

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

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| <p>In re:</p> <p>TEHUM CARE SERVICES, INC.,¹</p> <p style="text-align: center;">Debtor.</p> | <p>Chapter 11</p> <p>Case No. 23-90086 (CML)</p> <p>Re: Dkt. Nos. 1506 & 1260</p> |
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JOINT NOTICE OF APPEAL

PLEASE TAKE NOTICE that the Official Committee of Tort Claimants (the “TCC”), together with Elizabeth Frederick, Paris Morgan, Aanda Slocum, and LaTanda Smith hereby appeal to the United States District Court for the Southern District of Texas pursuant to 28 U.S.C. § 158 and Rules 8002, 8003, and 8004 of the Federal Rules of Bankruptcy Procedure from the order (Dkt. No. 1506) (the “Order”) (attached hereto as **Exhibit 1**) denying the *Motion of the Official Committee of Tort Claimants and Certain Tort Claimants for Structured Dismissal of Chapter 11 Case* (Dkt. No. 1260) (the “Motion”), entered on April 11, 2024, by the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”).² The TCC, Elizabeth Frederick, Paris Morgan, Aanda Slocum, and LaTanda Smith submit this Notice of Appeal in conformity with Bankruptcy Form B417A.

Part 1: Identify the Appellant(s)

1. **Name(s) of Appellants:** The Official Committee of Tort Claimants, Elizabeth Frederick, Paris Morgan, Aanda Slocum, and LaTanda Smith.

¹ The last four digits of the Debtor’s federal tax identification number is 8853. The Debtor’s service address is: 205 Powell Place, Suite 104, Brentwood, Tennessee 37027.

² Concurrently herewith, the Appellants are filing the *Motion of the Official Committee of Tort Claimants, Elizabeth Frederick, Paris Morgan, Aanda Slocum, and Latanda Smith for (I) Leave of the Court to Appeal the Bankruptcy Court’s Order Denying the Motion Dismiss and (II) Certification of Direct Appeal to the United States Court of Appeals for the Fifth Circuit*, attached hereto as **Exhibit 2**.



2. Position of Appellants in the Bankruptcy Case that Is Subject of this Appeal:

The Official Committee of Tort Claimants appointed by the United States Trustee on November 11, 2023, in above-referenced chapter 11 case and certain individuals asserting personal injury and wrongful death claims in above-referenced chapter 11 case.

Part 2: Identify the Subject of this Appeal

1. Describe the Judgment—or the Appealable Order or Decree—from which the Appeal is taken: Each and every part of the Order attached hereto as Exhibit 1, including the April 11, 2024, transcript of the Bankruptcy Court’s oral ruling on the Motion.

2. State the Date on which the Judgment—or the Appealable Order or Decree—was Entered: The Order was issued on April 11, 2024.

Part 3: Identify the Other Parties to the Appeal

List the names of all parties to the judgment—or the appealable order or decree—from which the appeal is taken and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

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Part 4: Optional Election to Have Appeal Heard by District Court (applicable only in certain Districts)

N/A.

Part 5: Signature

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 Signature of attorney for appellant(s)

Date: April 24, 2024

/s/ James Slater
 Signature of attorney for appellant(s)

Date: April 24, 2024

/s/ Adam B. Nach
 Signature of attorney for appellant(s)

Date: April 24, 2024

/s/ Jason Wallace
 Signature of attorney for appellant(s)

Date: April 24, 2024

Dated: April 24, 2024
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/s/ Eric R. Goodman

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ENTERED

April 11, 2024

Nathan Ochsner, Clerk

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

IN RE:

TEHUM CARE SERVICES, INC.,

Debtor.

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CASE NO: 23-90086

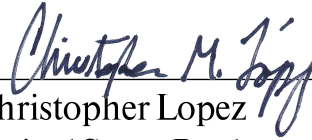
CHAPTER 11

ORDER DENYING MOTION FOR STRUCTURED DISMISSAL

[RE: Docket No. 1260]

For the reasons stated on the record at the hearing held on April 11, 2024, the Motion of the Official Committee of Tort Claimants and Certain Tort Claimants for Structured Dismissal of Chapter 11 Case is denied.

Signed: April 11, 2024



Christopher Lopez
United States Bankruptcy Judge



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

In re:

TEHUM CARE SERVICES, INC.¹

Debtor.

Chapter 11

Case No. 23-90086 (CML)

Re: Dkt. Nos. 1506 & 1260

RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT JUDGE

**MOTION OF THE OFFICIAL COMMITTEE OF TORT
CLAIMANTS, ELIZABETH FREDERICK, PARIS MORGAN, AANDA
SLOCUM, AND LATANDA SMITH FOR (I) LEAVE OF THE COURT
TO APPEAL THE BANKRUPTCY COURT’S ORDER DENYING THE
MOTION DISMISS AND (II) CERTIFICATION OF DIRECT APPEAL TO
THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

The Official Committee of Tort Claimants (the “TCC”), along with Elizabeth Frederick, Paris Morgan, Aanda Slocum, and LaTanda Smith (the “Individual Movants” and together with the TCC, the “Movants”), file this motion (the “Motion”), pursuant to 28 U.S.C. § 158(a)(3) and 28 U.S.C. § 158(d)(2)(A)-(B) and Bankruptcy Rules 8002, 8003, and 8004 for the entry of any order (I) granting the Movants leave to appeal the Bankruptcy Court’s order (to the extent that such order is interlocutory and is not a final order) denying *Motion of the Official Committee of Tort Claimants and Certain Tort Claimants for Structured Dismissal of Chapter 11 Case* (Dkt. No. 1260) (the “Motion to Dismiss”) and (II) certifying the Bankruptcy Court’s order denying the Motion to Dismiss for direct appeal to the United States Court of Appeals for the Fifth Circuit (the “Fifth Circuit”). A copy of the Court’s order denying the Motion to Dismiss is attached hereto as **Exhibit A**. See Fed. R. Bankr. P. 8004(b)(1)(E). The transcripts for the hearings and the Court’s

¹ The last four digits of the Debtor’s federal tax identification number is 8853. The Debtor’s service address is: 205 Powell Place, Suite 104, Brentwood, Tennessee 37027.

oral ruling are attached hereto as Exhibit B-1, Exhibit B-2, Exhibit B-3, Exhibit B-4, and Exhibit B-5. In support of this Motion, the Movants respectfully state as follows:

INTRODUCTION

1. This case is about access to our justice system. A tortfeasor should not be able to use a contrived bankruptcy to strip tort victims of their legal, equitable, and Constitutional rights. The Bankruptcy Court’s ruling denying the Motion to Dismiss means that any tort victim could have his or her access to our justice system taken away by a Bankruptcy Court through the non-debtor releases that are the objective of the bankruptcy case that the Movants here seek to end.

2. Corizon Health—a company based in Tennessee that is known today as “YesCare”—provides healthcare services to United States prisons and jails. As of late 2021, the company faced over 1,000 lawsuits alleging substandard medical care. People died. Mothers buried their daughters. Prisoners suffered cruel and unusual punishment because Corizon Health failed to provide the healthcare that it promised it would provide. The victims here were incarcerated, but they were not sentenced to die.

3. The standards to which this Country holds itself do not allow for cruel and unusual punishment. *See Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976) (inmates have a Constitutional right to medical care and the denial of that care, which may result in “pain and suffering” beyond any penological purpose, “is inconsistent with contemporary standards of decency”).

4. In mid-2022, Corizon Health decided to commence a series of legal maneuvers known as the “Texas Two Step,” to evade accountability for the harm it caused. These maneuvers, which included a divisional merger and a bankruptcy filing, resulted in the creation of two legal entities—Tehum Care Services, Inc. (“Tehum”) and CHS TX, Inc. (“CHS TX”) (which is now part of YesCare). Tehum—which means the “abyss” in Hebrew—was assigned Corizon Health’s

disfavored liabilities, including significant tort liability (*i.e.*, personal injury and wrongful death claims and Section 1983 claims), and subsequently filed for bankruptcy in Houston, Texas.²

5. CHS TX, and ultimately YesCare, received Corizon Health’s operating assets. Today, YesCare operates the same business that Corizon Health did prior to mid-2022, utilizing the same personnel and headquarters in Tennessee. YesCare—despite being formed in 2021—holds itself out to the public as having over 40 years of experience in the prison healthcare industry—*i.e.*, YesCare is Corizon Health.

6. Corizon Health created Tehum and placed it into bankruptcy to keep holders of personal injury and wrongful death claims from seeking justice before Article III Courts and State Courts. Tehum—the debtor in this case—exists to enable the non-debtor entities and persons who orchestrated the divisional merger to seek a discharge of their tort liability. But seeking a discharge of non-debtor tort liability is not a valid bankruptcy purpose.

7. The Fifth Circuit has long held that bankruptcy cannot be used to obtain a discharge of a non-debtor’s liability. The Fifth Circuit has also long held that a chapter 11 case must be dismissed when the filing is done to gain a litigation advantage, including attempts to gain control over and settle derivative claims against insiders. *See, e.g., In re Antelope Techs., Inc.*, 431 Fed. Appx. 272, (5th Cir. June 24, 2011). The Bankruptcy Court failed to follow this precedent and found that Tehum is a proper debtor.

8. This case presents a landmark legal issue. If a tortfeasor can undertake a divisional merger that is fraudulent, place a manufactured entity assigned the tort liability into bankruptcy,

² In naming the entity assigned Corizon Health’s liabilities “the abyss,” Corizon followed a tradition of semi-ironic names for companies contrived to prevent tort victims from recovering from them: Paddock Enterprises (designed to “ring-fence” the company’s assets from asbestos victims) and LTL (“Legal Talc Litigation”) Management, designed to do the same for victims of cancer caused by exposure to Johnson & Johnson’s talc products.

and then use that bankruptcy proceeding to forever bar tort victims from having access to our justice system, then bankruptcy can and will supplant our civil justice system. Bankruptcy Courts authorized under Article I of our Constitution would replace District Courts authorized under Article III of our Constitution as the forum where mass tort cases are resolved.

9. The Bankruptcy Court stated that it did not want to make a policy determination regarding the Texas Two Step. But some sort of determination of good faith, of legality, of consistency with the Bankruptcy Code and the Constitution, is unavoidable given the facts presented. Either Tehum is a proper debtor, or it is not.

10. The Bankruptcy Court held that Tehum (*i.e.*, the “abyss”) is a proper debtor. If Tehum (*i.e.*, the “abyss”) is a proper debtor, then bankruptcy can be used to supplant the civil justice system. The Bankruptcy Court implicitly made a policy determination regarding the role that Article III Courts and State Courts can and should play when it comes to the adjudication of personal injury and wrongful death claims.

11. This case has drawn the attention of the United States Senate.³ Senators from both sides of the aisle have expressed concern over the abuse of the bankruptcy system presented here. This case is not just about the cruel and unusual punishment suffered by Corizon Health’s victims. If this precedent stands, any tort victim could have his or her access to our justice system taken away through a Texas Two Step and the implementation of the non-debtor releases that are the objective of Tehum’s chapter 11 case.

³ See Correspondence attached hereto as **Exhibit C-1**, **Exhibit C-2**, and **Exhibit C-3**; see also Amanda Bronstad, *Three Senators and 25 States Ask SCOTUS to End ‘Texas Two-Step’ Bankruptcies*, Jan. 23, 2024, <https://www.law.com/2024/01/23/three-senators-25-states-ask-scotus-to-end-texas-two-step-bankruptcies/?slreturn=20240315131550>. The Senators critical of the Texas Two Step include Josh Hawley (MO), Elizabeth Warren (MA), Dick Durbin (IL), and Sheldon Whitehouse (RI).

12. The Movants submit that the order denying the Motion to Dismiss—a motion which was joined by the U.S. Department of Justice, nonprofit organizations committed to protecting the rights of incarcerated individuals (including *pro se* claimants), and family members whose loved ones died due to Corizon Health’s negligence—is a final order under 28 U.S.C. § 157(a)(1).

13. However, even if this Court concludes that it is not a final order, the standard for interlocutory review is met here. 28 U.S.C. § 157(a)(3). The Bankruptcy Court’s ruling features a controlling question of law where substantial grounds for a difference of opinion exists. This appeal will materially advance the ultimate termination of litigation. This case should be dismissed with a finding that Tehum is ineligible to be a debtor due to its lack of good faith. If the Bankruptcy Court’s ruling is interlocutory, leave to appeal should be granted.

14. The Movants also request certification of direct appeal to the Fifth Circuit under 28 U.S.C. § 158(d)(2)(A)-(B). The Bankruptcy Court’s order involves an issue of great public importance: whether a company can use a divisional merger to effectively extinguish the claims of the company’s tort victims—here, prisoners who suffered or died as a result of substandard medical care. The issues presented here track issues presented to the Third Circuit in the bankruptcy of LTL Management—an entity Johnson & Johnson created to use bankruptcy to bar cancer victims from accessing our civil justice system. The factors that led to certification of direct appeal to the Third Circuit in *LTL Management* also exist in this case.

15. However, what is most critical to the Movants is that this appeal be heard promptly by an Article III Court. The Movants would be pleased for this Court to hear this matter and consider the bankruptcy and Constitutional questions that arise from the Bankruptcy Court’s ruling that Tehum is a proper debtor. Tehum’s case was filed in bad faith. This Motion should be granted.

FACTUAL BACKGROUND (FED. R. BANKR. P. 8004(B)(1)(A))

16. For decades, tortfeasors have resorted to bankruptcy when the liability caused by their misconduct has resulted in genuine insolvency or financial distress. In these cases, the company at issue will submit itself and its assets to a Bankruptcy Court's jurisdiction and then use the bankruptcy process to negotiate a fair and reasonable resolution with its creditors, including the tort victims. In such cases, the ultimate resolution must comport with the Bankruptcy Code's requirements regarding a fair allocation of estate assets and other rules requiring that creditors be paid in full before equity holders can themselves receive a recovery or retain property. This case does **not** involve a bankruptcy of this nature or type in any respect. Rather, this case is predicated on an effort to upend the Bankruptcy Code's priority scheme and circumvent Fifth Circuit law.

I. Corizon Health's Efforts to Shield Assets from Creditors

17. Tehum—the chapter 11 debtor—has no business to reorganize. It has no operating assets or employees. The only real assets the Debtor has are potential causes of action against affiliates and insiders—namely, YesCare, CHS TX, and Mr. Isaac Lefkowitz (a beneficial owner of Corizon Health and the Debtor's sole member). These causes of action are the rights and remedies that belong to the tort victims that allow them to seek recoveries from the *real* defendants.

18. In January 2022, Mr. Lefkowitz created YesCare. YesCare was not owned by Corizon Health but was owned by the same entities and individuals who ultimately owned Corizon Health. Starting in February 2022, YesCare created a series of subsidiaries to bid on new contracts with state and local departments of corrections for prison and jail healthcare services. *See* 3-27-24 Hr'g Tr. 160-162, 164, 170-72. These subsidiaries had no independent officers or directors. Rather, Corizon Health's officers and employees created the proposals even though these newly created subsidiaries were competing for contracts *against* Corizon Health. This was done to shield new business contracts from Corizon Health's creditors.

19. In May 2022, with the prospect of a \$1 billion contract with the State of Alabama nearly secured, Corizon Health underwent a divisional merger under Texas law. Pursuant to this divisional merger, Tehum was allocated the disfavored liabilities (including personal injury and wrongful death claims and Section 1983 claims) and certain assets that were not necessary to sustain a going concern business.

20. CHS TX was allocated all Corizon Health's assets related to its operation on a go-forward basis. CHS TX then became a part of YesCare. YesCare and the subsidiaries it created after its formation hold themselves out as a mere continuation of Corizon Health, claiming to have over 40 years of experience in the prison healthcare industry.

21. The net effect of these maneuvers is simple. Corizon Health was stripped of its operating assets and new contracts. The assets allocated to YesCare were related its operation on a go-forward basis. Today, YesCare operates the prison healthcare business in various states (including Alabama). The liabilities allocated to Tehum—an entity that has no operations and no employees—are the liabilities that Corizon Health did not want to pay. These liabilities include tort claims, commercial claims asserted by hospitals that provided services to Corizon Health and were never paid, and state governments that assert claims for indemnification and contribution.

II. Creditors Have Rights and Remedies Under State Law

22. Tehum filed for bankruptcy. But before getting to that part of the case, it is important to note that creditors—both tort claimants and other creditors—had the ability to recover on their claims by exercising the rights and remedies available to them under applicable law.

23. The Texas Divisional Merger statute was not designed to permit parties to commit fraud and destroy those rights. The opposite is true. The statute, consistent with its plain language and legislative history, does not “abridge any right or rights of any creditor under existing law.”

See Tex. Bus. Org. Code § 10.901. If a party undertakes a divisional merger that is fraudulent and the divisional merger damages creditors, the creditors can assert an array of rights and remedies under state law, including under the doctrines of successor liability and alter ego.

24. **Successor Liability**. Under the successor liability doctrine, Corizon Health’s creditors have the right to hold CHS TX and/or YesCare responsible for their claims arising pre-divisional merger. Successor liability applies when the successor is a mere continuation of the predecessor, the successor is the result of a *de facto* merger, or the transaction was fraudulent.⁴

25. This is not a theoretical possibility. This issue was litigated in a Federal Court prior to Tehum’s bankruptcy filing by two of Tehum’s current tort creditors. See *Kelly v. Corizon Health Inc.*, No. 2:22-cv-10589, 2022 WL 16575763 (E.D. Mich. Nov. 1, 2022); *Jackson v. Corizon Health Inc.*, 2:19-cv-13382, 2022 WL 16575691 (E.D. Mich. Nov. 1, 2022).⁵

26. After receiving notice of Corizon Health’s divisional merger, two plaintiffs in civil rights actions against Corizon Health in Eastern District of Michigan moved to substitute CHS TX as the real party in interest, which the Federal Court granted. The Court first determined that Michigan law applied because the tort at issue occurred in Michigan. *Id.* at *9.

27. Next, applying Michigan’s doctrine of successor liability, the Court found that CHS TX was a “mere continuation” of Corizon Health, “conducting the same business” that Corizon Health conducted prior to the divisional merger. *Id.* at *13. On this basis—even though the divisional merger documents assigned the plaintiffs’ tort claims to Tehum—the Court held that CHS TX could be substituted as a defendant and held responsible for the claims under Michigan

⁴ See *Mozingo v. Correct Mfg. Corp.*, 752 F.2d 168, 174 (5th Cir. 1985); *Stearns Airport Equip. Co. v. FMC Corp.*, 977 F. Supp. 1263, 1269 (N.D. Tex. 1996).

⁵ The District Court entered two identical rulings in each of *Kelly* and *Jackson* on the same day. See *id.* Any citations to *id.* throughout this section are interchangeable to either cited decision.

law. *Id.* Consistent with state law, the plaintiffs could hold CHS TX responsible for the injuries.

28. The Movants submit that had the Michigan Court been aware of additional information regarding YesCare that came to light during the bankruptcy case, as well as YesCare's representations to the United States Senate, the Court would have reached the same conclusion as to YesCare (*i.e.*, YesCare is Corizon Health).

29. **Alter Ego Doctrine.** Under the alter ego doctrine, Corizon Health's creditors have the right to hold Mr. Lefkowitz and the other beneficial owners of YesCare responsible for their claims arising pre-divisional merger. The alter ego doctrine applies when a company's beneficial owners misuse the corporate structure to perpetuate a fraud or evade existing obligations. *See Ledford v. Keen*, 9 F.4th 335, 339 (5th Cir. 2021); *SSP Partners v. Gladstrong Invs. (USA) Corp.*, 275 S.W.3d 444, 451 (Tex. 2008).

30. Here, the ultimate ownership of Corizon Health's prison healthcare business did not change. The private equity firm that acquired the business reshuffled the deck to evade the obligations owed to existing creditors, including tort victims. This conduct provides a clear basis to hold the parties who perpetrated the fraud ultimately responsible for the claims.

31. **Fraudulent Transfer.** Under state law fraudulent transfer statutes, the divisional merger can also be avoided as a fraudulent transfer. State law allows for the avoidance of fraudulent transfers when the transfer was made with the actual intent to hinder, delay, or defraud creditors or when the transferor received less than reasonably equivalent value and was left with unreasonably small capital. *See Tex. Bus. & Comm. Code* § 24.005. Badges of fraud, which are present here, include whether the transfer was to an insider, the transfer was of substantially all the debtor's assets, the debtor was insolvent or became insolvent shortly after the transfer was made, and the debtor transferred the essential assets of the business. *Id.* at § 24.005(b).

32. Again, this is not a theoretical issue for YesCare. The Bankruptcy Court in the *DBMP* case pending in North Carolina addressed a similar fact pattern and held that the allocation of assets and liabilities under the Texas divisional merger statute in the manner similar to what occurred here can be subject to avoidance as a fraudulent transfer. *See Official Comm. of Asbestos Personal Injury Claimants v. DBMP LLC*, No. 21-03023-JCW (Bankr. W.D.N.C. July 7, 2022), Hr’g Tr. at 23-25 (attached as **Exhibit D**). This does not involve a difficult or novel application of state fraudulent transfer law.

33. The *DBMP* Court held that it would be “contrary to all Anglo-American notions of fraudulent conveyance law” for the victims of a fraudulent divisional merger to have “no recourse” against the entity that received the operating assets, and that such a result would be contrary to the “stated intention of the Texas statute,” which preserves creditor rights under existing law when a tortfeasor undertakes a divisional merger. *Id.* at 25; *accord* Tex. Bus. Org. Code § 10.901.

III. Tehum Commences Its Bankruptcy and Asserts Ownership of Causes of Action it Claims Are Derivative

34. After suffering defeats in the *Kelly* and *Jackson* litigation in Michigan and facing the threat of a receivership being appointed in litigation in Missouri, Mr. Lefkowitz, Tehum’s sole director, placed Tehum into a chapter 11 bankruptcy proceeding in February 2023.

35. This bankruptcy filing gave Tehum—an entity that Mr. Lefkowitz controlled through financing—a hook to assert ownership of the personal injury and wrongful death claims and settle them out from under the victims. The real impact of any bankruptcy settlement proposed by Tehum would be to forever bar tort victims from pursuing their rights in the American justice system through a bankruptcy settlement approved by an Article I Bankruptcy Court.

36. There is a Circuit split as to whether a bankruptcy trustee (or a debtor in possession) has standing to assert claims that belong to creditors under state law against third parties under

doctrines like successor liability and alter ego. Successor liability, alter ego, and veil piercing are not causes of action. They are equitable doctrines that permit creditors to pursue their claims against additional parties. Most courts recognize that when a claim is specific to a creditor, it is a personal claim and the legal interest only of the creditor that suffered the injury. *See, e.g., Caplin v. Marine Midland Grace Trust Co. of New York*, 406 U.S. 416, 434 (1972); *Matter of Buccaneer Resources, LLC*, 912 F.3d 291, 293-94 (5th Cir. 2019); *In the Matter of Educators Group Health Trust v. Wright*, 25 F.3d 1281 (5th Cir. 1994).

37. But courts in certain circumstances (that are not present here) have held that a debtor's bankruptcy estate can assert and settle claims asserted against alleged alter egos and successors **of the debtor**. *See, e.g., In re Emoral, Inc.*, 740 F.3d 875 (3d Cir. 2014) (successor liability remedy gives rise to an estate cause of action); *Matter of S.I. Acquisition, Inc.*, 817 F.2d 1142 (5th Cir. 1987) (alter ego remedy gives rise to an estate cause of action).⁶

38. The testimony at trial revealed Tehum's scheme. According to Tehum's chief restructuring officer (who was selected by the Debtor's sole member, Mr. Lefkowitz), Tehum claims that the personal injury and wrongful death claims asserted against CHS TX or YesCare (based on the successor liability doctrine) and against Mr. Lefkowitz and the other owners of Corizon Health and YesCare (based on the alter ego doctrine) are now **derivative claims** that are property of Tehum's bankruptcy estate. *See* 3-5-24 Hr'g Tr. 181-182, 195-214.

39. Based on this characterization, Tehum asserted that it could enter into a settlement with the **defendants** in the personal injury and wrongful death actions that settled these derivative claims as well as various fraudulent transfer claims that could be brought against the same

⁶ YesCare and CHS TX are not successors of Tehum. Even if a Court were to adopt the Third Circuit's reasoning in *Emoral*, the claims asserted against YesCare and/or CHS TX based on the doctrine of successor liability would not constitute property of Tehum's bankruptcy estate.

defendants. The Movants vigorously dispute this characterization.

40. As the Movants made clear before the Bankruptcy Court, the actions against YesCare, CHS TX and Mr. Lefkowitz are not property of Tehum’s bankruptcy estate under section 541(a) of the Bankruptcy Code; any contrary position would place section 541(a) in direct violation of the Fifth Amendment. If section 541(a) operates to take the plaintiffs’ causes of action (arising from individualized injuries they suffered)⁷ and transfers them to a debtor controlled and manufactured by the tortfeasor, it must do so on the petition date—*i.e.*, as of the “commencement of the case”—without due process or notice. 11 U.S.C. § 541(a). This would violate the Fifth Amendment and constitute an unlawful taking.⁸

41. But if Tehum is correct, then such a settlement, if approved by an Article I Court, would bar all claimants from pursuing their rights and remedies against the real parties in interest—*i.e.*, YesCare, CHS TX and Mr. Lefkowitz—with their only recourse being against a settlement trust funded with the proceeds of the insider settlement. Mr. Lefkowitz testified that the settlement would only be funded upon the entry of a final order discharging himself, YesCare, CHS TX, and a host of other non-debtor parties of their liability arising from Corizon Heath’s misconduct. *See* 3-25-24 Hr’g Tr. 242-243, 250-252, 347. Unless “the non-Debtor release parties get a

⁷ *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982) (“[A] cause of action is a species of property protected by the Fourteenth Amendment’s Due Process Clause.”) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)); *Dallas Cabana, Inc. v. Hyatt Corp.*, 441 F.2d 865, 868, n.9 (5th Cir. 1971) (“A ‘cause of action’ is an asset or a property right of the individual to whom it belongs.”).

⁸ *See Logan*, 455 U.S. at 433 (it is a “truism” that “some form of hearing” is required “before” a “protected property interest” is taken); *Int’l Transactions, Ltd. v. Embotelladora Agral Regiomontana, SA de CV*, 347 F.3d 589, 594–95 (5th Cir. 2003) (“Parties in interest must receive notice and an opportunity to be heard before their interests may be adversely affected.”); *see also Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 589 (1935) (“The bankruptcy power, like the other great substantive powers of Congress, is subject to the Fifth Amendment.”).

discharge of their tort liability,” then there is no settlement and no plan. *Id.* at 347.

42. The proposed settlement was for an amount far less than the liabilities that these non-debtors face in the tort system. After Tehum filed for bankruptcy, over 200 individuals (or the executors of their estates) filed personal injury and wrongful death claims, which claims are beyond the Bankruptcy Court’s jurisdiction to adjudicate. *See* 28 U.S.C. § 157(b)(2); *Stern v. Marshall*, 564 U.S. 462, 131 S.Ct. 2594 (2011).

43. The face amount of the tort claims is approximately \$775 million. Hospitals, governmental units, and other creditors filed proofs of claim as well, which liability is estimated to be between \$75 million and \$100 million. YesCare, a profitable company, faces substantial liability in the tort system if Tehum is unable to accomplish the objective of its bankruptcy.

IV. The Mediation with Former Bankruptcy Judge David R. Jones

44. After filing for bankruptcy, the Bankruptcy Court appointed former Bankruptcy Judge David R. Jones as the mediator. After a three-day mediation with Judge Jones, Tehum and the Official Committee of Unsecured Creditors (the “UCC”) announced a global settlement valued at \$37 million (a small fraction of YesCare’s actual liability).

45. At the time this mediation occurred, YesCare was represented by Ms. Elizabeth Freeman, Judge Jones’s former law clerk, who also was in a romantic relationship with Judge Jones. There is no evidence that this fact was disclosed to the UCC.

46. The global settlement former Judge Jones oversaw was a Faustian bargain. In exchange for a settlement and discharge of liability for all *alleged* estate causes of action—claims that according to Tehum included the avoidance actions and the personal injury and wrongful death claims asserted against YesCare, CHS TX and Mr. Lefkowitz—Mr. Lefkowitz and/or parties that he controls would fund a settlement.

47. But the proceeds of that settlement would **not** be shared equally among all creditors. The joint plan Tehum and the UCC proposed allocated the majority of the settlement proceeds and other valuable consideration (including certain tax credits) to the commercial creditors. The governmental claims would be subordinated and paid nothing. The personal injury and wrongful death claims would be channeled to a separate trust and paid less than the commercial claims. The majority of the UCC's members were holders of commercial claims.

48. Further, under the proposed plan, the UCC would select the trustees of the settlement trusts. These trustees would then oversee the settlement and ultimate liquidation of the commercial claims. If confirmed, the UCC members would have selected the party who determined the amount of their claims, and those claims would have been paid using the proceeds of a settlement that monetized the pain and suffering experienced by the tort victims and their families. In return, YesCare's future profits could flow to its private equity owners, and the tort victims would be barred from vindicating their Constitutional rights before Article III Courts.

V. The TCC Is Appointed and Moves to Dismiss the Chapter 11 Case

49. Judge Jones resigned after his relationship with Ms. Freeman became public. Following this revelation, in November 2023, the U.S. Trustee appointed a tort claimants committee in Tehum's case. The Bankruptcy Court also appointed a new mediator.

50. But Tehum and the UCC were still determined to press forward with their settlement (as each benefited therefrom, albeit at the expense of the tort victims). These parties invited the newly formed TCC to a mediation held in December 2023.

51. Approximately one week prior to this mediation, Tehum and the UCC made roughly 600,000 pages of documents available to the TCC. Tehum and the UCC, however, withheld certain key documents which were not produced until the end of January 2024, affording

the TCC as little time as possible to mount an opposition to the proposed settlement.

52. Following a one-day mediation in New York with the new mediator, Tehum and the UCC announced their intent to move forward with their settlement without the TCC's support. In response, the Movants moved to dismiss Tehum's bankruptcy case as a bad faith filing. In support of this relief, the Movants advanced several arguments:

53. **First**, the objective of a chapter 11 case cannot be to obtain a discharge of a non-debtor's tort liability. The Fifth Circuit has long held that bankruptcy can only be used to obtain a discharge for a debtor. See *Bank of N.Y. Tr. Co. v. 9 Official Unsecured Creditors' Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009) (“[T]his court has held that Section 524(e) only releases the debtor, not co-liable third parties.”) (citing *In re Coho Resources, Inc.*, 345 F.3d 338, 342 (5th Cir. 2003); *Hall v. Nat'l Gypsum Co.*, 105 F.3d 225, 229 (5th Cir. 1997); *Matter of Edgeworth*, 993 F.2d 51, 53–54 (5th Cir.1993); *Feld v. Zale Corp.*, 62 F.3d 746 (5th Cir.1995)).

54. **Second**, bankruptcy cannot be used to gain a litigation advantage. See *Matter of Little Creek Dev. Co.*, 779 F.2d 1068 (5th Cir. 1986) (the seminal bad faith case, which opined, *inter alia*, that it is bad faith to file bankruptcy as a follow on to state court litigation). Consistent with this principle, the objective of a chapter 11 case cannot be to exercise control over and settle derivative claims against insiders. See *In re Brazos Emergency Physicians Ass'n*, 471 Fed. Appx. 393, 394 (5th Cir. June 22, 2012); *In re Antelope Techs., Inc.*, 431 Fed. Appx. 272, 275 (5th Cir. June 24, 2011); *Investors Group, LLC v. Pottorff*, 518 B.R. 380, 384 (Bankr. N.D. Tex. 2014).

55. The *Antelope* case illustrates this point. 431 Fed. Appx. 272. In *Antelope*, the defendants in a shareholder derivative lawsuit—*i.e.*, a cause of action that is actually derivative of harm to a company—sought to use the company's bankruptcy to gain control over and settle the shareholder litigation against them. A key facet of the bankruptcy was for the derivative lawsuits

to become property of the company's bankruptcy estate so that they could then be settled by the debtor (as opposed to the plaintiffs/shareholders).

56. The Bankruptcy Court for the Southern District of Texas confirmed the debtor's plan, which released the derivative claims and purported to bar the continuation of litigation against the debtor's insiders. 431 Fed. Appx. at 273. The plan went effective. On appeal, the District Court vacated the confirmation order and held that the chapter 11 petition was filed as a litigation tactic—*i.e.*, a scheme to gain control over the litigation against the insiders—and, therefore, was not “filed in good faith.” *Id.* The Fifth Circuit affirmed, agreeing with the District Court that “the purpose of the petition was not primarily to reorganize or respond to financial crisis but instead was to gain unfair advantage in the shareholder derivative action.” *Id.* at 275.

57. On remand, the Bankruptcy Court dismissed the case as not having been filed in good faith based on, *inter alia*, the terms of the proposed plan, which provided releases to the litigation targets. *Id.* The Bankruptcy Court went so far as to describe the scheme to control the litigation and release the defendants as “illegal” and “unethical.” *In re Antelope Techs., Inc.*, No. 07-31159-H3-11, 2010 WL 2901017, at *5 (S.D. Tex. July 21, 2010).

58. This case presents the same fact pattern as *Antelope*, but with an even greater display of bad faith. Here, the **defendants** in the wrongful death and personal injury lawsuits sought to use Tehum's bankruptcy case to control and settle claims that could be asserted against them based on the doctrines of successor liability and alter ego. The defendants created the factual basis for the application of the successor liability and alter ego doctrines by committing fraud. They are now seeking to use the fruits of that very fraud to argue that the tort claims against them are derivative in nature so that they can use Tehum to settle those claims in its bankruptcy case.

59. In *Antelope*, the shareholder claims were actually derivative in nature based on the injury that was *suffered by the plaintiffs and the corporation*. But the wrongful death and personal injury lawsuits here do not allege or involve any harm to a corporate entity (*i.e.*, Tehum).

60. Tehum was not left to bleed from his head and nose for over two hours while no one called for emergency medical help; Tehum was not forced to suffer in agony and live in its own fecal matter for four months; Tehum did not die because someone forgot to replace the batteries in two defibrillators; and Tehum did not bury her daughter following her death. This is the pain and agony that the victims of Corizon Health's misconduct experienced.

61. But even if Tehum is correct that Corizon Health's owners (by committing fraud) succeeded in transforming the personal injury and wrongful death claims against Corizon Health into "derivative claims" against YesCare, CHS TX, and Mr. Lefkowitz that Tehum can now control and settle in bankruptcy, then this case presents the **exact same bad faith conduct** that mandated the dismissal of Antelope's chapter 11 case and for the same reason.

62. **Third**, Tehum seeks to upend the Bankruptcy Code's objectives and priority scheme. To benefit from bankruptcy, a debtor must shoulder a host of obligations.

63. A debtor must make disclosures of its creditors, assets and liabilities, income and expenditures, and the nature of its financial affairs. It must then, under Court supervision, agree to, and obtain confirmation of, a plan that meets a variety of substantive requirements to ensure that the plan is feasible, treats all the creditors' claims equitably, and generally leaves each class of creditors no worse off than it would be if the debtor were liquidated.

64. But here only Tehum has filed for bankruptcy and only Tehum has taken on the obligations and duties that the Code requires. YesCare, CHS TX, and Mr. Lefkowitz have not made the financial disclosures required of a debtor, and they have not submitted themselves to the

supervision of the Bankruptcy Court to obtain relief under a feasible and equitable plan.

65. At the same time, because the divisional merger left Tehum with no operating assets, Tehum's ability to meet creditor demands turns on the approval of a settlement that affords non-debtors with a discharge. Through the divisional merger and subsequent bankruptcy, YesCare, CHS TX, and Mr. Lefkowitz seek to garner the benefits of bankruptcy—a discharge that prevents tort claimants from pursuing litigation against them—without themselves shouldering its attendant obligations. This undermines the framework established by the Bankruptcy Code.

66. In addition, through the divisional merger, YesCare and CHS TX chose which subset of its creditors would be forced to deal with the bankruptcy process. That undermines the Code's priority scheme, "which ordinarily determines the order in which the bankruptcy court will distribute assets of the estate" and which provides that equity holders "receive nothing until all previously listed creditors have been paid in full." *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 457 (2017). That scheme "constitutes a basic underpinning of business bankruptcy law" and "has long been considered fundamental to the Bankruptcy Code's operation." *Id.* at 464-65.

67. Carving out a class of creditors—prisoners and their families who often lack the financial resources needed to oppose these types of maneuvers and who may not enjoy public sympathy—shows that Tehum's petition was filed for tactical advantage in litigation.

68. YesCare and CHS TX can satisfy their obligations to all the enterprise's creditors outside of bankruptcy, except for the liabilities they assigned to Tehum. But the creditors with liabilities that have been assigned to Tehum, and those creditors alone, have now had their claims subjected to the burdens of bankruptcy.

69. Through the divisional merger and bankruptcy filing, YesCare and CHS TX have put pressure on a disadvantaged group. Although Tehum filed for bankruptcy, it has no ongoing

business operations that might be protected by a bankruptcy filing, and its attempt to leverage bankruptcy's tools to protect non-debtor parties is not a valid bankruptcy purpose.

70. A central purpose of chapter 11 is to allow a distressed business to “preserv[e] going concerns” while navigating financial hardship. *Bank Am. Nat’l Tr. & Sav. Ass’n v. 203 N LaSalle St. P’ship*, 526 U.S. 434, 453 (1999)). But Tehum has no going concern to preserve. The purpose of Tehum’s bankruptcy is to protect non-debtor affiliates and insiders.

71. The divisional merger and chapter 11 petition were implemented to enable Tehum to resolve claims through a plan without subjecting the entire corporate enterprise to a bankruptcy proceeding. Tehum’s admitted goal is to consummate a plan that would permanently protect YesCare, CHS TX and their non-debtor affiliates and insiders. The undisputed testimony was that, absent the achievement of this objective, there can be no settlement or chapter 11 plan.

72. But the Bankruptcy Code is not designed to achieve this result. The purpose of the Code is to provide a mechanism for the adjustment of the debtor-creditor relationship, not to permit non-debtors—who do not themselves shoulder the obligations of bankruptcy—to benefit from the Code’s protections. 11 U.S.C. § 524(e) (a discharge in bankruptcy “does not affect the liability of any” non-debtor for the debt). Tehum’s bankruptcy does not serve a valid purpose, particularly in light of Fifth Circuit case law that condemns the use of bankruptcy to obtain a discharge for non-debtors. Under Fifth Circuit law, Tehum’s bankruptcy should have been dismissed.

VI. The Bankruptcy Court Denies the Motion to Dismiss

73. But the Bankruptcy Court denied the Motion to Dismiss and held that Tehum is a legitimate debtor and has the right to the protections and benefits afforded to a debtor in possession under the Bankruptcy Code. The Bankruptcy Court offered several reasons for its ruling.

74. **First**, the Bankruptcy Court stated that it would not dismiss Tehum's case as a bad faith filing because dismissal had not been sought sooner. *See* 4-11-24 Hr'g Tr. 32.

75. But the TCC was not appointed until November 2023. The TCC moved for dismissal in January 2024 (following the mediation in December 2023). Waiting less than **two months** to seek dismissal is not improper. *See, e.g., In re Aearo Techs., LLC*, Case No. 22-02890-JJG-11, 2023 WL 3938436, at *20 (Bankr. S.D. Ind. June 9, 2023) (motion to dismiss filed six months after the petition date was not untimely where parties were engaged in mediation).

76. At the beginning of the hearing on the Motion to Dismiss, which was also a joint hearing on Tehum's and the UCC's own motion to approve their settlement, the Bankruptcy Court indicated that it was not inclined to dismiss Tehum's bankruptcy case for bad faith. *See* 3-1-24 Hr'g Tr. 28-29 (rejecting dismissal for "bad faith" since the "case has already been going on for a while."). The Court limited the TCC's ability to offer evidence on the issue of "bad faith" on the grounds that the Court found that such evidence was not "relevant." 3-25-24 Hr'g Tr. 339-340. But evidence of bad faith should have been viewed as relevant, and the Court's failure to permit the TCC to offer such evidence, at a minimum, mandates a remand of the proceedings.

77. **Second**, the Bankruptcy Court held that the fact that Tehum had filed a plan and reached a settlement with the UCC was "evidence of a valid bankruptcy purpose[]." 4-11-24 Hr'g Tr. 34. But the debtor in *Antelope* also filed a chapter 11 plan, which plan included a settlement of the derivative claims against the insiders. This did not prevent the District Court in *Antelope* from seeing the case for what it truly was and vacating the confirmation order on the grounds that the case itself was a litigation tactic and an abuse of the bankruptcy system.

78. Further, negotiating a Faustian bargain with the UCC where the tort victims' pain and suffering is monetized to pay off the commercial claimants is not evidence of a valid

bankruptcy purpose. Just the opposite is true. Rather than seeking the dismissal of the Debtor's case, the UCC tried to take advantage of the situation to the tort victims' detriment. On this point, the terms of the Debtor's and the UCC's joint plan speak for themselves.

79. **Third**, the Bankruptcy Court stated that it wanted to avoid making any policy determinations as to whether "divisional mergers" are "good or bad." See 3-1-24 Hr'g Tr. 79-80, 112-113; see also 3-27-24 Hr'g Tr. 513; 4-11-24 Hr'g Tr. 25. But the Movants do not dispute a legitimate business could undertake a divisional merger, divide the assets and liabilities associated with separate business lines between two entities, and that doing so would not (in most instances) offend existing law. But that is clearly **not** this case.

80. When a divisional merger is used to create an entity with nothing other than undesirable liabilities, and another entity receives the operating assets, a fraud has occurred. The issue here is that the divisional merger was fraudulent. The Bankruptcy Court's order denying the Motion to Dismiss conflicts with Fifth Circuit precedent concluding bankruptcies filed for similar purposes are improper. See *Brazos*, 471 Fed. Appx. at 394; *Antelope*, 431 Fed. Appx. at 275.

81. **Fourth**, the Bankruptcy Court found that *Little Creek* requires the Court to conduct an "on-the-spot evaluation of the Debtor[s] financial condition, motives, and the local financial realities." 4-11-24 Hr'g Tr. 26-27.⁹ The Bankruptcy Court failed to conduct that evaluation, beyond stating that "Tehum still has millions of dollars to potentially distribute" if a settlement is approved. *Id.* at 35. But, if there can be no settlement and no plan unless the personal injury and wrongful death claims against Mr. Lefkowitz, YesCare, and its non-debtor affiliates and insiders

⁹ At the beginning of the hearing, the Bankruptcy Court stated that it did not "need to look at the [Fifth Circuit's decision in] *Little Creek*." 3-1-24 Hr'g Tr. 29. The Bankruptcy Court found that if the settlement was not approved, it could dismiss the case based on "administrative insolvency." *Id.* In addition to filing for bankruptcy for litigation purposes, Tehum's estate is administratively insolvent, which is another fact that supports dismissal. See Dkt. No. 1475.

are discharged, it follows that the purpose of this case (from the perspective of Mr. Lefkowitz, the Debtor's sole member) is to achieve this improper objective. In this context, ignoring the Debtor's obvious motive for filing, and its lack of any actual business to reorganize, was inconsistent with the Fifth Circuit's holding in *Little Creek*.

82. **Fifth**, the Bankruptcy Court found that it was not bound by the Third Circuit's decision in *LTL Management*, without attempting to distinguish that well-reasoned decision. 4-11-24 Hr'g Tr. 28. Mr. Lefkowitz, Tehum's sole director, admitted that Tehum is not in "financial distress." 3-25-24 Hr'g Tr. 335. The Bankruptcy Court found otherwise, crediting the testimony of "Tehum's CRO and [a] UCC witness." 4-11-24 Hr'g Tr. 31. But neither of these witnesses contradicted Mr. Lefkowitz's testimony on this issue.¹⁰

83. Further, unlike the Third Circuit, the Fifth Circuit has long held that a discharge in bankruptcy is limited to the debts of the debtor and not solvent third parties like YesCare. The question posed by this case is whether Fifth Circuit precedent can be evaded through the corporate machinations that occurred here. If the answer is "yes," then the civil justice system as it has existed for over 240 years in the United States is about to be radically transformed. The Movants submit that an Article III Court should have a say in this matter first.

¹⁰ Compare 4 11 24 Hr'g Tr. 31 (Court: "A better testimony to rely on is from Tehum's CRO and the UCC witness who actually tried to value these [personal injury] claims"); with 3-5-24 Hr'g Tr. 130 ("Q. ... [A]s a CRO for [Tehum] ... have you conducted a valuation of the personal injury claims? A. No."); 3-5-24 Hr'g Tr. 223 ("I don't believe I testified that [Tehum is] in financial distress today."). At deposition, the UCC's advisor was instructed not to answer questions regarding the valuation of the personal injury claims based on a dubious assertion of the attorney-client privilege and work product doctrines, and thus, could not testify at trial on this issue. Tehum's CRO did offer testimony regarding a claims estimation he did for purposes of a liquidation analysis, but he never offered an opinion—expert or otherwise—regarding the damages suffered by the tort claimants or the value of their claims. 3-5-24 Hr'g Tr. 222.

JURISDICTION

84. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 158. The District Courts have jurisdiction to hear appeals from final judgments, orders, and decrees from the Bankruptcy Courts and, with leave from the District Court, from other interlocutory orders and decrees. *See* 28 U.S.C. § 158(a)(1)-(3). The Fifth Circuit has jurisdiction of appeals from such judgments, orders, and decrees if the District Court or the Bankruptcy Court certifies the direct appeal of such judgment, order, or decree. *See* 28 U.S.C. § 158(d)(2)(A)-(B).

QUESTIONS PRESENTED (FED. R. BANKR. P. 8004(B)(1)(B))

85. This appeal presents the following questions:
- (A) Whether a Bankruptcy Court has the authority under the Bankruptcy Code and the Constitution to discharge a non-debtor of its tort liability.
 - (B) Whether the tort claims arising from Corizon Health's misconduct, as asserted against YesCare and its non-debtor affiliates and insiders, are the property of Tehum's estate under the Bankruptcy Code, and whether such a construction of the Bankruptcy Code would violate the Fifth Amendment.
 - (C) Whether a chapter 11 case filed in an effort to gain control over and settle claims asserted against non-debtor insiders and affiliates is filed in bad faith.
 - (D) Whether a chapter 11 case filed after a divisional merger that assigns tort liabilities to a non-operational company, with no employees and no assets to sustain a going-concern business, meets the Bankruptcy Code's good-faith requirement.
 - (E) Whether the Court erred in denying Movant's Motion to Dismiss.

RELIEF SOUGHT

86. By this Motion, the Movants seek (i) a determination that the order denying the Motion to Dismiss is a final order under 28 U.S.C. § 157(a)(1), or (ii) in the alternative, leave to appeal the order denying the Motion to Dismiss under 28 U.S.C. § 158(a)(3) and Bankruptcy

Rule 8004. Further, the Movants ask that this Court to certify the Bankruptcy Court's order for direct appeal to the Fifth Circuit under 28 U.S.C. § 158(d)(2)(A)-(B).

BASIS FOR RELIEF REQUESTED (FED. R. BANKR. P. 8004(B)(1)(D))

I. Leave to Appeal Is Warranted If the Order Denying the Motion to Dismiss Is Not a Final Order under 28 U.S.C. § 158(a)(1)

87. Other Courts have decided that an order denying a motion to dismiss a chapter 11 case for lack of good faith is a final order under 28 U.S.C. § 158(a). *See In re LTL Mgmt., LLC*, 64 F.4th 84, 99 (3d Cir. 2023); *In re Am. Capital Equip., LLC*, Nos. 07-2546, 07-2746, 296 Fed. Appx. 270, 273 n.1 (3d Cir. Oct. 16, 2008) (order denying a motion to dismiss a chapter 11 case for bad faith is a final order); *In re Brown*, 916 F.2d 120, 124 (3d Cir. 1990) (same).

88. A debtor that files for bankruptcy as a means of obtaining a litigation advantage cannot avail itself of the Bankruptcy Code's protections. *See Antelope*, 431 Fed. Appx. at 273. Here, by denying the Motion to Dismiss, the Bankruptcy Court determined that Tehum has a right to be a chapter 11 debtor, which determination should be reversed. Dismissal would end the litigation on the merits and terminate Tehum's chapter 11 case.

89. Other Courts have reached the opposite conclusion. *See, e.g., In re Jartran, Inc.*, 886 F.2d 859, 863-64 (7th Cir. 1989); *In re 405 N. Bedford Dr. Corp.*, 778 F.2d 1374, 1377 (9th Cir. 1985). The Fifth Circuit has concluded that motions to dismiss other types of petitions, *see Matter of Phillips*, 844 F.2d 230, 235 (5th Cir. 1988) (chapter 13 petition by an individual debtor), or a motion to dismiss on another ground, *see Matter of Greene County Hospital*, 835 F.2d 589, 595 (5th Cir. 1988) (lack of subject matter jurisdiction), are not final orders.

90. Even if the Bankruptcy Court's order denying the Motion to Dismiss is not a final order, interlocutory review is appropriate under 28 U.S.C. § 158(a)(3). Interlocutory review of a Bankruptcy Court's order by a District Court is appropriate where, as here, (1) the order involves

a controlling question of law; (2) there is substantial ground for difference of opinion as to that question; and (3) an immediate appeal from the order may materially advance the ultimate termination of the litigation. *See In re Red River Energy, Inc.*, 415 B.R. 280, 284 (S.D. Tex. 2009). The Bankruptcy Court’s order satisfies all three factors.

91. **First**, the order presents a controlling question of law. A question of law is “controlling” if reversal of the order would have some impact on the litigation or terminate the action, or if the certified issue has precedential value for a number of cases. *See Tesco Corp. v. Weatherford Int’l, Inc.*, 722 F. Supp. 2d 755, 766 (S.D. Tex. 2010); *Ryan v. Flowserve Corp.*, 444 F. Supp. 2d 718, 723 (N.D. Tex. 2006).

92. By denying the Motion to Dismiss, the Bankruptcy Court ruled that it can administer Tehum’s case as if it were a legitimate debtor. Tehum’s witnesses made it clear that any settlement must provide YesCare, CHS TX, and Mr. Lefkowitz with a discharge of their tort liability.¹¹ If a debtor’s attempt to manufacture successor and alter ego liability and then use a contrived bankruptcy to settle tort claims out from under victims without their consent constitutes bad faith, then there is no point to further proceedings in Tehum’s case.

93. Whether a Bankruptcy Court has the authority under the Bankruptcy Code and the U.S. Constitution to discharge a non-debtor of its tort liability; whether the tort victims’ claims became property of the estate, as Tehum argues; and whether, if those claims are property of the estate, that application of the Bankruptcy Code violates the Fifth Amendment to the U.S. Constitution are also controlling questions of law.

¹¹ *See* 3-5-24 Hr’g Tr. 210-211 (no “settlement” could be “achieved” without “releas[ing]” “successor liability, alter ego claims, and other derivative claims”); 3-25-24 Hr’g Tr. 347 (there is no settlement “unless the non-Debtor release parties get a discharge of their tort liability”).

94. If the case continues and Tehum tries to confirm a plan incorporating the same provisions that show that the filing was in bad faith, that process could take over a year. Resolution of the controlling question of law will prevent the needless waste of time and resources. And because the questions of law presented here involve issues of first impression for the Fifth Circuit, those issues have “precedential value for a large number of cases.” *Ryan*, 444 F. Supp. 2d at 723.

95. **Second**, there is substantial ground for disagreement. This factor is met where, *inter alia*, ““a trial court rules in a manner which appears contrary to the rulings of all Courts of Appeals which have reached the issue,”” or ““if novel and difficult questions of first impression are presented.”” *Tesco*, 722 F. Supp. 2d at 766–67. “The level of uncertainty required to find a substantial ground for difference of opinion should be adjusted to meet the importance of the question in the context of the specific case.” C. Wright & A. Miller, *FED. PRAC. & PROC. JURIS.* § 3930 & n.15 (3d ed.).

96. The Bankruptcy Court’s order is inconsistent with the Fifth Circuit’s holdings that nonconsensual third-party releases are improper, and that a bankruptcy filed as a litigation tactic should be dismissed for lack of good faith. Tehum’s theory that derivative claims created through a Texas Two Step divisional merger are property of the estate—which the Bankruptcy Court appears to have accepted as a valid theory—is designed to circumvent Fifth Circuit precedent.

97. Courts in other Circuits have dismissed bankruptcy cases for bad faith where the debtor used a Texas Two Step, or similar pre-bankruptcy tactics designed to preclude federal or State court litigation. *See Red River Energy*, 415 B.R. at 284 (substantial disagreement elements satisfied where “at least two courts interpret the relevant legal principle differently”).

98. In *LTL Management*, the Third Circuit reversed the bankruptcy court’s denial of a motion to dismiss, concluding that Johnson & Johnson’s manufactured bankruptcy filing after a

similar Texas Two Step divisional merger was bad faith because the debtor was not in financial distress. *See In re LTL Mgmt., LLC*, 64 F.4th 84 (3d Cir. 2023). And the Bankruptcy Court for the Southern District of Indiana granted a motion to dismiss 3M’s manufactured bankruptcy filing designed to stop multi-district litigation by military veterans who suffered hearing loss due to 3M’s defective combat earplugs. *See Aearo*, 2023 WL 3938436. The Bankruptcy Court in *Aearo* did not permit 3M to use the bankruptcy process “as a litigation management tactic,” and dismissed the case. *Id.* at *20, *22.

99. This is the first Texas Two Step filed in this Circuit and presents issues of first impression. Can a tortfeasor undertake a divisional merger, assign its tort liabilities to a new entity, place that entity into bankruptcy, and then use that bankruptcy proceeding to effectively bar holders of personal injury and wrongful death claims from having access to our tort system—while keeping all productive assets beyond the Bankruptcy Court’s reach?

100. If the answer to this question is “yes,” then the impact of Tehum’s bankruptcy will be far reaching. Any tortfeasor that does not want to compensate those who were injured by its conduct could undertake these same corporate maneuvers and obtain relief from a bankruptcy proceeding that denies victims their legal, equitable, and Constitutional rights.

101. The targets here are prisoners and their families—a population that often lacks access to adequate legal resources. But as evidenced by the 3M case involving military veterans whose hearing was damaged in the line of duty, the application of this rule could affect any tort victim who seeks justice before an Article III Court or State Court. Fifth Circuit precedent forbidding nonconsensual third-party releases, and other Courts’ decisions dismissing bankruptcies filed under similar circumstances, show that there is substantial room for disagreement with the Bankruptcy Court’s order.

102. **Third**, for the same reason that this appeal presents a controlling question of law, an immediate appeal from the Court’s order denying dismissal would materially advance the ultimate termination of the litigation. *See Ex parte Tokio Marine & Fire Ins. Co.*, 322 F.2d 113, 115 (5th Cir. 1963) (element satisfied where decision on appeal “would terminate [the litigation] altogether”); *Tesco*, 722 F. Supp. 2d at 767 (“A key concern consistently underlying Section 1292(b) decisions is whether permitting an interlocutory appeal will speed up the litigation”).

103. A ruling from this Court that accords with the holdings in *Antelope* and *LTL Management* would end the case. The alternative is for the bankruptcy to continue while Tehum seeks the approval of a disclosure statement and the confirmation of a plan incorporating the same provisions that show that the filing was in bad faith—provisions the Bankruptcy Court suggested it did not find problematic. But that process could take over a year.

104. If such a plan is confirmed, Movants would appeal that confirmation—a final order—and the issues presented here will be decided by an Article III Court in any event. And if, as Tehum has asserted, tort claims arising from its predecessor’s misconduct, as asserted against YesCare and its non-debtor affiliates and insiders, are the property of Tehum’s estate under the Bankruptcy Code, and that application of the Bankruptcy Code upon the filing of the chapter 11 petition violates the Fifth Amendment, it would be “expensive and senseless” to require the parties to continue the bankruptcy. *See Tokio Marine*, 322 F.2d at 115.

II. The Court Should Consider Certification of Direct Appeal to the Fifth Circuit Under 28 U.S.C. § 158(d)(2)(A)-(B)

105. The Movants welcome this Court’s consideration of this appeal. But the Movants also recognize that the standard for granting interlocutory review of an appeal from a Bankruptcy Court is similar to the standard for certifying an appeal for direct appeal to the Fifth Circuit. Consistent with the path taken in *LTL Management* where the Bankruptcy Court’s ruling that a

debtor created by a divisional merger belonged in bankruptcy went directly to the Third Circuit, the Movants submit that direct certification to the Fifth Circuit is warranted here.

106. Section 158(d)(2)(A) provides for direct review of a Bankruptcy Court’s judgments, orders, or decrees—including interlocutory orders of Bankruptcy Courts—by the Fifth Circuit where the District Court or the Bankruptcy Court certifies there is no controlling decision from the Supreme Court or Fifth Circuit, the case involves a matter of public importance, there are conflicting precedents, or an immediate appeal may materially advance the progress of the bankruptcy proceeding. *See In re OCA, Inc.*, 552 F.3d 413, 418 (5th Cir. 2008).

107. If the standard under Section 158(d)(2) is met, then certification is mandatory. *See* 28 U.S.C. § 158(d)(2)(B) (if standard is met, the District Court “shall make the certification”); *In re Fieldwood Energy III LLC*, No. 4:22-CV-00855, 2023 WL 2142661, at *4 (S.D. Tex. Feb. 16, 2023), *report and recommendation adopted sub nom. Atl. Mar. Servs. LLC*, No. 4:22-CV-00855, 2023 WL 3433684 (S.D. Tex. Mar. 30, 2023) (“certification is mandatory” where any one of the factors in Section 158(d)(2) is satisfied).

108. As explained above, this case involves conflicting precedents, and because it involves a controlling issue of law, an immediate appeal may materially advance the progress of the bankruptcy proceeding. In addition, this case also involves a matter of public importance.

109. The Bankruptcy Court stated that it was not making a policy determination regarding the Texas Two Step. But a determination whether such a maneuver is consistent with the Bankruptcy Code’s good-faith requirement is unavoidable given the facts presented.

110. Either Tehum (*i.e.*, the “abyss”) is a proper debtor, or it is not. By finding that Tehum (*i.e.*, the “abyss”) is a proper debtor, the Bankruptcy Court implicitly made a policy

determination regarding the role that Article III Courts and State Courts should play when it comes to the adjudication of personal injury and wrongful death claims.

111. The case also concerns a legal issue of profound importance regarding tort victims' control over their causes of action. By indicating those causes of action are "derivative" and owned by a company that was not injured by the misconduct, the Bankruptcy Court's decision below wrests control over those claims from the actual victims to an entity that was created for the very purpose of effecting the claims' eradication.

112. This case is about access to our justice system. A tortfeasor should not be able to use a contrived bankruptcy to strip victims of their Constitutional rights. The Bankruptcy Court's ruling on the Motion to Dismiss means that any company, whether a private prison healthcare provider, a supplier of equipment to U.S. Servicemen and Servicewomen, or a seller of harmful products, could commit torts through its products or services and then use a Texas Two Step to avoid accountability in State or Article III Courts.

113. YesCare could fail to provide healthcare to future prisoners and then undertake a second Texas Two Step to avoid accountability in our justice system. If the Eighth Amendment's prohibition against cruel and unusual punishment has meaning, our legal system must afford parties who are subjected to cruel and unusual punishment with access to Article III Courts and State Courts. An Article I Court should not have the power to preclude such access through a bankruptcy of an entity like Tehum (*i.e.*, the "abyss"). Bankruptcy is not a shield to protect non-debtors from being held accountable for committing acts that amount to torture.

CONCLUSION

114. **WHEREFORE**, based on the foregoing, the Movants respectfully request that the Court grant the Motion.

Dated: April 24, 2024
New York, New York

/s/ Eric R. Goodman

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Exhibit A

ENTERED

April 11, 2024

Nathan Ochsner, Clerk

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

IN RE:

TEHUM CARE SERVICES, INC.,

Debtor.

§
§
§
§
§
§
§

CASE NO: 23-90086

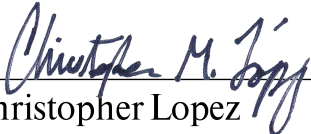
CHAPTER 11

ORDER DENYING MOTION FOR STRUCTURED DISMISSAL

[RE: Docket No. 1260]

For the reasons stated on the record at the hearing held on April 11, 2024, the Motion of the Official Committee of Tort Claimants and Certain Tort Claimants for Structured Dismissal of Chapter 11 Case is denied.

Signed: April 11, 2024



Christopher Lopez
United States Bankruptcy Judge



Exhibit B-1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

| | | |
|----------------------------|---|-----------------------|
| IN RE: | . | Case No. 23-90086 |
| | . | Chapter 11 |
| TEHUM CARE SERVICES, INC., | . | |
| | . | 515 Rusk Street |
| | . | Houston, TX 77002 |
| Debtor. | . | |
| | . | Friday, March 1, 2024 |
| | . | 11:04 a.m. |

TRANSCRIPT OF TRIAL DAY 1 RE: JOINT MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING AND APPROVING THE SETTLEMENT BY AND AMONG THE DEBTOR, THE UCC, AND THE PARTIES TO THE SETTLEMENT AGREEMENT AND (II) GRANTING RELATED RELIEF [1259]; MOTION OF THE OFFICIAL COMMITTEE OF TORT CLAIMANTS AND CERTAIN TORT CLAIMANTS FOR STRUCTURED DISMISSAL OF CHAPTER 11 CASE [1260] BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ UNITED STATES BANKRUPTCY COURT JUDGE

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Also Present: MICHAEL RUSSANO
NATHAN ALVAREZ
DAVID BARTON
LIZ MERCURIO



Barton - Direct/Zluticky

5

I N D E X3/1/2024

| <u>WITNESSES</u> | <u>DIRECT</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|------------------|---------------|--------------|-----------------|----------------|
|------------------|---------------|--------------|-----------------|----------------|

FOR THE DEBTOR:

| | | | | |
|--------------|-----|-----|----|----|
| David Barton | 147 | 193 | -- | -- |
|--------------|-----|-----|----|----|

EXHIBITSADMITTED

| | |
|--------------------------------------|-----|
| ECF Number 1410-1 | 167 |
| ECF Numbers 1410-2 and 1410-3 | 145 |
| ECF Number 1410-5 | 145 |
| ECF Number 1410-10 | 156 |
| ECF Number 1410-12 | 158 |
| ECF Number 1410-18 | 145 |
| ECF Number 1410-36 | 145 |
| ECF Numbers 1410-44 through 1410-61 | 145 |
| ECF Number 1410-63 | 145 |
| ECF Numbers 1413-25 through 1413-28 | 145 |
| ECF Number 1413-31 | 145 |
| ECF Number 1413-34 and 1413-35 | 145 |
| ECF Number 1413-37 | 145 |
| ECF Number 1413-39 through 1413-41 | 145 |
| ECF Number 1428-132 | 145 |
| ECF Number 1428-136 | 145 |
| ECF Number 1428-173 | 145 |
| ECF Number 1428-288 | 145 |
| ECF Number 1428-329 through 1428-331 | 145 |
| ECF Number 1429-115 | 145 |
| ECF Number 1429-141 | 145 |
| ECF Number 1429-148 | 145 |
| ECF Number 1429-170 | 145 |
| ECF Number 1429-252 | 145 |
| ECF Number 1429-341 | 145 |
| ECF Number 1429-350 | 145 |



INDEX (CONTINUED):

3/1/2024

| | <u>Page</u> |
|------------------------------------|-------------|
| OPENING STATEMENT BY MR. BROOKNER | 26 |
| OPENING STATEMENT BY MR. HEMENWAY | 59 |
| OPENING STATEMENT BY MR. GOODMAN | 76 |
| OPENING STATEMENT BY MR. PATTERSON | 114 |
| OPENING STATEMENT BY MR. NGUYEN | 125 |
| OPENING STATEMENT BY MS. FUNK | 130 |
| OPENING STATEMENT BY MS. JONES | 133 |
| OPENING STATEMENT BY MR. GLOVER | 136 |
| OPENING STATEMENT BY MR. STAPLETON | 138 |

1



1 (Proceedings commence at 11:04 a.m.)

2 THE CLERK: All rise.

3 THE COURT: Okay. Good morning, everyone. This is
4 Judge Lopez. Today is March the 1st. I'm going to call the
5 eleven o'clock case, 23-90086, Tehum Care Services, Inc., on
6 probably just a bunch of stuff.

7 So why don't we just take appearances in the
8 courtroom, and then I will turn to the folks online. If you
9 have dialed into the hearing, I would ask, and you hit "five
10 star", I'm going to unmute your line in a moment. There are
11 about 60 folks on the line, so I've enabled the mute feature.
12 But once I unmute your line, you're going to remain unmuted. I
13 just ask that you please just monitor yourselves so that we can
14 all hear each other, and we'll get started. Good morning.

15 MR. BROOKNER: Good morning, Your Honor. Jason
16 Brookner from Gray Reed for the debtor, along with my
17 colleagues in the courtroom, Aaron Kaufman, Amber Carson,
18 London England, and we also have with us Michael Russano, who
19 is the global head of litigation for Ankura Consulting.

20 THE COURT: Okay. Good morning.

21 MR. GOODMAN: Good morning, Your Honor. Eric
22 Goodman, Brown Rudnick. I've never had the pleasure of being
23 in front of Your Honor, my first time at your court, so thank
24 you.

25 THE COURT: Welcome.

1 MR. GOODMAN: Appreciate that. With me today are my
2 partners, Cameron Moxley --

3 THE COURT: Good morning.

4 MR. GOODMAN: -- who has been here before, got here
5 before I did, Gerard Cicero --

6 THE COURT: Good morning.

7 MR. GOODMAN: -- Jessica Meyers in the back, and an
8 associate, Megan McCafferty, who should stand up because she
9 has been working a lot of very late days and evenings.

10 THE COURT: Good morning.

11 MR. GOODMAN: So I definitely want to give her a
12 shout-out, and my co-counsel, Michael Zimmerman --

13 THE COURT: Good morning, Mr. Zimmerman.

14 MR. ZIMMERMAN: Good morning.

15 MR. GOODMAN: -- here on behalf of the Official
16 Committee of Tort Claimants.

17 THE COURT: Okay. Good morning.

18 MR. GOODMAN: Thank you. Oh, I'm sorry. We also
19 have the pleasure today of having one of our committee members
20 present in the room. So I'd like to introduce him, Nathan
21 Alvarez, member of our committee.

22 THE COURT: Good morning.

23 MR. GOODMAN: Thank you.

24 MR. ZLUTICKY: Good morning, Your Honor. Nick
25 Zluticky and Zach Hemenway from Stinson for the Official

1 Committee of Unsecured Creditors. We have a couple of folks
2 appearing by video as well. The Committee also is here by its
3 chairperson, Mr. David Barton, who's in the courtroom today.

4 THE COURT: Good morning.

5 Hey, good morning.

6 MS. HAYWARD: Good morning, Your Honor. Good to be
7 back in your courtroom. Melissa Hayward on behalf of the
8 settling parties.

9 THE COURT: All right. Good morning.

10 MS. FUNK: Good morning, Your Honor. Brenda Funk
11 with Munsch Hardt for the Idaho parties.

12 THE COURT: Good morning.

13 MR. NGUYEN: Good morning, Your Honor. Ha Nguyen for
14 the U.S. Trustee. Andrew Jimenez will be joining us as well,
15 but he's with Judge Rodriguez right now.

16 THE COURT: Alrighty. Good morning.

17 Good morning, Mr. Patterson.

18 MR. PATTERSON: Good morning, Your Honor. Johnie
19 Patterson here on behalf of the RMSC Plaintiffs.

20 THE COURT: Okay. Good morning.

21 Alrighty. Let me turn to people online. I'm just
22 going to go in the order in which I see them. Here's a 602
23 number. 602 number?

24 MR. STAPLETON: Good morning, Your Honor. Warren
25 Stapleton appearing on behalf of the Arizona Department of



1 Corrections.

2 THE COURT: Oh, good morning, Mr. Stapleton.

3 Here's an 801 number.

4 MR. ROTHSCHILD: Good morning, Your Honor. Brian

5 Rothschild for Utah School & Institutional Trust Land

6 Administration. I'm here for the Paradox Resources case. Is

7 this correct? I maybe missed that hearing.

8 THE COURT: Well, yeah. That one was at 10:30, and

9 we have agreed to -- they're going to file something, and

10 they're going to -- or there'll be an objection deadline until

11 Monday at noon to see how it proceeds. So that's the long and

12 short of that one.

13 MR. ROTHSCHILD: Okay. Your Honor, I spoke with

14 Mr. David Curry this morning, and I think we're on good terms

15 and working together very well. I apologize. I didn't get the

16 notice until this morning. So thank you.

17 THE COURT: Thank you.

18 Okay. Here's a 409 number.

19 MR. HAMM: Good morning, Your Honor. Blake Hamm for

20 creditor Saint Alphonsus Health Care System.

21 THE COURT: Okay. Here's a 214 number.

22 MR. GLUCK: Good morning, Your Honor. Kristian Gluck

23 and Paul Trahan of Norton Rose Fulbright on behalf of M2

24 LoanCo., the DIP lender, and also one of the settling parties.

25 THE COURT: Okay. Good morning.



1 Alrighty. Here is a 520 number. A 520 number? All
2 right. Here's a 713 number.

3 MS. JONES: Good morning, Your Honor. This is Erin
4 Jones on behalf of the Curators of the University of Missouri
5 and Capital Region Medical Center. I would have liked to have
6 been there in person, but I am suffering from a viral plague of
7 some sort. I didn't think you would want me to be there to
8 share. So I am participating remotely today.

9 THE COURT: I hope you're doing okay. Thank you.

10 MS. JONES: Thank you.

11 THE COURT: Here's a 305 number.

12 MR. SLATER: Good afternoon, Your Honor. James
13 Slater on behalf of creditor of Elizabeth Federick.

14 THE COURT: Alrighty. And here's a 404 number.

15 MR. GLOVER: Hi. Good morning, Your Honor. This is
16 Bryan Glover on behalf of St. Luke's.

17 THE COURT: Alrighty. Good morning.

18 Anyone else, please hit "five star." I'm going to go
19 once -- I'm going to hit refresh, see if anyone's there. All
20 right. One more. 480 number.

21 MS. MEDLEY: Laura Medley on behalf of myself, Your
22 Honor.

23 THE COURT: Alrighty. Good morning.

24 Here's a 205 number.

25 MS. MEDLEY: Good morning.



1 THE COURT: And another 480 number.

2 MS. MERCURIO: Good morning, Your Honor. This is Liz
3 Mercurio with the Law Offices of Scott Griffiths, representing
4 a member of the TCC.

5 THE COURT: Okay. Good morning.

6 MR. EARLY: Good morning, Your Honor. This is Val
7 Early in Birmingham. I had myself on mute there for a minute,
8 representing Tracey Grissom.

9 THE COURT: Alrighty. Good morning.

10 MR. EARLY: It's good.

11 THE COURT: Alrighty. I believe I have covered
12 everyone. I will check this again shortly to make sure that I
13 haven't missed anyone. But I know we're covered for now, so
14 why don't I turn this over to debtor's counsel? Good morning.

15 MR. BROOKNER: Thank you, Your Honor. Good morning.
16 Jason Brookner, again, from Gray for the debtor.

17 We have a variety of things happening today. And so
18 if it's okay, what I think I'd like to do is make a proposal to
19 Your Honor about the order of operations, if you will. Okay.
20 And then we'll take our cues from you as we go.

21 THE COURT: All right.

22 MR. BROOKNER: So we do have the two motions set for
23 today, the 9019 motion by the debtors and the Committee, the
24 TCC's motion for structured dismissal.

25 THE COURT: Uh-huh.



1 MR. BROOKNER: In addition, we also have scheduled
2 two other motions that were objected to by the TCC, the motion
3 for a fifth interim DIP financing order, as well as a motion to
4 extend exclusivity.

5 THE COURT: Okay.

6 MR. BROOKNER: So -- and there's also a motion in
7 limine that was filed two days ago, and there have been some
8 back and forth on those, and I assume you want to take those
9 up. So what the debtors and the Committee would propose are
10 the following. With respect to DIP and exclusivity, those can
11 just be taken up as part of the overall evidentiary
12 presentation mixed in with, if you will, the rest of the
13 evidence. The debtor's key witness for that is Mr. Perry, who,
14 as everybody knows, is unavailable today. He's testifying
15 Tuesday.

16 THE COURT: Oh, I didn't know that.

17 MR. BROOKNER: Oh, okay. I thought you knew that,
18 Your Honor. Yes. We had -- so there are a few key witnesses
19 that are unavailable today: the debtor's witness, Mr. Perry,
20 the TCC's expert, Mr. Atkinson, and Mr. Lefkowitz.

21 THE COURT: Ah, okay.

22 MR. BROOKNER: Those witnesses are all coming on
23 Tuesday.

24 THE COURT: Alrighty. I --

25 MR. BROOKNER: Which is our next day.

1 THE COURT: Okay. I heard -- the best description of
2 what it is to be a bankruptcy judge I've heard recently, and it
3 is that you walk into a dark room, and every now and then
4 someone flicks the lights open, ah --

5 MR. BROOKNER: Right.

6 THE COURT: -- and you kind of see it, and then they
7 flick it off, and then that's all I know. And then it goes on.
8 Anyway, okay.

9 MR. BROOKNER: Okay.

10 THE COURT: So that works.

11 MR. BROOKNER: So what I would suggest is, at least
12 with respect to the DIP motion and the exclusivity motion,
13 those just kind of be combined in with everything else, and
14 we'll deal with those at closing based on that.

15 THE COURT: Okay, okay.

16 MR. BROOKNER: Then I would suggest, Your Honor, we
17 start with the motion in limine filed by the TCC. And then
18 after that, we have our openings.

19 THE COURT: Okay.

20 MR. BROOKNER: And I would submit or suggest or
21 request that we do debtor, UCC, TCC as an order of openings.

22 THE COURT: Right.

23 MR. BROOKNER: And then we would get to the
24 witnesses, and I believe we have two witnesses today,
25 Mr. Barton from the creditors' committee.

1 THE COURT: Okay.

2 MR. BROOKNER: And I believe Mr. Griffiths from the
3 TCC.

4 THE COURT: Okay.

5 MR. BROOKNER: And I don't know how that wants to go.
6 I don't know who's going to go first on that. And then we'll
7 deal with everything else on Tuesday because no other witnesses
8 are here for today.

9 THE COURT: Okay. And I've got a 5 hard stop, so
10 we're going to -- I proceed -- we've got to just work until 5.
11 If we're going to take a break for lunch, it's going to be, you
12 know, 35 minutes, you know, it'll be grab a sandwich and we're
13 going to get right back to work.

14 Folks, get comfortable. I don't care if you want to
15 nibble on something in the courtroom. Just take it out with
16 you. We're just going to work until we can keep going.

17 MR. BROOKNER: And then I just wanted to remind Your
18 Honor, I probably didn't have to, but at one of the immediately
19 prior status conferences when we talked about timing for today,
20 Your Honor limited the parties to 30 minute -- the key
21 parties to 30 minutes each --

22 THE COURT: That part, I remember.

23 MR. BROOKNER: -- for opening. Okay. Okay. All
24 right. Very well, Your Honor.

25 THE COURT: No, got it. Thank you.

1 MR. BROOKNER: Thank you, Your Honor.

2 THE COURT: Alrighty.

3 MR. BROOKNER: So if you're on board with that, I
4 guess we move to the motion in limine.

5 THE COURT: Well, let me just make sure --

6 MR. BROOKNER: Okay.

7 THE COURT: -- everybody's okay with kind of
8 proceeding. I'm assuming -- and I'll say this for the record,
9 the motion, your 9019, their structured dismissal, exclusivity,
10 it all kind of -- we ought to just do everything at one time.
11 I don't care what order it is. I'm not going to extend
12 exclusivity and then do a structured dismissal or do something
13 weird like that. I ought to decide everything at the end of
14 the close of the evidence because I suspect that's the
15 evidentiary basis for it all.

16 So I do agree. Maybe we can take up the motion in
17 limine and then take up openings and then put on the witnesses.
18 I don't care what order we go in there. But maybe after the
19 motion in limine opening, then we can talk just housekeeping in
20 terms of docs that are in evidence and how parties wish to
21 proceed.

22 MR. BROOKNER: That's fine for the debtors and the
23 Committee.

24 THE COURT: Okay.

25 MR. BROOKNER: The debtor and the Committee.



1 THE COURT: And I don't care about the openings in
2 terms of I suspect -- since your side is seeking the settlement
3 first, then I suspect your side should go. So debtor, UCC, and
4 then I'll let TCC. You know, I've got to get my acronyms
5 right, Tort Claims Committee, yeah. I'll let the TCC go from
6 there. But it will essentially all be the same, you know,
7 opposition for that, your request for a structured dismissal.
8 Okay.

9 MR. GOODMAN: It's perfect from our side, Your Honor.

10 THE COURT: Okay. Alrighty. So why don't we then
11 take a --

12 MR. GOODMAN: I think we're the movant on the motion
13 in limine.

14 THE COURT: You are. You're get to go first on that
15 one.

16 MR. GOODMAN: Gotcha. I'll turn it over to my
17 colleague, Mr. Moxley.

18 THE COURT: You got it.

19 MR. MOXLEY: Good morning, Your Honor. Cameron --
20 Good morning, Your Honor. Cameron Moxley of Brown Rudnick,
21 co-counsel for the TCC, Judge.

22 Your Honor, we filed a motion in limine, and the
23 issues on that, Your Honor, we -- I would just draw your
24 attention, there's an annex to that that provides sort of --

25 THE COURT: I did. I read it.

1 MR. MOXLEY: You have? Thank you, Your Honor. I
2 think the argument, it essentially boils down to this, Judge.
3 There were a lot of questions that we asked of the debtor and
4 TCC's group of attorneys related to the process of the
5 investigation, the facts that were revealed to them by the
6 investigation, analysis that was undertaken, conclusions that
7 were reached, basic questions like what did you rely on in
8 determining, you know, to support the settlement motion. And
9 at every turn, as the annex lays out, there were instructions
10 not to answer.

11 We're not here today, Judge, respectfully, to argue
12 about whether or not that material was actually privileged or
13 whether or not those instructions were proper. I will say to
14 Your Honor, we don't think those -- that those questions went
15 to privileged information, and we don't think those
16 instructions were proper.

17 But that aside, what we're here on, Judge, is given
18 the instructions were given, and given the witnesses didn't
19 answer those questions, our view, respectfully, is that the
20 case law is clear, as laid out in our briefing, that you then
21 can't turn around and ask the witnesses those same questions
22 and elicit at the trial that same information that you shielded
23 from discovery.

24 If it turns out that the debtor and the TCC aren't
25 going to ask those questions, then maybe there's not an issue.

1 But it seemed to us, from reading the way in which the
2 opposition to the motion to dismiss was framed, that that is
3 exactly what they intend to do. They intend to rely on the
4 fact that an investigation occurred, that a mediation occurred,
5 that they did all of this work, and for -- and on the basis of
6 all of that work, they've reached the following conclusions.

7 Well, Judge, if we're not allowed to understand basic
8 information, for example, we asked the chief restructuring
9 officer, Mr. Perry, who was the debtor's designee, what role
10 did you play in the investigation? He was instructed not to
11 answer that. He's the chief restructuring officer, Your Honor,
12 and he was -- his testimony is that he supports and the debtor
13 supports the settlement.

14 So that's what the motion in limine, Judge, is about.
15 It's not about what -- us now untangling whether or not the
16 privilege -- the information we sought was actually privileged
17 or whether the instructions were proper. It's just the
18 instructions were given. We are where we are, and so they
19 should be limited, Judge, in what they should be able to
20 present today, Your Honor. That's it.

21 THE COURT: Got it.

22 MR. MOXLEY: That's the motion.

23 THE COURT: Thank you.

24 MR. MOXLEY: Thank you, Your Honor.

25 Mr. Kaufman?

1 MR. KAUFMAN: Hello, Your Honor. Aaron Kaufman for
2 the debtor. And they stuck me in the back of the room, and
3 it'll help me argue this.

4 I understand and appreciate what Mr. Moxley's saying.
5 I think we just fundamentally disagree on what the law actually
6 is and how it applies to this case. So let's start with what
7 the law is as it relates to bankruptcy settlements.

8 The law -- and it's cited in our response filed
9 yesterday -- says that a debtor does not have to waive its
10 privilege in able -- in order to be able to carry its burden in
11 demonstrating that the settlement is, as you'll hear from
12 Mr. Barton in a few moments, the UCC chairperson, a fantastic
13 result for creditors.

14 We cited Chassix Holdings, which is a case out of the
15 Southern District of New York, where the courts made clear that
16 the parties are not required to waive privilege to obtain
17 approval of settlements. In Health Diagnostics, also cited in
18 our pleadings, the Court reiterated that a bankruptcy court
19 doesn't need to delve into privilege matters to understand
20 whether a settlement is fair and reasonable and in the best
21 interest of the estate.

22 The TCC has no substantive responses to those cases.
23 They simply want this Court to issue what amounts to a death
24 penalty sanction against the debtor and the UCC before the
25 Court even knows what questions will be asked and what evidence

1 will be offered. This is wholly unsupported by the case law,
2 and it does -- it's wholly unwarranted under the facts of this
3 case.

4 So I want to make clear, I understand Mr. Moxley had
5 one characterization of what questions he thought he asked in
6 the depositions.

7 THE COURT: Mm-hmm.

8 MR. KAUFMAN: These are lots of depositions. We're
9 talking hundreds of pages and tens of hours of depositions.

10 THE COURT: Folks, if you're on the line, I'm going
11 to ask that you please place your phone on mute. I'm hearing a
12 little bit of noise in the background, and I just want to make
13 sure that I can hear everyone carefully and not worry about it.
14 It sounds like crunchy noise on the background there.

15 I apologize. Go.

16 MR. KAUFMAN: I was trying to make clear, we're
17 talking tens of hours' worth of depositions taken over the last
18 few weeks, hundreds of pages of transcripts. A simple summary
19 of what questions were asked can't be done in the span of a
20 minute or two. The Court would actually have to go page by
21 page to see what questions were actually asked and what answers
22 were given or instructed not to be given.

23 No one here -- when the Court actually studies the
24 deposition transcripts, it will be clear that no one was hiding
25 behind the privilege and no one was using the privilege as a

1 sword. But -- and Your Honor, how could that be? Look at
2 what's actually been produced in this case. There's no dispute
3 that hundreds of thousands of documents, spanning over 600,000
4 pages of documents, were produced in early December.

5 Then look at what we put on our exhibit and witness
6 list, which was filed on Wednesday around noon. Of the 73
7 exhibits listed on the debtor and the UCC's joint exhibit and
8 witness list, every single document was produced and, in some
9 cases, reproduced, and again, in some cases, months before that
10 witness and exhibit list was filed.

11 The TCC's invocation of the phrase "sword and
12 shield," which appears many times over the course of these
13 pleadings, simply rings hollow, Your Honor, when you consider
14 the law cited in our response and the actual facts of this
15 case.

16 So let me step back for just a moment so the Court
17 has a more complete understanding and context before we talk
18 about what's in the deposition transcripts.

19 THE COURT: No, just -- why don't we just talk
20 about -- I don't need to get into the specifics. I just need
21 to know kind of -- they're saying you're going to come in and
22 argue that -- you know, you're going to try to hide behind
23 privileged information in a deposition and then you're going to
24 try to say that you relied on it in connection with the
25 subject. Right? That's the gist of it.

1 I've gone through all the exhibits. I've read
2 carefully everything that you've said. What's the response to
3 that?

4 MR. KAUFMAN: The specific response is we don't think
5 there will be an instance of a question that we intend to ask
6 our witnesses where that witness was instructed not to respond.
7 We're talking about, again, we limited our response to
8 production to a tiny subset of documents, less than 300, and
9 said these are the documents that we relied on. These are the
10 documents we think are most relevant to the motion. And the
11 TCC had an opportunity to put those in front of our witnesses
12 and ask questions, and they chose not to.

13 And as the TCC pointed out in their response, their
14 reply filed last night, and I agree, Mr. Zluticky even pointed
15 out, it is not our job to tell you how to ask your questions.
16 All we can do is look at the questions that you asked and
17 decide you're getting into privilege here. You can't do that.

18 THE COURT: All right. So I'm going to just note
19 decisions on whether to grant motions in limine really are
20 discretionary, and I'm relying on Fifth Circuit case laws such
21 as Thomas v. Ameritas Life Insurance Corp., 34 F.4th 395 (5th
22 Cir. 2022) case. Right?

23 So really the question then becomes in bench trials
24 whether it would create prejudice or confusion. I think in a
25 bench trial setting, I'm comfortable allowing the process to

1 proceed, but -- because I can -- I'll know if it's being used
2 or not as a shield and a sword, and I can deal with this. All
3 right.

4 Motions in limine, when you look at Wright & Miller,
5 you know, really designed to prevent prejudicial evidence to a
6 party that's seeking, right, to exclude it from tainting a
7 jury, if you will. But I think as the fact finder here, I'm
8 comfortable that I can, in the absence of true prejudice, up
9 front.

10 So I'm going to deny the motion in limine, but it's
11 without prejudice of someone coming in and saying, Judge,
12 they're not doing exactly what I said. And the reality is, is
13 that I'm going to be weighing this really carefully. This is
14 an important motion, right? The life of the case itself, one
15 way or the other, relies on the evidence presented here. And
16 so I think everyone would benefit from a very robust and
17 transparent process.

18 Again, I told you how bankruptcy judges and what we
19 know, and I'm only going to judge these decisions based upon
20 what I hear in the courtroom. And so, you know, we'll see
21 where this goes.

22 But I get where you're going, Mr. Moxley. If it
23 turns out, you know, I reserve the right to kind of make --
24 take this up at a different time, but it's without prejudice to
25 anyone's ability. But I'm going to -- we'll see where this

1 goes.

2 If they're telling me they don't think it's going to
3 happen, but, you know, someone just comes in and says -- I'm
4 using an extreme example, I'm not saying you're going to do
5 this. But if someone were to come in and argue, you know, that
6 they relied on the advice of counsel in connection with the
7 settlement and that's really what they're really relying on,
8 right, it becomes really easy for me to decide that one, like
9 really easy, because I've got to make hard decisions.

10 So we'll see where things go. But I don't know what
11 the evidence is going to be presented before me, and let's just
12 take it up and see where it goes.

13 MR. MOXLEY: Thank you, Your Honor.

14 THE COURT: All right.

15 MR. BROOKNER: Thank you, Your Honor.

16 THE COURT: All right. Again, for the folks on the
17 line, there is someone definitely with your line open. I'm
18 going to mute the entire line if I keep hearing it. If you're
19 wearing AirPods, it may be you. If you have headphones or
20 something, it may be you. I'm just trying to make sure that we
21 can all hear each other. That was you. I'm muting the line.

22 AUTOMATED VOICE: Conference unmuted. Conference
23 muted.

24 THE COURT: And parties, I'll unmute your lines in a
25 minute.

1 Okay. Let's proceed.

2 MR. BROOKNER: I think we're ready for openings, Your
3 Honor.

4 THE COURT: Mm-hmm. Let's go.

5 MR. BROOKNER: Thank you. Good morning, Your Honor.
6 Again, Jason Brookner from Gray Reed for the debtor, along with
7 my colleagues, Aaron Kaufman, Amber Carson, and London England.
8 And if it's okay, I'd like to request that Ms. Carson at the
9 counsel table have -- you know, be designated as the operator
10 so she can put some slides up for us.

11 THE COURT: You got it.

12 MR. BROOKNER: All right. Your Honor, when we first
13 saw you about a year ago, I told you how our firm had no
14 historical involvement with the debtor until very shortly
15 before this case was filed, that we took our fiduciary duties
16 seriously, that we would execute those duties to the best of
17 our abilities. And as we sit here or stand here today, as the
18 case may be, we believe that we've done that.

19 The backdrop of this case is important because it's
20 very unlike many other cases that have come to your courtroom.
21 We understand being the debtor and its counsel. We've always
22 understood that the debtor's creditors are real people with
23 real claims, both in contract and in tort, and we want to put
24 actual dollars into actual pockets as soon as humanly possible.
25 That has always been our goal and that is consistent with

1 everything I've ever said to you in any hearing that we have
2 had.

3 And that, Your Honor, is why we are here today,
4 because along with the UCC, and I'm going to refer to the
5 Unsecured Creditors' Committee, of course, as the UCC, and the
6 Tort Committee will be referred to as the TCC, and I think
7 everybody is going to use that terminology today.

8 So the debtor and the UCC today are poised to jointly
9 deliver over \$54 million in value to this estate, and following
10 approval, excuse me, of this settlement from Your Honor to get
11 cash into the pockets of real people as soon as possible.
12 Others, however, would prefer to have that bird in the hand set
13 free. They'd allow it to fly away into a black hole of
14 litigation chaos with questionable timing for resolution, if
15 ever, and questionable results, if any.

16 Now, during trial, Your Honor, you're going to hear
17 testimony and you're going to see documents indicating that
18 some people did things that might be characterized as bad
19 things between the end of 2021 and the time of the divisional
20 merger in May of 2022. And, yes, there were transfers that
21 were made that were inappropriate. There were other actions
22 taken and other things done that were inappropriate. And all
23 of that was uncovered by both the debtor and the UCC in their
24 respective investigations.

25 But all of that, Your Honor, was long before this

1 Chapter 11 case was filed. Remember, the divisional merger,
2 which the evidence will show was an alternative to a Chapter 11
3 filing, occurred in May of 2022. And the Chapter 11 case
4 wasn't filed until nine months later, which was a year ago,
5 just about a year ago, a little bit more, February of 2023.

6 And the Chapter 11 case, the evidence will show and
7 you'll see, was filed as a last resort and only on the cusp of
8 a receiver being appointed in Missouri State Court. That does
9 not make this case a bad faith filing. In fact, it's not even
10 a close call, Your Honor. It was not a litigation tactic to
11 file. The filing was not preordained, and the filing was not
12 prearranged.

13 It is not bad faith to file for Chapter 11 in order
14 to liquidate estate claims, centralize claims against the
15 debtor into one forum, into a collective proceeding, and then
16 maximize the value of those claims that the debtor has plus
17 whatever other assets the debtor has for distributions to
18 creditors. NRA makes that clear, meaning the NRA case makes
19 that clear. The Little Creek case makes that clear. And
20 Little Creek's progeny made that clear. It is a valid
21 bankruptcy purpose to use Chapter 11 to satisfy valid claims
22 against the estate, and that's exactly what we are doing in
23 this case.

24 THE COURT: I'm going to tell you, Mr. Brookner, the
25 case has already been going on for a while. So the concept of

1 dismissing it as a bad faith filing, I think is probably not
2 the way I think about the world. I think I view the world as
3 either I approve this settlement or nothing left to do but
4 either convert or dismiss this case because the case -- I'm not
5 letting the case continue, right? So this is the shot. And so
6 it just seems to me that dismissal may be kind of a function,
7 like Judge, don't approve the settlement, and as a result,
8 there's nothing left to do but dismiss this case. It's the
9 orderly way to get out of it. And I don't think I need to get
10 into it.

11 I don't think -- if I don't approve the -- if I
12 approve the settlement, I think it's one way of viewing the
13 world. If I don't approve the settlement, then I think I don't
14 even need to look at the Little Creek. I can just look to
15 administrative insolvency.

16 MR. BROOKNER: Well, maybe, Your Honor.

17 THE COURT: But I'm just --

18 MR. BROOKNER: I mean, we'll have to --

19 THE COURT: I'm just telling you.

20 MR. BROOKNER: We'll have evidence about that. I'm
21 going to get to that as part of my opening.

22 THE COURT: No, I'm just -- no, I got it. But I'm
23 just telling you the way I'm viewing the world. This -- we're
24 deciding all issues here now. And there will -- and so that's
25 the -- those are the questions that I'm running through my

1 mind. But I got it. I don't have evidence of administrative
2 insolvency, but I got a good feeling about it.

3 MR. BROOKNER: Okay.

4 THE COURT: So I think -- I don't think this is kind
5 of an NRA-type case. This is a -- more of what the U.S.
6 Trustee told me. It's time for this case to either reach its
7 eventual course or we've got to come up with something. That's
8 the way I'm viewing the world. And I'm not trying to skew
9 anybody's presentation. It's just the way I think where it
10 kind of -- it's kind of where we are.

11 MR. BROOKNER: I could not agree with you more, Your
12 Honor. And, in fact, I had just finished giving you my good
13 faith speech, if you will. And I'm going to get into some of
14 those issues as I proceed. So if it's okay, rather than
15 respond now, I'd like to kind of stick with where I'm going.

16 THE COURT: Sure.

17 MR. BROOKNER: And then I'm happy to answer questions
18 or have a colloquy with you, Your Honor.

19 THE COURT: No, no, no. Absolutely.

20 MR. BROOKNER: Okay. So Your Honor, the debtor
21 believes when all the evidence is presented and the evidence is
22 closed and we've had closing arguments and all the views have
23 been heard, you're not going to have a choice but to approve
24 the 9019 motion.

25 There's \$54 million of value to the estate. That's

1 what's in creditors' best interests. Dismissal and sending
2 everybody black -- everybody back to this black hole of
3 litigation that's up on the screen is the worst possible things
4 for creditors.

5 THE COURT: What if that's what they want? How do I
6 view the world in that sense?

7 MR. BROOKNER: That's what who wants? That's what
8 the tort committee wants.

9 THE COURT: Well, that's what I'm asking. That's
10 what I'm asking. So if -- what do I do if that's what they
11 want?

12 MR. BROOKNER: If that --

13 THE COURT: In other words, how do we balance?

14 MR. BROOKNER: That's what the tort committee wants.
15 That's not what the unsecured creditors' committee wants. And
16 that's not what the people want who filed joinders in respect
17 of the 9019 motion, who are sophisticated creditors, who are
18 owed over \$75 million face amount of money, who have been
19 litigating with the debtor for more than five years,
20 approaching ten years, and they're begging Your Honor to not
21 send them back to court. They don't want to go there, Your
22 Honor.

23 THE COURT: Is there --

24 MR. BROOKNER: And if those people --

25 THE COURT: But then, why are we bringing the tort

1 folks along with that? If those creditors want to settle, then
2 why don't they just settle?

3 MR. BROOKNER: Because this is a global settlement.
4 This is not a one-off, two-off, three-off settlement.

5 THE COURT: Okay.

6 MR. BROOKNER: This is a global settlement. It's a
7 package deal. It's all or nothing.

8 THE COURT: What's the standard that I should use to
9 evaluate in connection with this case?

10 MR. BROOKNER: The settlement motion?

11 THE COURT: Mm-hmm.

12 MR. BROOKNER: Can we -- do we have those slides,
13 please? Can we move to the settlement slides? That's the
14 Jackson Brewing case and its progeny, Your Honor.

15 THE COURT: All right. But how do I view business
16 judgment, sound business justification kind of with a non -- in
17 other words, is it the same thing? I've been thinking about
18 this, and I want to think about it out loud. Is the standard
19 9019? How do I view that? Do I look at things differently
20 when there's an insider transaction, an insider? Do I think
21 about it differently if there's a defunct debtor? You know
22 what I mean? It's what's business judgment -- what are the
23 sound business justifications when I'm faced with these
24 situations?

25 You know, I think it's different than debtor settles

1 with third party, two parties come in, so we want to have a
2 9019. I settle my litigation for X. We do that all day, sound
3 business justification. But a global settlement involving
4 insiders on an entity that has no operations, how do I --is it
5 Jackson Brewing, or is it Jackson Brewing with a closer eye?
6 In other words, do we -- when we do sales, do we look a little
7 different when it involves insiders, or is it just -- is that
8 still the standard?

9 MR. BROOKNER: So I think, Your Honor, we're not
10 talking about a sale where an insider for the company is buying
11 assets.

12 THE COURT: But that's who's really getting out of
13 the deal.

14 MR. BROOKNER: Yeah, that's what they're getting out
15 of it. But remember, Your Honor, you've got an unsecured
16 creditors' committee who's a fully independent fiduciary third
17 party.

18 THE COURT: Mm-hmm.

19 MR. BROOKNER: We also have a chief restructuring
20 officer who's an independent third party. Those people
21 together have made these decisions, okay, not the insiders, not
22 the settling parties represented by Ms. Hayward. They were on
23 the other side of the deal, okay, a mediated deal --

24 THE COURT: Mm-hmm.

25 MR. BROOKNER: -- with former Judge Sontchi. And is

1 he -- should I refer to him in this court as judge or mister?

2 THE COURT: You know, I don't know. They never
3 taught me that in baby judge school how I'm supposed to refer
4 to folks who've retired. I don't know the answer either.

5 MR. BROOKNER: Then we'll call him Mr. Sontchi.
6 Mr. Sontchi did it, okay? And it was dealt with by the
7 independent fiduciaries in this case. It's their decision.

8 And so I would submit to Your Honor that the proper
9 standard is the Jackson Brewing standard. It's the business
10 judgment standard, Jackson Brewing, Foster Mortgage, and all of
11 their progeny. That's the standard.

12 THE COURT: They're going to come in and tell me that
13 this is basically sub rosa. So how do I respond to that? I
14 mean, it's coming, right?

15 MR. BROOKNER: Of course. Of course. That's
16 actually next on my list, Your Honor.

17 THE COURT: Yeah.

18 MR. BROOKNER: It's next on my list.

19 THE COURT: I'm out of the way.

20 MR. BROOKNER: Okay.

21 THE COURT: So essentially, you're packing this in
22 because you don't want to do it in a plan. That's what's
23 coming, right?

24 MR. BROOKNER: Okay. So let's talk.

25 THE COURT: You don't want to put this to creditor

1 vote.

2 MR. BROOKNER: Let's talk. Let's talk.

3 THE COURT: Is that -- how do we deal with that?

4 MR. BROOKNER: Let's talk about that. First of
5 all --

6 THE COURT: I got questions for them too. I'm just
7 kind of getting them all out now.

8 MR. BROOKNER: Man, I am happy to answer your
9 questions. You know that. Your Honor, I'll banter with you
10 all day long.

11 THE COURT: So no, I'm just trying to get it out
12 because this is an important issue.

13 MR. BROOKNER: So look. So let's talk about --
14 because the U.S. Trustee raises this sub rosa issue, okay?

15 THE COURT: Mm-hmm.

16 MR. BROOKNER: There's two elements that are
17 interrelated here, okay? The sub rosa issue with -- let's call
18 it the separation issue. If you remember when we came to you
19 the first time, we had a plan that encompassed the settlement
20 and we were going to do it all at the same time.

21 THE COURT: Mm-hmm.

22 MR. BROOKNER: You remember that, right?

23 THE COURT: Mm-hmm.

24 MR. BROOKNER: We decided based on what we were
25 hearing -- what we were kind of gleaning from Your Honor, and



1 what we were hearing from other third parties, what we decided
2 collectively, the debtor with the Committee, was to separate
3 everything, to have a settlement hearing on full notice so
4 everybody could have their day in court, make their arguments,
5 be heard, and then following what we hope was approval, put
6 that into a plan and yet again give everybody their day in
7 court on full notice to come in and be heard and object and say
8 what they needed to say.

9 The settlement, okay, doesn't deal with
10 distributions. It doesn't deal with classifications, okay?
11 There are certain releases that are contemplated as part of the
12 settlement, but they are subject to a plan. There's nothing
13 sub rosa about this settlement.

14 THE COURT: Okay. Help me understand how that works.
15 And honestly, just generally, I've been trying to figure out
16 how that settlement and what's the difference between the
17 settlement -- the release that I would approve in connection
18 with the settlement and then what would be subject to the plan?

19 MR. BROOKNER: So the settlement as a whole is
20 subject to the plan because once the money comes in -- or let
21 me rephrase, once the settlement is approved, we have to then
22 pivot to a plan process in order to have the money come in and
23 the releases go out and all of the consideration get whacked up
24 and distributed in connection with a global claims resolution
25 process. We can't do that as part of a settlement.

1 THE COURT: But what would people be voting on in
2 connection with the plan? That's the part that I've just --
3 mechanically, I just -- I --

4 MR. BROOKNER: People are going to vote -- people are
5 going to be voting on what they always vote on. They're going
6 to be voting on classification. They're going to be voting and
7 objecting to releases and indemnifications and other
8 provisions.

9 THE COURT: If I approve the releases here, how could
10 they --

11 MR. BROOKNER: They're -- but it's subject to the
12 plan.

13 THE COURT: That's the mechanical part that I'm still
14 not following.

15 THE COURT: That's the mechanics. You're approving
16 the influx of -- theoretically, you're approving the influx of
17 money effectively today and the settlement of the estate's
18 causes of action in exchange for that future influx of money.
19 There's also a DIP financing element to the settlement.

20 We then will go back to our neutral corners.
21 Hopefully, collectively, the three groups of us, the three
22 fiduciaries, will sit down if we have to have Mr. Sontchi come
23 back in again and help us, and we will then work on both the
24 distribution scheme and the claims reconciliation scheme. And
25 all of that will hopefully be baked into what the debtor is

1 optimistic will be, a consensual Chapter 11 plan for Your Honor
2 to take up at a confirmation hearing.

3 That's the process and the procedure that we are
4 contemplating. And I hope that that clarifies it.

5 THE COURT: No, no, no, it did. It did.

6 MR. BROOKNER: Okay.

7 THE COURT: No more questions. I'm going to stay
8 quiet.

9 MR. BROOKNER: You know, this is good, Your Honor. I
10 mean, you're making me bounce around, and I don't want to sit
11 down and have you --

12 THE COURT: No, no, no.

13 MR. BROOKNER: -- have questions that aren't
14 evidentiary that I can help you understand no.

15 THE COURT: Those are the ones. Those are the -- as
16 I think about kind of the evidence as it's going to be
17 presented, I wanted to know what stand -- legal standard you
18 think I need to be thinking about and then kind of how the
19 mechanics of what I'm asked to approve versus kind of what
20 they're asking me to do. That was the -- those are the two
21 balancing factors, and you've answered the question. So thank
22 you.

23 MR. BROOKNER: Okay. And I was actually right in
24 line with the way my outline is going, so --

25 THE COURT: Perfect.

1 MR. BROOKNER: -- thank you for doing it at that
2 point in time.

3 All right. So now, let's talk about the motion and
4 the hearing, the settlement motion, the other side of the coin,
5 if you will, which is the dismissal motion, and the hearing
6 today and on Tuesday. The evidence will show, Your Honor, that
7 the TC's case does not hold water. It just doesn't. What
8 you're going to hear from the TCC's own expert is that he
9 doesn't know whether dismissal is in the best interest of
10 creditors. He doesn't know. That was his deposition
11 testimony, and that's what he's going to say when he gets in
12 the box.

13 And if he was here today, we could have opened and
14 closed this case one, two, three. We could have put him on.
15 He would have said that. We could have been done. But now we
16 have to wait, unfortunately, until Tuesday.

17 Regardless of what Mr. Atkinson says or doesn't say,
18 there is plenty of other evidence that's going to support
19 granting the 9019 motion and denying the motion to dismiss.
20 And for that, let's first turn to the Code, because we know, I
21 know you know, we start and we end with the language of the
22 Code. That is the foundation for everything that you do and
23 that we do and that we all collectively need to do today and on
24 Tuesday.

25 So let's start. There we go. Ms. Carson put it up

1 on the screen. We're going to start with Section 1112. The
2 TCC seeks a structured dismissal under Section 1112. And
3 Section 349, which we'll get to in a minute, talks about the
4 effects of dismissal. Okay.

5 THE COURT: Mm-hmm.

6 MR. BROOKNER: So you're a plain language kind of
7 guy. Let's talk about some plain language. Work with me here.
8 Okay?

9 THE COURT: Mm-hmm.

10 MR. BROOKNER: The words structured dismissal don't
11 appear anywhere in the Code or anywhere in the rules. It's a
12 made-up concept. We both know that.

13 And the Supreme Court talked about it in Jevic. In
14 Section 1121, excuse me, 1112(b)(1), it's clear that the Court
15 has two choices under that section. It can convert or it can
16 dismiss. And if there's a showing of cause for dismissal --
17 but first of all, there has to be a showing of cause to
18 dismiss.

19 THE COURT: Mm-hmm.

20 MR. BROOKNER: If there is a showing of cause, the
21 Court must make a sister finding that dismissal is in the best
22 interest of creditors. I can tell by your nodding that, at
23 least for now, you appear to agree with me on my reading of
24 Section 1112.

25 I would respectfully submit to Your Honor that there

1 is no cause here. First of all, there's no administrative
2 insolvency. We have a settlement in hand that will provide
3 more than sufficient funding to cover administrative expenses.
4 And regardless, we also have causes of action that can be
5 pursued on a contingency fee basis, some of which are really
6 good causes of action. And they will recover perhaps as much
7 as \$30 million just by themselves, which will render this case
8 more than administratively solvent. We'll have a tremendous
9 cushion for that to be the case.

10 So when we're talking about the plain language, we
11 know what cause is because there's an outline of what cause
12 includes. And the only cause that the TCC has cited for
13 dismissal of this case that's listed in the statute is
14 administrative insolvency. The other element of cause, if you
15 will, because the listing in the statute is just including,
16 it's not exclusive, it's exemplary, if you will, the only other
17 cause they say is that this is a bad faith filing. That's it.

18 So we've already, I think, subject to the evidence,
19 dispatched with the whole bad faith thing, right, because
20 you're either going to dismiss or not dismiss, or you're
21 either -- let me rephrase. You're either going to approve the
22 settlement or not approve the settlement and then potentially
23 dismiss the case. We don't need to get to the bad faith stuff.
24 We just talked about that two minutes ago.

25 So the only thing that they have to rest on is

1 administrative insolvency for purposes of cause. But let's
2 assume for the sake of argument that they're right. Let's go
3 there. Let's assume that they're right we're administratively
4 insolvency. We submit they're not right, but that's -- we're
5 making an example, okay? So if that's the case, before you can
6 dismiss, you still have to find that dismissal is in the best
7 interest of creditors.

8 So what do those two words, "best interest," mean?
9 They're not defined in the Code. Remember Warner Wolf from New
10 York growing up --

11 THE COURT: I do.

12 MR. BROOKNER: -- on TV, sportscaster? He used to
13 say, let's go to the videotape, right? So let's go to the
14 videotape, Your Honor. The videotape here, because it's not in
15 the Code, is Webster's Dictionary or some other type of
16 dictionary. I like Webster's. The word "best," as defined in
17 Webster's, it's defined as a superlative of the word good. It
18 means excelling all others or the most or the largest or the
19 most favorable. That's best. The word "interest" means an
20 advantage or a benefit. Plain language, Webster's Dictionary.

21 And so if you put that all together, the term "best
22 interest" means what is the best outcome or the most favorable
23 outcome for creditors and what gives them the greatest benefit.
24 And that's the question. And I have to say it again, Your
25 Honor, when you are faced with approving this settlement or

1 sending everybody back into the chaos of a litigation black
2 hole, it's not even a close question.

3 Taking the money and working collaboratively with the
4 other two constituencies on a distribution and claims
5 reconciliation process is by far the better outcome and
6 infinitely, quote, "more favorable." For the record, I'm
7 giving you air quotes now. It's more favorable because that's
8 what gives creditors the greatest benefit. And for that, you
9 don't have to look any further than the joinders that were
10 filed by the RMSC plaintiffs represented by Mr. Patterson, who
11 is here, at Docket Number 1399, St. Luke's at Docket Number
12 1377, Saint Alphonsus at 1382, and Capital Regional Medical
13 Center and the Curators at Docket Number 1392.

14 Mr. Patterson, as you know, represents some tort
15 claimants in a case pending in New York. And the other three
16 joinders together that I just referenced represent claims in a
17 face amount of about \$75 million. Those joinders, all of them,
18 beg Your Honor not to send people back to the black hole of
19 litigation.

20 And here's what's important. You're dealing in those
21 cases or those joinders with people who are well-heeled with
22 experienced, sophisticated counsel. And they're saying, Your
23 Honor, we don't want to spend any more time. We don't want to
24 spend any more money. We've been spinning our wheels. We've
25 been going around and around and around. We have nothing to

1 show for it. What you have here with this settlement is a
2 concrete amount of money. Maybe it's not the best, but it's
3 certainly not the worst. It's down the middle, and we want
4 that.

5 And we will then go back to our neutral corners
6 later. And if we have any independent, direct third-party
7 claims, we'll pursue those claims. But let's get something
8 into people's pockets now rather than sending them back to
9 spend more time and more money and have more brain damage
10 trying to chase effectively their tails.

11 THE COURT: How much is -- I know there's been a lot
12 of going back and forth about -- how much would actually go
13 back out into people's pockets when you back everything out?
14 What's the evidence going to show, the mechanics?

15 MR. BROOKNER: Well, there's give or take, for the
16 settlement, \$40 million in cash. Okay. The more time that we
17 deal with the TCC and motions to dismiss --

18 THE COURT: I'm just talking if I approve the
19 settlement, how much money would go out, projected?

20 MR. BROOKNER: There will be \$40 million about in
21 cash that comes in that, put inside admin expenses, is ready to
22 go out the door, plus we have ERC credits.

23 THE COURT: Yeah, but that's what I'm trying to
24 figure out. Like, in other words, back out the admin, back of
25 the envelope, how much money are people counting for?

1 MR. BROOKNER: Look, I can't back out the admin
2 because, you know, I don't know how much they're spending and
3 how much we're spending in response.

4 THE COURT: So then -- but then how do I then gauge
5 how much value creditors are actually going to receive? I've
6 got to -- there's got to be some measure of value for me to
7 understand.

8 MR. BROOKNER: All right, well, then, let's put some
9 numbers on it. I think the numbers we had on it and the
10 evidence is going to show it, and Mr. Perry is not here so I
11 can't ask him. But I believe we had --

12 THE COURT: I won't hold you to it. I'm just trying
13 to get a sense --

14 MR. BROOKNER: Right.

15 THE COURT: -- of back of the envelope kind of where
16 we are.

17 MR. BROOKNER: I believe we had about \$12 million to
18 \$15 million or so ballpark. Is that right? I'm looking behind
19 me. For admin claims? That was about the ballpark, okay? And
20 we estimated a little high because --

21 THE COURT: No, no, no. I got it.

22 MR. BROOKNER: I think it was the TCC had counsel
23 and --

24 THE COURT: Let's just say there's \$15, \$17 --

25 MR. BROOKNER: Okay. So let's just say 15. Let's

1 just put a number on it, okay? That's 15 million from 40.

2 What's the math on that?

3 THE COURT: 25.

4 MR. BROOKNER: 25. I'm sorry, it's from 54, Your
5 Honor. Okay? So do the math on that. So you take 15 off.
6 We're at 39.

7 THE COURT: Mm-hmm.

8 MR. BROOKNER: Okay. And then you layer back onto
9 that the ERC credits, which could be any place between \$10 and
10 \$20 million. There's a question because the IRS has taken a
11 long time. They have some offset rights. But it's someplace
12 in that range. Let's call it 10 to be -- make it easy. Now
13 we're at 49. Okay? And there are other causes of action that
14 the estate has that are not being released, which haven't been
15 valued exactly right yet. There's some preferences. There's
16 some litigation against the Flacks Group and maybe against some
17 other third parties, which are not subject to the settlement.
18 They're not going anywhere.

19 So at a minimum, based on the math that we just
20 talked about, we're talking about 49 million.

21 THE COURT: How does the mandatory -- is there still
22 a mandatory mediation?

23 MR. BROOKNER: That's the plan that doesn't exist
24 anymore, Your Honor.

25 THE COURT: Well, that's what I'm trying to ask. I'm

1 just --

2 MR. BROOKNER: No.

3 THE COURT: -- I'm asking mechanically. Just there
4 were -- I'm going back to things I said before and now kind of
5 going in. So how does the settlement work now that was
6 different than the last deal?

7 MR. BROOKNER: Well, because the last time it was
8 baked in with the plan.

9 THE COURT: Right.

10 MR. BROOKNER: And we were doing it all together.
11 But the plan, that plan doesn't work for any variety of
12 reasons. That's why we separated everything out. And we know
13 once you approve this settlement, we have to go back to the
14 other room with the tort committee, with the creditor's
15 committee, probably with Mr. Sontchi to figure out what the
16 claims reconciliation process looks like. Is it similar to
17 what we had before? Is it 180 degrees different or is it
18 someplace in between? That's an open question that we just
19 don't know the answer to.

20 THE COURT: Okay. No, no, no. That's fair. That's
21 what I'm trying to understand.

22 MR. BROOKNER: And I'll tell you, we understand the
23 tort committee wants to give their respective constituents
24 their day in court. We get that. We're not fundamentally or
25 philosophically opposed to that. Okay? The question is, what

1 does it look like? What are the contours that go around that
2 and how does it work? And that's what we have to sit down and
3 talk about after you approve the settlement. It's not part of
4 what we're doing today and Tuesday.

5 THE COURT: Okay.

6 MR. BROOKNER: Good?

7 THE COURT: Mm-hmm, mm-hmm, mm-hmm.

8 MR. BROOKNER: Okay. You are right. You're tracking
9 with me because this is exactly my outline. This is great.
10 Okay.

11 All right. We talked about the statute a little bit,
12 the language. And then you look at Section 349, which talks
13 about the effects of dismissal. And first, 349 also doesn't
14 have the word structured. It's very simple. It just says
15 dismissal. And we can go to Webster's to see what "dismissal"
16 means. Dismissal means the act of dismissing or the fact or
17 state of being dismissed, to reject, to put out of action, to
18 refuse to hear. Okay?

19 And 349(b) says unless you order otherwise in
20 connection with dismissal, there's a litany of things in the
21 statute that happen, none of which are contained in the TCC's
22 motion or form of proposed order. None of them. You know what
23 349(b) says. You dismiss cases. You know what it says.
24 Nothing that they're asking you for is in 349(b). And what the
25 statute says is what's in 349(b) happens unless you say it

1 doesn't happen. That's what the statute says.

2 So when you look at that, you look at Jevic, and then
3 another recent case where Your Honor just gave a ruling,
4 SmileDirect, structural dismissal case. Your Honor took Jevic
5 seriously, and what you said in SmileDirect was I've got
6 opposition here. If I had unanimity and everybody was on board
7 rowing in the same direction, I would do this. But people are
8 opposing it. I don't have unanimity in the creditor
9 constituency, and I'm not going to structurally dismiss this
10 case. And you converted the case. Right?

11 That's what we have here, Your Honor. You don't have
12 unanimity. A structural dismissal is a no-go. It's not
13 permissible. And there's nothing close to unanimity here.

14 You have one committee that represents a very
15 distinct and specific constituency asking you for something
16 that the other committee that represents all of the creditors
17 in this case, opposes. And we have the various joinders.

18 So let's stop with the Bankruptcy Code and let's
19 focus on settlement.

20 THE COURT: Mm-hmm.

21 MR. BROOKNER: And let's go to Rule 9019. Now,
22 neither the Code nor the rules, and this is what we talked
23 about just a few minutes ago, neither the Code nor the rules
24 have any true guidance for Your Honor as to what you need to be
25 looking at and thinking about when approving a settlement. And

1 you did it when you were over here. You've done it when you
2 were over there. But we'll go through it again.

3 We have to go to the case law. That's the videotape
4 for this particular issue. And the case law is Jackson
5 Brewing. That's the magisterial mother of all settlement
6 cases. It came down in 1980 from the Fifth Circuit. And for
7 40 years, 40 years, Your Honor, everybody's filed this case in
8 the Fifth Circuit. Everybody. And the standard has remained
9 the same and unchanged for 40 years.

10 To approve a settlement, Your Honor must evaluate
11 three factors, the probability of success in the litigation
12 with due consideration for the uncertainty in fact and law;
13 number two, the complexity and likely duration of the
14 litigation and any attendant expense, inconvenience, excuse me,
15 inconvenience and delay; and number three, and I quote, "all
16 other factors bearing on the wisdom of the compromise." And
17 when Your Honor does that, as I know you know, you're not
18 conducting a mini-trial on the merits of the proposed
19 settlement.

20 You also don't have to take evidence. You're allowed
21 to use your personal knowledge and your own common sense and
22 experience. You don't have to take evidence to know that no
23 one has litigated and no court has ever issued a definitive
24 ruling on whether a Texas divisional merger is a fraudulent
25 conveyance, or whether it can otherwise be avoided, never mind

1 a focus on success or liability. No one has cited to you any
2 such rulings in the papers, because you can bet if it existed,
3 we would all know that.

4 And the Court doesn't have to take any evidence to
5 know that any litigation like this that I just talked about to
6 attempt to unwind a divisional merger will be complicated to
7 the nth degree, will be painfully expensive, painfully time-
8 consuming with a very uncertain outcome. And the only thing
9 that's certain from that litigation, Your Honor, is that it
10 will be appealed by one or the other or both parties until the
11 end of time, until the end of the appellate road, which means
12 more time, more money, more uncertainty, years of additional
13 complex, time-consuming, and expensive appellate litigation.

14 When we talk about the third factor, Jackson Brewing,
15 other factors bearing on the wisdom of the compromise, courts
16 have broken that down into two parts, as I know you know.
17 That's Foster Mortgage, Cajun Electric, and other cases, right?

18 First, the paramount interest of creditors with
19 proper deference to their reasonable views. And second, the
20 extent to which the settlement is the product of arm's length
21 bargaining and not fraud or collusion.

22 Well, the second factor we already talked about,
23 because you asked me about insiders a minute ago, and I gave
24 you the answer. We have a settlement that was put together at
25 a mediation with Mr. Sontchi, who was leading the charge, with

1 two independent fiduciaries to the unsecured creditors'
2 committee, and Mr. Perry, as the debtor's representative from
3 Ankura Consulting, with all of the other settling parties in
4 the other room, represented by their own counsel, Ms. Hayward,
5 and Mr. Gluck was there as well, and Mr. Perry, as I think Your
6 Honor knows, has made every operative decision for the debtors
7 since this case was filed, not Mr. Lefkowitz, not anybody else;
8 Mr. Perry, with, of course, the advice of counsel.

9 For anyone to contend that the settlement is not
10 arm's length would be frivolous at best. Not that I'm
11 suggesting Your Honor was asking frivolous questions, but the
12 contention would be frivolous. So now let's talk about the
13 paramount interest of creditors. Let's go back to the first
14 prong of other factors bearing on the wisdom of the settlement.
15 We're talk -- we're in Foster Mortgage now. We left Jackson
16 Brewing. We're in Foster Mortgage interpreting the third prong
17 of Jackson Brewing. You're with me, right?

18 THE COURT: Mm-hmm.

19 MR. BROOKNER: Okay. So talking about paramount
20 interest, we've already talked about how Webster's defines the
21 word interest. We've already done that. It means advantage or
22 benefit. We talked about that in connection with Section 1112.

23 Now let's talk about the word paramount. Paramount
24 means, quote, "superior to all others or supreme." If you put
25 those together, the question Your Honor has to answer, and we

1 think the answer is yes, is, is this settlement superior to all
2 other options? And here, and again, you and I talked about
3 this a little bit a minute ago, there's really only three
4 options. You can approve the settlement and we move forward
5 and we get through a plan process and all that; number two, you
6 don't approve the settlement and you dismiss the case; or
7 number three, which I think is an extraordinarily low
8 probability, somewhere between slim and none, is you deny both
9 motions and you send everybody back to figure out next steps.
10 I think that's a very low probability of happening. But those
11 are the three options that are realistic that we have.

12 As we talked about earlier, and I know it's been
13 weighing on Your Honor for quite a while now, we've been here a
14 year. We've been dancing and toying for a year and we cannot
15 continue to live like this. The creditors don't want to live
16 like this. The professionals don't want to live like this.
17 Your Honor doesn't want to live like this. It's just not fair.
18 It's just not a good place to be.

19 So that makes, like I just talked about, option three
20 a non-starter, meaning deny both motions and let us go figure
21 something out. We can't realistically do that. We've got to
22 get to the end of the road.

23 As to dismissal, Your Honor, we would also submit to
24 you it's a non-starter. And that's if for no other reason than
25 what I just talked about a minute ago, which is the \$75 million

1 in claims, Mr. Patterson's clients, or tort claimants, we're
2 saying to you, please, judge, please don't send us back to
3 litigation chaos. And that's also, by the way, what Ms. Funk
4 wrote in her papers. I think she coined the term litigation
5 chaos. I want to give her due props for that.

6 Nobody who has counsel wants that. And if people
7 with counsel don't want that, how do you think it's going to
8 play with the pro se claimants who don't have counsel? And
9 there's a lot of them.

10 THE COURT: Right, but what you're essentially
11 arguing is really, you know, do I put people back to what the
12 federal judicial system actually provides for, right, or
13 courts, right? It's not litigation chaos. It's just kind of
14 what you get if there were no bankruptcy case, right? That's
15 really what I'm asking for. I get the coinage of the term
16 litigation chaos, but it's really just sending you back from
17 what --

18 MR. BROOKNER: From what you get.

19 THE COURT: -- the law already provides, right?

20 MR. BROOKNER: Okay. That's it.

21 THE COURT: But I'm not sure that's chaos. It just
22 is what it is.

23 MR. BROOKNER: That's fine. I can stop with chaos.
24 I kind of liked it. That's why I used it.

25 THE COURT: No, I get it.

1 MR. BROOKNER: But we can go back. Ms. Carson will
2 put the black hole back up on the screen because that's what it
3 is. It's a black hole. It might not be chaos. That's fine,
4 Your Honor. I don't have to use that word. But it is a black
5 hole. And that's what people are telling you. Like, we want
6 to get out of this black hole. There's no end in sight. We
7 don't want to be here. We want to be here in this court. We
8 want the money.

9 THE COURT: I've got one more question for you, and I
10 know I took a lot of your time.

11 MR. BROOKNER: You're fine, Your Honor.

12 THE COURT: How then does -- there are a number of,
13 obviously, folks who are affected by what we may do here that
14 are incarcerated, how do I think, as I think through the
15 evidence and what the settlement proposes, how do I think about
16 individuals who are incarcerated and the rights that they may
17 or may not be impinged upon because of what I decide in
18 connection with the settlement?

19 MR. BROOKNER: Well, I don't --

20 THE COURT: I'm just thinking about how to think
21 about it. I'm thinking about all these things, and I --

22 MR. BROOKNER: Right.

23 THE COURT: -- want to know how do I think about
24 that.

25 MR. BROOKNER: So let me ask you a question, if I

1 might. Can I play the devil's advocate? What rights do you
2 think you would be impinging on by approving a settlement which
3 is subject to a plan that has yet to be filed?

4 THE COURT: I don't know.

5 MR. BROOKNER: Right.

6 THE COURT: That's why I'm asking. I'm telling you,
7 it's -- I'm the flick-the-lights guy, remember?

8 MR. BROOKNER: Of course.

9 THE COURT: You're the ones that know more --

10 MR. BROOKNER: Sure.

11 THE COURT: -- so I'm asking you.

12 MR. BROOKNER: I would submit to you, Your Honor, the
13 settlement doesn't affect anybody's rights. The only thing
14 that it affects is the estate's claims and the people who are
15 paying money. To the extent there are any individual rights
16 that might be affected at some point, that's a plan issue, and
17 you can bet your bippy, pardon my colloquialism, that the tort
18 committee is going to be all over that. They're going to be
19 all over that.

20 And we will deal with that in due course once you
21 have approved the resolution of the estate's claims, not
22 anybody else's claims, the estate's claims. That's all we're
23 talking about with the settlement, the claims that I have as
24 the debtor, that they want, by the way, as part of the
25 structured dismissal, and they haven't complied with Louisiana

1 World and all that, but that's just -- we don't have to talk
2 about that. We'll deal -- that's a legal issue for later.

3 THE COURT: Okay.

4 MR. BROOKNER: All right. So coming back to power
5 managers of creditors, it means all creditors, as I think Your
6 Honor knows, not just a specific subset of creditors, be they
7 pro se creditors, represented creditors, tort creditors, or
8 contract creditors, or others. It's all creditors.

9 Now, I'm getting to the end here, Your Honor, and I
10 appreciate you bearing with me.

11 THE COURT: Yes, you've got four minutes, and I'm
12 hoping. I know I've taken some of your time.

13 MR. BROOKNER: No, I've got -- I'm -- oh, no.

14 THE COURT: I've given you some time back, though,
15 from my questions and everything.

16 MR. BROOKNER: No, that's okay. I'm going to move
17 quick. I've only got two paragraphs to talk about that are
18 left, two concepts. The first one is that you're going to hear
19 that the settlement falls well within the range of
20 reasonableness from what the debtor and the Committee believe
21 the claims might otherwise be worth. Were they to be
22 litigated? Accounting, of course, for everything that goes
23 with that, which is time, money, unknown results,
24 complications. You've got to take a discount for all that.
25 You have to.

1 You can't say, oh, claims are worth \$100 million, we
2 should get \$100 million, without accounting for all the
3 discounts that you have to take as part of litigation. \$100
4 million doesn't just magically show up. \$87 million doesn't
5 magically show up. You've got to go get it. You've got to
6 spend time and money. You have to fight with people. You've
7 got to discount for that. There's uncertainty in fact and law.

8 And Your Honor, the 54 million, all the evidence
9 seems to show is that it's within the range of reasonableness.
10 It's not the best. It's not the worst. It's someplace in the
11 middle. And the settlement -- and by the way, you're going to
12 hear testimony from Mr. Atkinson that when he goes back and
13 readjusts the debtor's numbers from the disclosure statement,
14 which is kind of off menu at this point, but from the
15 disclosure statement, the last one we filed, that he sees the
16 global claims pool as being someplace between \$137 and \$185
17 million. And he says that's the money that you should be
18 getting, which, again, doesn't take any discounts for risk,
19 time, uncertainty, et cetera.

20 But if you look at that just on its face, you take
21 the midpoint, which is about 155 million, you look at the
22 settlement of 54 million, which, by the way, again, doesn't
23 account for other assets, doesn't account for ERC credits,
24 doesn't account for other litigation. We're talking just about
25 the settlement. There's more to be had than just the

1 settlement. But if you look at a settlement of 54 million and
2 you take the midpoint of their expert's number, which is 155
3 million or thereabouts, you're talking about a third. Pretty
4 good. Pretty good.

5 So Your Honor, that's all I have to say about that.

6 THE COURT: Thank you.

7 MR. BROOKNER: Thank you for your time.

8 THE COURT: Thank you.

9 I'll hear from the Committee.

10 MR. HEMENWAY: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. HEMENWAY: Zach Hemenway for the Unsecured
13 Creditors' Committee.

14 Your Honor, our creditors have been waiting a year
15 for this moment. They've watched an investigation, multiple
16 mediations, and a case that's gone in directions that no one
17 expected, directions that have delayed progress and increased
18 administrative costs.

19 Now, finally, the Court is going to hear evidence and
20 tell them what's going to happen to them. Are they going to be
21 helping us put together a plan that decides how the estate will
22 distribute at least \$54 million? Are we going to send them out
23 the door of this courthouse to go, as Your Honor alluded to,
24 back where they started?

25 Neither of these alternatives is perfect, and neither



1 is going to result in a path where creditors are made whole for
2 their injuries. But this case has to move toward a resolution.
3 And when we look to the Bankruptcy Code and the applicable law,
4 the two fundamental questions before the Court today is whether
5 the \$54 million is enough to settle the claims, the estate's
6 cause of action, and whether approving that settlement would be
7 in the best interest of creditors. UCC believes that the
8 answer to both questions is yes.

9 But before I get into all that, I want to talk for a
10 minute about the creditors in this case. Because regardless of
11 any of the disagreements we may get into today, I know that we
12 can all agree that, as Your Honor said, the life of the case
13 itself will be decided here, and that decision will have a
14 dramatic impact on all of the creditors and their chances at a
15 meaningful recovery.

16 The creditors in this case have suffered. The
17 financial harm that Corizon wrought is significant, and many of
18 the creditors are members of a vulnerable population,
19 incarcerated individuals, whose injuries go well beyond the
20 financial. There are claims based on wrongful death, abuse.
21 We're talking about serious physical and emotional injury
22 impacting these people and their entire families. These are
23 injuries that are difficult for the civil justice system to
24 address, even in the best of circumstances.

25 And these are not the best of circumstances. We're

1 dealing with a failing company that was purchased by investors
2 who decided to loot it and start over. We have insurance
3 policies that are designed not to address claims, but to
4 minimize cost of coverage. And we have creditors who spent
5 years before this case even started chasing what felt like a
6 moving target.

7 The end result is that whatever decision the Court
8 makes on these pending motions, creditors are going to continue
9 to feel frustrated, exhausted, and even outraged, and they're
10 going to be justified in feeling that way.

11 We're all here on behalf of those frustrated
12 creditors, and we're all trying to find the best way to get
13 them compensated. The UCC believes the settlement provides
14 that path.

15 Now, I'm going to start by going through what's in
16 dispute in the settlement, and then I'll talk about why the UCC
17 and creditors believe that it's a strong value for the causes
18 of action that are property of the estate. I'll also cover
19 what the settlement motion is and isn't, and then I'll talk
20 briefly about why dismissal would be catastrophic for many
21 creditors.

22 Now, I want to address, before I get into that, a
23 couple questions Your Honor raised. You asked what the
24 standard that's applicable here, and I think it's clear it's
25 Jackson Brewing plus the Foster Mortgage factors.

1 And as to whether or not there's any specific
2 attention on the fact that this is a settlement with insiders,
3 I think there's no question that it is. That's the second one
4 of the Foster Mortgage factors. We do look at whether it's an
5 arm's length transaction, and we have to look more closely when
6 the settling parties are insiders.

7 The other question Your Honor asked is -- or the
8 other thing Your Honor raised is the fact that this is
9 different, maybe, than a routine settlement that Your Honor may
10 see, or maybe you asked the question of that. I would say it
11 absolutely is. A global settlement like this carries a lot
12 more importance, covers a lot more. I mean, this is the max,
13 this is the majority of the estate's assets in this case. So
14 we think it is different, and that's why we wanted to have this
15 hearing that focuses entirely on it, rather than trying to get
16 it into a situation where we're conflating issues between a
17 plan and a settlement.

18 So let's start with what's in dispute in the
19 settlement. There's objections that have all kinds of rhetoric
20 and things like that, but none of that really has any bearing
21 on the analysis, and the creditors shouldn't have to watch
22 admin fees being spent on attorneys calling each other names.

23 When we focus on what matters, the substance, the
24 only true dispute here is whether the settlement amount
25 provides sufficient value for the estate causes of action,

1 specifically those that arise out of the divisional merger.
2 There's no dispute on what those causes of action are. Where
3 the UCC and TCC fundamentally disagree is on two aspects of
4 those causes of action, how viable they are and how valuable
5 they are.

6 Now, Rule 9019 simply says the Court can approve a
7 compromise after a hearing, and since that's all it says, we
8 look to Jackson Brewing and Foster Mortgage. And the Court
9 doesn't have to decide who's right, the TCC or the UCC. This
10 isn't a mini-trial on the merits. Instead, we look to all
11 those factors to evaluate whether the settlement is reasonable.

12 So the Court will hear evidence today and next week
13 on these causes of action, all the causes of action against
14 settling parties that are going to be released in the
15 settlement. And there's no dispute about what causes of action
16 are being released. It's all of them. It's right there in the
17 agreement. If and only if the settling parties pay the full
18 amount, all causes of action against them that are property of
19 the estate will be released. The TCC has tried to inject some
20 ambiguity as to what claims fall within that legal definition,
21 but they aren't arguing that the settlement doesn't cover all
22 causes of action.

23 Your Honor asked about the people who went out of the
24 settlement, and I think it's important to note that the
25 settlement won't prevent claimants from pursuing direct claims

1 against third parties. It is only the estate causes of action
2 that are in the scope.

3 The settlement motion that's before Your Honor
4 identifies all causes of action that we believe have any
5 material value. Each of the potential causes of action that
6 the TCC has talked about in its opposition and its motion to
7 dismiss, including successor liability, was considered by the
8 UCC and the debtor in deciding to enter into the settlement,
9 and they're outlined in the settlement motion.

10 THE COURT: You're settling the fraudulent transfer
11 litigation, essentially is what you're settling.

12 MR. HEMENWAY: Correct.

13 THE COURT: So no one's going to try -- in other
14 words, if I approve this settlement, no one can then challenge
15 to seek to try to unwind the divisional merger. That's really
16 the effect of --

17 MR. HEMENWAY: Yeah, I would say that is considered
18 an estate cause of action under Fifth Circuit law.

19 THE COURT: Yeah, yeah. Okay.

20 MR. HEMENWAY: So I'm going to go through the causes
21 of action that are there. We are settling the fraudulent
22 transfer litigation or cause of action, as Your Honor alluded
23 to. There's also \$31 million in pre-divisional merger
24 fraudulent transfers. You haven't heard a lot about those
25 because they're not really in disagreement. The TCC and UCC

1 are on the same page there. So I'll touch on those briefly.

2 There's \$1 million that went to pay debts for
3 Pharmacorr, another company Paragon owned, \$5.5 million that
4 went to Geneva, which is an insider entity, and \$24.5 million
5 that Isaac Lefkowitz and M2 LoanCo took from the company.

6 Each of these counterparties challenges those
7 characterizations, and they say they have defenses, but we
8 don't really need to get into that here, because all of the
9 fiduciaries agree these claims have significant merit.

10 There also isn't any disagreement about whether that
11 \$31 million figure would have to be discounted in value for
12 settlement analysis. The Jackson Brewing factors that are
13 outline in Cajun Electric make it clear the Court has to
14 consider things like complexity, duration, and risk.

15 Here, the battle that creditors fought for years pre-
16 bankruptcy, and those that we fought in this case, suggests
17 that the cost of pursuing those could be significant, and there
18 may be a contingency fee arrangement if they were going to be
19 pursue. Collection risks also may be higher there, given that
20 we're dealing with defendants who are experienced litigators
21 and experienced in moving money around.

22 So that brings us to the claims arising out of the
23 divisional merger. As I said at the outset, that's where we
24 and the TCC aren't on the same page.

25 Actually, the debtor, UCC, and TCC all disagree with

1 one another on these potential causes of action. The UCC
2 believes that the estate has a valid cause of action against
3 YesCare and its owners based on a fraudulent transfer theory,
4 as Your Honor alluded to.

5 The debtor doesn't think this cause of action has
6 much material value. They think it would be a challenge to
7 show the divisional merger constitutes a transfer within the
8 meaning of Section 548 because of the language in the Texas
9 statute. And they also say that -- they also have concerns
10 because YesCare is going to say that the debt it took on in
11 that deal makes the deal fair. They're also, of course, as
12 Mr. Brookner alluded to, concerned that no court has held a
13 divisional merger transaction to be a fraudulent transfer.

14 Now, we at the UCC, we acknowledge those concerns,
15 but we still believe this claim would have a chance of success
16 because it would put the transaction in a recognizable
17 bankruptcy context, a fraudulent transfer avoidable under
18 Chapter 5. The images under Section 550 would likely be
19 calculated as the value of YesCare at the time of the
20 divisional merger, so we had our financial advisors look at
21 trying to figure out what that number might be. As you'll hear
22 on Tuesday, they tried to run method -- they tried multiple
23 methods coming up with that, and they came up with a value
24 ranging from 0 to 75 million.

25 So to summarize, the UCC thinks the fraudulent

1 transfer avoidance action has merit, but it comes with
2 significant litigation risk costs and complexity, and the
3 damages would be a challenge to prove and would cap out at \$75
4 million.

5 The TCC doesn't really agree or disagree with this
6 analysis, Your Honor. It hasn't engaged much on the fairness
7 of the divisional merger transaction except in its high-level
8 discussion of its motives, and its financial expert isn't going
9 to come here and tell you a value for YesCare as of May 22nd --
10 May 2022, or any other date. Instead, the TCC has focused on
11 successor liability and alter ego.

12 The TCC's opposition is centered around three key
13 points. First, they contend the debtor in the UCC didn't
14 consider successor liability. Second, they contend those
15 claims are a slam dunk. And third, they contend that the
16 settlement value for those claims exceeds \$100 million. But
17 none of these assertions withstand scrutiny.

18 This is where the rubber meets the road in the case
19 and in considering the settlement. The TCC says we didn't
20 consider successor liability, and they pointed to some out-of-
21 context deposition testimony from last week. But they know we
22 evaluated those claims. It's right there in Paragraph 46 of
23 the motion.

24 As to the merits, they're telling us it's a slam dunk
25 because one magistrate in Michigan allowed a plaintiff to

1 substitute CHS Texas as a party. And they tell us these claims
2 are not only valuable but collectible because YesCare got a
3 contract in 2023 that has a high revenue number.

4 That's just not enough to make pursuing these claims
5 anything more than a serious gamble. And there are ample
6 reasons why pursuing this cause of action would be a roll of
7 the dice. First, pursuing successor liability here would
8 require viewing the divisional merger as a nullity and ignoring
9 the business organization's code. It is untested, theoretical.
10 It's a novel claim that epitomizes the uncertain litigation
11 described in Jackson Brewing.

12 Second, you can't have successor liability without
13 liability. This means that for this cause of action and only
14 this cause of action, it's not so much about the value of the
15 assets that were transferred. It needs liability for the
16 underlying claim, then followed by a novel theory of recovery.

17 And then finally, to the extent this cause of action
18 is seen as viable, our investigation raises questions about its
19 value. Our financial advisors looked at YesCare's financials
20 through the bankruptcy filing, the debtor's bankruptcy filing,
21 and they didn't see anything to suggest that the financial
22 analysis that they had done for May 2022 had significantly
23 changed.

24 The TCC views these claims, on the other hand, with
25 unbridled optimism. So much so, it views their value as equal

1 to the projected allowed claims of the entire creditor pool in
2 this case. But even under the TCC's view, \$54 million would be
3 reasonable.

4 The TCC's expert has suggested the total claims pool
5 would maybe 136 to 187 million, and that's prior to any
6 adjustment or discount for litigation risk, cost, or
7 settlement. Given that we're talking about claims that would
8 be the first of their kind, that would require showing a
9 liability and present multiple collection unknowns, the \$54
10 million settlement falls within the range of reasonableness
11 even under the TCC's view.

12 Additionally, I mentioned the Foster Mortgage
13 factors. We need to talk about those, and they provide further
14 support for the settlement. The first goes back to what I said
15 at the outset, the interest of creditors with proper deference
16 to their reasonable views.

17 The TCC has told us what its members think. It also
18 has told the Court that those are the views of every tort
19 claimant in the case, and that those views mean that creditors
20 don't support the settlement.

21 There's two problems with that assertion. First, the
22 UCC includes two tort claimants, and it unanimously supports
23 the settlement. Second, the TCC's perspective completely
24 disregards the views of non-tort claimants. These are
25 creditors that have filed more than \$100 million in

1 contract-based claims. If it's a bad settlement, Your Honor,
2 they're getting less money, and if dismissal would lead to a
3 pot of gold, they had the resources and ability to get their
4 share of it.

5 The TCC cannot downplay or ignore the views of the
6 creditors who fully support the settlement, and that includes
7 two groups that filed joinders in this case that I'd like to
8 talk about briefly. The first is St. Luke's Health System.

9 As my colleague, Mr. Zluticky, alluded to, the Court
10 will hear from David Barton today. Mr. Barton is deputy
11 general counsel for St. Luke's, and he became chair of the UCC
12 at the outset of this case because Mr. Nguyen, the United
13 States Trustee, asked him to. St. Luke's is a creditor because
14 it took care of incarcerated individuals' medical needs under
15 contracts with Corizon. When it became time for Corizon to pay
16 its bill, it refused. Though it fought Corizon in court for
17 years, St. Luke's still hasn't been paid any of the \$31 million
18 it seeks.

19 Another group that filed a joinder is the RSMC
20 plaintiffs. These are women who are incarcerated at Rose M.
21 Singer Center, which is part of Rikers Island in New York, who
22 have filed claims based on mistreatment and abuse perpetrated
23 by a member of Corizon's clinic staff. One of the RSMC
24 plaintiffs, Latricia Revell, has been a member of the UCC from
25 the outset. The RSMC plaintiffs have filed proofs of claim

1 totaling \$20 million relating to that lawsuit.

2 St. Luke's, Ms. Revell, and the rest of the UCC were
3 unanimous in voting to support the settlement, and they remain
4 unanimous in asking the Court to approve it. These UCC members
5 are aware of the TCC's theories about successor liability,
6 alter ego, and the supposed pot of gold at the end of a long
7 litigation rainbow. Yet, they are supporting the settlement
8 and asking the Court to approve it. The Court should give
9 proper deference under Foster Mortgage to these views, which
10 are more than reasonable.

11 As the other point that the Fifth Circuit gives us in
12 its guidance, the UCC's support and my presence here
13 demonstrates that this is an arm's-length transaction. There
14 is no love lost between the UCC and the settling parties. We
15 fought them tooth and nail to get the evidence we needed to
16 push that settlement number as high as possible. Your Honor
17 saw multiple motions to compel as part of that effort.

18 The parties seeking a Chapter 11 trustee used my
19 deposition of Mr. Lefkowitz as their primary evidence of his
20 evasiveness, and the TCC relies on the findings of our
21 investigation when it outlines his wrongdoing.

22 Make no mistake, another area where the TCC and UCC
23 agree is in their view of Mr. Lefkowitz and his colleagues at
24 Perigrove. What they did was wrong, and it should not be
25 abided. But those personal feelings cannot supersede the best

1 interests of creditors, just as Mr. Barton's personal feelings
2 cannot define or determine what will get St. Luke's the best
3 recovery. Sometimes you end up settling with your enemies even
4 when those personal feelings can make that really difficult.
5 The fact that UCC members support the settlement despite these
6 feelings is an indication of how strongly they believe the
7 settlement is the best path to a meaningful recovery.

8 It's paramount here that we listen to creditors, and
9 I think the RSMC plaintiffs have described the settlement as
10 well as anyone. When Mr. Patterson filed their joinder
11 supporting the settlement motion, he referred to the settlement
12 as an imperfect but financially beneficial solution. That's
13 exactly what it is, and that's why we agree with Mr. Patterson
14 that the settlement is reasonable and should be approved.

15 So that's what the settlement is. As we're shifting
16 to the motion to dismiss, I want to be clear on what the
17 settlement is not. It's not a settlement of anything other
18 than estate causes of action. We've talked about that.
19 Neither the debtor nor the UCC have the authority to settle
20 anything else, and we're not attempting to. Those causes of
21 action include successor liability and alter ego as a function
22 of Fifth Circuit law in Section 541.

23 As Mr. Brookner alluded to, the settlement is not a
24 plan. It doesn't contain any plan, and as I stood right here
25 and told the Court in December, if the settlement's approved,

1 we're going back to the drawing board and coming before you
2 with a new plan, and we want the input of the TCC, the United
3 States Trustee, and other creditors in that process.

4 I want to move now to the motion to dismiss. This is
5 a big decision, as Your Honor alluded to. Dismissal means
6 shaking the etch-a-sketch, making the last year meaningless,
7 and sending all creditors back into the civil court system.
8 And dismissal here would not be in the best interest of
9 creditors. There's \$54 million on the table, and the estate
10 projects an additional 10 to 20 million coming in before the
11 end of the case.

12 Now, there was some discussion about chaos earlier,
13 and I won't speak for Ms. Funk, but I think that what we're
14 talking about here is more than just going back to courts.
15 It's going back to courts and litigating against an entity that
16 isn't solvent. So the chaos that I think is being referred to
17 is the idea that some creditors might be litigating against
18 Corizon, some against YesCare, some against other entities, and
19 there would be a confluence of theories and litigation all over
20 the place going in all different directions.

21 It's important to understand that the settlement
22 doesn't take away anyone's day in court. It just means that
23 that day would come here in this Court, and Your Honor asked
24 specifically about the pro se plaintiffs, and I think that is a
25 good point to consider here. If the case is dismissed, each of

1 those pro se plaintiffs is on their own.

2 If the case is here, where everything can be dealt
3 with altogether, things like notices, procedures, those can
4 take into account the unique nature of those creditors, and we
5 can work with third parties to try to make sure that we are
6 implementing a plan and a procedure that does that. Individual
7 court cases, that may be more difficult.

8 The TCC's proposed solution, on the other hand, would
9 send these creditors just on their way, armed with a
10 complicated theory of recovery, a lengthy row to hoe, and no
11 guarantee that they'll get a dime, even if they are successful,
12 and that's the plaintiffs with the resources to do it.

13 One thing I really appreciated at the outset, Your
14 Honor, was the discussion of dismissal and focusing on the
15 UST's perspective about the case needing to move, rather than
16 all of the, you know, what I'll call noise about bad faith and
17 everything else. And the reason why I appreciate that on
18 behalf of the UCC is that it really underscores that this case
19 is not a referendum on divisional mergers, and treating it as
20 such disrespects the Bankruptcy Code and every creditor here.
21 These are real people with real claims, and we have an
22 obligation to try to get them as much real money as we possibly
23 can.

24 We think dismissing this case would virtually ensure
25 that every creditor, without significant resources to litigate

1 claims, would get nothing at all, and the creditors with those
2 resources would have, at best, an uncertain path to recovery.

3 The settlement is the clear choice for these
4 creditors, and proceeding to get that money in the door and
5 figure out the best way to get it in their hands is the best
6 path here. The UCC and its members ask the Court to approve
7 the settlement agreement.

8 THE COURT: Thank you.

9 Before we start, can we just take a five-minute
10 break? And then we'll -- my goal is -- well, we'll take a
11 five-minute break, I'll hear from you, and then if anyone on
12 the line who filed a joinder wishes to kind of make a short
13 statement -- I need to hear from the, obviously, the United
14 States Trustee, and then we'll kind of break for 30 to 35
15 minutes or let folks get something to eat. But we'll break for
16 five minutes, and then we'll kind of complete all the openings,
17 and then we'll break for about 30 to 35 minutes. Thank you.

18 THE CLERK: All rise.

19 (Recess taken at 12:31 p.m.)

20 (Proceedings resumed at 12:36 p.m.)

21 THE CLERK: All rise.

22 THE COURT: Okay. We are back -- well, not quite yet
23 back. We'll be back in a minute.

24 Okay. All right. We're back on the record in Tehum.
25 Good -- well, I guess it's good afternoon now.

1 MR. GOODMAN: Yeah. Good afternoon, Your Honor.
2 Eric Goodman, Brown Rudnick, on behalf of the Official
3 Committee of Tort Claimants.

4 We have a presentation to go through, Your Honor, but
5 I've been instructed by, you know, my elders that you always
6 listen to the judge so I'm going to go through just some quick
7 bullet point comments and then try to get to the presentation.

8 THE COURT: Okay.

9 MR. GOODMAN: I actually think the presentation
10 covers the material, but you know, I want to try to get to the
11 heart of the matter as fast as I can.

12 The first point is, there is a real dispute here over
13 what estate causes of action are being settled. And we think
14 that that has a material impact on the value of the settlement.
15 You know, if the debtor is correct in terms of its views on
16 successor liability, alter ego claims, being in the pot, then
17 we think the settlement range is significantly higher, and
18 obviously, what's being offered would fall outside of that
19 range.

20 The next point I would like to make is our view is
21 the settlement was definitely not an arm's length transaction.
22 It is unequivocally an insider deal that's subject to
23 heightened scrutiny. In our view, what you really have here
24 is, on the one hand, Mr. Lefkowitz, through various parties,
25 who was buying estate causes of action, if you will, for a

1 price, and the party with whom it is negotiating is the debtor
2 who has -- you know is taking the position that that's property
3 of the estate. And of course, you know from the petition that
4 was filed, Mr. Lefkowitz's signature is there as the sole board
5 member, so this really is a deal by and between Mr. Lefkowitz
6 at its core, which makes it an insider deal.

7 Dismissal, in our view, means that the doors to our
8 justice system open immediately. I heard statements that
9 appeals would go on forever. That is just simply not true.
10 When a case is dismissed, an appeal cannot stop the dismissal
11 from going into effect.

12 In fact, I would note Johnson & Johnson appealed the
13 order dismissing its second "Texas Two-Step" case, the LTL
14 decision. That appeal of the second bankruptcy is currently
15 pending before the United States Court of Appeals for the Third
16 Circuit. And I believe today litigation is currently going
17 forward against Johnson & Johnson and its affiliates in state
18 court.

19 So dismissal does not mean that we are anchored for
20 years and years with an appeal. Dismissal means the doors to
21 our justice system open immediately.

22 The creditors, in our view, do not like this plan.
23 They don't like it one bit. The current deal on the table
24 would propose to allocate \$12 million to pay the tort claims.
25 Those tort claims have a face value of \$775 million. I would

1 submit to -- just one tort claim, in the -- you know, one of
2 those claims -- personal injury or wrongful death claims in the
3 tort system, if it were to hit punitive damages, could easily
4 exceed, you know, \$10 million that would be set aside.

5 I want to make a point very clear, Your Honor. The
6 money that's being allocated to the tort victims, that's before
7 all the administration costs of the trust. And you know, based
8 on experience that I have working on behalf of trusts that have
9 been formed pursuant to Chapter 11 plans, those administrative
10 fees can be quite expensive, so you have to assume that there's
11 going to be money that's going to come off of that before
12 there's anything that's distributed to the claimants.

13 THE COURT: And again, this is going to come as no
14 surprise to anyone that I'm --

15 MR. GOODMAN: Yeah, go ahead.

16 THE COURT: I'm hyper focused on distributable value
17 under -- and what creditors will or -- likely to see in a form
18 of a recovery. So I'm -- and I know I'm pushing people on
19 openings about it, but it -- it's going to be something I'm
20 certainly focused on. I'm just kind of putting it out there.
21 I kind of want to know, you know, if I approved a settlement,
22 theoretically, I mean, you know, kind of, where do
23 folks -- really to see if we're going to put money in people's
24 pockets, you know, kind of what's -- how much money and -- is
25 actually going to go in someone's pocket?

1 MR. GOODMAN: Yeah. I mean, from our perspective,
2 we're looking at distributable value probably somewhere in the
3 range of \$8 to \$9 million to the tort victims if the settlement
4 is approved. And again, that's to pay claims with a face value
5 of \$775 million.

6 Now, I've heard some folks say that they don't want
7 to gamble and go back in the tort system, and my response is,
8 yes, please, we will take the tort system over that settlement
9 every day of the week without hesitation.

10 THE COURT: How do I deal -- and I know -- how do I
11 think about, kind of, what we all -- what's possible in light
12 of what you said, which is, you know, I, theoretically, could
13 be disapproving a settlement and leaving pro se folks
14 in -- maybe incarcerated pro se out -- you know, out to
15 litigate, you know, and potentially may or may never see a
16 recovery? How do I balance with, you know, kind of, solid
17 money that's theoretically on the table now, knowing that some
18 folks may never recover or may not have the funds to actually
19 pursue a recovery, and everybody's kind of out there on their
20 own? How do I balance that? I'm going to say that.

21 I'm going to ask you the question -- and I meant to
22 say this at the very outset: Anyone who's looking for me to
23 one way form an opinion on divisional mergers and whether I
24 think they're good or bad, or whether I'm forming a referendum
25 on the mass tort system in the United States, you've got the

1 wrong judge. I'm going to decide this issue up or down, based
2 upon the law and the facts, and I'm going to take no view one
3 way or the other on those things. You know, those are -- to
4 me, those issues are for policymakers, not for this Court.

5 So I'm just telling everyone now, the way I'm
6 thinking about the issue before me, I've got a settlement, it's
7 either going to be up or down, based upon the way we think
8 about it. But one of the things I have to think about is, you
9 know, bird in the hand versus, you know, kind of potentially
10 never providing a recovery for some folks. And tell me how I
11 should think about that with respect to the tort claimants or
12 anyone else.

13 MR. GOODMAN: Yeah. I'll answer it directly. There
14 is no bird. There's no settlement. If the settlement is
15 approved, no pro se claimant will ever receive a penny from
16 that settlement fund.

17 THE COURT: And why do you say that?

18 MR. GOODMAN: I'm going to get this into the
19 presentation --

20 THE COURT: Oh, I should --

21 MR. GOODMAN: -- but I'm going to --

22 THE COURT: I should stay quiet, right, and let you
23 do your job.

24 MR. GOODMAN: Yeah, I will get there. But I want to
25 answer your question, because the reason is -- and I'll just

1 state this from our experience working in the "Texas Two-Step"
2 cases. I know, to your point, you're -- say it's not a
3 referendum on that, and I wouldn't suggest that this case would
4 be. But there has never been a "Texas Two-Step" where anyone
5 has gotten paid anything out of the bankruptcy case. And to
6 think otherwise is to really fundamentally -- a failure to
7 understand what the "Texas Two-Step" really does.

8 So for a -- you know, and I'm going to answer this
9 quite -- because you actually asked the perfect question
10 earlier, which you said, why don't they just settle, right?
11 Why don't the members of the UCC who like this so much, why
12 don't the commercial creditors who just want to settle for a
13 specific dollar amount, why don't they do so, right? And the
14 answer to that question is because the tort claimants are the
15 bargain for consideration, right? Mr. Lefkowitz's demand for
16 finality, right -- that's his requirement, right, he needs
17 finality. If he doesn't get finality from a bankruptcy
18 proceeding, then he doesn't release the money. So that's the
19 deal that was made, right? The UCC, his constituency, the
20 commercial creditors, get the money when Mr. Lefkowitz gets a
21 shield that he can then use to protect himself and his
22 operating companies from liability in the tort system.

23 Every time that that has been tried, right, and
24 tried -- you know, run through a bankruptcy proceeding, it has
25 never been successful, right? The result has either been the

1 bankruptcy court has said, I'm dismissing the case. That was
2 Judge Graham in the case involving 3M, and he's basically said
3 no. In LTL, Judge Kaplan initially did not dismiss the case.
4 It went up to the Third Circuit. Judge Ambro wrote the
5 opinion -- the unanimous opinion of the Third Circuit,
6 reversing it. And we're going to get to this in the
7 presentation, but I would submit that the case law in the Fifth
8 Circuit is even worse for this side on a lot of these issues.

9 So if we were to play this out, we just don't think
10 that there's any path in this bankruptcy case through which any
11 settlement funds would ever flow to any victims. The only way
12 creditors in this courtroom -- and I'm not just saying this for
13 the tort victims, I'm also saying it for the commercial
14 creditors. Their only path to recovery is dismissal. And that
15 has been proven over and over again, in every "Texas Two-Step"
16 case that has ever been filed. Did I answer your question?

17 THE COURT: Mm-hmm.

18 MR. GOODMAN: Okay. A few more points before I get
19 to the presentation, I also want to point out that if the 9019
20 is approved, there's not going to be a consensual plan.
21 There's just simply not enough value on the table, even if all
22 of it were allocated to the tort victims for them to get, you
23 know, an upvote on -- in this case.

24 What would then happen if the Court were to approve
25 it, is it would obviously lock in the number, right?

1 Mr. Lefkowitz would never go higher, at that point, because
2 you've already told him that the settlement's reasonable at
3 that point. You would then have contested plan confirmation.
4 As I said, you have claims with a face value of 775 million.
5 We are the majority in terms of value and number. And of
6 course, you know, it would be a huge effort, but we would make
7 sure that every single, you know, person in the prison
8 population understood fully what was happening to them. And I
9 can't imagine that all but a handful would, you know, vote yes
10 on something along these lines.

11 The case is administratively insolvent. None of our
12 fees have been paid at all in this case. And I point this out,
13 you know, I'm here advocating for dismissal, and you say,
14 Mr. Goodman, why would you do that to yourself? And my answer
15 is, because it's the right thing. You know, our fees right
16 now, I think, are tied to, you know, us agreeing, you know, to
17 go along with their scheme, and we're not doing it.

18 The interpretation that was offered to you regarding
19 1112(b) was incorrect. I don't have the ability to put their
20 slide back on the screen, but I want to point out that cause is
21 what determines whether you convert or dismiss a case. The
22 issue of best interest doesn't come into play until you're
23 trotting to decide if you want to dismiss or convert. So just
24 saying we think this is in the best interest doesn't mean that
25 you would deny a motion to dismiss.

1 In fact, cause, based on the Fifth Circuit's decision
2 in Antelope, can arise when you have a filing that is done, in
3 just like this case, where you're trying to take control of
4 litigation claims, define the claims against insiders to become
5 state -- estate causes of action, and then try to settle those
6 out from under the victims. I think the Antelope case is
7 almost directly on point in terms of what we're facing here.

8 The last point I want to make -- or another point I
9 want to make, is I've heard several references to
10 Mr. Atkinson's testimony, all of which has been inaccurate.
11 Mr. Atkinson basically came in and said there isn't enough
12 information, you know, to value the tort claims and there isn't
13 enough information to value the fraudulent transfer claims
14 involving the divisional merger. His analysis basically
15 assumed, just for the sake of argument, that the debtors' math
16 was correct in terms of its value of the commercial claims and
17 the tort claim, and then on -- based on that, he was able to
18 offer a value of what the success, reliability, and alter ego
19 claims are. But the representations made to you regarding his
20 opinions and report have been incorrect.

21 So with that said, any more questions before I go?

22 THE COURT: No, but I promise if one comes out, I'll
23 spit it out.

24 MR. GOODMAN: Please do. I will say one of my many
25 faults is that I began my career as a law clerk to a federal

1 bankruptcy judge in Youngstown, Ohio. And in some ways, I've
2 never left. So whenever a judge asks me the question, I have
3 this need to be incredibly candid.

4 THE COURT: . Right. And I'll tell everyone: The
5 reason I'm putting all these questions out is I don't want to
6 be the judge who then waits till the very end and asks a bunch
7 of questions that people should have been thinking about early
8 on in what's going on in my mind, and that could have been
9 answered. That's literally what's going on. I'm just trying
10 to be as transparent as possible in the process.

11 MR. GOODMAN: No, I'd -- I really appreciate that
12 about you and how you've run the courtroom. I note I did look
13 up your bio before I came down, and I noted that you started at
14 Weil, Gotshal in 2003, which was about the time I started Jones
15 Day on the company side, so it's possible that you and I were
16 drafting first-day motions at roughly the same time. But in
17 any event, let me move on.

18 The way that we frame this case, we think that, you
19 know, the issue that is presented to the Court is as follows.
20 I'm going to read this presentation and then just talk about it
21 for really the next, you know, 20 minutes, or however long
22 you'll have me at the podium.

23 The question our view is this: Can a tortfeasor, any
24 company that has caused harm, assign the liabilities that it
25 does not want to pay, here, the tort claims and other

1 disfavored claims, to a new debtor with no actual business at
2 all, the creation of which would trigger various state law
3 remedies, including successor liability, and then put that
4 debtor into bankruptcy, and use the bankruptcy to forever
5 extinguish the disfavored liabilities without the claimants'
6 consent, thus barring the victims from having access to our
7 judicial system? That is, at its core, what this case is
8 about. So the question I pose is, can it be done?

9 So let's unpack this. Who is the tortfeasor? The
10 tortfeasor is Corizon Health, a company that was in charge of
11 providing healthcare services to various prisons across the
12 country. Today, Corizon Health is known as YesCare. YesCare
13 is Corizon. Corizon is YesCare. Corizon was, again, as I
14 said, known as -- YesCare was known as Corizon Health until May
15 of 2022. That's the date of the divisive merger. Today
16 YesCare continues to operate Corizon Health's business.
17 Essentially, Corizon Health's business was just rebranded as
18 YesCare.

19 How did we get here? We're here because people died,
20 and I'm going to try to get through the names and do the best I
21 can, but our committee members have suffered a great deal.
22 Their lives were cut short because of Corizon's misconduct:
23 Daniel Allard, Gary Lee Floyd, Tracey Grissom, Daniel J. Hall,
24 Michelle Morgan, Jennifer "Casey" Norred, Scott Snook. They
25 were all incarcerated, but they were not sentenced to death,

1 and unfortunately, they did die because of the malpractice that
2 was committed by Corizon, now known as YesCare.

3 We know from a Supreme Court decision from 1976,
4 Estelle v. Gamble, it was established that inmates have a
5 constitutional right to healthcare under the Eighth Amendment
6 prohibiting cruel and unusual punishment. And that has been
7 the law in our country since 1976.

8 So what are the liabilities? Well, we've gone over
9 this, but I'd like to retrace, just quickly. We have personal
10 injury and wrongful death claims, again with a face value of
11 775 million. Again, litigation could easily result in large
12 judgments, including punitive damages, if they're in the tort
13 system. So we could easily see how just one of the several
14 hundred claimants could easily get to \$12 million just on a
15 single claim.

16 Again, that's why Mr. Lefkowitz needs that shield,
17 right? And that's why he's conditioning his payment on getting
18 that shield in this bankruptcy case.

19 The commercial claims are, unfortunately, victims as
20 well. They are parties that YesCare doesn't want to pay,
21 right, because the counterparty is no longer considered
22 necessary to their ongoing business operations. We have former
23 employees also no longer considered necessary to the business.
24 There are governmental claims for contribution and
25 indemnification that exist.

1 And I would say if this case is successful, future
2 victims of this bankruptcy scheme could include the Pension
3 Benefit Guaranty Corporation, holders of environmental claims
4 under CERCLA, cancer victims. And in fact, I would submit
5 YesCare could even do the whole thing again in five years if
6 it, you know, continues to provide inadequate healthcare to
7 prisoners and more people die as a result of that. Really, the
8 liabilities in these types of cases include anyone that the
9 tortfeasor finds objectionable for any reason whatsoever.

10 So what is the debtor? We used the term "Potemkin
11 village" in our brief. It was a phrase that was shared with me
12 from a Supreme Court lawyer in the LTL case, so I can't claim
13 to have been well-read enough to have come up with this one on
14 my own, but that's -- I thought it was apt. When I looked it
15 up, I discovered the meaning to be -- in its original meaning,
16 that it's a number of fake villages that were designed to
17 impress the Russian empress, Catherine the Great. The term has
18 also become used to describe an elaborate facade designed to
19 hide an undesirable reality.

20 The debtor, in our view, is a Potemkin village. It
21 has no business, it has no employees, it's never operated
22 anything post divisive merger, it has no going-concern to
23 approve -- to preserve, rather. It has no funding at all,
24 other than funds that Mr. Lefkowitz decides to advance through
25 M2. And this debtor is actually not even eligible for a

1 discharge under 1141(d)(3). So the release parties
2 are -- would actually get a discharge that would be greater in
3 scope under the -- their proposed plan, than what the debtor
4 could even obtain under the Bankruptcy Code.

5 Again, with respect to the fact that there is no
6 business whatsoever, we actually asked the debtor to admit that
7 and they refused. The UCC admitted it.

8 But we did note that the question was posed by the
9 United States Senate to YesCare. The question was, "With
10 regard to Corizon's use of the divisional merger process to
11 separate its assets from its liabilities, what was the
12 rationale for determining which assets would be -- would
13 transfer or assign to whom" -- our debtor -- and "which would
14 be shielded from the reach of creditors through YesCare?"

15 The answer that YesCare gave to the United States
16 Senate is, pursuant to the divisional merger to whom it
17 allocated certain assets that were not necessary to sustain a
18 going-concern business, those assets, the assets allocated to
19 YesCare, were related to its operation on a go-forward basis.

20 It has been noted in the briefs the other parties,
21 they have protested and argued that our "Texas Two-Step" is not
22 like the others. And I actually would actually agree with that
23 on some level. This is somewhat different from other "Texas
24 Two-Steps".

25 I will note that the Jones Day version, that's been,

1 you know, really the firm that has sort of coined this process,
2 always leaves some operating assets with the debtor. Often, it
3 takes the form of a ground lease to a fast food franchise like
4 a McDonald's. But this debtor here actually doesn't have
5 anything that it can identify to support any argument that it
6 has any business whatsoever. It is just a complete empty
7 shell.

8 Also, I would note that in the Jones Day version,
9 there is usually a funding agreement on its -- that, on its
10 face, purports to make funding available inside and outside of
11 bankruptcy, including to pay administrative claims and of
12 course, pay claimants as well. Here you don't have such an
13 agreement because again, it was exhausted before the bankruptcy
14 was filed.

15 That means that the only source of funding that the
16 debtor has here is the insider DIP loan, and that is the
17 mechanism through which Mr. Lefkowitz controls who gets paid
18 and who does not. And I would submit that I'm probably on the
19 list of people that he doesn't want to pay. So again, we
20 haven't been paid anything in this case. All of our fees
21 remain due and owing.

22 How was the debtor created? The debtor went -- here,
23 the tortfeasor, which was Corizon, underwent a divisive merger.
24 I will note that divisive mergers are not per se fraudulent.
25 The divisive merger statute is not the problem. You could have

1 a company that has separate business lines, that divides
2 itself, and assigns the assets and liabilities associated with
3 each business line to separate entities. You know, that can
4 happen and I would submit nothing wrong there.

5 The issue though is, you know, can a divisive merger
6 be fraudulent? And the answer is yes, a divisive merger can be
7 fraudulent if the new entity is assigned nothing other than
8 liabilities and the parties intend to shield the operating
9 assets and future profits from the tort claimants, and that's
10 exactly what happened here.

11 Again, here we know that the divisive merger was not
12 legitimate. And I think we in the UCC actually agree on this
13 one. When something seems wrong, it often is.

14 And state law provides a host of remedies when
15 parties engage in this kind of conduct. The one that's most
16 obvious to me, given my training as a bankruptcy lawyer -- and
17 again, I went right to the bankruptcy court and never left the
18 practice, so you know, here I stand -- is the fraudulent
19 transfer claims. And you know, those are the ones that kind of
20 rise to the top, at least in the mind of, you know,
21 practitioners who deal with these all the time.

22 But I've also heard the phrase when your only tool is
23 a hammer, every problem looks like a nail. And there actually
24 are other remedies in -- that are available under state law,
25 including successor liability doctrine, which would transfer

1 the liability just to YesCare. And you also have alter ego
2 doctrine, which would enable folks to chase down the beneficial
3 owners when they're playing a shell game and moving assets
4 around, as we see here.

5 And I'll note the Kelly case, you know, shows, and
6 it's a pretty lengthy decision, that the victims here actually
7 don't even need a bankruptcy case at all to recover from
8 responsible parties. They can simply do what happened in this
9 case and name newco as the defendant. And I would submit,
10 given everything that we've now learned through discovery, the
11 party that they should be naming is YesCare.

12 THE COURT: Doesn't that then go to -- I guess, what
13 the other side is going to argue to me is that, like, what
14 you're proposing if I dismiss the case is literally sending
15 folks to go out there and go litigate for the next God knows
16 how many years in hopes of potentially getting God knows what
17 out of God knows who, right?

18 MR. GOODMAN: But it never works --

19 THE COURT: That's what they're saying. And
20 they're -- you know, they're arguing, right, like Jackson
21 Brewing, you look, you know, why isn't that within the range of
22 reasonableness to try to get something in the door today as
23 opposed to who knows what, who knows when, and who knows how
24 much, right? That -- that's what the other side is arguing.
25 What's -- how do you respond to that? Well, how should I be

1 thinking about it as the evidence continues to play out?

2 MR. GOODMAN: First of all, and we'll get to this in
3 detail, you know, there is no settlement, right?

4 THE COURT: Got it. I got you. I got the premise.
5 Right.

6 MR. GOODMAN: Proving the settlement means that there
7 is no money that would pay to anyone.

8 The other thing I would just point out, and we'll get
9 to this point a little bit later as well, every time that we
10 have seen a "Texas Two-Step" dismissed -- and you know, the
11 argument that you're hearing today has been made over and over
12 again. You know, this is not the first time someone has come
13 into court and said, you know, Your Honor, if you don't approve
14 this settlement, the victims won't get any money, you have to,
15 it's in their best interest.

16 And of course, we've seen over and over again that
17 the second the case is dismissed, parties settle, right? And
18 they really settle, they're really motivated to settle when
19 they're actually faced with litigation. It's a crazy thing, I
20 know.

21 But when Mr. Lefkowitz and his companies are named in
22 lawsuits and they have to actually defend them, right, they
23 don't necessarily say, we're going to make everyone litigate.
24 They enter into settlements, and those settlements, in the
25 aggregate, are multiples higher, right, than what's being

1 offered in this bankruptcy case.

2 Every creditor is harmed by this bankruptcy, every
3 single one. Commercial, tort, government, they are all harmed
4 by this settlement, every single one. So how does the debtor
5 pull this off in this one? And this is, you know -- I'm sorry.
6 I need to go back. Forget that slide, not important.

7 This is an interesting process, because being in the
8 Fifth Circuit, one question I've gotten asked over and over
9 again is, how are they doing this, because the Fifth Circuit
10 doesn't permit nonconsensual third party releases? And this is
11 actually somewhat of a novel approach. You know, this -- the
12 divisive merger process and it -- when it's done in a
13 fraudulent manner, like in this case, gives rise to, or
14 creates, the successor liability claim that creates the alter
15 ego claim, right? It's those maneuvers and those circumstances
16 that then give rise to those legal remedies, if you will.

17 So here, from the debtors' standpoint, they now know
18 that, having undertaken this fraudulent, divisive merger, and
19 they saw the litigation in Michigan, everyone is just going to
20 come in and name, YesCare as the defendant, and they're going
21 to continue to face all of this litigation. So how do they
22 stop it, right? How do they keep it from happening? And how
23 do they use the bankruptcy proceeding to make sure that these
24 victims never see or get their day in court and never -- are
25 never able to exercise their rights?

1 The argument, as we understand it, is that the debtor
2 now owns the tort claims arising from the personal injuries
3 suffered by the victims. And again, these are injuries that
4 were suffered by victims like Mr. Alvarez back there. That's
5 not an injury that was suffered by the debtor.

6 If the debtor is wrong about this, and you know,
7 we -- we've made our arguments in court -- honestly, we should
8 all go home. Because the release that Mr. Lefkowitz is trying
9 to get out of this court isn't for sale, right? You could
10 approve a settlement that involves the four avoidance claims
11 that they identify in their motion. That doesn't get
12 Mr. Lefkowitz even halfway to first base, right? He really
13 needs a settlement approved that wipes out, forever, the rights
14 of the tort victims to pursue him in state and federal court.
15 And those claims that -- if they are permitted to continue and
16 we hope they do, aren't going to be based on avoidance actions.
17 They're going to be based on successor liability and alter ego,
18 because those are the strongest claims.

19 And again, as is noted in our papers, we've made a
20 host of arguments as to why it just can't be the case that a
21 debtor owns the personal injury claims in this case. And you
22 know, of course, we're, you know, preserving arguments for a
23 later day. But I just want to note that in our view, we just
24 don't think that the claims are for sale.

25 But we do note that there is case law out there, and

1 I've tried my best as a former law clerk, you know, to give you
2 the citations to all the circuit courts that have grappled with
3 the issue of what do you do with an alter ego claim? What do
4 you do with a successor liability claim? Is it property of the
5 estate? Is it not? I think that the law is murky on these
6 kinds of issues, even within different circuits. You find
7 panels that take different views. But it really is a critical
8 issue because here it would inform what's being settled.

9 But I will note that there is a case in the Third
10 Circuit where the Third Circuit decided to find that a, quote,
11 "cause of action for successor liability belongs to the
12 bankruptcy estate." I found that to be a remarkable statement
13 because there's no such thing as a cause of action for
14 successor liability. It doesn't exist. Successor liability is
15 just simply a doctrine that says, when you engage in these
16 kinds of corporate transactions, I will follow the company that
17 took the business. It's a doctrine that makes the personal
18 injury claim one that can be pursued against YesCare.

19 The injury is still a personal injury claim. It's
20 still a wrongful death claim. That doesn't necessarily become
21 property of the estate. But again, in Emoral, there, you have,
22 you know, an opinion, you know, that hasn't been taken up to
23 the Supreme Court yet, but we will get there at some point to
24 see if we can get that one overturned.

25 But again, I note that Mr. Lefkowitz is here to buy

1 finality, right? That's the key point. That's the only thing
2 that makes the settlement work. And if the lawsuits are going
3 to continue, and we think they should, then what he wants to
4 buy just isn't for sale.

5 But let's enter into a world where we're wrong on
6 this point. Let's just assume, for the sake of argument, that
7 Your Honor decides that these personal injury wrongful death
8 claims asserted against the alter egos and the successors are
9 now property of the debtors' bankruptcy estate. Now we have a
10 bigger problem in some ways, because we need to know what the
11 settlement is, right?

12 You asked the first question of the day, which was, I
13 want to really think about the 9019 motion. I think you've
14 kind of prioritized that and said, you know, if I can't approve
15 the settlement, then we'll figure out what we're doing in this
16 case. So if we're going to think about the 9019 motion, then
17 we really have to fundamentally understand what's being
18 settled, right?

19 I try to come up with analogies because I feel like
20 if I can't explain this to my kids or my wife, then I'm not
21 doing a very good job as a lawyer. And I found myself at a
22 grocery store on date night. That's -- you know, grocery store
23 on a date night is what happens when you have a 16-year old and
24 a 14-year old kid. And we were in the grocery store and my
25 wife, as we walked in, grabbed a scanner for the grocery cart.

1 And as we walked around the grocery store, every time she put
2 something in the grocery cart, she scanned it. And then we
3 went to check out.

4 She parked the scanner into this, you know, machine
5 by the register. A number popped up. She put the credit card
6 in, and we left. And I said, I've never understood how you do
7 this. I always just get the groceries, put them in the cart
8 and stand in line. She says, yeah, I don't like to stand in
9 line.

10 When we got into the parking lot and I said, wait a
11 second, what keeps people from just putting stuff in the
12 grocery cart and then checking out and not scanning everything?
13 And she turned to me and she said, that's called shoplifting,
14 that's illegal, you can't do that, right?

15 And that's where I kind of had an epiphany, right?
16 We have to know what's in the grocery cart, right, in order to
17 even evaluate a settlement in this case. If the grocery cart
18 is just filled with bags of chips, then it's going to ring up
19 at a much lower price. If the grocery cart is filled with
20 chips, and then underneath the chips are bottles of fine wine
21 and steaks, that's a materially different grocery cart, right?

22 And in our illustration, what we're trying to get
23 across, you know, to the Court here is that the meat and the
24 fine wine in my illustration, those are the successor liability
25 and alter ego claims that Mr. Lefkowitz is terrified of, right?

1 Those are the ones that have the most value that he wants to be
2 rid of through this bankruptcy proceeding. The bags of chips
3 that are on top, some of them actually have quite a bit of
4 value, but they're really almost a disguise.

5 The point of the analysis that Mr. Atkinson really
6 did, as opposed to how it was represented to the Court, is that
7 if the successor liability, alter ego claims are part of the
8 cart, right, just based on the debtors' own math, right, just
9 based on their own valuation of the claims in this case, we
10 know that grocery cart is worth between \$135 to \$187 million,
11 with 135 being the absolute lowest point in the range of
12 reasonableness that the Court could even consider.

13 And again, we actually don't think that the claims
14 analysis is correct. We think that if you actually did a full
15 blown estimation proceeding under Section 502(c) of the
16 Bankruptcy Code in this case, and we actually brought in claims
17 and we gathered more information, I think that that settlement
18 number would actually be at a much, much higher point, right?

19 But again, for the purposes of today, we don't have
20 access to that information. I know that they didn't attempt to
21 get it from the claimants, probably because if they did, I'm
22 assuming that it would show that the settlement range would be
23 significantly higher. But again, we're just trying to make the
24 point that if you just base it on the debtors' own math, the
25 settlement doesn't even pass any scrutiny, it just fails out of

1 the gate.

2 The chips, again, in our view, are the avoidance
3 actions. No one seems to know what the divisive merger claims
4 are worth. We've asked this question at deposition, and no one
5 seems to have any idea. We think that the motion fails on that
6 basis alone.

7 I would note that, in the presentation that you got,
8 did you notice how the UCC put a number on the first three
9 avoidance actions, but they didn't put a number on the divisive
10 merger one? You might also notice in the motion that they
11 don't even attempt to value that claim either.

12 But our point really, though, is that this motion is
13 really hiding the true economic reality of the settlement
14 itself. If you look at the Rule 9019 motion, if you go to
15 Paragraph 27, this is where they talk about the four, you know,
16 key claims that they investigated, and you saw the UCC put up
17 on the board and describe and talk about the number, right?
18 They don't mention successor liability in that paragraph. They
19 don't mention alter ego. In fact, they don't mention alter ego
20 claims anywhere in the settlement motion.

21 They're not novel theories. I mean, you already have
22 a federal court that has said that they would happily
23 substitute-in parties that have continued the business
24 operations as the defendant in these proceedings, so I don't
25 know how you even get to the conclusion that they're, quote,

1 "novel".

2 But again, if we look more carefully -- and I know
3 that they want to divorce the settlement from the plan, they
4 try to treat those like they're two separate things. But if
5 you look carefully at the plan language of the disclosure
6 statement and how they're defining the releases and the
7 gatekeeping function, I think you can see quite clearly that
8 they are trying to sweep in the successor liability alter ego
9 claims in what's being released. It's just not something they
10 want to advertise, right?

11 Because if you think about, it's kind of weird, a
12 debtor selling personal injury claims based on harm to, you
13 know, victims and then using the proceeds of that sale
14 transaction to pay off the commercial creditors. I mean,
15 I -- it kind of makes my head want to explode as a bankruptcy
16 lawyer that this has even being brought before the Court.

17 But the point I'd make, though, is we know that these
18 are good claims, right? And it's -- the point I'd also want to
19 make is it's not just the tort claimants, right? It's the
20 commercial creditors. It's the government creditors. The
21 State of Arizona, if they want to go after YesCare and
22 Mr. Lefkowitz, they could do so as well in the event of a
23 dismissal.

24 So I'm going to skip forward a little bit because I
25 think I hit these issues. I want to get to the divisive merger

1 claims. So sorry, I need a water break.

2 THE COURT: Go for it. You got about --

3 MR. GOODMAN: So in our --

4 THE COURT: You got about seven minutes on my clock.

5 MR. GOODMAN: Okay. The divisive merger claims,
6 again, we think that they have been undervalued. We'll get to
7 this during the testimony and the financial advisor. But we
8 think that, again, the attempt to rely on various documents and
9 financial statements that were provided by YesCare, we think,
10 is just a flawed approach in any respect.

11 The next thing I'm going to get to is my attempt to
12 respond to the UCC, because I know you're looking at us as a
13 fiduciary for the tort claimants, the UCC as a fiduciary for
14 all the claimants in the case. So why is it that we're just
15 so -- in such adamant disagreement, you know, about the
16 settlement and what is sort of the best path forward?

17 And the UCC, you know, as you heard, they're trying
18 to convince folks that this is a good deal. We've been accused
19 of representing a mere subset of the victims, which is not
20 true. We represent all the tort victims. But I would submit
21 simply that dismissal is the best option for all creditors in
22 this case, not just the tort claimants.

23 So to the TCC, I would offer the following: First
24 point I would like to just point out to the Court is that the
25 TCC initially came before Your Honor and said that \$37 million

1 was the best deal that anyone could ever possibly negotiate.
2 Suddenly, a tort claimants committee exists, and by walking
3 into the room, you see the settlement go up by \$15 million in
4 just one day. That's a 40 percent increase.

5 THE COURT: I thought I had something to do with
6 that, too, though. You're taking --

7 MR. GOODMAN: You did. You did, yeah.

8 THE COURT: You're stealing all my thunder. I don't
9 see a bullet about me in there but that's all right.

10 MR. GOODMAN: Yeah and I know -- all right, I'm going
11 to put -- we'll put in there, Judge Lopez, yes.

12 THE COURT: No, but look, I mean, here's the
13 question, though --

14 MR. GOODMAN: Yes, of course.

15 THE COURT: You know what you're asking me, though,
16 right? Like, in other words, there's -- you know, what -- we
17 all know what dismissal means, and we all know what comes with
18 dismissal --

19 MR. GOODMAN: Yes.

20 THE COURT: -- and the effect of it. It's fast, it's
21 harsh, and it's going to leave a lot of people kind of in
22 limbo. It'll settle over time, but you know -- and in other
23 words, like, there's no soft landing when it comes to dismissal
24 that I'm aware of. That's what you're asking me, and I just
25 want to make sure that we're all clear. I'm pushed-in on this.

1 I pushed Mr. Brookner on one end, I'm going to push you on the
2 other end. Like, dismissal is dismissal, and it's cut the
3 rope, and it -- it's a harsh landing on the way for a bunch of
4 people. And that's what I'm dealing with.

5 And it's my -- and I got it, right? I wear the robe,
6 I got to make the call. But I'm just making sure everybody's
7 really clear about what they're asking me to do on both sides.

8 MR. GOODMAN: I would respectfully submit, and I say
9 respectfully as I can, that you have it precisely the opposite,
10 right, that dismissal is the soft landing, right? Approving
11 the settlement, that is the train wreck, right? That is
12 litigation in perpetuity where no one gets paid anything.
13 Dismissal is the only path that any creditor in this case has
14 to getting paid anything at all on account of their claim.
15 That includes the pro ses, that includes the commercial claims,
16 that includes the tort claims, that includes the government
17 claims. That is the only soft landing.

18 THE COURT: There are people who have filed -- yeah,
19 but there are people who have filed joinders --

20 MR. GOODMAN: Yes.

21 THE COURT: -- who are saying, I think this is the
22 best path for me to get anything, right? So it's -- I'm down
23 here to debate whether dismissal just means dismissal, and
24 doors close at that point, is what I mean, and maybe that's the
25 best way of saying.

1 MR. GOODMAN: Well, it -- we are actually at those
2 slides.

3 THE COURT: As everybody's really clear about what I
4 mean.

5 MR. GOODMAN: I'm sorry. We're actually at those
6 slides. So if you'll, you know, bear with me. So as I've been
7 saying over and over again, the deal is illusory, right? The
8 deal that is on the table is illusory. There is no deal. And
9 we've seen, in every single "Texas Two-Step" that has ever been
10 filed, trying to get money out of a "Texas Two-Step" is like
11 Charlie Brown trying to kick the football: Lucy is always
12 going to pull the football away at the very last second, right?
13 And again, no one gets paid until the case is dismissed.

14 In this example, okay, Charlie Brown is any tort
15 claimant in this room who believes that if you approve this
16 settlement, they're going to get paid something, right?
17 They're not, it's not going to happen. The football, that is
18 the settlement that is being dangled out, right. If you'd just
19 support this bankruptcy case, if you'd just support the
20 releases, if you'd just, you know, give Mr. Lefkowitz a shield
21 so that he never has to be bothered again in the tort system,
22 right, that is the football that is there.

23 Now, who is Lucy in this example? Lucy is actually a
24 little more complicated. Lucy is obviously Mr. Lefkowitz,
25 right, because he is demanding finality. But Lucy is also the

1 Third Circuit. Lucy is the Fifth Circuit. Lucy is Judge
2 Graham. Lucy are the courts.

3 THE COURT: Yeah, but what you're saying is no one
4 ever gets paid because courts dismiss it, not that people
5 couldn't get paid, right? If Lucy is the Third Circuit, then
6 that just means -- but then we got to get into the reasons that
7 the Third Circuit did what they did, right? It -- I guess what
8 I'm saying is there's a difference between, if I approve this
9 settlement, no one's ever going to get paid because there's
10 really no settlement, or Judge, if you pull the football,
11 right, then no one -- then there's -- then no one is going to
12 get paid through the settlement because I will have done it.
13 That, there was a settlement in one instance, I took it off the
14 table as opposed to -- and I'm just trying to figure out
15 which -- what you're telling me.

16 Is there a settlement that's really illusory or are
17 you asking me to pull the football, in which there is a
18 settlement, I just take it off the table?

19 MR. GOODMAN: I will answer your question. There is
20 no settlement. And here's why -- let's just play this out.
21 We, the TCC, say if you increase the pot by X dollars, right,
22 and you know, we'll come on board, you're still going to have
23 parties that are going to object, including the United States
24 Trustee. We know that the plan would have to deliver these
25 kinds of releases in order for Mr. Lefkowitz to release the

1 settlement funds. And we know what the Fifth Circuit thinks
2 about these kinds of releases, right? When it comes to a
3 nonconsensual third-party release, we know that since Feld v.
4 Zale was decided in 1995, the Fifth Circuit has a remarkable
5 run of saying to anyone who tries to get this kind of relief in
6 the bankruptcy court, the answer is no, right?

7 So then the question is, if we pivot into a world,
8 right, where you can use bankruptcy for the sole purpose,
9 right, of gaining control over the personal injury claims,
10 selling them, and then distributing the proceeds to parties
11 against their -- over their objection, right? It's not like
12 you have a case here where the tort claimants and the
13 commercial claimants are all standing here arm-in-arm saying,
14 this is a great deal, would you please approve it, right? You
15 don't have a situation like that at all.

16 What would here happen, I would submit -- and again,
17 I'm going try to say this in the most delicate way I can, but
18 the Antelope decision, we think, is almost directly on point.
19 You know, in the Antelope, you had a shareholder derivative
20 lawsuit, right? You had something that was clearly property of
21 the debtor's bankruptcy estate. It wasn't, we're going to
22 argue that it is. It was a shareholder derivative lawsuit that
23 was brought and the company decided, we don't like this
24 lawsuit, so they filed for bankruptcy in order to take control
25 over it, right?

1 And they actually confirmed a Chapter 11 plan of
2 reorganization over the objection of the parties that were
3 trying to bring this litigation. The case actually went fully
4 effective, right? You had a plan of reorganization that bore
5 the signature of a bankruptcy judge such as yourself, right;
6 plan confirmed; derivative claims settled, right? You know,
7 the parties here were the plaintiffs, basically had the door
8 shut in their face. The plan went fully effective, which I
9 assume means that the money was paid over.

10 It went up to the district court. The district court
11 said reversed, vacated, and sent it back down to the bankruptcy
12 court, meaning that a fully consummated Chapter 11 plan was
13 pulled out by the Article III court upon the first layer of
14 appellate review.

15 What happened next is even more interesting to me.
16 The case went back to the bankruptcy court, and the bankruptcy
17 court then considered the evidence further and dismissed the
18 case as a bad faith filing.

19 And then the case went up to the United States Court
20 of Appeals for the Fifth Circuit. And the party who had
21 proposed the plan and gotten the settlement across the goal
22 line said, this was outrageous; how could you do this to me; I
23 had a fully-consummated plan; surely the appeal must be
24 equitably moot, right, because I did everything that I was
25 supposed to do, I got my confirmation order, I paid all of the

1 money. And the First -- Fifth Circuit said, no way, no way,
2 not on our watch, we are not going to ever invoke the doctrine
3 of equitable mootness to moot-out.

4 THE COURT: I got it. But now we're talking ten
5 years down the line, you know -- or time. So in other words --

6 MR. GOODMAN: Yes.

7 THE COURT: -- the Fifth Circuit will do what the
8 Fifth Circuit does. Antelope, I think, was confirmed in this
9 very courtroom. And I don't know what happened, one way or the
10 other. I think -- but that's not before me.

11 What's before me is just a settlement, and that's all
12 I'm focused on. I'm just telling everyone now, telling me
13 what's going to happen down the line, I'm not interested. What
14 I'm interested in is, do I approve this settlement based on the
15 facts and law in front of me. And if you can prove to me that
16 the settlement is illusory, you win. If not, then maybe they
17 win. I don't know. Or whether it's in the best in -- you
18 know, kind of, whether it's in the best interest of creditors
19 in the estate or, you know -- and what's in the basket? I
20 agree with you there. We just have to figure that out and
21 we'll weigh it.

22 MR. GOODMAN: Well, again, I think there's multiple
23 ways that we get there. I mean, I -- to your point, what's in
24 the basket, that's the first critical stay point, because that
25 defines what the price is. You know, I think we're going to

1 show you that how they define the basket means that the
2 settlement is completely outside the range of reasonableness.
3 And you know, you could end there and say it's over, right?

4 But I would also, again, make the further point, I do
5 think it is illusory, because, again, if the triggering event,
6 right, that causes the settlement money to be released is
7 something that we all know can't be obtained in a bankruptcy
8 proceeding, right, even if -- you know, again, I represent all
9 sorts of parties in these mass tort bankruptcy cases. You
10 know, there are many folks out there who would love for
11 bankruptcy courts to be able to do this kind of work. But when
12 these cases do present themselves, and they are what I call the
13 pure litigation tactic-type varieties, I -- we just haven't
14 seen one that's ever survived going up the chain.

15 And that's why I think, from an illusory standpoint,
16 you really kind of hit it because it -- you kind of have to ask
17 yourself, if I sign off on this 9019 settlement and I confirm
18 this plan of reorganization -- and you know, obviously, you
19 would never do that if you thought you were going to get
20 reversed. But if the odds of reversal are, you know, sort
21 of --

22 THE COURT: I don't think about that.

23 MR. GOODMAN: Okay.

24 THE COURT: I think about what the right answer is
25 and I do it. And then people can -- above me can tell me if I

1 got it right or wrong. That's my job. And in other words, I
2 don't think about getting affirmed or reversed. I think about
3 doing the job, the best job, based upon the facts and law that
4 I have in front of me. And I'll make the decision. In other
5 words, I really do.

6 I don't -- I have no idea what -- I'm bound by
7 precedent, obviously. But I don't pretend to try to think
8 about what a district court or who the district court judge may
9 be or what she or he may be thinking or what Fifth Circuit may
10 or may not do. I -- my job is to try to -- that may mean you
11 win, that may mean you lose. I don't know. But that's why
12 they do what they do and they ask me to do what I do --

13 MR. GOODMAN: Understood. Understood, yeah.

14 THE COURT: -- you know? So --

15 MR. GOODMAN: A final point I wanted to make, you
16 know, in terms of our view about what happens if the case gets
17 dismissed, and I know that we have all the dire predictions
18 that you hear, but I would submit it's speculation. There's no
19 evidence supporting it.

20 And in fact, again, I come back to the point, every
21 time that we've seen cases like this get dismissed, people
22 settle, right? That's how things normally work out in its tort
23 system. In fact, this actually happened.

24 This very thing happened in the 3M case. They filed
25 their bankruptcy proceeding, not 3M, obviously. But it was a

1 subsidiary, Aearo, right, filed in the Southern District of
2 Indiana. And you know, they went into bankruptcy and they
3 announced and they said, behold, you know, here's the
4 \$1 billion settlement trust. You know, they said, no one has
5 ever settled outside of bankruptcy, it can't be done. And they
6 said, if you guys accept this and give us our releases, then
7 this billion dollars will appear and you will get the money.
8 Same situation here, right, just instead of a billion dollars,
9 it's the 50 or the 40, whatever it is that they're putting on
10 the table.

11 THE COURT: I know. But you're still arguing that I
12 should be against divisional mergers, right? Because you keep
13 citing divisional merger cases and that they don't work or not
14 work. And I'm telling you I'm going to approve a settlement
15 based on what's fair and (indiscernible - 1:23:49*). I'm
16 not -- you know, I'm not -- you're not -- you know, like, no
17 one's going to cite this case for -- you know, and let's add
18 this to the list of stuff that works or doesn't work. It's
19 going to be, there was a settlement on the table and Lopez
20 approved it or didn't approve it.

21 And I think Mr. Brookner is going to have to do the
22 same thing, you know? I think he's going to have to tell me
23 there's a real settlement and this is a really good deal and
24 that they really thought about it.

25 And -- but I get -- I know what kind of case we have

1 and I -- I am certainly mindful. I'll tell you what I do think
2 about, and everybody knows this is, I'm concerned
3 about -- I've been concerned about, from the beginning of the
4 case and so I'll be looking for it, transparency; you know,
5 independence; and whether it was truly independence or not; and
6 whether this is really in the best interest of the estate and
7 creditors; and whether they thought about all creditors and not
8 just a subset of creditors.

9 I think because -- you know, and I do think about the
10 tide of the plan. I know it's -- you can't -- there are two
11 separate stages, but to the extent that there -- one is
12 connected to the other, sometimes there are separate stages and
13 you got to look at them, sometimes, like, what's the triggering
14 event, right, where the money comes in and how much money is
15 actually going to go out and what people are actually going to
16 receive once you run the numbers and do the math, are things
17 that I'm truly interested in.

18 And it's not mean -- doesn't mean I like divisional
19 mergers, doesn't mean I don't like them. It just means I got
20 to -- there's a motion in front of me and one to dismiss and
21 one to one to approve a settlement. And that's what I've got
22 to weigh so --

23 MR. GOODMAN: I understand. I just want to point out
24 and my last point is, I actually picked the 3M case to
25 illustrate, you know, how much more money tends to be available

1 after the case is dismissed --

2 THE COURT: No, I'm aware.

3 MR. GOODMAN: -- because it wasn't a divisional
4 merger.

5 THE COURT: No, I'm aware. Yeah, I've read -- no,
6 no, you know?

7 MR. GOODMAN: I have conclusions. But honestly, if
8 I've answered your questions --

9 THE COURT: No.

10 MR. GOODMAN: -- I can sit down. If you have more
11 questions for me, I will stay at the podium as long as you
12 desire.

13 THE COURT: No, I think you've answered my questions.
14 Thank you very much.

15 MR. GOODMAN: Thank you.

16 THE COURT: Mr. Patterson? Good afternoon,
17 Mr. Patterson.

18 MR. PATTERSON: Good afternoon, Judge. How are you?

19 THE COURT: Good.

20 MR. PATTERSON: Yeah, I found this quite interesting.

21 THE COURT: That makes two of us.

22 MR. PATTERSON: As you know, I represent RMSC
23 plaintiffs, three women out of Rikers that were abused. And so
24 we are tort claimants. We are also unsecured creditors. And
25 as was provided earlier, one of the women does actually sit on



1 the unsecured creditors' committee, just separate counsel so
2 that is separate and apart from my representation.

3 This is not a good case, right? I don't like this
4 debtor. It doesn't have anything to do with Mr. Brookner. I
5 don't like this debtor. I don't like what they've done. I
6 don't like how they've operated. And maybe I'm a little more
7 simplistic, but on behalf of my clients, I'm looking at this a
8 little bit differently. And I will say up front, I'm not
9 comfortable with the triggering event, right, because it's kind
10 of holding us hostage. I'd prefer if this were just a
11 standalone settlement.

12 THE COURT: And what is your understanding of -- and
13 I know I should have -- I forgot to ask that -- about it. What
14 is your understanding of the triggering event? What
15 brings -- what makes the money come in, if you will?

16 MR. PATTERSON: My understanding is confirmation of a
17 plan that incorporates the terms and includes the
18 (indiscernible - 1:27:41*). But that's just my understanding
19 of it. I have no --

20 THE COURT: No, no. I'm going to push everybody on
21 that, too, because I'm trying to make sure that I understand
22 it.

23 MR. PATTERSON: So I'm a little uncomfortable with
24 that. I'm a little uncomfortable with the settlement, quite
25 frankly. But we're supporting it for a couple of reasons.

1 And I'm a little more simplistic than maybe the
2 others that have talked here, but looking at the numbers,
3 number one -- let's look at the numbers. Again, I don't claim
4 to know, I only know what's been told or what I've heard today,
5 big numbers thrown around, 30 million predivisional transfers
6 potentially. I've heard 100 million, up to an average of
7 160 million of successor liability. Or, I'm sorry, an average
8 of 160 successor liability, I think, is what the TCC provided.

9 If you look at that, that's \$190 million,
10 potentially, of claims. And you go out and this case is
11 dismissed and someone goes and tries to collect that, it's not
12 going to be collect -- there's not going to be a lawsuit for
13 \$190 million. There's going to be 600 lawsuits for 100 million
14 that get sorted out some way all across the country over the
15 next ten years. So it's an ugly process. I wouldn't call it
16 chaos, but it's a mess, procedurally. You put those together,
17 you have about 190 million. If you take off 40 percent to
18 45 percent, that's another 80 million.

19 The way we look at it is they're offering 55, 54,
20 best case out there, maybe is 180 to 100 today. I'm buying
21 into that for my clients. To me, that sounds, yeah, that's
22 about right, that's close. And I get the money today, you
23 know, meaning in the next year, versus hiring a lawyer,
24 goes -- finding these guys, suing them, serving them, trying
25 it, to a jury, probably, which will take at least 18 months, 24

1 months, maybe longer, depending on what part of the country,
2 and then collecting or trying to collect, right?

3 And I'm not saying any of that's impossible or any of
4 it's way too difficult, right, especially for these smart guys
5 that are here. But it's, I think, realistically, four years
6 down the road, five years down the road, and today you're going
7 to offer me 60, 70, 80 percent of potential recovery. Yeah,
8 I'm going to take that every time.

9 The second piece that sold us -- and everyone doesn't
10 necessarily agree with me, but I believe it, and I've counseled
11 the people who've asked me -- is, I don't think this stay is
12 still in place. This 105 extension is gone, it expired in
13 August of last year, and I can go and continue my lawsuit
14 against the State of New York for my women if I want to, and
15 nothing in this settlement reimplements that. And I'm going to
16 fight it, and I would probably change my mind if I weren't able
17 to pursue those claims on behalf of my clients, right, that
18 extension that we fought, you -- everyone remembers, right?

19 I've told Mr. Brookner, he doesn't necessarily agree,
20 I believe, by the terms of this Court's orders, that stay is
21 gone. And this settlement doesn't try to reimpose it. Not
22 that they won't try in the plan, but I will fight that. But
23 this -- I'm telling you, for my clients, that's significant so
24 I can go sue the State of New York and the city of New York or
25 Rikers, whomever else, as well as my claim here. That's

1 important.

2 So I heard the arguments about illusory and there's
3 no real deal and there's no real settlement. I'll be honest
4 with you, Judge: I don't understand that. Either they're
5 offering to pay the 54 million or they're not. And if they
6 don't, I would prefer to be here, wherever -- where you've got
7 jurisdiction over a whole host of these people, and we can
8 bring them all here and find out why they didn't pay. Or if
9 it's not really a settlement, I prefer to be here than out
10 there, 100 percent.

11 And likewise, I didn't understand selling the tort
12 claims. The -- I had this discussion with Mr. Brookner.
13 There's either property of the estate, claims that are property
14 of the estate, or they're not. If I have a direct claim
15 against YesCare, I don't think anyone's touching that here. I
16 don't think Mr. Brookner has the authority. He might can put
17 it on a piece of paper, but he doesn't have my claim to sell
18 and transfer. It's either property the estate or it's not
19 property of the estate.

20 THE COURT: That's --

21 MR. PATTERSON: That may be a problem.

22 THE COURT: And that's part of where -- I mean,
23 hopefully, yeah. And the evidence will have to kind of wear
24 out. But at the end of the day, those are the kind of things
25 that I absolutely want to understand exactly what everyone

1 understands so that there's no confusion three years down the
2 line, someone then --

3 MR. PATTERSON: Right.

4 THE COURT: -- coming in and saying, wait, I wanted
5 this because of this deal, that deal. There's got to be
6 absolute clarity as to what is being -- what is contemplated
7 being settled in this litigation.

8 MR. PATTERSON: Right. And look, while you get out
9 to the edges, it becomes very confusing and very fuzzy. I
10 think, at least here, the lawyers here know what's property of
11 the estate. We know the fraudulent transfer claims are there.
12 We know the alter ego claims are there. These successor
13 liability type claims are there, right? Anything that flows
14 through the debtor is going to be there. And I'm okay with
15 that.

16 And I'm also okay with this Court saying, if there's
17 a dispute as to what was settled, come hash it out. That's
18 what -- look, that's what you do every day. That's what we do
19 every day, is figure out what's property of the estate. And so
20 that part doesn't bother me as much because I think I generally
21 understand what it is being settled.

22 The third-party release argument, likewise, I don't
23 buy it. I don't see where the third-party release is coming
24 in. I mean, the release is the settlement of these claims.
25 They're paying money. You get a release. It's not like

1 they're obtaining the release in the plan. I know it will be
2 reflected in the plan, but more than likely, this will just
3 adopt, as it's allowed to do, the 9019 terms into the plan.
4 And so if there were releases being provided or proposed that
5 expand or go beyond the 9019, we're going to be in here
6 objecting.

7 THE COURT: I think the concern is that people aren't
8 going to have the kind of opt-out option that you would.
9 Essentially, I would be approving a release now that no one
10 could opt out of. You know, like, everybody would be bound by
11 that, and that you couldn't kind of check the box to get out of
12 it, I think is the argument. I'm not sure it's right or wrong.
13 I'm just articulating what I think the concern is.

14 MR. PATTERSON: But there -- I view it a little bit
15 differently. I don't view it as a third party. He --

16 THE COURT: No, I get where you're going.

17 MR. PATTERSON: This deal doesn't release a claim
18 that I own, right? That's a third-party release. You're
19 telling me I can't sue you, right? They're saying, Judge, we
20 have these claims against you, you're going to pay us money,
21 we'll give you a release, right? And I'm over here saying,
22 should the debtor really do that, and are you giving up too
23 much or too little? That's all that's happening today. To me,
24 third-party release never comes into play. This is a direct
25 claim: I'm settling claims against you, you're giving me

1 money, I'm releasing you from those claims.

2 THE COURT: So do you think for -- with respect to
3 your claimants, you could -- I got the State of New York,
4 right? You can --

5 MR. PATTERSON: Right.

6 THE COURT: -- if -- to the extent you wanted to go
7 after them. Do you think you can go after YesCare?

8 MR. PATTERSON: If I have a direct claim, yes.

9 THE COURT: Direct claim against YesCare?

10 MR. PATTERSON: Yes. He can't settle my direct
11 claim.

12 THE COURT: In other words, I'm just exploring the
13 option. I'm --

14 MR. PATTERSON: Yes.

15 THE COURT: Because I want people to really kind of
16 fully explore what I think.

17 MR. PATTERSON: Right. Now -- and we're going to
18 hear what the evidence is as we go through but --

19 THE COURT: You mean post -- kind of post-divisional
20 merger, if YesCare -- if you have a claim against YesCare that
21 you can go after them?

22 MR. PATTERSON: I still have it. If it's a direct
23 claim, it's here.

24 THE COURT: Okay.

25 MR. PATTERSON: He doesn't have the authority, and



1 I'm pointing to Brookner and you know, the debtor.

2 THE COURT: Yeah, I know.

3 MR. PATTERSON: The debtor doesn't have the authority
4 to settle my direct claim. They can jump up and down and say
5 the magic words, but they can't settle my direct claim. They
6 don't own it. They can't release it. That's a third-party
7 release. I don't view anything in these documents as
8 purporting to be a third-party release. I could be wrong
9 again. I read like everyone else. Maybe I need the shopping
10 cart explanation. I don't know.

11 Another important piece that the Court has asked
12 everyone about that I think is also important is those that are
13 still incarcerated, they -- those pro ses, the people that
14 don't have lawyers, that they can't afford, the fancy guys that
15 come in here and you know, this case gets dismissed, those
16 people get forgotten. There's no question in my mind,
17 100 percent, those people will never collect a penny. Joe
18 Smith sitting in prison at Rikers Island -- I know it's a
19 women's prison -- but Janice Smith, right, she will never
20 collect a dime. Why? Because she doesn't have access to
21 counsel. She doesn't have access to the courts. She doesn't
22 have information. She can't afford a lawyer, which is what she
23 needs. I can 99 percent guarantee this Court that those people
24 are the people that will be damaged, forgotten, and left if
25 this case is dismissed.

1 Does that affect me or my clients? Not directly.

2 Does it affect me as a human? Yeah, it does. It bothers me
3 just because I know what's happened, right? Is that any
4 different if this case remains? Yes.

5 And I think your question is how do they get paid?
6 How do they get represented? How do they participate? Well,
7 number one, you have a committee right here with very
8 expensive, smart lawyers, a table full of them, that represent
9 them in this case, and you can look to them and say,
10 the -- they are your responsibility, you better make sure that
11 their interests are protected, right? I didn't hear them talk
12 about that.

13 Number two, you have the Justice Department standing
14 in this courtroom every time there's a hearing. The Justice
15 Department is answerable to those -- for those people.
16 It -- they are their responsibility. They are sitting in their
17 housing. So the Justice Department better be prepared to tell
18 you what's going to happen to them and their claim. And so
19 personally, I think that's a significant piece because no one's
20 addressed it. No one's answered you other than, you know, I
21 don't know. I do know. As a practicing lawyer, I do know
22 those people will collect zero and it's guaranteed if this case
23 is dismissed, guaranteed. So that's really all I have, Judge.

24 I think that all of, all the sideshow about the
25 merger, bad faith, good faith, as far as me and my clients are

1 concerned, I could care less. It -- today, that stuff doesn't
2 matter. I want to know the big numbers, right? I'm
3 interested, is the 30 million predivisional transfers, is that
4 a real number? I want to know what is this successor liability
5 number? I know we can't pin it down, but somebody give me a
6 pretty good range. Is it the 100 million or is it 600 million?
7 I don't know. I only know what these guys, these smart guys
8 tell us. And so that's what I'm looking for. But based upon
9 the knowledge I have right now, you know, the return is not
10 bad.

11 And I don't want to have to chase it. If you're
12 going to offer that through this settlement to my clients in
13 this Court, where you have control of everyone, that's easy for
14 me, Judge. We take that every time so that I don't have to
15 chase and run all over the country chasing these guys.
16 Because, look, quite frankly, they're on to their next deal.
17 People are going to have their shots at these guys. If they
18 really stole this money, they're going to steal again from
19 somebody else. They're going to get it. They'll -- let
20 somebody else chase them. I -- for my clients, let's get the
21 money in, get our distribution, and let us go pursue our claims
22 in New York state.

23 THE COURT: Thank you very much.

24 MR. PATTERSON: Thank you, Your Honor. And I've got
25 to step out at two o'clock --

1 THE COURT: Please leave.

2 MR. PATTERSON: -- and I won't be back till Tuesday.
3 I've got to go to a funeral so --

4 THE COURT: Not a problem at all.

5 MR. PATTERSON: I -- but I'm -- I anticipate the
6 party doesn't really start till Tuesday for me anyway, right?

7 THE COURT: Got it.

8 MR. PATTERSON: Okay.

9 THE COURT: Got it. Thank you very much.

10 Mr. Nguyen?

11 MR. NGUYEN: Thank you, Your Honor. I will be brief
12 because I think we want to get to the evidence, and the
13 evidence will be more important.

14 THE COURT: Why don't you take as much time as you
15 need? It's important.

16 MR. NGUYEN: Understood, Your Honor.

17 THE COURT: Thank you.

18 MR. NGUYEN: The United States Trustee, we've -- I
19 (indiscernible - 1:42:37*) an opposition to the 9019 motion,
20 and we also filed a response in support of the TCC's motion to
21 dismiss. We outlined the reasons why we believe dismissal is
22 appropriate.

23 With respect to the 9019, the U.S. Trustee dispute
24 whether the settlement is a fantastic deal for creditors.
25 Everyone's pointing to Ms. Funk's joinder pleading. One



1 of -- she hit --

2 THE COURT: She's gone viral.

3 MR. NGUYEN: I won't mention the litigation chaos,
4 but one of the things she mentioned in her pleading is very
5 important. Initially, we were told that, prior to the second
6 mediation, the parties were going to come in here, draw the
7 9019, and just determine the size of the pot. But this 9019
8 motion goes beyond determining the size of the pot. It has a
9 lot of strings attached.

10 Your Honor asked about what are the trigger events to
11 the effectiveness of the settlement? They tell you right there
12 in the settlement, all creditors are enjoined. It's on
13 page -- Paragraph 9. "All creditors are enjoined from pursuing
14 any claims or causes of action against the released parties
15 with the scope of the release herein." That is a requirement
16 of the settlement before Mr. Lefkowitz hand over a single dime
17 to these creditors.

18 Another condition -- so another one of those
19 conditions that we found extremely problematic is, if a
20 creditor opt out of the third party release, as it was stated
21 in the second amended plan, they're not entitled to receive
22 property of the estate. You don't get a dime from this
23 settlement unless you give Mr. Lefkowitz what he wants. It's
24 finality. It's that shield that the TCC mentioned.

25 So you know, these condition precedent are given in

1 favor of those parties that essentially what we put in our
2 pleading, looted the debtor prior to the prepetition loan. We
3 don't like it. We don't have to make a determination of
4 whether divisional merger was inappropriate.

5 But I think those facts diluting the transfer, those
6 are all relevant for Your Honor in terms of analyzing the 9019
7 standard, because you actually are -- in looking at the
8 settlement, you are looking at an insider transaction. All of
9 those facts that happened prior is relevant to that heightened
10 scrutiny standard under Foster Mortgage that Your Honor has to
11 look. You ought to canvas the facts, looked at all the
12 evidence. You don't have to do a mini-trial, but you know,
13 these facts are relevant for Your Honor to determine whether at
14 the end of the day, is the deal fair and equitable for
15 creditors?

16 We submit, given the many inappropriate transfers,
17 that -- Mr. Cross, when he presented his Chapter 11 motion to
18 appoint a Chapter 11 trustee, you know, there were transfers
19 that weren't disclosed. It took multiple iterations before
20 those transfers were put out for everyone to know.

21 So you know, Your Honor, in terms of looking at the
22 settlement -- and I think another big piece of this is looking
23 at the value of YesCare. My office attended several
24 deposition. We've received documents. But at the end of the
25 day, if you're going to value the claims and be able to make a

1 judgment call of whether it's fair and reasonable and within
2 the lowest range of reasonableness, I think you need to know
3 how much YesCare is worth or how much YesCare is worth today.
4 Because under successive liability theory, alter ego theory,
5 you know, the debtor and YesCare is one and the same. If
6 YesCare is operating today and was an extension of the debtor,
7 I think you need to know what that value is and whether the
8 value that the UCC and the debtor settle under the settlement
9 is worth those claims for the fraudulent transfers.

10 Your Honor, I will -- I'm going to be brief with
11 this. You know, the Court is -- it is a court of equity. When
12 examining this deal, I think the case, taken as a whole and all
13 of the contingency imposed in the settlement as part of these
14 condition precedent that we outlined in our pleading, I just
15 think it's impossible for this Court to find that it's in the
16 best interest of creditors to approve this deal.

17 THE COURT: Is what the trustee -- I was trying to
18 dig a little deeper into what you're really asking. Are you
19 saying don't approve the settlement or are you saying don't
20 approve the settlement, make them put it in a plan?

21 MR. NGUYEN: Your Honor, the -- for the U.S. Trustee,
22 the number doesn't matter. What they're asking in terms of
23 those --

24 THE COURT: It's the -- because when you talk about
25 the strings, are you saying that should be put out to a

1 creditor vote and let the plan process play out or --

2 MR. NGUYEN: But even if you put those in a plan, our
3 argument -- those provision renders any plan patently --

4 THE COURT: Patently unconfirmable anyway. So you're
5 saying, it doesn't -- that's the -- okay. That's what I was
6 trying to figure out.

7 MR. NGUYEN: The deal doesn't work. I've never seen
8 a case where two similar creditor group, unsecured creditors,
9 where if you don't give the third-party release, you don't get
10 a dime of estate causes of action. These creditors, if it's
11 estate assets, they get a share in that no matter what,
12 regardless of whether they give an opt-out or not. That's how
13 the Code works. I've never seen it set up this way.

14 There are gatekeeping provisions that are required
15 under the condition precedent. You -- of -- if Your Honor
16 approved that gatekeeping-keeper provision, Your Honor would be
17 determining whether the government has a colorable claim for
18 criminal misconduct. That's how broad these provisions are in
19 the Code. They want finality, so they cast a wide net. So
20 under those condition precedent, I think it renders any plan
21 patent unconfirmable. This deal doesn't work.

22 We've been here for two years. We've gone through
23 two mediation. It's very expensive.

24 Thank you. Two mediation in one year. Thank you,
25 Mr. Brookner.

1 It's been a long road and it's time to fish or cut
2 bait. If this deal doesn't work, dismissal seems to be the
3 appropriate answer, Your Honor. Thank you.

4 THE COURT: Thank you.

5 Alrighty. Ms. Funk? I should say the infamous.

6 MS. FUNK: I -- Your Honor, Brenda funk again for the
7 Idaho parties. You know, I -- we filed a simple pleading in
8 this case. We were really trying to just indicate to the Court
9 how much of a difficult position creditors are in in this case.
10 And I stand by that.

11 Going back to the basket analogy, and this is
12 something that the U.S. Trustee's office was getting to, they
13 are not just trying to settle estate causes of action, they are
14 settling Idaho's causes of action. They are settling every
15 other state's causes of action. We cannot get a distribution
16 under the plan unless we release our standalone direct causes
17 of action against YesCare. I have tried to confirm that with
18 debtor counsel and with Ms. Hayward. They all indicated that's
19 what's going to happen under the plan. So I have to --

20 THE COURT: That's what I mean. So that's where I'm
21 trying to --

22 MS. FUNK: And that's what I thought Your Honor was
23 getting to earlier, trying to figure out what's in the basket.

24 THE COURT: No, no, no. But I -- it's where I'm
25 going to. It's trying to understand. But in other words, the

1 settlement is -- well, there's a settlement and then there's a
2 plan. But what you're alluding to, if I get it right, is that
3 there seems to be a little different -- you know, Mr. Patterson
4 had the understanding that if he could sue -- if he had a
5 direct claim against YesCare, he could sue him. You seem to
6 think that your client, the State, can't, like, somehow I would
7 block the -- my -- me approving the settlement would somehow
8 infringe upon your -- the State of Idaho's right.

9 MS. FUNK: If the conditions precedent to the
10 settlement agreement are satisfied and we are forced
11 to -- we're going to be forced -- the State of Idaho is going
12 to be forced to either opt in or opt out of the distribution.
13 And --

14 THE COURT: But that's under the plan, right?

15 MS. FUNK: That's under the plan. But again, these
16 are conditions precedent.

17 THE COURT: But what you're saying is that I've
18 locked in the course, if you will.

19 MS. FUNK: Yes, right.

20 THE COURT: I got it.

21 MS. FUNK: And for anyone to stand up and say, well,
22 we can go back and you know, try and negotiate these provisions
23 of this plan later, you know, I don't believe that YesCare or
24 any of these parties would necessarily renegotiate once this
25 Court gives its stamp of approval to the condition precedent to

1 the settlement.

2 And so when you're looking at the basket,
3 Your Honor -- we're standing up here talking about valuation.
4 We're going to be asking about how much value was attributed to
5 people's direct causes of action when you came up with this
6 \$54 million number, because that \$54 million number includes my
7 clients' claims.

8 THE COURT: Got it.

9 MS. FUNK: Thank you.

10 THE COURT: Thank you. Anyone else wish to be heard?

11 Alrighty. I'm going to go to folks online. If there
12 was anybody who filed -- I'm only going to ask if you filed
13 like a joinder or an opposition. And it -- and if you're not
14 here, you got to be brief. That's the judge's newly-imposed
15 rule on this. Let me open up the line.

16 I will say from the outset, I hope no one is reading
17 or trying to get a read on me. It would -- I'm pushing either
18 way at this point, just trying to understand the scope of where
19 things go. But I got it. It's telling someone not to do
20 something that they're probably trained to do.

21 So let me -- I'm going to unmute a few lines here.
22 And again, I'm -- if I'm -- if it's just because you filed a
23 joinder or a document in support or against this, I'll hear
24 you, but it's got to be brief. Here's a 409 number.

25 MR. HAMM: Yes, Your Honor. Thank you. Blake Hamm,

1 for creditor Saint Alphonsus Healthcare Systems. Saint
2 Alphonsus supports the 9019 motion for two reasons.

3 THE COURT: Okay.

4 MR. HAMM: The first reason is because Saint
5 Alphonsus has experience with what will likely happen if the
6 case is dismissed. Saint Alphonsus, like many other people,
7 chased Corizon, then CHS and affiliates since 2018 in Idaho
8 District Court. And on the verge of obtaining summary judgment
9 in those cases, we're in bankruptcy. So it's not our belief or
10 Saint Alphonsus's belief that dismissal will necessarily result
11 in better settlements coming forward.

12 Number two, what Saint Alphonsus believes is, as
13 people have discussed in the basket, is not the value of claims
14 so much, it's the -- what we think the value of YesCare is.
15 And that's assuming that you could prevail on alter ego or
16 successor interest liability claims of that sort. And we
17 expect what we'll hear from the evidence is that YesCare is not
18 valued at a billion dollars, that it's going to be something
19 far less, making the pot of money that would be available for
20 creditors here, reasonable, given those circumstances. Thank
21 you, Your Honor.

22 THE COURT: Thank you.

23 713 number?

24 MS. JONES: Thank you, Your Honor. This is Erin
25 Jones for the Curators of the University of Missouri, as well

1 as Capital Region Medical Center. And I will keep my comments
2 very brief, at the risk of being one, repetitive, but also
3 destroying everybody's eardrums with my horrible voice. I will
4 reserve most of my comments for closing, which I can hopefully
5 do in person in a courtroom next week.

6 But I do want to say that my clients support the
7 motion to settle. They oppose the motion to dismiss. I want
8 to reiterate that, to a large extent, my clients think about it
9 very similarly to the way Mr. Patterson described and also
10 echoing Mr. Hamm's comments about what it really looks like to
11 litigate on the outside, so to speak, with these parties, and
12 not necessarily resulting in a better outcome.

13 You know, we're really looking at, you know, if you
14 hit an absolute, you know, walk-off grand slam to win the World
15 Series, what is that number and how long does it take to get
16 there? Discount it for time, discount it for the cost of
17 attorneys, discount it for experts, discount it for costs, and
18 you get into a range of outcomes, and I think that the
19 settlement is within that range.

20 And to that end, Your Honor asked questions about
21 what's the standard to be applied here? And you had asked a
22 question of, you know, is there a different standard because
23 the settlement involves insiders? You know, I don't know that
24 it changes the standard, but I think everybody's looking at
25 this with heightened scrutiny, and I think that, you know,

1 there's an evidentiary burden that the debtor and the UCC have
2 to meet. And I think they're going to put on independent
3 fiduciaries that are going to talk about that, and they're
4 going to put on evidence of values to the estate that comes
5 from these claims.

6 You know, and secondly, you asked whether the fact
7 that the company is defunct and is not operating more, whether
8 that changes the standard. And I think the answer is no. I
9 mean, as you know, Your Honor, I represent Chapter 7 trustees
10 all the time in complex cases, and it's the same standard that
11 we apply in a Chapter 7 case where we're liquidating a company.
12 We still apply the Jackson Brewing and the Foster Mortgage
13 standards. So I don't think it's a different standard just
14 because the company is liquidating.

15 And so we would ask the Court to approve the 9019
16 based on the applicable standards, which we agree are Jackson
17 Brewing and the Foster Mortgage; and then also not to dismiss
18 the case, and with a real concern, especially in the structured
19 dismissal for the request for the Court to abandon and to grant
20 exclusive standing to the TCC, I guess after the
21 dismissal -- which I don't know how the TCC is going to even be
22 a thing after a dismissal -- but to grant them exclusive
23 standing to pursue certain estate causes of action.

24 I think the fact that they want them is evidence that
25 it would not be in the best interest to dismiss the bankruptcy

1 case because, you know, there's value here for creditors. And
2 to the extent that they would have standing to pursue those
3 claims, so would my client. And I don't think that my client's
4 right should be abridged by a request that is exclusively for
5 the benefit of tort claimants.

6 And based on that, I would ask the Court to approve
7 the 9019 and dismiss the motion to dismiss. And I'm going to
8 reserve the rest of my comments for closing.

9 THE COURT: Okay. There are two more folks. There's
10 a 404 number.

11 MR. GLOVER: Good afternoon, Your Honor. This is
12 Brian Glover on behalf of St. Luke's.

13 THE COURT: Yes?

14 MR. GLOVER: St. Luke's supports the settlement.
15 Now -- and there are just two quick points that I'll make here,
16 and I won't -- I will not belabor them. First, St. Luke's sits
17 on the unsecured creditors' committee, and Mr. Barton, who's in
18 the Courtroom today, is the Committee chair. St. Luke's has
19 seen the factual and the economic analysis, and to quote
20 Mr. Barton, believes that the settlement is a fantastic result.
21 You'll see and you'll hear -- hear evidence on this point
22 during the hearing.

23 And second, St. Luke's is a creditor and has
24 litigated with Corizon for years. It knows what it is like to
25 litigate with these folks. And given the settlement dollars

1 that are on the table, St. Luke's strongly prefers the
2 settlement over the alternative, which is going back into the
3 federal court litigation system. It will have to continue to
4 litigate with Corizon and get a judgment.

5 Now, St. Luke's actually has a summary judgment
6 motion that's on file. It's been fully briefed. St. Luke's is
7 potentially on the precipice of getting a judgment, a large
8 judgment, against the debtor. And so in that regard, maybe if
9 there is a dismissal, the landing for St. Luke's may be a
10 little bit softer than it would be for some of the estate's
11 other creditors.

12 However, you know, any judgment that St. Luke's were
13 to obtain would be worthless unless there's money to pay it.
14 And to make that happen, St. Luke's would have to pursue third
15 parties by asserting the same claims and the same theories of
16 recovery that are subject to the settlement approval motion
17 being heard today. It's going to have to do that in race to
18 the courthouse fashion, with the risk of inconsistent results
19 around the country on these issues, and will be competing with
20 all of the estate's other creditors.

21 St. Luke's knows what it like -- what it looks like
22 to litigate with and pursue and chase Corizon. And with that,
23 St. Luke's strongly prefers the settlement over the prospect of
24 continued litigation and asks you to grant the 9019 motion.
25 Thank you.

1 THE COURT: Thank you very much.

2 There's one more. It's a 602 number.

3 MR. STAPLETON: Good afternoon, Your Honor. Arizona
4 Department of Corrections, Warren Stapleton. Just wanted to
5 say three quick things. One is, I do think you do have to
6 apply heightened scrutiny. I don't think it's the same as a
7 Chapter 7. And that's because in a Chapter 11, you're allowing
8 debtor to retain some measure of control over the causes of
9 action that are being settled. And obviously here, there's
10 some coextensive or overlapping between the ownership of the
11 debtor and the parties being released, and so that control
12 necessitates a heightened level of scrutiny.

13 In terms of looking at the merits of the settlement,
14 I break it down into three categories. I would say, you know,
15 what I'll call the plain vanilla fraudulent transfers, which I
16 don't think there was any argument about. That's the
17 \$31 million number. I think there's a lot of agreement on
18 that. Then there's the divisive merger fraudulent transfers.
19 I think there's no real number except the UCC has said between
20 zero and \$75 million. And then there's successor liability,
21 which I think, at this point, everyone agrees is also being
22 settled. And there aren't really numbers for that yet, or at
23 least not numbers before the Court. But I'm -- like, in terms
24 of evaluating the terms of the settlement, I would look at
25 those three buckets as the three buckets.

1 And I know there -- there's a -- sort of an idea of
2 maybe there's overlap between the divisive merger and successor
3 liability. And I would say they're different because in terms
4 of the successor liability, it allows claimants to reach past
5 the value of the debtor as of May 1st of 2022, which would be
6 the date of the merger. So that's basically the upside that's
7 being protected, and that's why they want the releases.

8 The last thing I would say is, and this echoes what
9 Ms. Funk said, which is the triggering of the payment -- of the
10 settlement payment is the confirmation of a plan that releases
11 all three of those things, of the fraudulent transfer, the
12 divisive merger, and the successor liability. That really
13 can't be done until the plan is before the Court, and so I'm
14 not sure we can do this. I think Chapter 11 is a negotiation,
15 and I agree with Ms. Funk that once the settlement is approved,
16 the negotiating ability, at least in terms of the incentives
17 for YesCare to negotiate, are gone. And that's all I have.

18 THE COURT: Thank you very much.

19 Folks, let's it's now 2:02. Can we come back and
20 start at 2:40? Thank you.

21 THE CLERK: All rise.

22 (Recess taken at 2:02 p.m.)

23 (Proceedings resumed at 2:39 p.m.)

24 THE COURT: Okay, well, let's get started. We're
25 back on the record.

1 MR. KAUFMAN: Yeah, I think before we call our first
2 witness, we were just going to do the housekeeping matters, of
3 which stipulations or which exhibits the parties had agreed. I
4 know I conferred with Ms. Meyers and Mr. Moxley last night. I
5 don't want to miss

6 THE COURT: I left my pen. I'm going to step out.
7 Don't do the all rise thing. I'm just going to be right back.

8 Okay.

9 MR. KAUFMAN: All right. So lots of exhibits in
10 front of you.

11 THE COURT: All right.

12 MR. KAUFMAN: I think -- how do you want to do it?
13 You want to go through the ones that we stipulated?

14 MS. MEYERS: Sure. So I think it would make sense to
15 start with what we had emailed about initially, and then I know
16 that Mr. Kaufman followed up with some additional ones that
17 they were willing to stipulate to.

18 MR. KAUFMAN: Okay. So -- oh, I didn't print a color
19 copy, so I'm not going to see your red writing.

20 MS. MEYERS: I have it written down, if you want, if
21 you'll trust me to --

22 MR. KAUFMAN: So for the debtor's exhibits -- so the
23 debtor and the UCC filed a joint list. And I apologize, Your
24 Honor, we didn't specify this the way the local rules tell us
25 to, but I'm going to refer to what's in the debtor and the --

1 THE COURT: We call Dallas liberties. Is that what
2 it's for?

3 MR. KAUFMAN: Dallas. That one --

4 THE COURT: Go ahead.

5 MR. KAUFMAN: So the debtor and --

6 THE COURT: You had to take one for the team. Go
7 ahead.

8 MR. KAUFMAN: -- Debtor and UCC Exhibits 2, 3, 5,
9 18 --

10 THE COURT: Hold on a second. Debtor, UCC. And this
11 is docket number what?

12 MS. MEYERS: 1-4-1-0.

13 MR. KAUFMAN: 1-4-1-0.

14 THE COURT: That's the star in the show. Okay.
15 1-4-1-0, the docket numbers are -- I should say the exhibit
16 numbers are?

17 MR. KAUFMAN: Yeah, I think you can -- the docket
18 numbers -- the dash docket numbers --

19 THE COURT: Yeah.

20 MR. KAUFMAN: -- should be the same as the exhibit.
21 So 2, 3, 5, 18.

22 THE COURT: Okay.

23 MR. KAUFMAN: 44 through 61. 36.

24 THE COURT: Wait, 2, 3, 5, 18, 44 through 61, then
25 36.



1 MR. KAUFMAN: Now, we're going backwards.

2 THE COURT: Now we're going back. Okay. I just want
3 to make sure.

4 MR. KAUFMAN: 36. Now, back forwards to 63.

5 THE COURT: Okay.

6 MR. KAUFMAN: And then, there are some filed under
7 seal.

8 THE COURT: Okay.

9 MR. KAUFMAN: And those are Exhibits 25, 26, 27, 28,
10 31, 34, 35, 39, now go backwards to 37, 40, and 41.

11 THE COURT: And that's at docket number -- the seal
12 is under what docket?

13 MR. KAUFMAN: 1413.

14 THE COURT: Okay, so I've got at 1410, 2, 3, 5, 18,
15 36, 44 through 61, and 63?

16 MR. KAUFMAN: Yes, Your Honor. 1413-25, 26, 27, 28,
17 31, 34, 35, 39, 37, 40, 41. That's it.

18 THE COURT: Okay.

19 MR. KAUFMAN: On the TCC, the list is filed at 1411,
20 right?

21 MS. MEYERS: That's correct.

22 MR. KAUFMAN: Okay.

23 MR. KAUFMAN: I don't think the documents are on the
24 docket yet.

25 MS. MEYERS: We discussed with counsel yesterday.



1 They sent -- we had sent a list through requesting admission on
2 certain ones. They sent back another list identifying the ones
3 that they were willing to admit. And so I sort of culled down
4 the list, and, you know, we may have additional ones that I
5 think we can stipulate to. But at this point, my understanding
6 is that there's an agreement on TCC 329, TCC 330 and 331.

7 MR. KAUFMAN: You're going in a different order than
8 me. Sorry, can you slow down?

9 MS. MEYERS: I apologize.

10 MR. KAUFMAN: 329, I don't see that. Hold on just a
11 second.

12 THE COURT: How about you all figure this out, and
13 then you can just tell me and we can read them into the
14 numbers. You want me to step off, or DO you want to huddle up
15 to the side or --

16 MR. KAUFMAN: Yeah, if that -- that might be quicker.

17 THE COURT: Okay, I'll give you five minutes. Thank
18 you.

19 (Recess taken at 2:46 p.m.)

20 (Proceedings resumed at 2:50 p.m.)

21 THE COURT: Okay, we are back on the record in Tehum.
22 Counsel --

23 MS. MEYERS: Thank you, Your Honor.

24 THE COURT: -- I'll let you go forward.

25 MS. MEYERS: So --

1 THE COURT: I've got TCC -- that Docket 1411, if
2 we're taking those, which exhibits?

3 MS. MEYERS: So it's exhibits -- and I apologize,
4 these are --

5 THE COURT: No worries.

6 MS. MEYERS -- completely out of numerical order, but
7 it's TCC 329.

8 THE COURT: Okay.

9 MS. MEYERS: TCC 330 and 331.

10 THE COURT: Okay.

11 MS. MEYERS: TCC 173.

12 THE COURT: Okay.

13 MS. MEYERS: 132.

14 THE COURT: Okay.

15 MS. MEYERS: 136.

16 THE COURT: Alrighty.

17 MS. MEYERS: 288.

18 THE COURT: Alrighty.

19 MS. MEYERS: And then we get into the confidential
20 exhibits on the TCC's list.

21 MR. KAUFMAN: Sorry, Ms. Meyers. 288's under the
22 confidential one.

23

24 MS. MEYERS: Oh, I apologize. Okay. 288 is
25 confidential. And then the other confidential exhibits are



1 342, 350, 115, 148 --

2 THE COURT: You said 1-5-0, 148?

3 MR. KAUFMAN: No, no, 1-1-5.

4 MS. MEYERS: 1-1-5.

5 THE COURT: 1-1-5.

6 MS. MEYERS: 1-4-8, 141, 170, and 252.

7 THE COURT: 329, 330, 331, 173, 132, 136, 288, 342,
8 350, 115, 148, 141, 170, 252.

9 MR. KAUFMAN: That's correct.

10 MS. MEYERS: That's correct, and I believe we'll have
11 more.

12 THE COURT: Okay, sounds great. These will be deemed
13 admitted -- well, they will be admitted into the record, not
14 deemed. They are admitted into the record. Okay.

15 (ECF Numbers 1410-2, -3, -5, -18, -36, -44 through -61,
16 and -63 admitted into evidence)

17 (ECF Numbers 1413-25 through -28, -31, -34, -35, -37, -39
18 through -41 admitted into evidence)

19 (ECF Numbers 1428-132, -136, -173, -288, and -329 through
20 331 admitted into evidence)

21 (ECF Numbers 1429-115, -141, -148, -170, -252, -342, and -
22 350 admitted into evidence)

23 THE COURT: Okay. Any other housekeeping we should
24 take up?

25 MR. KAUFMAN: We're ready for evidence.



1 THE COURT: All right, call your first witness.

2 MR. ZLUTICKY: Your Honor, Nick Zluticky for the
3 unsecured creditors' committee. So is Your Honor's aware, but
4 I'm more saying this for everybody on the Webex, we have
5 additional evidence that we're going to be presenting on
6 Tuesday, so I don't want anyone to be dialing in today to think
7 today will complete the UCC's presentation of evidence.

8 THE COURT: I'm not worried about --

9 MR. ZLUTICKY: Understood.

10 THE COURT: I've got the job to do, so you present
11 the evidence as it goes, and we'll -- today, we start and we go
12 till 5. So clearly, we're not finishing anything, so let's
13 just proceed.

14 MR. ZLUTICKY: Thank you very much, Your Honor. So
15 the Official Committee of Unsecured Creditors calls David
16 Barton.

17 THE COURT: Alrighty. Mr. Barton, come on up. Okay.
18 Can you please raise your right hand?

19 DAVID BARTON, UNSECURED CREDITORS' COMMITTEE'S WITNESS, SWORN

20 THE COURT: Okay. Please be seated, And just make
21 sure the mic is close to you so we can hear you. If you
22 have -- hear an objection, I just ask that you please give me
23 an opportunity to resolve the objection. And if you need a
24 break at all, just let me know. Okay?

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: Alrighty. And just -- you can adjust the
2 mic to make it work, but you can hear.

3 All right. Counsel, you may proceed.

4 MR. ZLUTICKY: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. ZLUTICKY:

7 Q Please state your name for the record.

8 A My name is David Barton.

9 Q Where are you currently employed?

10 A I'm employed with St. Luke's Health System in Idaho.

11 Q How long have you been employed at St. Luke's?

12 A A little more than 13 years.

13 Q And is it okay with you if I refer to St. Luke's Health
14 System as St. Luke's, colloquially?

15 A Yes.

16 Q Okay.

17 THE COURT: Can you see if you can get that mic just
18 a little closer to you?

19 Zilde, can we see if we can -- maybe we can just
20 adjust it.

21 THE WITNESS: How's this?

22 THE COURT: Whatever you just did is much better.
23 Thank you.

24 BY MR. ZLUTICKY:

25 Q All right. What is your job title at St. Luke's?



1 A Deputy general counsel.

2 Q When did you graduate law school?

3 A Graduated from law school in 2002.

4 Q From what university?

5 A University of California at Berkeley.

6 Q Okay. And do you -- what was your undergraduate degree

7 in?

8 A Philosophy.

9 Q And when did you obtain your undergraduate degree?

10 A 1988.

11 Q What did you -- what was your profession between 1988 and

12 law school?

13 A I was a philosophy professor, teaching at various

14 universities.

15 Q After you graduated law school, where did you go to work?

16 A I went to work at a firm called Folger, Levin & Khan in

17 San Francisco. It's a litigation firm.

18 Q Did you have an area of expertise at Folger Levin?

19 A I did. It was a broad area, general commercial

20 litigation.

21 Q When did you join St. Luke's?

22 A I joined St. Luke's Valentine's Day, 2011.

23 Q What are your job duties as the deputy general counsel for

24 St. Luke's?

25 A Two primary sets of job duties, I have. One is managing



1 our relationships legally with our physicians, financial
2 relationships with the physicians, as well as their issues
3 regarding their membership on our medical staff. And then I'm
4 also responsible for overseeing non-malpractice litigation.

5 Q In your job title as deputy general counsel and your job
6 duties you just described, do you oversee in-house and outside
7 counsel in performing your role?

8 A I do.

9 Q And do you manage litigation for St. Luke's?

10 A I do.

11 Q To the extent that it's non-malpractice litigation?

12 A Correct.

13 Q Are you familiar with a company named Corizon Health, Inc?

14 A I am.

15 Q How are you familiar with Corizon.

16 A In two ways. First, I'm of course, aware of the
17 litigation that St. Luke's has filed against Corizon. And
18 then, I'm familiar with Corizon because St. Luke's has had a
19 relationship with Corizon where we took care of patients
20 through a contract with Corizon who couldn't be taken care of
21 in the prisons. So we took care of Corizon patients.

22 Q And were there any other services that St. Luke's provided
23 to Corizon other than what you've just described?

24 A Not that I'm aware of.

25 Q Prior to 2014, did Corizon pay St. Luke's for those

1 services, generally?

2 A Yes.

3 Q And at some point, did Corizon stop paying St. Luke's for
4 those services?

5 A They did.

6 Q Did St. Luke's file a lawsuit against Corizon for failure
7 to pay for those services?

8 A Yes, we did.

9 Q Approximately when was that lawsuit filed?

10 A I believe 2018.

11 Q So approximately five years prior to the filing of this
12 bankruptcy case?

13 A That's right.

14 Q How is St. Luke's involved in this bankruptcy case?

15 A We're a creditor, and we have a seat on the creditors'
16 committee.

17 Q So, Mr. Barton, Exhibit 5 in the notebook in front of you
18 has already been admitted into evidence. I'm just going to ask
19 you a couple of quick questions about it.

20 A I see it.

21 Q Okay. Now this exhibit says St. Luke's is owed
22 approximately \$31.3 million from Corizon. Do you see that on
23 the first page of Exhibit 5?

24 A I don't yet.

25 Q Okay. It might be on the second page.

1 A I see it on the second page, yes.

2 Q Okay. How would you characterize 31.3 million in terms of
3 St. Luke's receivables?

4 A Very substantial. I'm not aware of a larger receivable.

5 Q And at some point prior to February 13, 2023, did Corizon
6 change its name to Tehum Care Services, Inc.?

7 A Yes.

8 Q Is it your understanding that Tehum Care Services, Inc. is
9 the debtor in this bankruptcy case?

10 A Yes.

11 Q So we talked about your involvement a bit in this
12 bankruptcy case. How did you become involved after they filed?

13 A I believe I was contacted by Mr. Nguyen, who's here in the
14 court today, and he explained what the creditors' committee
15 does.

16 Q So did the United States Trustee's office ask you to join
17 the Official Committee of Unsecured Creditors?

18 A They did.

19 Q Before this committee, had you ever served on an unsecured
20 creditors' committee in a bankruptcy case before?

21 A No.

22 Q Did you agree to join the UCC in this case?

23 A I sure did.

24 Q Why?

25 A As I mentioned a moment ago, I am familiar with Corizon in

1 two separate arenas, familiar with them through litigation we
2 had against them and familiar with them through the care we
3 provide to Corizon's patients. In both of those circumstances,
4 I had concerns about Corizon's behavior. Certainly, it's been
5 difficult to litigate against them. Seemed to me that it was
6 likely that we were not the only entity or person that Corizon
7 had harmed, and I eagerly wanted to join a committee whose job
8 it was to make sure that creditors who had been harmed by
9 Corizon got some money in their pockets.

10 Q Are you the chair of the UCC?

11 A I am.

12 Q And have you served as chair since the formation of the
13 UCC in March 2023?

14 A Yes. I think I might have been interim chair at the very
15 beginning, but I've been chair.

16 Q How would you describe the level of engagement in the
17 bankruptcy case of the UCC's members?

18 A Very high.

19 Q Why do you describe it that?

20 A You know, first, it's an extraordinary collection of
21 intellects, a very high level of understanding and commitment
22 among the members of the UCC. The discussions we have are
23 illuminating and fruitful. We have a variety of different
24 perspectives on the committee, and frankly, they're very
25 interesting meetings.

1 Q So how often does the UCC hold these meetings?

2 A We hold meetings at least once a week. We have a regular
3 meeting on Monday mornings at 9:30 my time. And we have -- in
4 addition, we will schedule meetings when there are important
5 issues for the Committee to consider or preparation for
6 mediation, for example. There will be additional meetings in
7 those circumstances.

8 Q Is there any particular reason the UCC picked Monday
9 mornings?

10 A There is. We chose the time of day in order to
11 accommodate the schedule of one of our tort claimants on the
12 Committee who needed to have the -- have this happen in the
13 morning.

14 Q How is the attendance at those meetings?

15 A The attendance is good. I don't believe we've ever failed
16 to have a quorum.

17 Q Do you attend those meetings?

18 A I do.

19 Q In your view, what's the goal of the UCC?

20 A We protect the interest of the creditors. And in this
21 context, that means getting as good a recovery for them as
22 possible.

23 Q How does the UCC accomplish that goal or try to accomplish
24 that goal?

25 A Well, we do it by, you know, initially retaining advisors

1 who we direct to perform an investigation into the matters and
2 uncover claims. But we do it through directing an
3 investigation, overseeing that investigation, assessing the
4 fruits of that investigation.

5 Q Who are the members of the UCC?

6 A There is St. Luke's. There is Saint Alphonsus Health
7 System. There's Rachell Garwood. There's Latricia Revell.
8 There is Maxim Healthcare Staffing. Truman Medical Center.
9 And it's another Missouri health system.

10 Q Is that Capital Region?

11 A Capital Region Medical Center. Thank you.

12 Q Have Ms. Garwood and Ms. Revell asserted tort claims
13 against the debtor in this case?

14 A They have.

15 Q Does the UCC represent the interest of all creditors?

16 A We certainly do.

17 Q Including creditors with tort claims like Ms. Garwood and
18 Ms. Revell?

19 A Yes, and I should say unsecured creditors.

20 Q Do the tort claimant members on the UCC attend most
21 meetings either personally or through their respective counsel?

22 A I don't think there's one where they've both missed. Yes,
23 the answer is yes.

24 Q Does the UCC listen to those members?

25 A Yes, and -- we certainly do.

1 Q Does the UCC give the opinions of those members any more
2 or less weight than the opinions of other UCC members?

3 A We don't give them special weight because of the nature of
4 the claims, but we do give special weight because of the nature
5 of the information we might get. Those who represent
6 incarcerated claimants have a perspective that I don't have
7 that the Committee, as a whole, needs. And so we listen very
8 carefully when they raise that perspective.

9 Q So I want to turn back to the proceedings in the case for
10 the moment. At some point did the debtor file a motion to
11 borrow money in this bankruptcy case?

12 A Yes.

13 Q Okay. And if you could open the binder to Exhibit 10.

14 A I've got it.

15 Q Do you recognize this document?

16 A I do.

17 Q How do you recognize this document?

18 A This -- I recognize it from having seen it previously
19 during the course of the Committee's work.

20 Q And what is it?

21 A This looks to be the debtor's initial motion for -- to get
22 DIP financing, DIP loan.

23 MR. ZLUTICKY: Your Honor, I would offer Exhibit 10.

24 THE COURT: Any objection?

25 MR. MOXLEY: No objection, Your Honor.



1 THE COURT: Alrighty. Exhibit 10 is admitted.

2 (ECF Number 1410-10 admitted into evidence)

3 BY MR. ZLUTICKY:

4 Q Mr. Barton, who was the proposed lender under this
5 diploma?

6 A I think it was M2 LoanCo.

7 Q Did the UCC approve the terms of the proposed DIP loan?

8 A No, we didn't like the terms of the DIP loan, the proposed
9 DIP loan.

10 Q Did the UCC file an objection to the DIP motion?

11 A We did.

12 Q Can you please open the binder to Exhibit 11?

13 A I'm there.

14 Q Do you recognize this document?

15 A Yes.

16 Q How do you recognize this document?

17 A This is the objection that the Committee authorized be
18 filed against the DIP motion.

19 Q Were you involved in preparing this document?

20 A Yes.

21 Q And what is the document again?

22 A It's the objection of the UCC to the DIP motion.

23 MR. ZLUTICKY: Your Honor, I offer Exhibit 11.

24 THE COURT: Any objection?

25 MR. MOXLEY: No objection, Your Honor.



1 THE COURT: 11 is admitted.

2 (ECF Number 1410-11 admitted into evidence)

3 BY MR. ZLUTICKY:

4 Q Did the UCC object to M2 LoanCo receiving a lien on
5 avoidance actions?

6 A Yes.

7 Q Do you have an understanding of what avoidance actions
8 means?

9 A I do.

10 Q What is that understanding?

11 A An avoidance action is what you -- the kind of action you
12 take to undo a fraudulent conveyance.

13 Q Why did the UCC object to M2 LoanCo receiving a lien on
14 avoidance actions?

15 A Because if we then recovered against M2 LoanCo, if we had
16 a -- if the estate brought a claim against M2 LoanCo, M2 LoanCo
17 would then just take that money from the debtor and it wouldn't
18 do much good.

19 Q At the time, did the UCC believe there were claims against
20 M2 LoanCo?

21 A We believed there were possible claims against M2 LoanCo,
22 yes.

23 Q Did the UCC object to the releases proposed for M2 LoanCo,
24 YesCare, and other related parties in the proposed DIP loan?

25 A Yes.

1 Q Why?

2 A Because we thought there were claims against them that
3 could bring money into creditors' hands.

4 Q So if you could open your binder to Exhibit 12, please.
5 Do you recognize this document?

6 A I do.

7 Q How do you recognize this document?

8 A I believe the Committee reviewed it in the course of its
9 work, including myself.

10 Q What is this document?

11 A This appears to be the order that was issued on the DIP
12 motion after the objections levied by -- you know, leveled by
13 the UCC.

14 MR. ZLUTICKY: Your Honor, I offer Exhibit 12.

15 THE COURT: The objection.

16 MR. MOXLEY: No objection.

17 THE COURT: 12 is admitted.

18 (ECF Number 1410-12 admitted into evidence)

19 BY MR. ZLUTICKY:

20 Q Did the bankruptcy court grant M2 LoanCo a lien on
21 avoidance actions, to your knowledge?

22 A No. Excuse me, let me clarify that. I do have knowledge
23 of that, and they did not -- and the Court did not.

24 Q Thank you for the clarification.

25 THE COURT: He is a lawyer.



1 MR. ZLUTICKY: That's right.

2 BY MR. ZLUTICKY:

3 Q Did the bankruptcy court permit the releases requested by
4 M2 LoanCo, YesCare, and other related parties? 3:10:18

5 A It did not.

6 Q So then, given all that, do you know why the TCC continues
7 to refer to the DIP motion in its pleadings and not the DIP
8 order?

9 A I don't know why they do that.

10 Q Did the UCC identify areas that required the UCC's
11 investigation in this bankruptcy case?

12 A Yes.

13 Q Was the divisional merger one of those areas?

14 A It was.

15 Q Do you have an understanding of what the divisional merger
16 is that's been described in this case?

17 A Yes.

18 Q What is that understanding?

19 A My understanding is that it was a transaction whereby
20 Corizon consolidated all of its various entities and then
21 divided those entities into two entities, one being Corizon,
22 which ultimately became the debtor later, nine months down the
23 line, and then a company called -- I believe it was called CHS
24 at the time.

25 Q Does CHS operate under another name now?



1 A They operate under the name, YesCare.

2 Q Were there other areas of investigation that UCC pursued
3 in addition to the divisional merger?

4 A Yes.

5 Q Can you give me an example of those areas?

6 A Sure. Fraudulent conveyance claims, breach of fiduciary
7 duty, alter ego, successor liability.

8 Q Did those include fraudulent conveyance, successor
9 liability -- the other claims you mentioned, did those include
10 claims against the proposed settlement parties in this case?

11 A Yes.

12 Q As chair of the UCC, what role did you have in
13 investigating potential claims or causes of action?

14 A I participated, along with the rest of the Committee, in
15 directing that investigation into what claims the estate might
16 have.

17 Q What did you do to pursue that investigation?

18 A We began by hiring the right folks. So we carefully
19 selected counsel initially, and then with the assistance of
20 counsel, we also carefully selected financial advisors. We
21 directed those professionals to issue document subpoenas, to do
22 depositions, and everything necessary to find out what sums of
23 money might be available and, you know, we might be able to get
24 to the creditors.

25 Q Did you request updates from the UCC's professionals on

1 the scope of the investigation?

2 A Yes. On a regular basis.

3 Q Did you request updates from the UCC's professionals on
4 the status of that investigation?

5 A Yes.

6 Q So in addition to what you previously described, what did
7 the UCC do to investigate those potential claims or causes of
8 action?

9 A We issued document requests resulting in, I think, about
10 5- or 600,000 pages of documents. We took depositions of the
11 major players. I think we took the deposition of Isaac
12 Lefkowitz a number of times, and we met with substantial
13 resistance that had to be overcome with motions to compel, and
14 we doggedly pursued the information we needed to understand how
15 to get money to the creditors.

16 Q Did the UCC request documents from the debtor as part of
17 its investigation?

18 A Yes.

19 Q Did the debtor produce documents to the UCC in response to
20 that request?

21 A Pardon me?

22 Q Did the debtor produce documents to the UCC in response to
23 that request?

24 A Yes.

25 Q Did the UCC request documents from M2 LoanCo as part of



1 its investigation?

2 A Yes.

3 Q And did M2 LoanCo produce documents to the UCC in response
4 to its request?

5 A Yes.

6 Q Did the UCC have any disputes with M2 LoanCo regarding the
7 production of documents?

8 A I believe we did.

9 Q Did the UCC file a motion to compel in this court to
10 compel M2 LoanCo to produce additional documents?

11 A Yes.

12 Q Did M2 LoanCo produce additional documents to the UCC
13 after that motion was filed?

14 A Believe they did.

15 Q So, Mr. Barton, I'm going to try to get through the next
16 couple of questions in summary form, which is, did the UCC
17 request documents from YesCare?

18 A Yes.

19 Q Did the UCC request documents from FTI?

20 A Yes.

21 Q Did the UCC request documents from M2 HoldCo?

22 A Yes.

23 Q Did the UCC request documents from M2 EquityCo?

24 A Yes.

25 Q Did the UCC request documents from Perigrove 1018, LLC?



1 A Yes.

2 Q Did the UCC request documents from Geneva?

3 A Yes.

4 Q Okay. Ultimately, did those parties produce documents in
5 response to the UCC's request?

6 A Yes.

7 Q Now I want to ask a couple of questions about Flacks
8 Group. Did the UCC request documents from Flacks Group as part
9 of its investigation?

10 A I don't -- yes, we did.

11 Q And did Flacks Group produce documents to the UCC in
12 response?

13 A I think they did.

14 Q Okay. Did the UCC complete its investigation into Michael
15 Flacks and Flacks Group?

16 A No.

17 Q Did the UCC mediate with Michael Flacks and Flacks Group?

18 A No.

19 Q Are Michael Flacks or Flacks Group being released under
20 this settlement?

21 A No.

22 Q All told, approximately how many documents were produced
23 to the UCC by the settlement parties as part of the UCC's
24 investigation?

25 A I actually don't know how many documents. You know, I



1 think it's about 500- or 600,000 pages.

2 Q Did the UCC review all 500 or 600,000 pages of documents
3 and conducting its investigation?

4 MR. MOXLEY: Objection, Your Honor. Your Honor, this
5 is one of the issues that I asked Mr. Barton about at his
6 deposition. I specifically asked him were UCC members ever
7 shown --

8 THE COURT: Can you just get close to the mic? I
9 just want to make sure I can hear you, sir.

10 MR. MOXLEY: Yes, Your Honor. I apologize, Your
11 Honor.

12 THE COURT: No, no, no.

13 MR. MOXLEY: No, I'm happy to hand up the Court a
14 copy of Mr. Barton's deposition transcript if the Court needs
15 it. But at Page 138 of his transcript, I asked him were the
16 UCC members ever shown any documents that were reviewed as part
17 of the investigation, and he was instructed not to answer that
18 question. And Counsel --

19 THE COURT: I'll let you cross him on it, and it'll
20 go to the way. I'll overrule. He can answer.

21 MR. MOXLEY: Thank you, Judge.

22 MR. ZLUTICKY: Thank you, Your Honor.

23 BY MR. ZLUTICKY:

24 Q Did the UCC review all 500,000 pages of documents in
25 conducting its investigation?

1 A We did. Either through the UCC or through counsel, yes.

2 Q Did the UCC also take depositions as part of its
3 investigation into potential claims and causes of action?

4 A Yes.

5 Q You said the UCC took the deposition of Mr. Lefkowitz
6 several times?

7 A Yes.

8 Q Did the UCC depose M2 LoanCo.

9 A Yes.

10 Q Did it depose Perigrove 1018?

11 A Yes.

12 Q Did it depose Geneva?

13 A Yes.

14 Q Did it depose Pharmacorr?

15 A Yes.

16 Q Did it depose YesCare?

17 A Yes.

18 Q Did the UCC attend the 341 meeting of creditors in this
19 case?

20 A Yes.

21 Q Did the UCC ask questions at the 341 meeting of creditors
22 of the witnesses appearing under oath?

23 A Yes.

24 Q Did the UCC ask questions at every continued 341 meeting
25 of creditors of the witnesses appearing under oath?



1 A Pardon me, I didn't quite catch that.

2 Q Did the UCC ask questions of witnesses that appeared at
3 continued 341 meetings?

4 A Yes.

5 Q Did the UCC receive all of the information it asked for in
6 its investigation of the settlement parties?

7 A I doubt it.

8 Q Okay. And why not?

9 A I -- it's -- I don't think it's possible to know for
10 certain that every document that we might want to have looked
11 at has been produced, but we're satisfied that we have the
12 information we need.

13 Q Why are you satisfied that you received the information
14 you needed?

15 A We have the information we need to evaluate the value of
16 claims relative -- I should say prior to the first mediation.
17 We wanted to make sure that we didn't have that mediation until
18 we felt we were in a situation where we could assess the value
19 of our claims so that we could assess the reasonable range of
20 settlement. So we delayed that first mediation until we had
21 that information. And so when I say we're satisfied that we
22 have the information we need, that's what I mean. It was good
23 enough. We had enough information to go into the mediation.

24 Q So, Mr. Barton, if you could turn to Tab 1 of your binder.

25 A Here's.

1 A I am there.

2 Q Do you recognize this document?

3 A Let me just look at the date on it. Yes, I do.

4 Q How do you recognize this document?

5 A Through the work that I've done with the Committee.

6 Q What is this document?

7 A This document is the Committee's and debtor's motion for
8 authorizing and approving the settlement.

9 MR. ZLUTICKY: Your Honor, I offer Exhibit 1.

10 THE COURT: Any objection to the admission of 1?

11 MR. MOXLEY: No objection.

12 THE COURT: Exhibit 1 is admitted.

13 (ECF Number 1410-1 admitted into evidence)

14 BY MR. ZLUTICKY:

15 Q Mr. Barton, if you could turn to Paragraph 27 of Tab 1.

16 A Paragraph 27?

17 Q Yeah, it starts on Page 12.

18 A Okay. I'm there.

19 Q Okay. Paragraph 27 lists four main categories of claims.
20 Do you see that in Paragraph 27?

21 A Yes, I do.

22 Q Are those the only potential claims against the settlement
23 parties the UCC identified?

24 A No.

25 Q What other types of claims -- what other types of

1 additional potential claims against the settlement parties did
2 the UCC identify?

3 A They would include the ones I mentioned previously. They
4 would include altered ego claims, successor liability, breach
5 of fiduciary duty.

6 Q And we'll get to those claims in a bit, but first, let's
7 focus on Paragraph 28 of the settlement motion titled Avoidance
8 Actions Against M2 LoanCo. Do you see that in Paragraph 28 of
9 the settlement motion?

10 A I do.

11 Q After completing its investigation, did the UCC identify
12 potential claims against M2 LoanCo?

13 A Yes.

14 Q What types of claims?

15 A Fraudulent conveyance claims, for the most part.

16 Q Are those the transfers described in Paragraph 28 of
17 Exhibit 1?

18 A Yes.

19 Q What is the total amount of those transfers?

20 A Little over 24 and a half million.

21 Q Does the UCC have a view on the merits of those claims?

22 A We think it's -- we think those claims are meritorious.
23 We think those conveyances were, in fact, fraudulent.

24 Q Okay. And why do you think that?

25 A There wasn't equivalent value or even close to equivalent

1 value exchanged.

2 Q But how do you know that?

3 A Through the investigation that we did.

4 Q Do you know whether M2 LoanCo disputes those claims?

5 A They do dispute those claims.

6 Q Did the UCC -- well, let me back up for a moment. Do you
7 know whether there was a prepetition loan between M2 LoanCo and
8 the debtor?

9 A I believe there was.

10 Q Okay. And did the UCC look into that prepetition loan?

11 A Yes.

12 Q Okay. Did the UCC identify any claims against M2 LoanCo
13 relating to that prepetition loan?

14 A Yes.

15 Q What types of claims?

16 A There was about \$80 million that was characterized as a
17 loan from M2 LoanCo to the debtor that we do not believe was an
18 actual loan, that the debtor here, Tehum, should not owe to M2
19 LoanCo.

20 Q And was that loan allocated to YesCare under the
21 divisional merger we spoke about earlier?

22 A That's my understanding.

23 Q What is the UCC's view on the merits of those claims?

24 A The claims are strong. They're meritorious claims.

25 Q Do you know whether M2 LoanCo disputes those claims?



1 A They do.

2 Q Do you know whether the debtor disputes those claims?

3 A I believe it does.

4 Q Paragraph 30 of the settlement motion describes potential
5 claims against Geneva Consulting. Do you see that in Paragraph
6 30?

7 A Avoidance actions against Geneva, yes.

8 Q After completing its investigation, did the UCC identify
9 potential claims against Geneva?

10 A Yes.

11 Q What kinds of claims?

12 A More fraudulent transfer claims.

13 Q Are those the transfers described in Paragraph 30 of the
14 settlement motion?

15 A Yeah, it's in the table at the bottom of that paragraph.

16 Q What is the total amount of those transfers?

17 A Five and a half million.

18 Q What is the UCC's view on the merits of those claims?

19 A We think those are meritorious claims. We think those
20 conveyances were fraudulent.

21 Q Why do you believe that?

22 A Again, we don't see evidence of equivalent value for the
23 transfers.

24 Q And does the UCC know that the transfers occurred?

25 A Yes.



1 Q How does the UCC know the transfers occurred?

2 A We uncovered those in our investigation.

3 Q Do you know whether Geneva disputes those claims?

4 A They dispute those claims, yes.

5 Q Paragraph 32 of the settlement motion describes potential
6 claims against Pharmacorr. Do you see that in Paragraph 32?

7 A I see --

8 Q It says it's avoidance actions against Perigrove 1018 and
9 related parties. Do you see that in Paragraph 32?

10 A I do.

11 Q And so if you read Paragraph 32, it describes transfers
12 that benefited Pharmacorr, though. Do you see that at the top
13 of --

14 A I do.

15 Q After completing its investigation, the UCC identified
16 potential claims against Pharmacorr?

17 A Yes.

18 Q And what are those claims?

19 A Again, they're fraudulent transfer claims.

20 Q And those are the transfers described in Paragraph 32 of
21 the --

22 A Yes.

23 Q -- settlement motion?

24 A That's correct.

25 Q What is the total amount of those transfers?

1 A Just shy of a million.

2 Q What is the UCC's view on the merits of those claims?

3 A Again, we think those were improper transfers.

4 Q Do you know whether Pharmacorr disputes those claims?

5 A They do dispute those claims.

6 Q After completing its investigation, did the UCC identify
7 potential claims against YesCare?

8 A We did.

9 Q And what are those claims?

10 A There are fraudulent transfer claims. There's also a claim
11 that the, you know, creation of YesCare was achieved through a
12 fraud. And there are successor liability claims, as well.

13 Q Do those claims arise out of the divisional merger?

14 A Yes.

15 Q Why does the UCC believe there are fraudulent transfer
16 claims against YesCare?

17 A Well, when you do a divisional merger, you're required
18 under the Texas Code to allocate assets to each of the entities
19 that are -- that survive the transaction. And we believe that
20 the way in which those funds were allocated in the divisional
21 merger was unfair to creditors and fraudulent in that sense.

22 MR. ZLUTICKY: So, Your Honor, I'm getting into just
23 maybe two or three questions that are probably confidential or
24 deal with a confidential document.

25 THE COURT: I don't think you're putting it up on the

1 screen, but you can talk about it generally.

2 MR. ZLUTICKY: We're not putting it up on the screen,
3 Your Honor.

4 THE COURT: Okay. Then, you can continue.

5 MR. ZLUTICKY: Okay.

6 BY MR. ZLUTICKY:

7 Q Did FTI prepare an opinion on the divisional merger?

8 A FTI did prepare an opinion.

9 Q Have you reviewed it?

10 A Yes.

11 Q What was that opinion that FTI rendered about the
12 divisional merger?

13 A Well, it was an opinion that the transaction was fair and
14 specifically that it was fair to creditors.

15 Q What is the -- and this transaction, do you mean the
16 divisional merger?

17 A I mean the divisional merger, yes.

18 Q What is the UCC's view of that fairness opinion?

19 A We think it's pretty much worthless, that the information
20 it was based on was not accurate.

21 Q What do you mean that the information wasn't accurate?

22 A I don't believe that FTI had accurate information about
23 the amount of money that would be available to creditors.

24 Q And why do you say that?

25 A I say that because we know that certain amounts were



1 hidden from FTI, that there wasn't full disclosure of the
2 financial situation of the relevant entities.

3 Q What is the UCC's view on the merits of the claims against
4 YesCare?

5 A We think they're meritorious.

6 Q Okay. Why?

7 A We think they're meritorious because there was fraud in
8 the way this merger -- in the way this divisional merger was
9 done. However, it is likely that in order to undo that
10 divisional merger and find that the YesCare that, you know,
11 survived the merger was really a successor to the debtor may
12 require overturning the Texas statute authorizing divisional
13 mergers. And so that is just a -- you know, a claim that is
14 uncertain.

15 Q Do you know whether YesCare disputes those claims?

16 A They do dispute those claims.

17 Q Did the UCC review the insurance policies of the debtor
18 and its predecessors as part of its investigation?

19 A We did.

20 Q Did that include review of directors and officers or D&O
21 insurance policies?

22 A Yes.

23 Q And what did the UCC discover with respect to those
24 policies?

25 A There isn't D&O insurance available.

1 Q Does that impact the UCC's view on claims against the
2 settlement parties?

3 A Yes, particularly regarding alter ego claims where, you
4 know, you are trying to get to an individual director or
5 officer. The fact that there is no insurance to pay those
6 claims diminishes the value of those claims.

7 Q So you brought up alter ego. If you could turn to
8 Paragraph 46 of the settlement motion.

9 A I've got it.

10 Q And I'm quoting from the document. It says, "The UCC and
11 the debtor have also evaluated the viability of potential
12 claims against CHS TX/YesCare based on the divisional merger
13 under theories based on or derivative of successor liability."
14 Did I read that correctly in Paragraph 46?

15 A You did.

16 Q Okay. And did those potential claims include successor
17 liability?

18 A Yes.

19 Q What other potential claims were included in that
20 evaluation?

21 A You know, claims of a similar nature. Piercing the
22 corporate veil. Alter ego.

23 Q Did the UCC evaluate those claims against YesCare prior to
24 the mediations?

25 A We did.

1 Q Okay. Why?

2 A We wanted to make sure that every possible source of
3 recovery was identified so that we could maximize our position
4 going into the mediation and get the best possible result.

5 Q Okay. So not asking you to give a legal opinion, Mr.
6 Barton, but just in your understanding, what is the difference
7 between alter ego and successor liability?

8 A Successor liability gets you to the next company. Alter
9 ego gets you to the officers or directors of the company, if
10 you will. That good enough, or do you want to --

11 Q Answering the questions is great. Does the UCC believe
12 potential alter ego or successor liability claims exist against
13 YesCare?

14 A Yes.

15 Q And does the UCC believe potential alter ego claims exist
16 against the other settlement parties?

17 A Yes.

18 Q What is the UCC's view on the merits of those claims?

19 A I think they're meritorious, but it's difficult to pierce
20 the corporate veil.

21 Q Okay. What causes you to say that?

22 A Well, partly it's just experience in litigation. I would
23 say it's experience.

24 Q Does the UCC have any other views on the merits of these
25 claims?

1 A I don't know.

2 Q The UCC's view on the merits of those claims, is that
3 based in part on the investigation the UCC conducted?

4 A Yes.

5 Q Does the UCC know whether YesCare disputes these claims?

6 A YesCare disputes these claims.

7 Q Does the UCC know whether the other settlement parties
8 dispute these claims?

9 A I believe other settlement parties dispute these claims.

10 Q Okay. And we talked earlier about a Texas divisional
11 merger statute. Have you read that statute before?

12 A Yes.

13 Q To your knowledge, has it been repealed by the Texas
14 legislature?

15 A It has not been repealed. It is on the books.

16 Q To your knowledge, has it been invalidated by a court in
17 Texas or by the Supreme Court of the United States?

18 A It has not.

19 Q Did this factor into the UCC's view on the alter ego and
20 successor liability claims?

21 A Of course, yes.

22 A How?

23 A It is speculative to think you're going to win on a theory
24 that requires overturning a statute that's been on the books
25 for a long time. It's not impossible, but it's not a great

1 hook to hang your hat on.

2 Q Do you have experience pursuing fraudulent conveyance
3 claims?

4 A I do.

5 Q Okay. What is that experience?

6 A Just recently pursued a fraudulent conveyance claim
7 against a person in Idaho.

8 Q And your experience pursuing fraudulent conveyance claims,
9 did those experiences inform your view on pursuing those
10 fraudulent conveyance claims against the settlement parties?

11 A They did.

12 Q In what way?

13 A In the fraudulent conveyance claim I just mentioned, we
14 happened to be successful, but the reason we were successful is
15 because this defendant had actually produced a YouTube video in
16 which they said they had engaged in the transaction in order to
17 hide money that would otherwise be due under a judgment. So we
18 just had the best possible evidence you could have. So we did
19 win that claim. But typically, you have to make a more
20 substantial showing than that to win on a fraudulent conveyance
21 claim.

22 THE COURT: I haven't had one of those.

23 BY MR. ZLUTICKY:

24 Q Mr. Barton, did the UCC participate in the first global
25 mediation, August 2023?

1 A We did.

2 Q Did you attend the first mediation in August 2023?

3 A I did. I attended that here in Houston.

4 Q Okay. So you attended in person?

5 A I did.

6 Q How long did that mediation last?

7 A Three days. Two and a half.

8 Q So without revealing anything protected by the Court's

9 orders on confidentiality of the mediation, did the UCC

10 significantly participate in the mediation?

11 A Yes.

12 Q At that mediation, did the parties to the mediation reach

13 a settlement?

14 A We did.

15 Q Did the UCC approve that settlement?

16 A Yes.

17 Q Was that approval unanimous?

18 A It was.

19 Q So in August 2023, what was your view on the terms of the

20 settlement?

21 A In -- the terms of the August 2023 settlement, we thought

22 it was a good settlement.

23 Q Now, did the August 2023 settlement contemplate a plan

24 would be filed incorporating its terms?

25 A Yes.



1 Q So -- make sure I have this exhibit number right. So if
2 you could turn to Tab 18, and I believe this has already been
3 admitted.

4 THE COURT: Yes.

5 BY MR. ZLUTICKY:

6 Q Okay. So this is the second amended disclosure statement
7 regarding the debtor and the Official Committee of Unsecured
8 Creditors second amended joint Chapter 11 plan. Do you see
9 that?

10 A I do.

11 Q And attached that is a copy of that second joint amended
12 plan. Do you see that?

13 A I do.

14 Q Now, there's been a fair amount of discussion in
15 depositions and in motion practice about the plan, but I want
16 to ask very clearly, Mr. Barton, does the UCC support
17 confirmation of that plan?

18 A Nope.

19 Q Why not?

20 A Well, it relates to a settlement that has been superseded
21 by an even better one, and it would be the Committee's
22 expectation that any plan that is going to be implemented in
23 connection with the settlement that's currently on the table
24 would be prepared with the TCC. So we're not interested in
25 this one at this time.

1 Q Is there any circumstance under which the UCC would
2 support confirmation of that plan.

3 A Reflected here in Exhibit 18? No.

4 Q Will the UCC ever seek confirmation of that plan?

5 A No.

6 Q Why not?

7 A For the reasons I just stated. It's no longer relevant.

8 Q Has the UCC made any determination of what would be
9 included in a new plan?

10 A We have not -- no, we have not.

11 Q Now, the UCC is aware there have been some reports of
12 allegations of a relationship between the first mediator and an
13 attorney who represented YesCare. Is that right?

14 A Okay.

15 Q Were you aware of any such relationship in August 2023
16 when the first mediation occurred?

17 A No, of course not.

18 Q Was anyone on the UCC or any of the UCC's professionals
19 aware of that?

20 A I have no reason to believe they were. None at all.

21 Q The UCC eventually requested that the Court appoint a new
22 mediator, Mr. Sontchi, to conduct a second mediation. Is that
23 correct?

24 A Yes.

25 Q Why?

1 A The situation was certainly unfortunate. We thought, as a
2 Committee, about what the best way to approach it was, and we
3 just approached it with, you know, the guiding principle in
4 mind. Let's maximize a recovery for the creditors. So let's
5 turn this to our advantage. That's what we did. We thought,
6 goodness, this -- you know, what happened probably means the
7 Court's not going to approve the existing plan and settlement,
8 and so that gives us leverage. We can negotiate a better deal.

9 Q And did the UCC use that leverage to try to negotiate a
10 better deal?

11 A We did.

12 Q Why?

13 A Because we wanted to put more money into the hands of the
14 creditors.

15 Q Did the UCC participate in the second global mediation in
16 December 2023?

17 A Yes.

18 Q Did you participate in the second global mediation?

19 A I did. This time, remotely. I stayed in Boise.

20 Q So without revealing anything protected by the Court's
21 orders on confidentiality of the mediation, did the UCC
22 significantly participate in the mediation?

23 A Yes.

24 Q At that mediation, did some of the parties to that
25 mediation reach a settlement?

1 A Yes.

2 Q Did the UCC approve that settlement?

3 A Yes.

4 Q Okay. And was that approval unanimous?

5 A It was.

6 Q What was your view on the terms of the December 2023
7 settlement?

8 A I was really pleased by it. Fifty-four million was more
9 than I expected we would get.

10 Q So why is this December 2023 settlement higher than the
11 amount of the August 2023 settlement?

12 A Well, I -- you know, I suppose that's a question for the
13 debtor, but my theory is -- or for the settlement parties,
14 rather, but -- for the other settlement parties. But my view
15 is that we had substantial leverage going into that because the
16 other parties knew that the existing plan and settlement was
17 not going to get approved, and so they needed to come up with
18 more money, and we were there to extract.

19 Q So if you could please turn to Exhibit Tab 2? And this is
20 another one I believe has already been admitted. So I want to
21 ask you a couple of questions about this agreement.

22 THE COURT: Which exhibit was it?

23 MR. ZLUTICKY: Exhibit 2, Your Honor.

24 THE COURT: Okay. Thank you.

25 BY MR ZLUTICKY:

1 Q Do you have tab two open, Mr. Barton?

2 A Yes.

3 Q Okay. This is the settlement agreement between the
4 debtor, the UCC, and the settling parties. Is that correct?

5 A Just need to look at the date here. January 16th, '24,
6 yes, that's correct.

7 Q What claims are being settled under the terms of the
8 proposed settlement agreement?

9 A To your knowledge, all claims of the estate and only
10 claims of the estate.

11 Q Are any claims held by non-debtors being released under
12 the terms of the proposed settlement, to your knowledge?

13 A No.

14 Q Are any claims that creditors have against non-debtor
15 third parties being released under the terms of the proposed
16 settlement, to your knowledge?

17 A No.

18 Q Approximately how much money is being paid by the
19 settlement parties in exchange for the releases in the
20 settlement agreement?

21 A About 54 million.

22 Q Are those parties also releasing claims they may have
23 against the estate?

24 A Yes.

25 Q Are non-estate claims being released in that settlement,

1 to your knowledge?

2 A I think I may have misheard the last question. Could you
3 repeat it? I just want to make sure my testimony was accurate.

4 Q Sure. Are the settlement parties releasing claims they
5 may have against the debtor?

6 A No.

7 Q So --

8 A Yes. I apologize. The settlement parties are releasing
9 claims that they have against the debtor.

10 Q The releases are mutual?

11 A Yes, the releases are mutual.

12 THE COURT: I almost kicked you under the table.

13 BY MR. ZLUTICKY:

14 Q Are any non-state claims being released in the settlement
15 agreement, to your knowledge?

16 A They are not being released.

17 Q Does the UCC have a view on whether the settlement is a
18 fair result for creditors?

19 A We do.

20 Q And what is that view?

21 A Well, as has been quoted here already, I personally think
22 it's a fantastic view. And the UCC thinks it's a good deal, a
23 fantastic deal.

24 Q Why do you think that?

25 MR. MOXLEY: Objection. Objection, Your Honor. Your



1 Honor, I specifically asked Mr. Barton what did the UCC rely on
2 when it decided to support the settlement involving the
3 divisional merger claims which are part of the settlement here.
4 He was instructed not to answer that question. Respectfully,
5 Judge, I think given the instructions to not answer that
6 question, it's inappropriate for Mr. Barton to be able to
7 testify as to why he holds the headline view that he supports
8 the motion.

9 THE COURT: Overruled. You can answer.

10 THE WITNESS: \$54 million. I mean, I think in
11 anyone's world, that is a lot of money. It is high relative to
12 the amount of money, frankly, that we believed was even
13 available to anybody. It is reasonable relative to the value
14 of the claims we asserted. And most importantly, I think, from
15 the Committee's perspective, it gets money into the hands of
16 creditors now.

17 My client, St. Luke's, has been pursuing Corizon for
18 years. The Committee pursued Corizon for a full year. All
19 that time they were hiding money, moving it around, playing
20 games. We finally got the money. So I regard that as a very
21 important thing that we now have money that can be made
22 available to creditors.

23 BY MR. ZLUTICKY:

24 Q Is the length of time to receive money a factor in the
25 UCC's view of the settlement?

1 A Yes.

2 Q Okay. To your knowledge, how long will it take for the
3 estate to receive the settlement funds?

4 A My understanding is that will be available upon
5 confirmation of a plan that's not yet before the Court.

6 Q Did the UCC form a view of how long it would take to
7 obtain judgments against these parties on these claims?

8 A Yes.

9 Q What is that view?

10 A Many years. If the question is about -- could you repeat
11 the question? I apologize.

12 Q What is the UCC's view of how long it would take to obtain
13 judgments against the settling parties for these claims?

14 A If the estate were asserting the claims?

15 Q That is correct.

16 A Okay. It would take years.

17 Q How would you describe the litigation with Corizon in the
18 lawsuit filed by St. Luke's in 2018?

19 A Frustrating.

20 Q Why do you say that?

21 A The tactics that were used were ones you don't usually
22 see, even in hard-fought litigation? Strategic changes in
23 counsel to create delays, changes in corporate formation where,
24 despite federal court rules that require you to apprise the
25 court of your corporate structure, despite that, they failed to



1 disclose those changes. There were maneuvers like that that
2 successfully delayed the litigation to the point where it's now
3 five years old.

4 Q And in those five years, did St. Luke's obtain a judgment
5 against Corizon?

6 A We didn't.

7 Q Did that inform your view on the possible length of time
8 to obtain judgments against the settling parties?

9 A Yes.

10 Q Did St. Luke's Health System incur attorneys' fees, costs,
11 and expenses in its litigation against Corizon?

12 A We did.

13 Q How would you describe the amount of those fees?

14 A Hundreds of thousands of dollars.

15 Q Did that inform your view on the possible cost of
16 obtaining judgments against the settling parties?

17 A It did.

18 Q Did the UCC form a view of how much it could cost to
19 obtain judgments against the settling parties on these claims?

20 A Yes.

21 Q And what is that view?

22 A That it would be very high and, you know, probably high
23 enough that we wouldn't be able to use, you know, estate funds
24 to do it. We'd have to do it on contingency.

25 Q Are there risks in pursuing the potential claims against



1 the settling parties that we've discussed today?

2 A Yes.

3 Q What are some of those risks?

4 A There's -- you know, of course, there's the ordinary risks
5 that, you know, are associated with any litigation. You just
6 may not get the evidence you hope to, and you may not be able
7 to convince a jury. But then, you know, in addition to that,
8 there's special problems with these defendants. They do engage
9 in fraudulent transfers, and they can be expected to continue
10 the game of hiding their money. And so I do think collection
11 poses special problems.

12 Q Now, if this settlement's approved, do you know how much
13 of this settlement St. Luke's would get?

14 A Nope.

15 Q Do you know how much of this settlement tort claimants
16 would get?

17 A No.

18 Q Why not?

19 A Well, there isn't a plan yet, that we would develop that.
20 My hope would be that we would develop that with the TCC.

21 Q Now, you're aware that the TCC's objected to the
22 settlement motion, right? Are you aware the TCC's filed a
23 motion to dismiss this bankruptcy case?

24 A Yes.

25 Q Did the UCC ever consider filing a motion to dismiss this

1 case at some point?

2 A We did.

3 Q When was that?

4 A Early on, when the Committee was first formed.

5 Q And why didn't the UCC file a motion to dismiss then?

6 A Our job is to recover as much money for the creditors as
7 possible, and we thought long and hard about it, but it didn't
8 seem to us to be right to gamble with the creditors' money on a
9 fairly speculative claim. We -- as I've testified, we do think
10 there were merits to it. Right. And perhaps it's possible to
11 undo the transaction. Perhaps it's possible to undo the Texas
12 statute and get it overturned, but I don't think that's a
13 sufficient basis to use the creditors' money.

14 Q You've spent the past twelve months chairing a committee
15 representing the unsecured creditors in this bankruptcy case.
16 Is that right?

17 A Yes.

18 Q And you've been involved in the UCC's investigation,
19 prosecution, mediation and settlement processes in this case?

20 A Yes.

21 Q Through that experience, have you formed a view on whether
22 the settlement is a good result for all creditors?

23 A Yes.

24 Q Can you tell us what that view is?

25 A I think it's a good result for creditors. I think we

1 should take this money.

2 Q Okay. And through your experience, have you formed a view
3 on whether dismissing the bankruptcy case would be a good
4 result for all creditors?

5 A Yes.

6 Q Okay. And what is that view?

7 A That it would be a disaster.

8 Q Why do you say that?

9 A I think it's overwhelmingly likely that 100 percent of the
10 pro se plaintiffs and a good chunk of the incarcerated
11 plaintiffs who have claims won't see anything as a result of
12 the settlement. I don't know how it is possible for a creditor
13 in that situation to marshal the resources to pursue the kinds
14 of claims that have been described in the TCC's motion.

15 Q Well, now, St. Luke's is owed more than \$31 million,
16 though. Is that right?

17 A Yes. Okay.

18 Q Okay. Does St. Luke's have the resources to pursue
19 Corizon and YesCare and others in Idaho if the case were
20 dismissed.

21 A We sure do.

22 Q And we already talked about St. Luke's has a motion for
23 summary judgment pending in that current case in Idaho, right?
24 And St. Luke's asserted successor liability claims in that
25 case, right?

1 A That's right.

2 Q Would St. Luke's be in possibly a better position than
3 others to pursue its claims to collection?

4 A I don't think we'd be in a good position, but we'd be in a
5 better position relative to others, yes, because we have those
6 resources. And we're pursuing this claim with a lead counsel
7 who is the former United States Attorney for the District of
8 Idaho. I do not think that most creditors are going to be in a
9 position to be able to do that kind of thing.

10 Q Well, then why then do you think it's not in St. Luke's
11 best interest to just go back to court in Idaho and fight it
12 out?

13 A Don't get me wrong. That's what we'll do if this is
14 dismissed. We'll fight it in Idaho. But I have grave doubts
15 as to our ability to collect anything.

16 Q So through your experience today that we've discussed,
17 have you formed a view of the settlement parties, YesCare M2
18 LoanCo, Perigrove, Mr. Lefkowitz?

19 A I suppose so.

20 Q What is that view?

21 A That I don't trust them.

22 Q What causes you to say that?

23 A I've seen the fraudulent transfers. I've seen the efforts
24 to hide money from creditors. And I haven't seen evidence of
25 some sort of epiphany whereby they're all going to change their

1 behavior.

2 Q So given that that is your view, why is the UCC settling
3 with those settlement parties?

4 A For the benefit of the creditors. We can get \$54 million
5 available now, and I don't think we're going to do better in
6 any other way. And I don't like them, but that doesn't mean I
7 won't settle with them.

8 MR. ZLUTICKY: Your Honor, I have no further
9 questions and pass the witness.

10 THE COURT: Let's see, any other questions from this
11 side, the parties who are in favor? I'm just going to step off
12 for a second. I'm going to call the AC folks and make sure
13 that the AC is actually on. I'm just going to step off. If
14 you wouldn't mind just staying right where you are. Do you
15 need a break?

16 THE WITNESS: I'm fine, Your Honor.

17 THE COURT: Okay. Let's just take a two -- I'm just
18 going to take two minutes and make a quick phone call.

19 THE CLERK: All rise.

20 (Recess taken at 3:57 p.m.)

21 (Proceedings resumed at 4:04 p.m.)

22 THE COURT: I apologize. Okay. Let's proceed with
23 cross-examination.

24 MR. MOXLEY: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. MOXLEY:

2 Q Good afternoon, Mr. Barton.

3 A Good afternoon.

4 Q Sir, my name is Cameron Moxley. I'm with the law firm of
5 Brown Rudnick. We're co-lead counsel to the TCC. We had a
6 chance, actually, to meet by video when I took your deposition
7 previously. It's nice to see you in person, sir.

8 A Nice to see you.

9 Q Mr. Barton, today, in the course of our discussion, we may
10 reference certain materials. Those are in the white binder
11 that's sitting there before you.

12 MR. MOXLEY: Your Honor, I believe the Court has a
13 copy of that binder as well. Thank you, Judge.

14 BY MR. MOXLEY:

15 Q And they'll also come up, Mr. Barton, on the screen in
16 front of you.

17 A Oh, they will?

18 Q So you're welcome to rely on either, and if there are --
19 if there's areas of documents you want us to zoom in on on your
20 screen, we can do that. Okay?

21 A Great.

22 Q Okay. Mr. Barton, I think you testified earlier you're
23 the chairman of the Official Committee of Unsecured Creditors,
24 correct?

25 A Yes.

1 Q Okay. And as I referenced a moment ago, it was on
2 February 14th of this year that I asked you questions at a
3 deposition we conducted by video, right?

4 A Yes.

5 Q Okay. And you testified at that deposition on behalf of
6 the Official Committee of Unsecured Creditors, or the UCC,
7 right?

8 A Right.

9 Q You have a bachelor's degree in philosophy from Stanford
10 University, correct?

11 A Yes.

12 Q And you have a Ph.D. in philosophy from the University of
13 California at Berkeley, right?

14 A Yes.

15 Q And you testified earlier you have a law degree from
16 Berkeley as well, correct?

17 A Yes.

18 Q And you're currently the Deputy General Counsel for St.
19 Luke's Health System, correct?

20 A Yes.

21 Q I think Mr. Zluticky asked you before, we can refer to
22 them as St. Luke's today, right?

23 A Yes, that's just fine.

24 Q Okay. And St. Luke's has filed a proof of claim in this
25 case. I think you looked at it when -- on the direct

1 examination, right?

2 A Yes.

3 Q Could you open your binder -- the white binder, this time,
4 sir -- to Tab 173? These are -- the tabs are by exhibits.

5 MR. MOXLEY: (Indiscernible) Your Honor, this is the
6 exhibit list.

7 THE COURT: What number did you say?

8 MR. MOXLEY: 173.

9 THE COURT: 1-7-3?

10 MR. MOXLEY: That's TCC Exhibit 173.

11 THE COURT: Oh, okay. I see it.

12 MR. MOXLEY: Your Honor, there may be some
13 duplication on our list and the debtor's list, but --

14 THE COURT: Oh, okay.

15 MR. MOXLEY: -- so I'll use our numbers, but --

16 THE COURT: Oh, I can find your binder.

17 MR. MOXLEY: Okay. Very good. Thank you, Judge.

18 BY MR. MOXLEY:

19 Q Mr. Barton, do you have -- do you have TCC Exhibit 173
20 there in front of you?

21 A Thank you.

22 Q Is that a copy of St. Luke's proof of claim?

23 A Yes.

24 Q St. Luke's bankruptcy counsel has mentioned this case as
25 (indiscernible).



1 A We did. That's correct.

2 Q Is that correct? Thank you, sir.

3 Mr. Barton, are you aware that one of the motions at issue
4 in this hearing is the debtor's and the UCC's joint motion
5 asking the Court to approve the debtor's and UCC's settlement
6 agreement, right?

7 A Yes.

8 Q And if you look at Tab 125 in your binder, which is TCC
9 Exhibit 125, turn to that, please?

10 A I've got it.

11 Q Okay. And this is a copy of the joint motion seeking
12 approval of the settlement agreement, right?

13 A Yes, sir.

14 Q Okay. Mr. Barton, for ease of reference, can we refer to
15 that motion that is in your binder at TCC Exhibit 125 as the
16 Rule 9019 motion?

17 A Fine.

18 Q Okay. And the Rule 9019 motion attaches the settlement
19 agreement that is sought to be approved, right?

20 A Yes.

21 Q Okay, and if you could -- that settlement agreement's at
22 Exhibit 1 to the 9019 motion which begins at Page 37 of the
23 file, right?

24 A I'm sorry. I'm not seeing that.

25 Q If you turn to Page -- you see the top of -- there's the

1 page number at the very top of the document, sir.

2 A Ah.

3 Q I'd ask you to turn to Page 37 of 47.

4 A I've got it, yes.

5 Q Okay. And it should be on your screen, as well, sir, if
6 that's helpful.

7 A Very good.

8 Q Okay. And Mr. Barton, can we refer to the settlement
9 agreement that is Exhibit 1 to the Rule 9019 motion today as
10 "the settlement"?

11 THE COURT: Mr. Moxley, can you pull that mic, just
12 bend it a little bit towards you?

13 MR. MOXLEY: Yes, Your Honor.

14 THE COURT: All right.

15 MR. MOXLEY: Is that better?

16 THE COURT: Much better. Thank you.

17 MR. MOXLEY: Thank you, Your Honor. And I'll try to
18 stay closer to the microphone.

19 THE COURT: No, no, no, no.

20 MR. MOXLEY: Okay.

21 THE COURT: Just keep doing what you're going.

22 MR. MOXLEY: Okay.

23 BY MR. MOXLEY:

24 Q Mr. Barton, my question, just to repeat it, was can we
25 refer to the settlement agreement today, just for ease of

1 reference, as "the settlement"?

2 A I suppose so.

3 Q Okay. If you have any confusion --

4 A Yeah.

5 Q -- when I'm asking my question just let me know. Okay?

6 Is that fine, sir?

7 A Yes.

8 Q Okay. So going back to the Rule 9019 motion itself,
9 Mr. Barton, if we could -- same tab, just go back to the
10 motion, beginning page, beginning of the document, let me draw
11 your attention to Page 2. And then you see Paragraph 1 of the
12 motion on Page 2?

13 A Yes.

14 Q And the Rule 9019 motion at Paragraph 1 states that the
15 UCC and the debtor each undertook investigations of various
16 claims and causes of action belonging to the debtor's
17 bankruptcy estate, right?

18 A Yes.

19 Q Okay. Now, once the Rule 9019 was filed, Mr. Barton,
20 there were no further investigatory steps the UCC was taking in
21 order to determine whether or not to support the settlement
22 agreement, correct?

23 A No.

24 Q That's incorrect?

25 A I think that's incorrect.



1 Q Okay. Let's look at your deposition transcript, if we
2 could, sir. That's the first tab of the -- your binder. No,
3 your white binder there, sir. Go to -- it's TCC Exhibit 123
4 for identification purposes. This is your deposition
5 transcript. Do you see that, sir?

6 A Yup.

7 Q Okay. Let me ask you to turn to Page 150. I'm sorry,
8 sir. Bear with me one second, sir. I'm sorry. Page 123. I
9 apologize. 123. And if you're on Page 123 with me,
10 Mr. Barton, could you look at Line 3? Do you see there, I
11 asked you, were there any further investigatory steps the UCC
12 was taking under the Rule 9019 motion was filed in order to
13 determine whether or not to support the settlement.
14 Mr. Kaufman interjected an objection to form, and then your
15 answer was, "Not in order to determine whether or not to
16 support the settlement. As I said, there is unanimous support
17 for the settlement. That has never wavered." Was that your
18 testimony, sir, in response to that question?

19 A That was my testimony.

20 Q Was your testimony accurate?

21 A My testimony is accurate.

22 Q Okay, so when you answered the question "no" today, why
23 did you answer the question differently today, sir?

24 A Did I mishear your question? I thought the question was
25 whether there was any ongoing investigation.

1 Q I see. Okay, so you stand by the testimony from your
2 deposition?

3 A Yes.

4 Q Okay. Let's discuss the investigation that the UCC
5 undertook. The UCC investigated potential avoidance claims
6 against M2 LoanCo, right?

7 A Yes.

8 Q Okay. And that investigation was performed by the Stinson
9 and Dundon Advisers firms, correct?

10 A No. It was performed by the UCC directing the counsel to
11 do that.

12 Q Okay. Let's turn to Page 151 of your transcript, sir,
13 your deposition transcript. I asked you at Line 2 of Page 151
14 who performed that investigation, and your answer was "Stinson
15 and Dundon Advisers at our direction, at the direction of the
16 UCC," correct?

17 A Yes.

18 Q Okay, so my question, sir, was who conducted the
19 investigation that is described in the Rule 9019 motion.

20 A Okay, it -- well, I don't -- Stinson and Dundon did it at
21 the direction of the UCC. I -- that means that the UCC did it.
22 We were in charge of it.

23 Q Okay. Did UCC members carry out the investigation
24 personally? Or did they task the Stunson [sic] and Dundon
25 firms with carrying out the investigation?



1 A Both.

2 Q I see. Okay. The Rule 9019 motion reflects that the
3 transfers to M2 LoanCo and the -- that the UCC believes could
4 be avoided totaled approximately \$24.5 million, correct?

5 A I believe so.

6 Q Okay. That's at motion -- that's at Paragraph 28 of the
7 motion, right, which we can turn back to.

8 MR. MOXLEY: That's at Tab 125, Your Honor.

9 THE WITNESS: I see on the screen, here.

10 BY MR. MOXLEY:

11 Q Okay, very good. The screen (indiscernible). That's
12 correct, right, \$24-1/2 million?

13 A Yes.

14 Q Okay. The UCC also investigated potential avoidance
15 actions against Geneva, right?

16 A Yes.

17 Q And does Paragraph 30 of the Rule 9019 motion describe
18 those?

19 A If you could give me a moment, if you would, to pull this
20 up in the binder?

21 Q Of course.

22 A What's the tab number?

23 Q The tab number is 125, and page -- or Paragraph 30 begins
24 at Page 13 of the document.

25 A Okay.

1 Q And what was the amount of those claims, sir, as set forth
2 in the motion?

3 A You're -- under avoidance actions against Geneva?

4 Q Correct.

5 A 5-1/2 million.

6 Q The UCC also investigated potential avoidance action
7 claims based on transfers to a third party that benefitted the
8 Perigrove 1018 related parties, right?

9 A Yes.

10 Q That's described at Paragraph 32 of the motion?

11 A Yes.

12 Q Okay. And those potential transfers to a third party for
13 the benefit of Perigrove total approximately \$956,000, correct?

14 A Yes.

15 Q Okay. And the UCC also looked at potential avoidance
16 actions related to the divisional merger, right?

17 A Yes.

18 Q And it was the -- was it the Stinson and Dundon firms that
19 investigated the potential divisional merger avoidance actions,
20 as well?

21 A At the direction of the UCC. It was the UCC's
22 investigation, as I've testified.

23 Q Okay. Let's look at your deposition transcript again, if
24 we could, sir.

25 A Okay.

1 Q I'd ask you turn to Page 199.

2 Are you with me, sir, Page 199?

3 A Yes.

4 Q Okay. If you could look at Line 12, you'll see at your
5 deposition I asked you, "To the extent the UCC has any view at
6 all as to what the value of the potential avoidance actions
7 rising from the divisional merger is, would that view come from
8 any source other than its advisors, Dundon and the Stinson
9 firm." Do you see that?

10 A I see that question, yes.

11 Q And do you see there that counsel to the UCC instructed
12 you not to answer that question?

13 A I do.

14 Q And you testified that you had followed counsel's
15 instructions, correct?

16 A I did.

17 Q Okay. What about potential causes of action for theft of
18 business opportunity? Was that a cause of action the UCC
19 identified and investigated?

20 A I don't recall that.

21 Q You have no memory of that cause of action being raised?

22 A I don't.

23 Q So the UCC hasn't concluded that claims for potential
24 theft of business opportunity -- hasn't concluded if -- whether
25 or not those have any value, correct?



1 MR. ZLUTICKY: Objection, Your Honor. Misstates the
2 witness' testimony. He said he didn't recall.

3 THE COURT: Overruled.

4 THE WITNESS: Could you repeat the question, please?

5 BY MR. MOXLEY:

6 Q Yes. Mr. Barton, the question was if you don't recall
7 whether or not -- sorry. Strike that.

8 If you don't recall whether the UCC investigated claims
9 for theft of potential business opportunity, am I correct that
10 the UCC has not ascribed a value to those potential causes of
11 action?

12 A I don't know that they have.

13 Q As the chairperson of the UCC, you're not aware of the UCC
14 having ascribed any value to those potential claims, are you?

15 A That's correct.

16 Q Would I also be correct, then, sir, in assuming that the
17 settlement value that is set forth in the settlement agreement,
18 that no portion of that is ascribed to claims or causes of
19 action based on theft of potential business opportunity?

20 A I don't know.

21 Q I think you testified on direct, sir, that breaches of
22 fiduciary duty were causes of action that the UCC investigated
23 as well, correct?

24 A Yes, correct.

25 Q And is your testimony the same that those causes of action



1 were investigated by the UCC directing the Stinson and Dundon
2 Advisers firms?

3 A Right.

4 Q Okay. And what value did the UCC conclude that the
5 fiduciary duty claims have?

6 A I don't know.

7 Q There's no value set forth for those claims in the Rule
8 9019 motion, right?

9 A That's correct.

10 Q Okay. And what portion, if any, does the UCC ascribe to
11 potential breaches of fiduciary duty claims in the settlement
12 agreement?

13 A I think they're problematic claims because they would be
14 brought against directors and officers of these companies, and
15 there isn't insurance to cover those claims. So I don't think
16 they're particularly valuable claims, but they're claims.

17 Q Thank you, sir. My question was a little different. It
18 was is there a dollar amount of the settlement payments that
19 the UCC ascribes to those claims?

20 A Not to my knowledge.

21 Q Okay. Did anyone other than the advisors at the Stinson
22 and Dundon firms advise the UCC with respect to the issue of
23 whether or not the UCC should enter into the settlement
24 agreement and pursue the Rule 9019 motion?

25 A The question, whether anyone advised -- other than Stinson

1 and Dundon advised the UCC?

2 Q Correct, sir.

3 A Not to my knowledge.

4 Q Now, the UCC believes that the divisional merger here --
5 you know what I'm referring to when I say "the divisional
6 merger", yes?

7 A Yes.

8 Q Okay. I believe you testified to that on direct, as well,
9 correct?

10 A Yes.

11 Q Okay. The UCC believes that the divisional merger here
12 was unfair to creditors, right?

13 A Certainly.

14 Q And the UCC believes that the divisional merger here may
15 have involved fraud, right?

16 A Yes.

17 Q But you don't know what the value of the divisional merger
18 avoidance claims is, do you?

19 A We don't have a precise dollar figure, no.

20 Q In fact, I think you testified before that you think it's
21 nearly impossible to value it, right?

22 A It's very difficult. Yes, sir.

23 Q You would agree that the measure of damages on what claim
24 relating to the divisional merger would be would be what was
25 the value of CHS, which later became YesCare immediately after



1 that divisional merger transaction, right?

2 A Correct.

3 Q And that would be the value of what was transferred
4 arguably fraudulently, right?

5 A Right.

6 Q And you think it's hard to come up with that number,
7 right?

8 A Yes.

9 Q You don't know what the value of what was transferred as
10 part of the divisional merger was, right?

11 A We don't have precise numbers, correct.

12 Q Now, the UCC undertook substantial work to try to find out
13 the value of CHS TX, Inc. immediately after the divisional
14 merger but was unable to get that information, right?

15 A We were able to get a lot of information, but not
16 information that gave us a precise dollar value.

17 Q And again, that substantial work was work that was
18 performed by the Stinson and Dundon firms at the UCC's
19 direction, right?

20 A Fair.

21 Q Are you aware, Mr. Barton, that YesCare has held itself
22 out as continuing Corizon's business?

23 A Yes.

24 Q For example --

25 A Yes.

1 Q Okay. Well, let me just ask you, for example, sir, are
2 you aware of YesCare marketing statements to the effect that
3 they are a continuation of -- that YesCare is a continuation of
4 Corizon's business?

5 A I'm not aware of marketing statements.

6 Q Okay. Let me show you a document, sir. It's at 270 in
7 your binder.

8 MR. KAUFMAN: Your Honor, we're going to object to
9 this one.

10 MR. ZLUTICKY: Objection, Your Honor.

11 MR. KAUFMAN: There's no predicate for this. It's a
12 100 -- it's hearsay within hearsay, and probably a third layer
13 of hearsay on top of that. It's never been produced in this
14 case until Wednesday despite discovery requests asking for
15 identification and production of documents like this. We don't
16 even know who made this document.

17 MR. MOXLEY: You know what, Your Honor, let me ask a
18 couple questions about the document in front of the witness.

19 MR. KAUFMAN: We would object to that, too.

20 THE COURT: No, why you don't tell me a little bit
21 about it before I let you.

22 MR. ZLUTICKY: Well, there's been no foundation
23 laid --

24 THE COURT: Yeah.

25 MR. ZLUTICKY: -- for this document.



1 THE COURT: You're going to have to lay -- I'll give
2 you an opportunity to lay some foundation, but --

3 MR. MOXLEY: Your Honor, I can -- I'll withdraw the
4 request that he look at the document. I'll just ask him some
5 questions without the document --

6 THE COURT: Okay.

7 MR. MOXLEY: -- without the use of the document if
8 that's okay.

9 THE COURT: Thank you.

10 MR. MOXLEY: Thank you, Your Honor.

11 BY MR. MOXLEY:

12 Q Mr. Barton, are you aware that YesCare has held itself out
13 as claiming to have over 40 years of experience in the
14 correctional healthcare space?

15 A I'm not.

16 Q YesCare has not been around for 40 years, correct?

17 A An entity under that name has not been around for 40
18 years.

19 Q The entity that was -- that preceded YesCare was Corizon
20 Health, right?

21 A Well, CHS, and then, yeah.

22 Q Yes? Okay.

23 A Yes.

24 Q Mr. Barton, you don't think it's appropriate that a
25 company could divide itself like Corizon did here, right?

1 A What do you mean by "like they did here"?

2 Q Where --

3 A What aspect of the -- what aspect of it are you focusing
4 on?

5 Q Yes, where operational assets are placed in one company
6 and liabilities are largely placed in another company. You
7 don't think that's appropriate, do you?

8 A I don't have a view on that, on what you've just
9 described. I have a view on a company doing that and then --
10 and then having the entity that they, you know, deprived of
11 assets and just gave the liabilities to, and then declaring
12 bankruptcy for that entity. I don't think that's appropriate.

13 Q Okay. If we could look at the -- back at Tab 125, which
14 is the tab that's the 9019 motion and the settlement agreement,
15 sir? And if I could ask you to turn to Page 38 of 47.

16 A Tab 47?

17 Q Sorry. No, no. Tab 125, the Rule 9019 motion, and then
18 if you could turn to Page 38, sir. So we're within the
19 settlement agreement.

20 A I'm there.

21 Q Okay. And if you look at Page 38, you'll see there begins
22 at the bottom of that page, Section 4, Settlement Payments?

23 A Yes.

24 Q Okay. Do you recall that Section 4 of the settlement
25 agreement provides for the M2 parties to make certain

1 settlement payments, right? See that, sir?

2 A I see that.

3 Q Okay. And Mr. Barton, you're familiar with the settlement
4 agreement, right?

5 A I am.

6 Q Okay. Just to -- for ease of reference, if you turn back
7 to the prior page, the very first paragraph under the heading
8 "Settlement Agreement", you see that -- you see there's a
9 definition there for the -- who the M2 parties are?

10 A Yes.

11 Q Okay. And YesCare Corp. and CHS TX, Inc. are among the M2
12 parties as defined in the settlement agreement, correct?

13 A Yes.

14 Q Now, the UCC does not know whether or not YesCare has the
15 financial ability to make the settlement payments called for by
16 Section 4 of the settlement agreement, right?

17 A We don't have certainty on that.

18 Q You don't know, correct?

19 A Yes.

20 Q Now, Mr. Barton, going back to the causes of action that
21 are set forth in the Rule 9019 motion and described in it, they
22 include the potential avoidance actions against Perigrove,
23 Geneva, and M2 LoanCo, right?

24 A Pardon me. I -- can you repeat that? I just didn't catch
25 that.



1 Q Of course.

2 A I was looking at the document.

3 Q No, of course, sir. So just thinking back in your mind --
4 we can -- I can show you the document, if it's easier, but the
5 causes of action that are set forth in the Rule 9019 motion and
6 described in it, they include the potential avoidance actions
7 against Perigrove, Geneva, and M2 LoanCo, right?

8 A I don't see them in the settlement agreement right now.
9 Can you point me to that?

10 Q Let -- yeah, let me make this much easier for you. I'm
11 sorry. I apologize. Let's go back to the settlement
12 agreement -- or the Rule 9019 motion.

13 A Mm-hmm.

14 Q And we can look at, just for example, just start at
15 Paragraph 1.

16 A I'm going to need the tab.

17 Q I'm sorry. Paragraph -- 125. Same tab. Same tab we're
18 in. Yup. It's on the screen as well, if that helps, sir.

19 A Okay.

20 Q Do you see -- you see there's a reference there to the
21 movant's investigations revealed the estate may have
22 meritorious claims against Perigrove 1018, M2 LoanCo, Geneva
23 Consulting, and it goes on from there, correct?

24 A Where are you? What --

25 Q Paragraph 1, sir.



1 A Yes, I see.

2 Q Okay. And the causes of action that are set forth in the
3 Rule 9019 motion and described in it include the potential
4 avoidance claims arising from the divisional merger as well,
5 right?

6 A Yes.

7 Q There are no other specific causes of action that you're
8 aware of that the UCC investigated that are not described in
9 the Rule 9019 motion, though, right?

10 A I don't know the answer to that question.

11 Q Okay. Let's look, again, then, at your deposition
12 transcript, sir, if we could?

13 A Okay. I'm not sure I understand the question. There's a
14 lot of double negatives in it.

15 Q Let me ask --

16 A Can you repeat it?

17 Q Yeah, of course. Let me ask the question again. There
18 are no other specific causes of action that you are aware of
19 that the UCC investigated that are not described in the Rule
20 9019 motion, right?

21 A That are not described in the Rule 9019 motion?

22 Q Yes, sir.

23 A Not that I'm aware of. The Rule 9019 motion does describe
24 successor liability and related claim.

25 Q Yes. My question is about what the UCC investigated. And



1 any claims that -- did the UCC investigate any claims that are
2 not described in the Rule 9019 motion?

3 A Not that I'm aware of.

4 Q Not that you're aware of. I'm a little bit confused
5 because earlier today, you testified about how the UCC
6 investigated alter ego claims.

7 A Yes.

8 Q Alter ego claims are not referenced in the Rule 9019
9 motion, are they?

10 A Successor liability and related theories are related --
11 are described in the 9019 motion.

12 Q Right. And I think Mr. Zluticky asked you to tell you --
13 to tell him the difference between alter ego and successor
14 liability.

15 A Yes.

16 Q They're different doctrines, correct?

17 A They are different. They are related doctrines, but
18 different.

19 Q And alter -- the alter ego doctrine is not referenced in
20 the Rule 9019 motion, correct?

21 A That's not correct. Successor liability and related
22 doctrines are referenced.

23 Q I see. So your testimony is that the reference at
24 Paragraph 46 to the successor liability doctrine is also a
25 reference to alter ego, even though the words "alter ego" do

1 not appear in that paragraph. Is that your testimony?

2 A Can I go to --

3 Q Of course.

4 A -- Paragraph 46?

5 Q Of course. Let's do that.

6 A I believe there's a reference to -- to related theories.

7 "UCC and the debtor have also evaluated the viability of

8 potential claims against CHS TX and YesCare based on divisional

9 merger under theories based on or derivative of successor

10 liability." I do take that to include alter ego.

11 Q You do?

12 A Yes.

13 Q What value in the settlement does the UCC ascribe to the

14 alter ego claims that are not specifically referenced by

15 express terminology?

16 A I'm not aware of --

17 Q (Indiscernible).

18 A I'm not aware of a particular value placed on them.

19 Q Are breach of fiduciary duty claims that I think you also

20 testified to on direct examination described anywhere in the

21 Rule 9019 motion?

22 A They're mentioned, yes.

23 Q They are?

24 A Yes.

25 Q Okay. And who are those claims against, sir?

1 A They'd be against directors and officers of the various
2 entities that were among the settlement parties. They may
3 include directors and officers of entities that were not among
4 the settlement parties, such as the Flacks Group.

5 Q And are the causes of action that are being settled by the
6 settlement agreement all described in the Rule 9019 motion?

7 A I don't know.

8 Q Let me ask you to turn to your deposition transcript if I
9 could, again, sir, which is the first tab of the binder. If
10 you could turn to Page 240?

11 THE COURT: Which tab, Counsel?

12 MR. MOXLEY: Yes, Your Honor, the first tab in the
13 binder.

14 THE COURT: Oh, okay. Sorry.

15 MR. MOXLEY: It's Tab 123.

16 THE COURT: Sorry.

17 MR. MOXLEY: Yup.

18 THE COURT: I'm with you.

19 MR. MOXLEY: It's the transcript, sir, yes.

20 THE COURT: Oh, okay. Got it.

21 MR. MOXLEY: Yes.

22 THE WITNESS: Okay.

23 BY MR. MOXLEY:

24 Q We're at Page 240, Mr. Barton. And if I could ask you to
25 look at Line 13. I asked you, "As you sit here today as the



1 UCC's designee, are you aware of any causes of action that are
2 being settled in the settlement agreement that are not
3 described in the Rule 9019 motion?" There was an objection.
4 Then your answer was, "I am not, sitting here now, aware of
5 such things." Correct?

6 A Yes.

7 Q So at your deposition, you weren't aware of any causes of
8 action that are being settled that are not described in the
9 Rule 9019 motion. Is that still your testimony, sir?

10 A Look, I don't have an exhaustive understanding of
11 everything that's listed in the 9019 motion. So I don't know
12 the answer to your question right now, sitting here.

13 Q So as you sit here today, it's possible there are claims
14 that are being settled under the settlement agreement that are
15 not described in the Rule 9019 motion, correct?

16 A No. That's not correct. The --

17 Q Okay. So one of the things -- one of those things has to
18 be true, sir.

19 A The -- can you repeat your last question?

20 Q Yes, sir. My question is, is it possible, as you sit
21 there today, that there are potential claims, causes of action
22 that are being settled by the settlement agreement that are not
23 described in the Rule 9019 motion?

24 A Well, you would have to look at the settlement agreement
25 that describes the -- what's being settled. That is where I'm

1 coming from here. I mean, I don't know why we're looking to
2 the 9019 motion. The 9019 motion attaches the settlement
3 agreement, so you can look to the cause -- you can see what
4 causes of action are being settled in the 9019 -- in the
5 settlement agreement. Those are estate claims.

6 Q Well, we're looking at the -- strike that.

7 You're a lawyer, correct?

8 A Yes.

9 Q Okay. Are you aware that a settlement agreement in the
10 context of this bankruptcy proceeding needs to be presented to
11 the Court for the Court to approve?

12 A Yes.

13 Q Okay. So I'm looking at the Rule 9019 motion because it
14 describes -- it purports to describe the settlement agreement,
15 the basis for the seeking of the approval of the settlement
16 agreement that is attached to it. Do you understand that?

17 A Yes, it attaches the settlement agreement itself. Yes.

18 Q Right. So my question for you, sir, and I -- I am, at
19 least, not sure if I am clear on what your testimony is because
20 it seems to me that it's different today versus your
21 deposition. So let me just ask you the question cleanly, and
22 we'll see what your answer is.

23 Are you aware, as you sit here today, of whether or not
24 there are any causes of action that are being settled by the
25 settlement agreement that are not described in the Rule 9019

1 motion?

2 A I am not aware.

3 THE COURT: Can I ask a question? I'm sorry. You
4 know, I want to understand the settlement agreement, if you've
5 got the settlement agreement up. And I want to make sure that
6 I'm understanding something, and I don't mean to steal your
7 thunder here. I -- I'm just -- I'm looking at the agreement.
8 I just want to make sure that I ask these questions before I
9 forget to ask them.

10 So the settlement agreement -- I mean, like, the
11 actual agreement, right? The actual thing that I'm being asked
12 to approve. So 12 -- the exhibit to -- what's attached to the
13 9019.

14 MR. MOXLEY: Yes, Your Honor.

15 THE COURT: Okay. It's between what we'll call the
16 M2 parties, the debtor, and the committee, right? It provides
17 for settlement payments, obviously. It's got the settlement
18 payments, but I'm going to, like, 6, 7, 8, and 9 -- 6, 7, and
19 9. I get -- and don't read into this. I just want to make
20 sure I'm understanding kind of what the UCC's understanding is
21 as to this.

22 So 6 says that on the effective date, the M2 parties,
23 which are defined up here, are going to release and waive all
24 claims and causes of action against the debtor's estates,
25 including some proofs of claim, right? So the M2 parties,

1 which is YesCare, M2 LoanCo, the M2 Perigrove, Pharmacorr, and
2 Geneva. And then on the plan effective date, the debtor and
3 the committee waive any claims and causes of action against all
4 of these individuals listed A through --

5 MR. MOXLEY: U.

6 THE COURT: -- U. Right? As I read this -- and I
7 want to make sure I've got this right, and then all creditors
8 are going to be enjoined from going against the released
9 parties here, right -- because that's what 9(a) says -- in a
10 plan, in a settlement. They're going to have to be enjoined.

11 I don't know how that works, by the way. Somebody's
12 going to have to explain to me what I'm -- what I'm approving
13 here and how this works or how you opt -- what the plan is
14 contemplating, because I don't understand the opting out of the
15 settlement. But maybe that's just a technical point that
16 somebody can explain. Let me just to the question.

17 As I read this, and I don't know if the claim exists
18 or not, but I'm just exploring, so Sigma gets a release under
19 the plan, and all creditors are bound, but Sigma can still sue
20 someone, and so can Mr. Lefkowitz, and so can Endeavor. Right?
21 They -- Pharmacorr. Like, theoretically, like, they're not
22 part of the M2 parties that are releasing, but then they're
23 getting releases, and all creditors are bound by the release,
24 but then they can turn around and sue someone. So they can
25 turn around and sue the very people -- and I don't know if they

1 have any claims or not; I just want to make sure that I
2 understand as I'm reading the document -- can Isaac Lefkowitz
3 turn around and sue someone, although he's getting a release
4 for the -- like, in other words, if he had a counterclaim
5 against someone on litigation, he would get released under this
6 settlement agreement. But then he can turn around and sue them
7 offensively. And nothing would bind him because nothing here
8 binds him because he just can't sue the released parties
9 because he'd technically be a creditor, I suspect, or maybe --
10 do I have that right?

11 THE WITNESS: Your Honor, I don't know.

12 THE COURT: Or could Sigma sue someone?

13 THE WITNESS: My understanding has been that the
14 releases are mutual, and --

15 THE COURT: I don't -- that's what I'm saying. And
16 if it is, then I want to make sure that that's your
17 understanding, and I want somebody to -- I agree with you,
18 we've got to look to the terms of the -- motions say things,
19 but I'm being asked to approve a settlement, and that's what'll
20 be attached to the order. And I just want to understand the
21 way the settlement works.

22 So you know, DG Realty, right? Could they turn
23 around and sue someone who's actually getting -- they would be
24 released from all cred -- but can they turn around and sue
25 someone? And I need to kind of just understand that.

1 MR. MOXLEY: Your Honor, as I understand the Court --

2 THE COURT: Can YesCare sue someone?

3 MR. MOXLEY: Yes, Your Honor. As I understand the
4 Court, I believe you're asking the witness these questions?

5 THE COURT: Yes, yes.

6 MR. MOXLEY: Yes.

7 THE COURT: I'm asking the witness.

8 MR. MOXLEY: I don't want you --

9 THE COURT: Is it the committee's understanding --

10 MR. MOXLEY: Yes.

11 THE COURT: The -- yeah, the committee witness. I'm
12 just -- but I just want to understand that because I know that
13 they did a bunch of research, and they're analyzing claims, and
14 I just want to make sure that I'm understanding -- that's
15 question 1, you know. In other words, can one of these
16 released parties turn around and sue a third-party creditor?
17 It's like -- you know, using, like, the State of Idaho, right.
18 Could someone then -- no, I guess you can't say the state. But
19 we'll get it right. Entity. You know, like, let's use the --
20 you know, the Missouri Curators or something. You know, could
21 you turn around and sue them, or could you sue a prison and
22 say, you know you tortiously did some stuff to me. You know,
23 are they released -- they're getting released from anything
24 offensively, but can they then turn around and sue. That's
25 question 1. And then question -- well, let's get through



1 question 1. Do you have an understanding of that one way or
2 the other?

3 THE WITNESS: Your Honor, I'm -- I'm afraid I don't
4 have an understanding.

5 THE COURT: Okay. No, no, no. It's fair. And then
6 question 2 is do you -- how does 9 -- what's your understanding
7 of the way 9(a) works? In other words -- or 9(b) -- 9(i) --
8 excuse me -- 9(a)(i), 9(a)(ii). It says that all creditors are
9 going to be enjoined from any -- within the release parties,
10 but then any party who opts out of the settlement. But I
11 don't -- what's your understanding of how they would opt out of
12 the settlement that they're not a party to? And I'm sure
13 there's a very technical way to do it. I just want to make
14 sure that I'm -- I understand what's contemplated because
15 they're not a party to the agreement.

16 THE WITNESS: Your Honor, I don't know if this is
17 helpful.

18 THE COURT: I'll take anything you've got.

19 THE WITNESS: Okay.

20 THE COURT: There could be other witnesses that can
21 explain it to me. I just -- you're the committee rep. I just
22 want to make sure that I'm understanding what I'm being asked
23 to approve one way or the other. I'm just -- I'm just diving
24 into the guts of it, of the deal, and I just want to make sure
25 that I understand what's mutual, what's one way, what's the

1 other way so I can kind of understand the scope of it. I've
2 got a good feel of the investigations that the committee did
3 and what they looked at. I just want to make sure that I get
4 because I -- that's what it is. So don't read too much into
5 it. I'm just making sure that I understand the full scope, and
6 you're here, and --

7 THE WITNESS: Okay.

8 THE COURT: -- we've got a hard 5 stop, so.

9 THE WITNESS: I don't know if this is -- is helpful,
10 but we have deliberately bifurcated this into two phases. The
11 first phase would be the global settlement where we get an
12 amount that we can make available to creditors.

13 But the second stage, where a plan is developed,
14 hasn't occurred yet. And it is our desire and fervent hope
15 that the TCC will work with us on putting that plan together.

16 THE COURT: But I'm -- so the question I've got is --

17 THE WITNESS: So -- so there is some uncertainty --

18 THE COURT: -- I'm just trying to understand, so --
19 if I approve a settlement today -- well, not today -- if I
20 approve this settlement, I'd need to understand what, like,
21 9(a)(ii) means so that I know there's no confusion, and when we
22 get down the line, what it means to opt out of a settlement so
23 that we don't get -- so at least -- I know it's not for you,
24 but I'm just throwing it out there -- I need -- somebody's
25 going to have to explain that to me so that when we get to --

1 if we get there, that there's no confusion and no one has holes
2 of value about what this really means and we're not litigating
3 that.

4 I need to understand what that is, but I also need to
5 understand if -- I'm not saying he has any claims, but can he
6 turn -- can Mr. Lefkowitz turn around and sue someone and say,
7 you know what, I've got the release. Now, here I come for,
8 you know, X, Y, Z. Can YesCare turn around and sue folks in
9 connection with this case, anyone who came at one of the
10 companies? And so those are my questions.

11 Did you all investigate claims that -- Sigma -- with
12 respect to Sigma, did you investigate claims and causes of
13 action with respect to Sigma?

14 THE WITNESS: I believe so.

15 THE COURT: Okay. Okay, sorry. We were coming up on
16 the time, and I needed to just -- we're going to break until
17 Tuesday. I needed to just understand this from the committee's
18 perspective, and I'm sure there'll be other reps, as well.

19 MR. MOXLEY: No, no, absolutely, Your Honor. I just
20 didn't want the Court to --

21 THE COURT: No.

22 MR. MOXLEY: -- hear me not answering questions and
23 think that I was not being responsive.

24 THE COURT: No, no, no, no.

25 MR. MOXLEY: I understood you were asking the

1 witness. Okay.

2 BY MR. MOXLEY:

3 Q Well, similarly, Mr. -- sorry, Mr. Barton. Did you
4 have -- if you have an answer for the Judge's question, please
5 go ahead.

6 A I don't. Go ahead.

7 Q Okay. Similarly, though, just as the Judge wishes to
8 understand the operation of 9, the TCC wishes to understand
9 what the UCC understands is actually being settled. Were you
10 here for Mr. Goodman's opening from the TCC?

11 A I was.

12 Q Okay. And you saw the basket analogy for the grocery
13 store that he used?

14 A I did.

15 Q Okay. So I'm going to ask you some questions that are
16 designed to help us understand what the UCC's understanding is
17 of what's in the basket.

18 A Okay.

19 Q Okay? So you've never heard anyone suggest that personal
20 injury tort claims are now estate claims, given that we're in
21 the bankruptcy court, right?

22 A I have not.

23 Q Okay. And it's your view that the settlement agreement
24 does not purport in any of its language to settle the claims of
25 the tort claimants, right?

1 A It settles only estate claims.

2 Q It would be an incorrect view if a settling party to the
3 settlement agreement took the position that a personal injury
4 tort claim is an estate claim that is settled by the settlement
5 agreement, correct?

6 A Correct.

7 Q Okay. And it would be an incorrect view of the settlement
8 agreement if claims asserted against YesCare by personal injury
9 tort claimants were viewed by one of the parties to the
10 settlement agreement as being settled by the settlement
11 agreement, right?

12 A If they're direct claims against YesCare.

13 Q Explain what you mean, sir.

14 A Yeah. So if -- the estate -- the settlement agreement
15 settles claims of the estate.

16 Q Mm-hmm.

17 A My understanding is that the law in this circuit is that
18 successor liability claims are claims of the estate. So to the
19 extent that a claim against YesCare is really a claim against
20 Tehum, and you're using a successor liability theory to get to
21 YesCare, my understanding is that those are claims of the
22 estate.

23 Q Okay. So it's your understanding that claims that
24 personal injury tort claimants may have that they -- that arose
25 prior to the divisional merger against Corizon, they can no

1 longer pursue those claims against YesCare if the settlement
2 agreement is approved, correct?

3 A Successor liability claims, my understanding is, are
4 claims of the estate.

5 Q Okay.

6 A In this circuit. I think there's an open legal question
7 about which you all will dispute about, but that's my
8 understanding.

9 Q So any person -- just let me make sure I understand. Any
10 personal injury claim that arose prior to the divisional merger
11 is released because it would be, by necessity, a successor
12 liability claim if asserted against YesCare or CHS TX, correct?

13 A Successor liability claims, my understanding is those are
14 claims of the estate.

15 Q Okay. Did the UCC value -- ascribe a value to the
16 personal injury claims that arose prior to the divisional
17 merger?

18 A To the totality of personal injury claims?

19 Q Yes, sir.

20 A I don't think so.

21 Q Okay. If the UCC didn't ascribe a value to the personal
22 injury claims that arose prior to the divisional merger, how
23 does the UCC know whether this is a good settlement or not?

24 A The settlement makes \$54 million available right away to
25 creditors, and it doesn't -- and there isn't another better

1 alternative on the table.

2 Q Does the UCC know the value of the successor liability
3 claims that are being settled by this agreement?

4 A I don't have an exact dollar figure to give you.

5 Q Do you have a ballpark figure that you could give?

6 A I don't.

7 Q And that's because the UCC actually didn't ascribe a value
8 or come up -- or come up with a value of what the successor
9 liability claims that are being settled by this agreement is,
10 correct?

11 A I don't know. I don't know.

12 Q You just don't know one way or the other? Other than you,
13 that's the chairperson of the UCC, who else at the UCC would
14 know the answer to that question?

15 A I don't know.

16 Q If you don't know, no one at the UCC knows, right?

17 A We're -- I don't think that's necessarily true, but I am
18 not aware that the UCC knows the exact dollar amount of any of
19 those claims.

20 Q Okay. So a universe of -- strike that.

21 Yes, Mr. Barton, what about alter ego claims that are
22 being settled? Has the UCC valued the alter ego claims that
23 are being settled?

24 A We don't have an exact dollar figure for the alter ego
25 claims.

1 Q So the UCC is supporting a settlement of -- that will
2 release claims that it has not come to a view on what they are
3 valued at. Is that right?

4 A I -- I think we do not have an exact dollar figure for the
5 claims that we're releasing. That's fairly typical in a
6 settlement. Rarely do you have that kind of exact information.

7 Q Without knowing the value of something that you're giving
8 away, though, sir, how does the UCC know that the settlement
9 agreement is a fair and reasonable deal to creditors?

10 A We have an understanding of -- of the -- the merits and
11 difficulties in recovering under those claims, so.

12 Q What's your understanding of the merits of those claims,
13 sir?

14 A Well, it's a difficult kind of claim to pursue. To the
15 extent that these claims would involve invalidating a Texas
16 statute, authorizing divisional mergers, you know, it's going
17 to be a speculative claim and decrease the value of it.

18 Q Mr. Barton, you said during your direct testimony that you
19 would need to overturn the Texas statute to assert claims
20 against YesCare, and I think you just said it again just now,
21 correct?

22 A There are certain claims where, you know, it -- it would
23 seem that that would be necessary.

24 Q Why do you think that?

25 A Well, the Texas statute authorizes the kind of divisional

1 merger that was engaged in here. And so it allows the division
2 of a company to create a new company that is not the successor
3 of -- of the entities that were part of the merger. So to the
4 extent that we're claiming that YesCare that emerged from this
5 merger is, in fact, a successor of the debtor, it's a good
6 argument you need to overturn the statute to make that claim.

7 Q Are you aware of the Kelly case in the federal district
8 court in Michigan?

9 A No.

10 Q Okay. No one's made you aware of that case?

11 A I'm not aware of it.

12 Q Okay. Would it surprise you to hear that a federal
13 district court in Michigan has already ruled that CHS TX can be
14 a defendant party on a successor liability theory in a claim
15 that a claimant had previously asserted against Corizon?

16 MR. ZLUTICKY: Objection, Your Honor. Hearsay.

17 THE WITNESS: I don't have a basis to know whether
18 what you're saying is accurate.

19 THE COURT: Well, he can answer. Hold on a second.

20 THE WITNESS: Oh, I'm sorry. Apologies.

21 THE COURT: Hold on. Hold on, folks.

22 He can answer if he knows the answer to that
23 question.

24 Go ahead.

25 THE WITNESS: I don't know whether -- I don't have a



1 knowledge of what you just said. I can't speak to whether it
2 would surprise me or not.

3 BY MR. MOXLEY:

4 Q Okay. Okay. Would it impact your view as to whether or
5 not successor liability claims to be brought would require
6 overturning the Texas statute? Would it impact your view if
7 you -- if you knew that a federal district court has already
8 done that without overturning the Texas statute?

9 MR. ZLUTICKY: Objection, Your Honor. Hearsay.

10 THE COURT: Why is it hearsay if it's -- if he's
11 asking if it would impact his views?

12 MR. ZLUTICKY: Well, he's stating something -- he's
13 asking witness to speculate on something that hasn't happened,
14 plus he's talking about something that --

15 THE COURT: But that's not hearsay, right? So is
16 the --

17 MR. ZLUTICKY: Well, but there's also something he's
18 asking for the witness (indiscernible).

19 THE COURT: Overruled. He can answer if he knows.

20 THE WITNESS: Can you repeat the question, please?

21 BY MR. MOXLEY:

22 Q Would it impact your view, sir, as to whether or not a
23 successor liability claim here to be brought would have to --
24 would have to overturning the Texas statute if a federal
25 district court has already done just that without overturning

1 the Texas statute?

2 A I don't know. I'd have to look at the details of that
3 case to know whether it has any application here at all.

4 Q Okay. And no one's advised you of that -- of the case I
5 referenced. Is that right?

6 A I think it's been mentioned today, but I'm not aware of
7 the case.

8 Q Before today, you were not aware of the Kelly case. Is
9 that right?

10 A That's correct.

11 MR. MOXLEY: Your Honor, I'm cognizant of the time.
12 I'm just going to try to get to my next subject. Your Honor,
13 I'm not -- I'm not able to conclude the witness' testimony.

14 THE COURT: No, that's what I'm saying. So just find
15 a logical stopping point, and if it's now, then we'll stop now.
16 If you want to -- you want to get some more stuff in, you can,
17 and we'll pick up at the appropriate time.

18 Mr. Zluticky?

19 MR. ZLUTICKY: Your Honor, just very briefly, I do
20 know that Mr. Barton has to attend a conference that I believe
21 begins tomorrow, and I don't know that he'll be available on
22 Tuesday the 5th.

23 THE COURT: I know.

24 MR. ZLUTICKY: If he --

25 THE COURT: We can figure something out, and

1 whether -- let's just be practical and figure out the -- what
2 makes the most sense.

3 MR. ZLUTICKY: I just wanted to make the Court aware
4 of that.

5 THE COURT: Yeah, yeah. I'm not going to -- yeah.
6 I'm not going to jam you. And yeah, but I do appreciate you
7 letting me know. So that may mean that on Tuesday, if he can't
8 make Tuesday, then maybe we just go out of order and then
9 finish him at the appropriate time, if that makes sense.

10 MR. MOXLEY: We're happy to do that. I -- our
11 understanding was that the Court had made available Tuesday and
12 Wednesday morning.

13 THE COURT: Ah. Wednesday morning's getting tricky
14 for me.

15 MR. MOXLEY: Okay.

16 THE COURT: Just on stuff. But what I'm saying is
17 we'll just be convenient. I'm not going to jam him.

18 MR. MOXLEY: Okay. Let me -- if the Court will give
19 me just one moment?

20 THE COURT: Oh, absolutely.

21 MR. MOXLEY: Okay.

22 BY MR. MOXLEY:

23 Q Okay, let's do this. Could you turn to 267 in your
24 binder, sir?

25 THE COURT: Let me ask you. How much more time do

1 you think you have with him? And I don't want to rush you.
2 Just logically.

3 MR. MOXLEY: Yes, Your Honor. I think probably, if
4 I -- I think I could do it very quickly probably in --

5 THE COURT: No, no, no. Just, like, normal time.
6 How much time do you think you need?

7 MR. MOXLEY: One and a half to two hours.

8 THE COURT: Okay. Okay. Okay.

9 MR. MOXLEY: Okay.

10 THE COURT: And then I know -- does someone else have
11 questions for the witness? And I'm sure there'll probably be
12 some redirect. Is the U.S. Trustee going to want to ask
13 questions, as well?

14 MR. NGUYEN: Not at this time, Your Honor.

15 THE COURT: Okay. All right. I'll stay quiet and
16 let you keep working.

17 MR. MOXLEY: That's okay. Thank you. Thank you,
18 Judge.

19 BY MR. MOXLEY:

20 Q Mr. Barton, as part of the investigation that the UCC
21 conducted, did the UCC direct its advisors to look for publicly
22 filed cases involving the settlement parties?

23 A I don't recall we gave that specific instruction.

24 Q Okay. Let's look at 267 in your binder, sir. That's the
25 statement that St. Luke's filed. Are you there, sir?



1 A Yes.

2 Q Okay. This is filed on the docket at 1377. And this is a
3 copy of that statement that St. Luke's filed. Correct, sir?

4 A Yes.

5 Q Okay. Now, we looked earlier on your direct testimony. I
6 believe St. Luke's claim is approximately \$31.3 million.

7 Approximately, correct?

8 A Yes.

9 Q Okay. There's -- this statement at 267 describes,
10 generally, the litigation that St. Luke's has brought against
11 Corizon previously, correct?

12 A Yes.

13 Q Okay. And if you look at the proof of claim, that goes
14 into some more detail? There's an annex to that proof of
15 claim, correct? We can look at that real quickly. That proof
16 of claim is at 173 of your binder, sir. And if you turn --
17 when you're at 173, if you turn a couple pages in, you'll find
18 the annex.

19 A Mm-hmm.

20 Q Okay. And at Paragraph 3 of the annex, St. Luke's
21 describes its lawsuit, correct?

22 A Right.

23 Q And there, St. Luke's states, "Prior to the petition date,
24 the debtor who formerly operated as and assumed the liabilities
25 of Corizon Health, Inc., contracted with the Idaho Department



1 of Corrections ("IDOC") to provide on-site medical care to IDOC
2 inmates and to pay outside providers, including St. Luke's, for
3 medical care that could not be provided within the prison
4 walls. Corizon reimbursed St. Luke's at rates specified in a
5 January 2011 memorandum of understanding with St. Luke's." Did
6 I read that correctly?

7 A Yes.

8 Q Okay. And then the next paragraph describes how on July
9 1st of 2014, Corizon unilaterally abandoned its payment
10 agreement with St. Luke's and started reimbursing at the
11 significantly lower Idaho Medicaid rate based on its
12 interpretation of an Idaho statute, right?

13 A Yes.

14 Q Okay. And in January 2018, the Idaho Supreme Court agreed
15 with St. Luke's position that Corizon could not reimburse at
16 the Medicaid rate, right?

17 A That's what the document says, yes.

18 Q So St. Luke's sued Corizon to recover the millions of
19 dollars that Corizon underpaid and still owed St. Luke's,
20 right?

21 A Right.

22 Q Those are the damages St. Luke's is owed: the millions of
23 dollars that Corizon underpaid St. Luke's, right?

24 A Right.

25 Q Okay. Sometime after St. Luke's filed that lawsuit

1 against Corizon seeking those damages, the debtor then filed
2 its petition commencing this bankruptcy case, right?

3 A Yes.

4 Q Okay. Okay.

5 MR. MOXLEY: Your Honor, I apologize. I think any
6 other line of inquiry --

7 THE COURT: No, no. I don't want you to apologize.

8 MR. MOXLEY: -- would take more than two minutes so,
9 yes.

10 THE COURT: Okay. Why don't we, then, stop now, and
11 we'll pick up on Tuesday.

12 I will remind you that you're still under oath during
13 this entire time. So I want to make sure you're not speaking
14 with anyone about your testimony. Okay?

15 I very much appreciate everyone's time. I'm going to
16 step off for about five minutes and let everyone kind of clear
17 out, and then we'll pick back up with the 5 p.m.

18 Thank you very much.

19 MR. MOXLEY: Thank you, Your Honor.

20 (Proceedings concluded at 4:57 p.m.)

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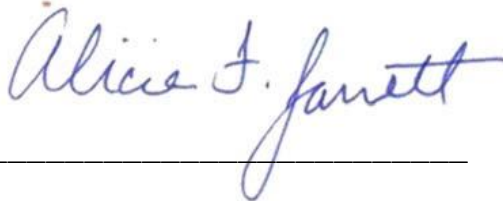
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C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



ALICIA JARRETT, AAERT NO. 428 DATE: March 6, 2024
ACCESS TRANSCRIPTS, LLC



Exhibit B-2

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

IN RE:, § CASE NO. 23-90086-11
TEHUM CARE SERVICES, INC., § HOUSTON, TEXAS
DEBTOR. § TUESDAY,
§ MARCH 5, 2024
§ 1:05 P.M. TO 7:02 P.M.

**HEARING ON MOTION TO APPROVE 9019 SETTLEMENT AGREEMENT
AND TRIAL DAY TWO**

BEFORE THE HONORABLE CHRISTOPHER LOPEZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE
ELECTRONIC RECORDING OFFICER: ZILDE COMPEAN
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(Please also see Electronic Appearances.)

INDEX

| WITNESSES: | <u>Direct</u> | <u>Cross</u> | <u>Redirect</u> | <u>Recross</u> |
|----------------|---------------|--------------|-----------------|----------------|
| RUSSELL PERRY | | | | |
| By Mr. Kaufman | 19 | . | . | . |
| By Mr. Moxley | . | 143 | . | . |

| EXHIBITS: | <u>Admitted</u> |
|-------------------|-----------------|
| 13 | 45 |
| 14 | 45 |
| 15 | 45 |
| 16 | 47 |
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| 73 | 116 |
| TCC 99 | 34 |
| 1410-42 & 1410-43 | 98 |

1 HOUSTON, TEXAS, TUESDAY, MARCH 5, 2024, 1:05 P.M.

2 THE COURT: Okay. Good afternoon, everyone. This
3 is Judge Lopez. Today is March the 5th. I'm going to call
4 the 1:00 p.m. case continuation of Tehum here on a motion to
5 approve a 9019 settlement agreement.

6 There are a number of parties in the courtroom. I'd
7 ask that if you are making an appearance, that you make it
8 electronically today. The parties are going to want to save
9 as much time as we can today, to be as efficient as possible.

10 So if you're going to make an appearance, if you
11 know you're going to be speaking today, why don't you hit five
12 star, and at some point, I will unmute your line.

13 But for purposes of kind of where we are, I'd like
14 to just figure out if there's any housekeeping, and then get
15 right into the evidence.

16 MR. BROOKNER: Yes, Your Honor. Quick housekeeping.
17 Good afternoon. Jason Brookner for the Debtor. I will not
18 appear for everybody else who is with me today. A couple of
19 quick things.

20 First, a little while ago, at Docket Number 1432, --

21 THE COURT: Um-hum.

22 MR. BROOKNER: -- we filed an amended form of order.
23 I have copies. I have one to one of your assistants.

24 THE COURT: I read it.

25 MR. BROOKNER: Okay. And we did that, Your Honor,

1 because we heard your comments, and we went back after the
2 hearing, and we read the documents and saw that perhaps, it
3 wasn't as clear as we all thought it was in light of your
4 comments.

5 And so the key revisions were in paragraph 6, which
6 now clearly reflect mutual releases; in paragraph 9 to again
7 be clear that no direct claims are being affected. We've also
8 removed the opt out, and this way, there shouldn't be any
9 confusion that only estate claims are being released.

10 THE COURT: Okay. Walk me through the changes
11 again.

12 MR. BROOKNER: Certainly, Your Honor.

13 THE COURT: You said --

14 MR. BROOKNER: If you go to Exhibit --

15 THE COURT: Just walk, just the paragraph.

16 MR. BROOKNER: Oh, do you need a copy?

17 THE COURT: No, no.

18 MR. BROOKNER: If you go to Exhibit B, Your Honor,

19 --

20 THE COURT: Yeah.

21 MR. BROOKNER: -- because that shows the changes
22 from what was originally in the last two pages.

23 THE COURT: Yeah. I'm looking at the redline.

24 MR. BROOKNER: Okay. So you'll see paragraph 6. It
25 shows the redline that all of the released parties shall

1 release and shall be deemed to have released and waived all
2 claims and causes of action against the estate, including, but
3 not limited to, et cetera, et cetera.

4 THE COURT: Right. But my question was are they
5 releasing the parties who -- they're releasing all claims
6 against cause of action against the estate.

7 MR. BROOKNER: Correct.

8 THE COURT: Right?

9 MR. BROOKNER: Right.

10 THE COURT: But creditors are going to have to
11 release the third parties but the --

12 MR. BROOKNER: No, there's no opt in, opt out
13 anymore. We got rid of that.

14 THE COURT: Oh.

15 MR. BROOKNER: So this is only estate claims coming
16 and going. That's all it is. No opt in, no opt out.

17 THE COURT: Okay. No, I'm saying that was my
18 question, the opt in, opt out. You're saying -- let me just
19 walk you through it.

20 MR. BROOKNER: Sure.

21 THE COURT: Go ahead. Go ahead. Keep going.

22 MR. BROOKNER: So this pertains, paragraph 6
23 pertains to the estate's claims --

24 THE COURT: Um-hum.

25 MR. BROOKNER: -- that are being released, and those

1 parties who are settling will also be giving a release. So
2 there's full mutual releases between the estate on the one
3 hand and all the other released parties on the other. Has
4 nothing to do with individuals. They're not opting in;
5 they're not opting out. There is just the settlement, the
6 approved settlement of the estate claims. And then we get to
7 paragraph 9.

8 THE COURT: How is released parties defined?

9 MR. BROOKNER: The released parties is defined in
10 the settlement agreement at paragraph 7, Your Honor, as the M2
11 parties in paragraph A who are the parties signing the
12 agreement, and then a variety of additional parties behind
13 them, including officers, directors, et cetera.

14 THE COURT: Right, right, right, right. But, I
15 guess, I had a -- maybe I wasn't clear with my question. I
16 was wondering whether let's just say, for example, Mr.
17 Lefkowitz is going to receive a release from the estate,
18 right.

19 MR. BROOKNER: Um-hum.

20 THE COURT: Creditors who want to receive a recovery
21 under the proposed plan are going to have to agree Mr.
22 Lefkowitz or they'll receive -- or has that changed as well?

23 MR. BROOKNER: That's changed. The opt out is gone.
24 If you go to paragraph 9 on the next-to-last page, --

25 THE COURT: Okay.

1 MR. BROOKNER: -- you'll see in section A, first of
2 all, Creditors are only enjoined from pursuing estate claims
3 that are released here in the property of the estate. That's
4 the first paragraph.

5 THE COURT: Okay.

6 MR. BROOKNER: And then second as you go further
7 down in the paragraph, we make it very clear that no
8 individual direct claims are being affected by anything in the
9 settlement agreement.

10 THE COURT: Right.

11 MR. BROOKNER: So if somebody has a direct claim
12 against YesCare -- so, for example, let's -- because Ms. Funk
13 also raised this issue. Let's talk about her even though
14 she's not here but Mr. Forma (phonetic) is.

15 The State of Idaho had -- let's assume they had a
16 contract with Corizon.

17 THE COURT: Um-hum.

18 MR. BROOKNER: And then after the divisional merger,
19 they entered into a new contract with YesCare. That second
20 contract, if there's a breach of that contract or other
21 damages flowing from that contract that they have with
22 YesCare, that is not touched by this. That's not an estate
23 claim. That claim is preserved.

24 Similarly, if they're -- if anybody has any kind of
25 direct claim against any released party, whatever that may be,

1 not being touched.

2 THE COURT: Okay. Okay. I got it. I got the case.
3 Thank you.

4 MR. BROOKNER: Okay.

5 THE COURT: All right.

6 MR. BROOKNER: So those are the changes to the
7 order. So that was kind of my first point.

8 My second point was I wanted to quickly talk about
9 the order of operation. The parties conferred yesterday, and
10 we sent Ms. Saldana an email letting her know, what we're
11 going to do today is the Debtor through Mr. Kaufman is going
12 to put on Mr. Perry for direct, our CRO, and is subject to
13 cross, of course.

14 After that, Mr. Zluticky for the Committee will put
15 on Mr. Dundon as the Committee's second witness, subject to
16 cross. We think that's probably going to take the whole day.

17 THE COURT: Um-hum.

18 MR. BROOKNER: If we have time left and we can
19 reasonably knock it out, Mr. Lefkowitz is in Houston, and we
20 will bring him in. I don't think we're going to be going to
21 be able to get there, quite frankly, but if we do, then we do.

22 Otherwise, assuming we don't get through Mr.
23 Lefkowitz today, and we just do the two witnesses that are
24 teed up, we then have told Ms. Saldana we think we're going to
25 need two more full days potentially for this deal.

1 Because we're going to have -- we have to finish the
2 cross-examination of Mr. Barton that Mr. Moxley was doing last
3 week. Then the TCC has to put on its two witnesses, Mr.
4 Atkinson and Mr. Griffiths.

5 THE COURT: Okay.

6 MR. BROOKNER: So we're going to have -- and then,
7 of course, Mr. Lefkowitz, presuming he doesn't get on today.
8 So we'll have four more to knock out, and we're waiting on Ms.
9 Saldana to get back to us with dates.

10 THE COURT: I think she was waiting on me to get
11 back. I was out of town yesterday so --

12 MR. BROOKNER: Okay. And that was all that I had in
13 so far as cleanup, housekeeping stuff.

14 THE COURT: Okay. Any initial housekeeping,
15 Counsel?

16 MR. GOODMAN: Yeah, a few matters.

17 THE COURT: Go ahead.

18 MR. GOODMAN: Eric Goodman, Brown Rudnick here on
19 behalf of the Official Committee of Tort Claimants. With me
20 today is Cameron Maxley, who will be handling the two
21 witnesses, Mr. Perry and Mr. Dundon. Also, Michael Zimmerman,
22 co-counsel, Gerard Cicero, Meghan McCafferty, and Justin Myers
23 with our group today.

24 A few housekeeping matters. Over the weekend, we
25 did have a meet and confer with the Debtor's counsel regarding

1 the witnesses -- who was going to be available, who was not
2 going to be available, and I thought it was sort of agreed
3 upon between us, there'd be Mr. Perry today, and then Mr.
4 Dundon.

5 We were in the process of preparing for Mr.
6 Lefkowitz, but we were told that he would not actually be
7 available today. So we would not be ready to go forward with
8 him today.

9 THE COURT: I've got a hard stop at 7, so it sounds
10 like we're just going to do Perry and Dundon today --

11 MR. GOODMAN: Yeah.

12 THE COURT: -- just from a practical standpoint.

13 MR. BROOKNER: Yeah. And Your Honor, if I may, I'd
14 like to apologize to the other side. If there was confusion
15 on that score, then we apologize about the miscommunication.
16 That was not intended.

17 THE COURT: So we'll do Perry and Dundon today.

18 MR. GOODMAN: Perfect. And then, of course, we're
19 going to need to beg the Court, ask the Court for future
20 dates. So we're still waiting to --

21 THE COURT: Yeah.

22 MR. GOODMAN: -- sort of get a sense of that. And
23 then I'd also like to talk about the changes to the proposed
24 order.

25 But I was curious if the Court has a sense of

1 timing, like we obviously, I think, are going to have a need
2 for maybe two more days.

3 THE COURT: Yeah. I need to check with my calendar
4 and case manager. I literally just flew back a little earlier
5 today. I will get you dates by tomorrow for sure, but we'll
6 make sure that it works for witnesses.

7 I think what we'll do is just give you a range of
8 dates. I may have given out some dates for mediation, and
9 that's what I just need to confirm that I didn't do that, and
10 have folks locked in on something. I don't want to -- so, but
11 my goal is to just give you dates as soon as we can. See if
12 we can finish this up certainly in the next two weeks to be
13 sure, --

14 MR. GOODMAN: Okay.

15 THE COURT: -- if we can.

16 MR. GOODMAN: Okay.

17 THE COURT: But I know next week was spring break
18 too, and I didn't want to -- I knew -- I don't know what that
19 does to folks' schedules. So I didn't want to jam anyone on
20 that as well. So maybe we can just see what makes sense for
21 all the parties.

22 MR. GOODMAN: It's bad for the Texas parents, Your
23 Honor.

24 THE COURT: So, yeah. Just let me know. But I will
25 get with Ms. Saldana tonight and we'll shoot dates for

1 everyone in the next day or two, but I'm not going to jam
2 anyone when it comes to it or surprises on that.

3 MR. GOODMAN: Okay. Perfect.

4 THE COURT: Okay?

5 MR. GOODMAN: Yeah. Wonderful. Thank you so much,
6 Your Honor.

7 One other just sort of note regarding the changes to
8 the proposed order --

9 THE COURT: Um-hum.

10 MR. GOODMAN: -- that was filed just over an hour
11 ago, we did have a chance to quickly review it. And I would
12 just sort of flag a couple things for the Court in terms of
13 considering the revisions versus the old version.

14 In our view, or our understanding is that the vast
15 majority, in fact, maybe all of the personal injury/wrongful
16 death claims here involve damages, you know, that occurred,
17 deaths that happened prior to the divisive merger, --

18 THE COURT: Um-hum.

19 MR. GOODMAN: -- right. So most of the claimed
20 claimants that we represent again, it could be, you know, the
21 vast majority, if not all, we're talking about an injury or a
22 death that occurred prior to May 1, 2022, which is the date
23 that the divisive merger occurred.

24 In our view, and maybe you've seen this in the
25 papers -- and I think, you know, you read everything; you kind

1 of know our position on this -- is that, you know, a party
2 can't create successful liability by going through these
3 transactions, and then use those, you know, corporate
4 maneuvers to essentially take the position that they now own
5 and control those claims.

6 So there is a fundamental difference between us as
7 to what is a direct cause of action versus what is an estate
8 claim. Here's the rub though on this, and I come back to the
9 shopping cart analogy that we used earlier.

10 We kind of need to know the answer to that question.
11 Because if the personal injury/wrongful death claims are now
12 estate causes of action and they're in that shopping cart,
13 that is a profoundly different shopping cart, right, than one
14 that would not include the personal injury and wrongful death
15 claims.

16 So I think this is a recurring theme, and this is,
17 in my view, kind of gets to the heart of the case. And it
18 really, the Court's evaluation, if you think about the 9019
19 motion, because without clarity on that issue, I think it
20 becomes challenging, if not impossible, to sort of evaluate
21 the terms of the settlement offer.

22 So again, I know that they have made the changes and
23 we will, of course, continue to study them, but I think that
24 the fundamental issue still remains as to what is and is not
25 an estate cause of action; and therefore, what is and is not

1 being settled.

2 THE COURT: Thank you.

3 MR. GOODMAN: Thank you.

4 UNIDENTIFIED MALE: Your Honor, before I -- do you
5 want a copy of the order, or you have what you need?

6 THE COURT: I've got what I need.

7 UNIDENTIFIED MALE: Okay.

8 Does anybody else need a copy? Okay. All right.
9 Thank you, Your Honor.

10 MR. CORNWELL: Your Honor, good afternoon. John
11 Cornwell doing my best Brenda Funk impersonation today. She's
12 on the phone, and she'll keep my honest. I don't want to open
13 the floodgates for comments, but because the Idaho parties
14 issue was raised, I am here on behalf of the Idaho parties.

15 Read the revisions to the proposed order same time
16 Your Honor saw them. I've spoken to Mr. Brookner. I think
17 that they resolved the two, I'll call it fundamental plan
18 issues, that the Idaho parties had with the proposed
19 settlement, namely, the direct causes of action are no longer
20 waived, and I think that's very clear, as well as the opt in,
21 opt out issue that I think is similar but a different legal
22 issue.

23 Of course, Idaho parties has filed a statement and
24 reserved all rights to look at what's actually filed in a plan
25 and object, but I just want to be clear on the record that I

1 agree with Mr. Brookner's representations on the record.

2 THE COURT: Thank you.

3 MR. CORNWELL: Thank you.

4 THE COURT: All right. Mr. Kaufman?

5 MR. KAUFMAN: Unless anyone has any other comments,
6 we'd like to get to the evidence.

7 THE COURT: Let's go to it.

8 MR. KAUFMAN: All right. The Debtor at this time
9 would call Russell Perry to the stand.

10 THE COURT: Okay. Mr. Perry.

11 MR. KAUFMAN: And as a housekeeping matter, I see
12 the Debtors Exhibit -- the Debtor UCC exhibit books are right
13 here.

14 THE COURT: All right. Is that for the witness?

15 MR. KAUFMAN: Yes, for the witness.

16 THE COURT: Got it.

17 MR. KAUFMAN: I think. Well, I assume those are for
18 the witness.

19 THE COURT: I don't know. You tell me.

20 MR. KAUFMAN: If they were on the witness stand on
21 Friday. No, no. May I approach?

22 THE COURT: Yeah.

23 MR. KAUFMAN: I don't know if it was done last time,
24 Judge, but anybody else here, we, the RMSC plaintiffs would
25 invoke the rule, Judge.

1 MR. BROOKNER: I don't think there are any witnesses
2 here who are parties.

3 THE COURT: Why don't we find out?
4 Are there any witnesses who are in the courtroom?

5 MR. PATTERSON: Your Honor, Matt Dundon of the UCC's
6 in the courtroom.

7 THE COURT: Okay.

8 MR. ZLUTICKY: He is a representative of the UCC
9 here today. So with the --

10 THE COURT: I can't hear you.

11 MR. ZLUTICKY: Your Honor, Mr. Dundon is a
12 representative of the UCC, the representative of the UCC here
13 today. So under A2, and then also under A3, he will be
14 essential to our claims of defense. And so, we would ask that
15 he be permitted to stay notwithstanding a 615.

16 THE COURT: Okay.

17 MR. MOXLEY: Your Honor, good afternoon. Cameron
18 Moxley of Brown Rudnick for the TCC. Your Honor, our expert
19 witness, just as Mr. Dundon is, Mr. Atkinson may be listening
20 on the Zoom at different periods today as well. So we have
21 the same argument as Mr. Zluticky.

22 THE COURT: All right. Let me just ask if there's
23 any fact witnesses. Who are the other fact witnesses that
24 would even potentially even be called?

25 MR. MOXLEY: Mr. --

1 THE COURT: Mr. Lefkowitz, right, would be the only
2 one, but I don't see him on the line.

3 MR. MOXLEY: Mr. Griffiths is the designee of the
4 TCC. And so, I think under the rule, he can stay as well,
5 Your Honor.

6 MS. HAYWARD: Your Honor, Melissa Hayward for the
7 settling parties. I believe Mr. Lefkowitz may be listening.
8 However, he is a party representative for M2 Loan Co, the DIP
9 lender, and also for the settling party, so I would believe
10 that he is allowed to listen to the proceedings.

11 THE COURT: Yes, party reps, I'm going to let them
12 stay. Experts can stay. You all will have to confirm for me
13 because there's no one -- everybody in the courtroom looks
14 fine if there's not anyone I know. There's someone on the
15 line, but you-all know who the other witnesses are who
16 potentially you may call.

17 And if you need to, I'll take five minutes and let
18 you get him off the line, but I think other than that, I'm
19 ready to proceed.

20 MR. MOXLEY: No one else for the TCC is affected,
21 Your Honor.

22 THE COURT: All right. Okay. Can I have you raise
23 your right hand, sir?

24 (Witness sworn.)

25 THE WITNESS: Yes.

1 THE COURT: Okay. I'll let the record reflect the
2 witness has been properly sworn in.

3 Counsel, you may proceed.

4 DIRECT EXAMINATION

5 BY MR. KAUFMAN:

6 Q Mr. perry, could you give the Court again your name and
7 your position in this case?

8 A Sure. My name is Russell Perry. I'm the chief
9 restructuring officer for the Debtor.

10 Q And as the chief restructuring officer, what are your
11 primary responsibilities in this case?

12 A Well, in this case, it really starts -- well, I'd say
13 it's threefold.

14 One, gathering information facts, information that is
15 critical for the case to carry through, share that information
16 with the respective stakeholders.

17 Two, I think the second responsibility here is to
18 initiate and carry forth investigation into potential causes
19 of action.

20 And then, you know, three, the overarching responsibility
21 for really any CRO, specifically the CRO in this case is to
22 make decisions on behalf of the Debtor.

23 Q We'll discuss each of these in turn, but first, let me
24 ask you is being a CRO in a Chapter 11 case a one-man or one-
25 person job?

1 A In my experience, it's never a one-person job, no.

2 Q So explain that to the Court.

3 A Sure. Well, so we -- so we're clear, my firm Ankura is
4 involved with this engagement beyond just me. There are
5 multiple individuals within Ankura that works on the
6 engagement. My team engages with not only the professionals
7 that are involved in the engagement, but also, we have
8 consistent engagement with the former employees of the Debtor,
9 we have engagement with other professionals in the case.

10 And I think as folks understand, there have been an
11 extensive amount of work completed in this case that I
12 couldn't have completed by myself.

13 Q And I think you've talked about this in some prior
14 hearings, just your experience. Can you list a few recent
15 cases where you served as a restructuring officer or a
16 financial adviser for a Chapter 11 debtor in the healthcare
17 industry?

18 A Sure. Let me start with Pipeline Holdings. Pipeline was
19 a case filed here in the Southern District in front of Judge
20 Isgur late '22. It was a case of seven hospitals. One in
21 Dallas, four in LA. There was another two in Chicago. That
22 Chapter 11 was confirmed or the plan was confirmed in early
23 '23.

24 I'm currently the restructuring officer for Grupo Hima,
25 which is a group of hospitals that filed in Puerto Rico.

1 Like the Pipeline, so I'm clear, I was the chief
2 transformation officer which has the same fiduciary
3 responsibilities as a CRO.

4 Another case that I was a CRO in was a case called Gulf
5 Coast Holdings filed in Delaware. It was a case in which all
6 the assets were effectively sold, and the estate was
7 liquidated.

8 And then by way of just an example, I was also the
9 restructuring adviser for a company by the name of Trident
10 Holding that filed in the Southern District of New York in
11 roughly 2018.

12 Q And is that a complete, exhaustive list, or just a few
13 recent cases?

14 A The latter. I think in some of my declarations, I've
15 included many others.

16 Q And in those cases you just mentioned, did any of those
17 cases require the Debtor to investigate estate causes of
18 action against third parties or insiders?

19 A They did. Um-hum.

20 Q Tell the Court about those experiences.

21 A Sure. Let me lump Pipeline, Trident, and Gulf Coast
22 together and we can unpack if we need to. In all three of
23 those situations, there were activities or transactions that
24 occurred prior to the filing.

25 In each of those three examples I gave, there were

1 investigations that were carried out, information that was
2 gathered, and sort of investigation results, you know, shared
3 respectively.

4 Various decisions were made by either the independent
5 directors or myself or some combination by which the decision
6 was made to either settle, not release, or, you know, some
7 other mechanism for those respective claims.

8 The fourth just to round out, because I gave you four
9 examples a second ago, the Grupo Hima engagement, which is
10 currently in Chapter 11, we are in the midst of negotiating
11 with both the unsecured creditor committee, as well as the
12 government of Puerto Rico with respect to some fairly
13 significant liabilities.

14 There have been quite extensive discussions around
15 potential cause of actions in that engagement. It very well
16 could lead to an investigation or it could lead to, you know,
17 a settlement.

18 Q The Debtor in this case has filed motions to approve a
19 settlement, a motion to authorize additional DIP financing,
20 and a motion to extend exclusivity. Are you familiar with
21 those motions?

22 A I am.

23 Q And the TCC, the Tort Claimant Committee, has filed a
24 motion to dismiss. Are you familiar with that motion?

25 A I am.

1 Q Did you authorize the filing of the Debtor's motions?

2 A I did.

3 Q And do you believe those motions are in the best
4 interests of the estate?

5 A Absolutely.

6 Q Let's talk about the strategy of this case. How did you
7 come to be the chief restructuring officer for the Debtor?

8 A Mr. Lefkowitz contacted me directly. Basically said I
9 need a CRO. Gave me his phone number. I called him the
10 morning of the 13th directly.

11 Q And when you first spoke with Mr. Lefkowitz, had you met
12 him before?

13 A No, I hadn't.

14 Q When did you -- maybe you said this -- when did you first
15 connect with Mr. Lefkowitz?

16 A It was the morning of the bankruptcy filing, February the
17 13th.

18 Q And so the record's clear, what is Mr. Lefkowitz's role
19 for the Debtor in this case?

20 A He's the sole director of the Debtor.

21 Q Does the Debtor, to your knowledge, have any other
22 officers or directors?

23 A It only has the CRO, myself, and Mr. Lefkowitz as the
24 sole director.

25 Q And you connected with Mr. Lefkowitz the morning of, I

1 think you said, February 13th of 2023?

2 A That's correct.

3 Q And did you agree to serve as the chief restructuring
4 officer?

5 A I did shortly after. Um-hum.

6 Q Before you accepted the role, did you do any
7 investigation of the company?

8 A I had some time to do that, and yes, I did.

9 Q Okay. Describe for the Court what steps you took to
10 research the company before you accepted the role.

11 A Sure. Well, I didn't know what the role was until I
12 spoke to Mr. Lefkowitz. On that initial phone call, he
13 explained the details, who the company was, what transaction
14 had incurred, what the real urgency was around the Chapter 11.

15 Mr. Lefkowitz added Jason Brookner to that call. Mr.
16 Brookner, Mr. Lefkowitz, and I then continued the conversation
17 around sort of the same topics.

18 We concluded that call, and, you know, I continued to do
19 sort of other investigation work on my own to understand and
20 sort of validate the best I could, you know, what really I was
21 dealing with.

22 Q And when you spoke with Mr. Lefkowitz, did you understand
23 that Ankura had been involved with the company before that
24 call?

25 A Well, as soon as he mentioned the name, not necessarily

1 to whom, but when he mentioned Corizon, right then I knew that
2 we were involved, we being Ankura, that we did have a prior
3 involvement. And so, as part of my investigation, immediately
4 I picked up the phone and called another partner inside of
5 Ankura by the name of Roy Gallagher who was leading the
6 engagement for Ankura previously before my involvement.

7 Q And based on your discussions with your engagement
8 partner, how long had Ankura been involved -- well, let me ask
9 the question this way.

10 When was Ankura first involved with Corizon?

11 A I don't have the exact date, but I think it's around 2017
12 or so.

13 Q And when did Ankura's engagement cease?

14 A My understanding is the engagement ceased at the end of
15 2021.

16 Q And so the record's clear, were you involved in that
17 engagement, you, Russell Perry, involved in the prior
18 engagement with Corizon?

19 A I was not, no.

20 Q You mentioned that Jason Brookner was added to the call,
21 your initial call with Mr. Lefkowitz. Had you worked with
22 Gray Reed before?

23 A I had not worked an engagement with Gray Reed. I was
24 obviously very familiar with the firm and with Mr. Brookner
25 and yourself, but I had never worked with them.

1 Q So what, if anything else, convinced you to agree to
2 accept the engagement as the chief restructuring officer for
3 Tehum?

4 A Well, the initial conversation I had with Mr. Gallagher
5 from my firm at least validated to me that the situation was
6 what I'll call real, that the company, at least in the way he
7 described to me, had been under distress for quite some time
8 prior to '21, meaning while he was engaged.

9 He had at least general knowledge that there was a
10 divisional merger that had been carried out, and, you know, at
11 least I understood that there was a business previously, the
12 divisional merger had occurred, and that there was, you know,
13 substance here.

14 But I think more importantly, Mr. Brookner's involvement
15 probably was, you know, might have been the most important
16 aspect because I knew his reputation, the firm's reputation.

17 You know, he had indicated that he was sort of conflict
18 free from the matter. And, you know, with that as a sort of
19 data point, I agreed to --

20 Q I'm going to ask you to turn to the Debtor and UCC's
21 Exhibit 3. It should be in the first exhibit book in front of
22 you.

23 MR. KAUFMAN: Your Honor, for the record, this would
24 be at Docket 1410-3.

25 THE COURT: Thank you.

1 BY MR. KAUFMAN:

2 Q And what is this document?

3 A This is the petition for filing Chapter 11.

4 Q Okay. And if you'll flip to page 6 out of 8 on that
5 document, what is that document?

6 A 6 of 8 is the corporate resolution.

7 Q Okay. And did you review this resolution before the
8 petition was filed?

9 A I did.

10 Q What is your understanding of the corporate resolutions
11 as it relates to your authority to act on behalf of the Debtor
12 and any obligations to report to Mr. Lefkowitz on your
13 actions?

14 A Well, my understanding, and I believe I've testified on
15 this in the past, is this resolution provided me with sole
16 decision-making authority for the Debtor really over any
17 restructuring matters in which there may be a conflict that
18 Mr. Lefkowitz is involved in.

19 Q So anything having to do with restructuring or where
20 there's a conflict of interest, is it fair to say that's
21 pretty much everything in this case?

22 A Over the last year and a few days, it's been pretty much
23 everything. Yes, that's right.

24 Q So at any point during your engagement chief
25 restructuring officer, has Mr. Lefkowitz or anyone else

1 dictated to you the strategy for this case?

2 A No.

3 Q And without getting into your discussions with counsel,
4 describe for the Court the Debtors' process for determining
5 the strategy for this case.

6 A Sure. Well, let me describe it as the initial strategy,
7 right. Because being that Ankura, and at least from my
8 capacity and Gray Reed had no involvement pre-petition. We
9 really had to get into triage mode almost immediately.

10 What that meant was understanding the universe of
11 Creditors, pulling together and understanding the list of
12 Creditors that existed, a creditor matrix, and a noticing
13 perspective. We had to gather information because we knew
14 schedules and statements were going to be complicated.

15 We immediately had to understand what the pending
16 lawsuits were because, you know, it's tricky. And we had
17 thought that it was going to be tricky, that the automatic
18 stay was going to be communicated properly and carried out
19 effectively. So we needed to understand that.

20 And three, I'd say, you know, importantly, the divisional
21 merger itself had substantial documentation to it, so we
22 needed to quickly get our arms around the divisional merger
23 for a number of different reasons.

24 Q So you mentioned the divisional merger. What were you
25 looking for during this triage mode, as you described it?

1 What were you looking for in the divisional merger in this
2 early period?

3 A I guess twofold. One, I needed access to assets, right.
4 I needed to understand did the company have cash allocated to
5 it. Did the company have a funding agreement allocated to it?
6 You know, my knowledge sort of initially was that, you know,
7 those two assets likely existed, but I needed to understand
8 how, when, and what mechanism we could possibly execute upon
9 those.

10 And then to some extent, right, I needed to understand
11 just what liabilities were generated from that divisional
12 merger transaction from an allocation perspective just again
13 so I could get my arms around what were the liabilities of the
14 state as I thought about noticing and then ultimately
15 scheduling.

16 Q And did you look into the divisional merger documents to
17 determine if there were other tangible assets, insurance, tax
18 credits, anything like that?

19 A I did. There are sections of the divisional merger
20 documents that speak to what's called remain co-assets. There
21 are also schedules within the documents that provide for what
22 assets are allocated or were allocated to remain co versus
23 allocated to new co.

24 It did become apparent to us very quickly that there
25 were, you know, I would say a substantial number of insurance

1 policies that were allocated to remain co.

2 Obviously, we didn't know the underlying details amongst
3 those, but there were a number of insurance policies.

4 Two, we obviously confirmed there was a funding agreement
5 attached to and in concert with the divisional merger. And
6 then there was limited cash, right, that was allocated.

7 Q Did the Debtor prepare schedules and statements in this
8 case?

9 A They did. Multiple.

10 Q And the most-recent one, if you'll turn in your exhibit
11 book to Exhibit 22, which I think is at the end of that first
12 binder. Do you recognize this document?

13 A I do.

14 Q Did you help the Debtor prepare this document for filing?

15 A I absolutely did. Um-hum.

16 Q And what was the date of the filing?

17 A So this was filed on July the 19th of '23.

18 MR. KAUFMAN: Your Honor, I offer Debtor UCC
19 Exhibit 22.

20 THE COURT: Any objection?

21 (No verbal response.)

22 THE COURT: 22 is admitted.

23 (Exhibit 22 received in evidence.)

24 BY MR. KAUFMAN:

25 Q Mr. Perry, is the plan of divisional merger and the

1 related documents attached to the Debtors' schedule of assets
2 and liabilities filed on July 19, 2023?

3 A That's exactly what I was confirming. Starts on page 16
4 of 202 for this document.

5 Q Okay. Let me go back. You described that there was kind
6 of a triage mode in the early phases of the case. How did the
7 case strategy develop once you got beyond the triage mode?

8 A Well, again, from a triage perspective, you know, that
9 was understanding liabilities and assets. Once we had to some
10 extent our sea legs, we knew that we immediately needed to
11 press pause on litigation across the country.

12 A very early hearing we had in this matter in front of
13 Your Honor was an extension of the automatic stay as certain
14 on Debtors.

15 A fairly small universe of claims when we now consider
16 filed claims in the case, and we knew that we needed to pause
17 that litigation.

18 Two, we knew pretty early on based on the various hats
19 that were worn by the insiders and the fact that there were
20 litigation matters across the country that there likely needed
21 to be a fairly thorough investigation. And so, we needed to
22 move down that track as quickly as we could.

23 And third, again, in a matter that we also brought in
24 front of Your Honor very early in the case, we knew we needed
25 financing. We needed capital because we had to fund

1 professionals who we knew were going to need to carry out a
2 pretty extensive workload.

3 Q So let's unpack that first part a bit. You said you
4 needed to put a pause on some of the litigation that was
5 ongoing across the country. Why was that necessary? Why did
6 the Debtor believe that was necessary in the early days?

7 A Well, I would say this was the first sort of real in-
8 depth claim analysis that the Debtor conducted whereby it was
9 identified that certain claimants or certain plaintiffs had
10 asserted proper the estate actions as part of their lawsuits
11 at least in the Debtors' perspective.

12 And then second, we understood that there were
13 indemnification relationships between non-Debtor entities and
14 the Debtor. And we really needed to press pause so that we
15 could martial the assets ourselves and understand what the
16 liabilities were in the case.

17 MR. KAUFMAN: Your Honor, can I approach?

18 THE COURT: Um-hum.

19 BY MR. KAUFMAN:

20 Q I've handed you what's been marked as TCC Exhibit 99.

21 MR. KAUFMAN: So, Your Honor, for the record, I
22 can't see, but I think this is Docket 1423-100.

23 BY MR. KAUFMAN:

24 Q Have you seen this document before, Mr. Perry?

25 A I have.

1 Q And what is it?

2 A This is my declaration. The date is double copied up
3 top, but this should be from March of '23, and it's my
4 declaration in support of the automatic stay issues that I
5 talked about a second ago.

6 Q If you turn to page 14, the last page, you'll see the
7 page of the document.

8 A Ah, March 23rd. Okay.

9 Q And was it -- you said this was submitted in support of
10 the extension of the stay filed in this case?

11 A Correct.

12 MR. KAUFMAN: Your Honor, I offer TCC Exhibit 99.

13 THE COURT: Any objection?

14 MR. MOXLEY: No objection.

15 THE COURT: TCC 99 is admitted.

16 (Exhibit TCC 99 received in evidence.)

17 BY MR. KAUFMAN:

18 Q Flip with me in this document, TCC Exhibit 99, to page 9.
19 And I guess I should confirm this. This was signed under
20 penalty of perjury, correct?

21 A That's my understanding, yes.

22 Q So paragraphs 22 and 23, do you see those two paragraphs?

23 A I do.

24 Q So you don't need to read this out loud, but based on
25 what you testified in these two paragraphs and submitted to

1 the Court under penalty of perjury, was the Debtor aware of
2 the existence of potential alter ego and successor liability
3 theories on March 23rd of 2023?

4 A We were. We were aware of the theories at the time
5 because some of the litigation matters that we had identified
6 asserted those remedies.

7 Q And again, why was it important to pause litigation that
8 dealt with alter ego and successor liability theories in March
9 of 2023?

10 A Well, in our view, these were properly estate-related
11 remedies that had these claims moved forward and let's call it
12 amounts liquidated, you know, in our view, it wouldn't have
13 allowed for us to be able to otherwise value, martial, and
14 really maximize the estate in regards to these types of
15 claims.

16 So we needed to press pause so it gave the Debtor the
17 ability to pursue those.

18 Q And there is an expert report submitted by the Tort
19 Claimant Committee in this case, correct?

20 A A declaration expert report. Um-hum. Yes.

21 Q And that's submitted by Michael Atkinson of the Province
22 firm, right?

23 A That's correct.

24 Q Did you read that report?

25 A I did.

1 Q And did you attend the deposition taken on, I think it
2 was February 26th last week?

3 A I did. I attended in person.

4 Q Mr. Atkinson suggests that the Debtor did not appear to
5 consider alter ego or successor liability theories. Are you
6 familiar with that assertion?

7 A I don't recall exactly where in his declaration, but I
8 recall he did assert that, yes.

9 Q Do you agree with that statement?

10 A I don't agree with his assertion. I agree that he took
11 that position, but I don't agree with the assertion he was
12 making.

13 Q Did the Debtor spend months investigating alter ego and
14 successor liability theories as part of the investigation?

15 MR. MOXLEY: Objection, Your Honor. Leading.

16 THE COURT: Sustained.

17 BY MR. KAUFMAN:

18 Q What did the Debtor do as part of its investigation?
19 What did the Debtor consider as part of its investigation?

20 A The Debtor considered really any potential estate causes
21 of action that it could otherwise identify and potentially
22 liquidate.

23 Q We're going to move to the next exhibit binder in front
24 of you. If you'd turn to Exhibit Debtor UCC Exhibit 24.

25 MR. KAUFMAN: Your Honor, for the record, this is

1 Docket 1410-24.

2 THE WITNESS: Okay. I'm here.

3 BY MR. KAUFMAN:

4 Q Have you seen this document before?

5 A I have.

6 Q And what is it?

7 A This is the bar date ordered that was -- the bar date
8 order that was filed in early May of '23.

9 Q And what can you tell the Court about how this order came
10 to be submitted?

11 A Well, the order is admittedly fairly lengthy because it
12 does include some forms in the back.

13 This was a fairly heavily-negotiated order, the way I'll
14 describe it. It was also really important to both the Debtor
15 and at the time the Unsecured Creditors Committee, and it was
16 important because this was a really unique case. It was
17 different than cases that may typically got forward, and
18 simply because of the, you know, incarcerated population that
19 we knew our Creditor base would likely have a number of.

20 So early on, what we needed to do was establish how we
21 notice, who we notice, the process by which we notice, and we
22 needed to understand and have an alignment to the best we
23 could with the Committee on carrying out those tasks.

24 You know, we collaborated the best we could. We worked
25 with, directly with the Committee. Again, we had to negotiate

1 a number of things in here. Some, when I say negotiate, it
2 more related to assuring that the notice was conducted
3 properly, efficiently, and thoroughly, which means we also had
4 to involve our noticing agent.

5 But as it relates to the actual bar date itself, we
6 doubled what typically you would see, let's say, in a normal
7 Chapter 11, to the extent there are normal Chapter 11s whereby
8 the bar date was extended to 180 days as opposed to only 90.

9 Q And do you believe the notice given that was negotiated
10 with the UCC, do you believe it was reasonably calculated to
11 maximize Creditor participation in this case?

12 A I do, and that was the intention.

13 Q And if you'll look -- I'm sorry to do this -- it's in the
14 first exhibit binder, Exhibit 18, Debtor and UCC Exhibit 18.

15 MR. KAUFMAN: So, for the record, 14-18. 1410-18.

16 BY MR. KAUFMAN:

17 Q This is the disclosure statement, right?

18 A That is correct.

19 Q And if you'll --

20 A The second amended.

21 Q The second amended disclosure statement filed in October
22 of last year, right?

23 A The 27th of '23, correct.

24 Q Turn to page 34 of 177 of that document. And by 34, I
25 mean 34 at the top.

1 A Okay. I'm here.

2 Q Do you see footnotes 11 and 12 of that document?

3 A I do.

4 Q What is being described in that provision of the
5 disclosure statement?

6 A Well, 11 and 12 are referenced above in the bottom
7 paragraph of section D. And really what we're looking to
8 communicate is that the Debtor mailed, disclosed, noticed
9 across a number of different, you know, time periods.

10 And in each one of these dockets, there's actually, we
11 just called a service of notice or something where we actually
12 indicate who received notice, how they received notice, and,
13 of course, what was actually noticed.

14 Q So as KCC, the notice agent, was learning of new,
15 additional Creditors, is that -- were they serving
16 supplemental notices to those Creditors?

17 A There were. I don't have it memorized, but one of these
18 or multiple of these will be most likely 100-plus pages
19 because of the extensive nature of noticing.

20 But there is an iterative nature. The Creditor matrix
21 that we originally utilized in, we'll call it February of '23,
22 is obviously different than the Creditor matrix we were using,
23 for example, in October because every notice that we received,
24 every piece of correspondence that we received, names that we
25 received, we assured they were added to the Creditor matrix so

1 that they received notice and proper information.

2 Q And then there was a publication notice on top of that?

3 A There was.

4 Q Let's turn to the Debtor in possession of financing
5 motion filed in this case. Can you briefly explain to the
6 Court what the sources of revenue were to the Debtor when the
7 case was filed?

8 A Well, in terms of a, you know, finance and accounting
9 perspective, there was no revenue. There was no operating
10 revenue for the Debtor.

11 Q And why was that?

12 A Well, when the company -- I don't want to say company --
13 when Corizon completed its divisional merger in May, there
14 were no operating contracts allocated to the Debtor.

15 And therefore, there was no operating revenue that was
16 received by the Debtor.

17 Q And you mentioned the funding agreement a few minutes
18 ago. What amounts were available to the Debtor under the
19 funding agreement when the bankruptcy case was filed in
20 February of 2023?

21 A Well, from where I sit today, there was nothing
22 remaining.

23 Q Why do you say it that way? What do you mean?

24 A Well, I was in this chair in, you know, March of '23
25 where Your Honor sort of quizzed me on whether or not I knew

1 how much was under the funding agreement.

2 And to the extent that there was information or amounts
3 under the funding agreement that I would be back in this court
4 to assure that I was taking the steps to access it. So we
5 began almost immediately gathering the information in order to
6 understand whether there was any remaining amounts available
7 under the funding agreement.

8 And throughout the course of the engagement, it was
9 concluded through our analysis that there was no remaining
10 amounts left.

11 Q Okay. So if there was no amounts left under the funding
12 agreement, did you investigate other sources of capital or
13 cash that could be used to fund the bankruptcy case?

14 A Oh, absolutely.

15 Q Explain that process to the Court.

16 A Sure. The day we filed, February the 13th, we had
17 received that morning correspondence from Synergy, our third-
18 party, what was called the employee retention tax credit. We
19 had received a really extensive report from them that
20 basically indicated the Debtor had access to it was roughly
21 \$10 million of employer retention credits.

22 There was a process by which we needed to bring those
23 into the estate, but they identified they were available and,
24 you know, obviously, I quickly latched onto those.

25 Second, we knew, as I mentioned earlier, the Debtor had

1 been allocated insurance policies and, you know, a number of
2 insurance contracts. We didn't know whether or not there were
3 available funds underneath those and to what extent we could
4 use those, but we knew they were available.

5 Outside of those three things, the funding agreement,
6 which, as I said today, I know that there was nothing
7 available, the ERC credits, and, you know, insurance policies,
8 the real only other I'd say item available was just, you know,
9 any type of call it litigation that may exist or may come
10 about and whether or not I could, you know, figure out how to
11 monetize those in terms of bringing capital in.

12 Q Were you able to monetize those immediately in the case
13 in February of 2023?

14 A Well, when you say those, I wasn't available. I wasn't
15 able to monetize any of those as much as I attempted to.

16 Q So then what was your next step to make sure the case had
17 sufficient funds to pay for administrative expenses during the
18 case?

19 A Well, just so we're clear, I spent quite a bit of time
20 actually engaging with third-party potential lenders. I
21 testified on this, you know, some months ago. The ERCs, at
22 least as how I viewed them, represented real collateral.

23 My attempt was to convince third-party lenders to lend on
24 that collateral. I didn't have much other collateral to
25 offer, but I certainly exhausted efforts to determine whether

1 or not third-party lenders were available.

2 I had to pivot away from that eventually. And really,
3 the source of capital in this case was M2 LoanCo who had
4 provided the funding agreement, who had provided an additional
5 loan agreement to the Debtor pre-petition, and so I started to
6 engage through counsel with M2 LoanCo for the ability to bring
7 in capital.

8 Q You mentioned engaging M2 LoanCo through counsel. How
9 did the DIP loan get negotiated with M2 LoanCo?

10 A Well, the process that at least I undertook was that I
11 engaged directly through counsel or directly with counsel to
12 M2 LoanCo.

13 Q And why was that? Why did you have to go through
14 counsel?

15 A Well, we talked earlier about the board resolution. I
16 didn't have a great feel at the time, which I think I
17 testified to a couple times, as it relates to what Mr.
18 Lefkowitz's role was at the time of M2 LoanCo.

19 And what I didn't want to do was create, at least at the
20 time, any type of appearance or even a conflict that the
21 Debtor wasn't negotiating directly with M2 LoanCo, and so, I
22 chose to negotiate through counsel.

23 Q And did you ultimately authorize the filing of a DIP
24 motion in this case?

25 A I did.

1 Q And is that motion what's been admitted as Debtor UCC
2 Exhibit 10?

3 A This is the interim. This -- that's correct.

4 Q Okay. And did the UCC object to the DIP motion?

5 A Yes, they did.

6 Q And their objection is the next exhibit, Exhibit 11,
7 right?

8 A Correct. This is their objection.

9 Q And what resulted following the UCC's objection as it
10 relates to entry of an order on the motion?

11 A Well, this objection was filed on the 21st of March. I
12 believe the hearing occurred a few days later. The Debtor in
13 the Committee, as well as M2 LoanCo did engage in negotiations
14 leading up to a hearing.

15 There were resolutions on a couple of fronts. Not all
16 unfortunately. And we brought forth a hearing in that, you
17 know, third week of March in order to seek approval of the DIP
18 order.

19 Q And the Court ultimately entered that first interim DIP
20 order, right?

21 A Ultimately, correct.

22 Q And that's what's been admitted as Debtor UCC Exhibit 12?

23 A That's correct.

24 Q And did the Debtors submit subsequent interim DIP orders
25 after the entry of this first order?

1 A There have been four total DIP orders entered by Your
2 Honor, and we have submitted now a fifth order.

3 Q Okay. And Debtor UCC Exhibits 13, 14, and 15, are those
4 the second, third, and fourth interim DIP orders entered in
5 this case?

6 A That is correct.

7 MR. KAUFMAN: Your Honor, I'll offer Debtor UCC
8 Exhibits 13, 14, and 15, which, for the record, are Docket
9 1410-13, 14, 15.

10 THE COURT: Any objection?

11 MR. MOXLEY: Your Honor, I don't mean to be
12 difficult with exhibits, particularly filings. I thought what
13 our teams had agreed to was that docket entries would be --
14 could be subject to judicial notice, and wouldn't necessarily
15 need to be entered.

16 With that said, Your Honor, we'd be happy to do
17 whatever procedure the Court prefers with the judicial notice
18 of those documents. We don't have objection.

19 MR. KAUFMAN: Your Honor, my response to that is
20 that that is the general statement. If it's just a pleading
21 filed on the docket, the Court can take judicial notice. But
22 this document, we actually do intend for the Court to consider
23 the substance of it, so we ask that it be admitted.

24 THE COURT: I'm okay admitting it.

25 MR. MOXLEY: No objection, Your Honor. Thank you.

1 (Exhibits 13, 14, and 15 received in evidence.)

2 BY MR. KAUFMAN:

3 Q Is the Debtors --

4 MR. KAUFMAN: Oh, I'll wait for a ruling.

5 THE COURT: Oh, I'm fine. They're admitted.

6 BY MR. KAUFMAN:

7 Q Is the Debtor seeking entry of a final order on the DIP
8 motion at this time?

9 A No. We're seeking entry of an interim DIP order for --

10 Q And the interim DIP order that the Debtor is seeking is
11 the next exhibit 16; is that correct?

12 A That is correct.

13 Q Is M2 LoanCo as the DIP lender requiring as a condition
14 of this additional interim financing the entry of a final
15 order?

16 A They're not.

17 Q And to your knowledge, has M2 LoanCo declared a default
18 or threatened to declare a default under the DIP loan?

19 A No.

20 Q Exhibit 16, Debtor UCC Exhibit 16, did you authorize the
21 filing of that motion?

22 A I did.

23 Q And does it include a proposed order and an interim
24 budget?

25 A It does include a proposed order, and I do see the

1 budget. That's correct.

2 Q And was this negotiated with the DIP lender and the UCC?

3 A It was.

4 MR. KAUFMAN: Your Honor, I offer Exhibit 16, which
5 is the fifth interim DIP order.

6 THE COURT: This one I see a little different than
7 the others, and I, subject to your -- I can admit this for
8 what you filed, but this has a budget. And I don't know if I
9 should admit the budget for the truth of the matter asserted
10 and the numbers in there.

11 But I can certainly take it for what the parties
12 have filed, and what you're seeking as the fifth interim.

13 MR. KAUFMAN: That's --

14 MR. MOXLEY: That would be our position, Your Honor.

15 THE COURT: You okay with that? Okay. Thank you.

16 MR. KAUFMAN: That's fine.

17 (Exhibit 16 received in evidence.)

18 BY MR. KAUFMAN:

19 Q Was this fifth interim DIP motion, the budget, and the
20 proposed order, was this negotiated as part of the global
21 settlement that was reached among the parties in this case?

22 A It was.

23 Q Okay. If you'll scroll down in that motion to where the
24 proposed order begins, which I think is page 10 of the
25 document.

1 A I'm here.

2 Q Okay. Describe for the Court your understanding of what
3 is being proposed in the interim order.

4 A Well, this is entry into the fifth, as we've indicated.
5 It does include the advancing of another 5 million. If we
6 look to page 11 of 16 and come to the bottom, this DIP order
7 really sets forth certain milestones conditions in order for
8 funding to occur.

9 Q And when these milestones were negotiated, did the Debtor
10 anticipate having this hearing completed by now?

11 A Oh, indeed.

12 Q And is the Debtor now working with M2 LoanCo to extend
13 those milestones so that they tie into the end of this
14 hearing?

15 A Yes, that's my understanding.

16 Q Has M2 LoanCo indicated a willingness to push those dates
17 off a little bit?

18 A That is my understanding, yes.

19 Q What if the Court declines to approve the financing
20 proposed under this motion?

21 A Well, I guess simplistically, it just means that the CRO
22 is continuing to ask the professionals to really finance the
23 case.

24 Q And the Tort Claimant Committee argues that the estate is
25 administratively insolvent. Are you familiar with that

1 allegation?

2 A I wasn't here last Friday, but I do understand that that
3 allegation has been made.

4 Q Do you agree that the estate is administratively
5 insolvent?

6 A No, I do not.

7 Q Can you explain to the Court why you think the estate is
8 administratively solvent?

9 A Sure. Well, I assess administrative solvency as kind of
10 a point in time similar to, call it a balance sheet. Today,
11 let's just say if I was to assess outstanding fees and match
12 those up with what assets I would have available to martial
13 and pay those fees, then I believe there's assets that exceed
14 the amount of administrative expenses outstanding.

15 To me, and it may sound simplistic, but that's how I
16 assess solvency.

17 Q And if the settlement that's being proposed today is
18 approved by the Court, and then a plan is later confirmed so
19 that the settlement goes effective, will the additional funds
20 under the settlement be sufficient to pay administrative
21 expenses in this case?

22 A Yes, by a wide margin.

23 Q And make distributions to Creditors?

24 A That's correct.

25 Q How much do you project of the settlement proceeds will

1 be available to Creditors in this case?

2 A Well, of the settlement proceeds by themselves, the way
3 that I look at that is within the settlement agreement there's
4 a \$40 million amount that would be funded upon, let's call it
5 the effective date, really, there's -- I feel the situation's
6 like.

7 But that 40 million would be funded and then netted out
8 of that would be occurred or call it incurred and owing or
9 unpaid administrative expenses.

10 Now for the budget that Your Honor just referenced,
11 there's a number they added to the budget that I called
12 settlement proceeds. That number, at least per this budget,
13 was around 3, 3.1 million.

14 So the way that I look at it is the settlement proceeds
15 are 40. The proceeds or the amount of the proceeds that would
16 need to fund administrative expenses per this budget is 3 and
17 change. So let's call it roughly 35 million.

18 And I have to give a delta between 35 and what that exact
19 math would be simply because, number one, the budget was
20 prepared a few weeks ago. My understanding is the TCC has
21 filed the applications that I didn't account for in this
22 budget. I don't have a budget --

23 Q You don't have --

24 A -- all in. And so --

25 Q You don't have a --

1 A -- I don't know what the delta would be.

2 Q I'm sorry. You said you don't have a budget. What did
3 you mean by that?

4 A Sorry. From the TCC. And so, I don't know if we're
5 going to deal with questions on this, but there is a line for
6 third committee in the budget. And I believe it is lower than
7 the fee app, you know, the fee statements that have been filed
8 so far.

9 So when I say minimum of 35, the way that I think about
10 the settlement proceeds, I take the 40 and I deduct what would
11 be incurred but unpaid for professional fees.

12 Q And are there other sources of recovery for Creditors in
13 this case beyond the settlement proceeds that are being
14 proposed?

15 A Absolutely.

16 Q And did you prepare a demonstrative for today that
17 demonstrates to the Court the potential waterfall of the
18 settlement?

19 A Down to distributable assets. I did.

20 MR. KAUFMAN: Your Honor, could I approach and hand
21 this up?

22 THE COURT: Sure. Thank you.

23 BY MR. KAUFMAN:

24 Q Could you walk the Court through this demonstrative and
25 explain to the Court what you're projecting based on the

1 statements you just made?

2 A Sure. As I mentioned a second ago, this is not a
3 complete waterfall, meaning I wasn't looking to recreate the
4 liquidation analysis in the original disclosure statement.

5 What I was looking to accomplish in this is to show what
6 proceeds were available after administrative and priority
7 claims were funded.

8 So let me take it in really three pieces. The first
9 piece I'll talk about lines really 2 through 5 since there
10 wouldn't be cash in the estate simply because I'm using that
11 to fund expenses.

12 Row 2 are the employee retention credits I mentioned a
13 second ago. Your Honor and others in this case may have seen
14 a smaller number when the original liquidation analysis was
15 filed. That number has increased, you know, to a fair extent
16 because we worked closely with Synergy, the outside
17 consultant, to calculate additional amounts the Debtor was
18 qualified for under the ERC credit program.

19 The 25.9 million that you see is the amount that I
20 personally applied for through the IRS, through what's called
21 941-X forms. The 19.5 is just simply a 25 percent discount on
22 that. I have at least at this point no reason to believe that
23 those amounts won't be liquidated; it's just a matter of
24 timing.

25 The cause of action proceeds on number 3 or row 3, that

1 estimate admittedly is one that I worked closely with the
2 Committee on. There are certain claims that the Debtor
3 believes it has that is not being released through this 9019.

4 For example, there are claims that are not being released
5 to a former equity owner called the Flacks Group. There are
6 preference payments that are not being released. We've simply
7 estimated those to be between 1.5 to 3 million. I think the
8 Committee might think they're worth a little more.

9 Insurance proceeds within the disclosure statement, there
10 is a fairly thorough schedule on all the insurance policies
11 that the Debtor has possession of within a certain portion of
12 those. And I'll reference those as being the Arizona policy
13 simply because we mediated and we had a process by which we
14 have embedded into the plan.

15 There are fairly substantial amounts of insurance
16 available with low SIRs. We've simply estimated 5 to 10
17 million. It's going to depend on the value of the claims
18 obviously, but we have included that as initial recovery.

19 And then, of course, you see the global settlement. What
20 I've done in this schedule is I've said where were we in
21 August of '23 in the first settlement, and where are we now in
22 the '24 settlement.

23 So as it sits, at least for those four categories I've
24 just mentioned, 37 to 40 is somewhat comparable. The
25 mechanics are a little bit more complicated beyond that, so

1 that's a \$3 million improvement.

2 Now as you work down the page, the employee retention
3 credit offsets, just simply, those are fees and taxes. The
4 first is the IRS tax claim that was filed. At least
5 memorialized within the original plan or the plan that's on
6 file today, there is a notion that the ERC credits would apply
7 to those taxes.

8 It's what I've been in communication with the IRS about
9 throughout this engagement. There's an understanding between
10 both parties that that would take place.

11 The Synergy fee that's referenced there is just the fee
12 that I referenced a little bit earlier. It's contingent based
13 on the amount of cash received.

14 This is a different presentation and liquidation analysis
15 at least from 10, 11, and 12's perspective. On row 10, I just
16 simply said what is the DIP budget showing or what did the DIP
17 budget show as total administrative expenses.

18 The August '23 settlement would've been until the end of
19 the year. The January '24 settlement would be memorialized in
20 the budget that I just mentioned. That would take us through
21 the end of April. So those are total fees, end of the year
22 versus end of April.

23 And then the release on row 12 is just simply a
24 settlement concept. That's what we --

25 Q Let me stop you. You skipped line 11. Why did you skip

1 line 11?

2 A Oh, I'm sorry. I have a TBD. So this goes back to the
3 point I was referring to earlier. As it stands today, the
4 17.4 that is referenced on row 10 is budgeted, right, actual
5 incurred plus budgeted.

6 I do not know as I sit here today what incremental fees
7 may exist beyond what's in the budget, both from the Debtors'
8 perspective in the activities that we're dealing with now and
9 we may deal with going forward, and then, of course, from the
10 TCC's perspective and the UCC.

11 Q Okay. And line 12, you were talking about the DIP
12 facility obligation releases. Why is it dramatically
13 different between the August settlement and the present
14 settlement?

15 A Well, it's -- I will say it's a bit complicated. But in
16 the original settlement, there was a dollar-for-dollar credit
17 for DIP amounts that would be advanced post that mediation,
18 meaning that 37 million would have been reduced by a certain
19 amount to fund administrative expenses such that the only
20 amounts that were available to release, at least at that
21 point, was the DIP that had been approved, which I think was
22 the first and the second, plus accrued interest.

23 The 14 million is really the concept that's now baked
24 into the new settlement, which would be the 8.5 plus accrued
25 interest that had already or would be contemplated to be

1 advanced, plus the additional five.

2 So when you take that, you add accrued interest, and you
3 add the fees, that 14.3 million is effectively the release of
4 the DIP claim that is memorialized in the 9019.

5 Q So let me ask it this way. The 37 settlement agreement
6 that was proposed from the August settlement and the 40 that's
7 being proposed under the present settlement, you say those are
8 kind of apples-to-apples, right?

9 A To the best that I could create this demonstrative,
10 that's the way, at least in my mind, I think about it.

11 Q But does the timing change, the timing of payment change?

12 A The timing does. The 37 million, the reason I put it on
13 a separate line is there was an amount in the first settlement
14 by which would come in at the effective date. It was 25.

15 The incremental 12 would have come in monthly. I think
16 it was a million a month, every month, for the next 12 months.
17 The current 9019 is for the 40 million to be received on the
18 effective date.

19 Q No payout over time, right?

20 A No payout over time. What I haven't done in this
21 demonstrative -- and I do think I was asked this in some of my
22 prior testimony -- I have not applied any type of present
23 value --

24 Q Then you mentioned line 12 under the old August
25 settlement only about 2.9 million has been released to the

1 DIP. Now that's gone up by how much?

2 A Well, it's just (inaudible).

3 Q What else -- tell the Court about the remaining line
4 items under 15, 14 through 20.

5 A Sure. I'll just hit these briefly. The plan trust
6 professional fee, you know, that was really a concept in the
7 first and second amended plan and disclosure statement. I'm
8 making the assumption -- I don't know because once we
9 hopefully are able to reach an order on this 9019, I'd like to
10 move this case into plan negotiation stages.

11 I am assuming there would be a trust. In any
12 liquidation, there's typically a trust. In our original
13 liquidation analysis, we included fees for a trustee or
14 trustees of 2.1 to 2.8. I've simply left that alone.

15 So I've left it here. The U.S. trustee fees are simply a
16 calculation off of distributions. And then the other
17 administrative expenses claim was a fairly important line
18 because that 1.2 you see in the bottom left represented a
19 potential claim that would have been filed or I thought would
20 may be filed by Cigma from an administrator perspective.

21 And then when you see the January 24th, that 755, 750 of
22 that is an amount that's memorialized within the budget. So
23 all in all, when you come all the way down to row 20 -- and I
24 realize that was a lot of detail -- but when you come down to
25 row 20, at least for January '24, if I was preparing a

1 liquidation analysis based on the economics here, the amounts
2 available for Creditors, plural, Creditors, would be between
3 49 and 62 million.

4 THE COURT: I'll just ask you a clarifying question.
5 For Cigma, how do they flow through this budget? Can you just
6 remind me?

7 THE WITNESS: Your Honor, there's a line item in the
8 budget that says Cigma risk management. It's row 3 and
9 750,000 is budgeted back in January here in the budget.

10 BY MR. KAUFMAN:

11 Q Has that amount been paid?

12 A It has not.

13 MR. KAUFMAN: Sorry, Your Honor. I didn't mean to
14 step in.

15 THE COURT: No, no, no, no. I'm glad you asked the
16 question. That was going to be my next question. And then
17 the question after that is so under the proposed settlement,
18 what happens to that claim?

19 THE WITNESS: That claim is dissolved. 750 is, in
20 fact, the full payment to Sigma. And there are no amounts
21 going --

22 THE COURT: So, I'm sorry. In other words, is the
23 estate going to have to pay the 750 under the settlement or is
24 it released in exchange for the release?

25 THE WITNESS: 750 is the payment, Your Honor. So

1 they're owed called only five today. The construct today
2 would be to pay 750 for Sigma. That resolves the outstanding
3 balance of the 1.5 in the amounts in the amounts occurring in
4 the future.

5 And no administrative claim would be filed for
6 Sigma. And then, of course, the settlement mechanics then
7 step in from a length release perspective.

8 THE COURT: they are owed 1.5 plus potentially some
9 other amounts. The estate is going to settle it for 750 and
10 then kind of a waiver of any future services that Sigma would
11 provide?

12 THE WITNESS: That's correct. But they would still
13 continue to provide services. Which is very important from my
14 perspective.

15 THE COURT: Okay. Thank you. They're not releasing
16 the 750 though, correct.

17 THE WITNESS: Correct.

18 THE COURT: Okay.

19 MR. KAUFMAN: Your Honor, I think I misunderstood
20 your question.

21 THE COURT: No, no, no. I was just making sure that
22 I understood kind of how they flow through here and what the
23 deal with Sigma is. It's just more clarifying questions for
24 me. I appreciate it.

25 MR. KAUFMAN: All right.

1 BY MR. KAUFMAN:

2 Q And so that I can clarify, I think Your Honor ask the 750
3 is not being released. What is the -- your understanding of
4 the deal with Sigma if the DIP and the settlement is approved?

5 A Well Sigma is, I think, a release party under the 919. I
6 have to remember if they're a self -- but they are a release
7 party under the 919.

8 The 750 would fund all outstanding amounts and amounts
9 that would be incurred in the future. And Sigma would
10 continue to provide services to the Debtor going forward.

11 Q So what's the benefit -- your understanding of the
12 benefit of paying Sigma about half of what they're owed in
13 exchange for a release from Sigma from future amounts owed?

14 A Well, my job is to maximize value to the estate, right.
15 And the bottom left of this demonstrative, just by way of
16 example, I think the understanding at least up to this point
17 in the case is that Sigma was not walking away from their
18 administrative claim or at least their view of their
19 administrative claim.

20 They had every intention to file that claim and they were
21 going to come to court to litigate it. At least that's my
22 understanding. So by settling I think there is at least as it
23 stands today, value to the estate first as a scenario in which
24 that administrative claim would be allowed.

25 Second, Sigma continues to provide services to the Debtor

1 and really what I'm doing in this 750 is I'm funding a
2 fraction of not only the expenses that have incurred today,
3 but I don't know how long this case will be. But we may very
4 well continue to use their services in the future. And I no
5 longer have an amount owing.

6 Q And so the record is clear, what services does -- well
7 let me back up. Who is Sigma?

8 A Sigma's a group of individuals. They were previously in
9 house counsel, is the way that the described to the Debtor. I
10 believe it was in connection with Divisional merger, the group
11 of in house lawyers separated from the company's formed their
12 entity I believe they owned that entity.

13 And they now provide services on a contractual basis for
14 the Debtor, I believe, to other third party entities as well.

15 Q And do you know whether Mr. Lefkowitz has a role with
16 Sigma?

17 A My understanding is he's an unpaid director of Sigma.
18 But my understanding is he's not an equity owner of Sigma.

19 Q And what services does Sigma provide?

20 A Let me answer a little more past tense and present tense.
21 The initial work that the (indiscernible) and I think, Your
22 Honor had questions on this a few months ago, if I recall.
23 Sigma they maintain really the entire data base of personal
24 injury claims and various court claims against the Debtor.

25 When we filed, we really had no ability to get our arms

1 around, where were the claims, where were they filed, who was
2 involved, who were the Defendants, what were some of the
3 underlying merits.

4 And so Sigma was important from a noticing, from a
5 documentation for us to be able to build the creditor matrix,
6 for us build creditor schedules. Sigma also -- because they
7 refer to themselves as claims management, they also had
8 relationships with the other various counsels that were
9 defending the litigation from across the country on behalf of
10 the Debtor.

11 And so we had to utilize Sigma's relationship sort of
12 management some of those outside counsels so that we knew
13 that, you know, folks were in essence not incurring
14 administrative expenses that we couldn't afford to pay.

15 Now as we moved through the engagement, that was initial,
16 I think we may have talked about this, but there was a
17 extension of the automatic stay we sought. I think multiple
18 follow-ups to that. Maybe one or two. To where Sigma was
19 very helpful for us and critical for us to really dig into
20 each of those individual claims.

21 You know, we can pull back the sheets ourselves and
22 things like that, but just the history of the actual claim.
23 Who is involved, how long it had been carried out, some of the
24 undergoing merits and the like Sigma helped us with that.

25 So they've been instrumental throughout really this

1 entire process. At the second mediation there was a request
2 to gather additional information.

3 Q Let me just stop you.

4 A Okay.

5 Q Let's not get into what was discussed at mediation. But
6 I'll ask the question. Did Sigma assist you in providing
7 responses to requests made by the Tort Claimant Committee as
8 part of mediation.

9 A Yeah that was my last piece. In response to information
10 requests that were made by management and TCC, Sigma generated
11 a number of reports and, you know, data on claim activity that
12 we could provide to the various parties.

13 Q I think that's enough on Sigma, unless the Court has any
14 follow-up questions.

15 THE COURT: No thank you.

16 BY MR. KAUFMAN:

17 Q The Tort Claimant Committee has alleged that M2 Loanco
18 has maintained control over the Debtor and the UCC by
19 withholding DIP funding. Do agree with this characterization?

20 A No.

21 Q Why not?

22 A Well first of all, the Debtor and the Committee we
23 haven't stopped working. We haven't taken direction, we
24 haven't stopped working, we haven't otherwise been persuaded
25 by, you know, any type of action in that regard.

1 You know, I'm involved another Chapter 11 in which I have
2 what I'll say a challenging DIP lender that didn't always fund
3 exactly to the budget and on time. And, you know, we carried
4 out our duties per our fiduciary interest and our tasks.

5 So, you know, there's been no influence at all on, you
6 know, type of withholding or not funding or funding based on
7 whatever condition is in whatever DIP order.

8 Q The Tort Claimant Committee has also alleged that the DIP
9 loans were pre-negotiated before the bankruptcy case was filed
10 last February. Is that accurate?

11 A No, I wasn't even retained until the bankruptcy was
12 filed.

13 Q Do you believe the UCC has been complicit with either the
14 Debtor or M2 Loanco. as the DIP Lender in negotiating the DIP
15 orders in this case?

16 A No. I think the committee has been a strong adversary
17 throughout the entire process. Which is, you know, been
18 memorialized within the fifth interim.

19 Q Let's turn -- I want to talk about your investigations --
20 the Debtor's investigations in this case. Would you turn to
21 Exhibit 2 in the Debtor and the UCC's Exhibit Book, Exhibit 2?

22 A Okay.

23 MR. KAUFMAN: For the record that's 410, docket
24 410-2, which I believe has been admitted.

25 THE WITNESS: And I'm sorry, which one are we going

1 to?

2 BY MR. KAUFMAN:

3 Q First binder, Exhibit 2.

4 A First binder. Okay, I'm sorry.

5 Q And while you're doing that -- well let me know when
6 you're there.

7 A I'm here.

8 Q What is this document?

9 A This is the execution copy of the settlement agreement.

10 Q And are you asking the Court to approve this settlement
11 with the modifications that Mr. Brookner described a few
12 moments ago?

13 A Yes, the modification, I think are memorialized order
14 that would supercede the language in the agreement.

15 Q And let's talk about how this settlement came to be. Did
16 the Debtor investigate the state causes of action before
17 entering into this settlement agreement?

18 A It did.

19 Q Tell the Court about the process, the investigative
20 process that the Debtor undertook.

21 A Okay. I think much of this is laid out in the disclosure
22 statement, but let me summarize it in my words.

23 The investigation really had two components. It had a
24 legal component and it had a financial component. Counsel led
25 the investigation. Counsel being Gray Reed led the

1 investigation.

2 There were Ankura professionals that reported to and
3 worked at the direction of Gray Reed in connection with that
4 investigation. And the task was to investigate potential
5 causes of action via state mail.

6 Q You mentioned some Ankura individuals. Who are those
7 individuals?

8 A Well my team consists of call it six core individuals
9 beyond myself. Let me break them up into two buckets. One
10 I'll refer to as the investigation team. And the second I'll
11 refer to as sort of the CRO team.

12 The investigation team -- this is three individuals. One
13 by the name Mike Conellie (phonetic). Mike is a very
14 experienced seasoned restructuring and dispute professional.
15 Works within our transaction and valuation practice. He is a
16 forensic accounting, fraud examiner. I believe that he has a
17 CPA and a number of other credentials that allow him and help
18 him to focus in the expert role of disputes, transactions and
19 litigation matter.

20 He was assisted by two individuals in his team. One
21 being Brian Sergeant (phonetic). Brian is, as I recall,
22 finance in accounting, undergrad. I believe he has his CPA.
23 The third individual is by the name of David Cooper. David
24 Cooper has what's called a Charter Financial analyst
25 designation which is the same that I have.

1 Those three individuals were focused on the
2 investigation. The three other individuals -- I think I've
3 explained to the Court in the past -- one Scott Renaldi
4 (phonetic). Scott is and has a very extensive background in
5 Chapter 11 administration. Both the preparation of, carrying
6 out the administration.

7 He's also served in multiple post confirmation roles.
8 And then Steve Petrocelli (phonetic) and Dillon Frankal
9 (phonetic) are two members of what I call the CRO team that
10 are -- one is a CPA. They're both financing and accounting
11 restructuring centric professionals that their career is
12 dedicated to simply restructuring matters.

13 Q So you mentioned that the investigation was led by Gray
14 Reed, especially on the legal side. Explain to the Court the
15 extent of your involvement. The process that you undertook to
16 become involved and apprise yourself of the status of the
17 investigation.

18 MR. MOXLEY: Objection, Your Honor. I asked Mr.
19 Perry this exact question to explain his involvement in the
20 process and he was instructed not to answer that question. So
21 I would object to him being able to answer that question at
22 today's trial.

23 THE COURT: I'll allow you to cross him on it. Go
24 ahead.

25 BY MR. KAUFMAN:

1 Q Do you need me to reasked?

2 A Please.

3 Q Just describe for the Court your involvement, the steps
4 you took to apprise yourself of the status of these
5 investigations.

6 A Sure. I think I've testified in the past that my
7 involvement was to review reports and other information
8 produced by the investigation. So let me explain that.

9 The Gray Reed and Ankura teams for months I had daily
10 calls on my calender to assure the teams came together daily.
11 As a CRO what I didn't want is to be in the dark. I didn't
12 want to be in the dark.

13 I didn't want work to be carried out for two, three, four
14 weeks without really understanding what was occurring and what
15 was happening in this case was moving too quickly. There were
16 too many factors to deal with.

17 And so my role was, again, to organize calls, to attend
18 calls, to stay informed as to how the investigation was
19 carrying out.

20 There were reports created. I received that reports. I
21 reviewed those reports. And then, you know, there were other,
22 call it, analysis that, you know, I had a hand in helping
23 with.

24 Q A hand in helping with as in -- explain that to the
25 Court. Did you prepare reports?

1 A There are certain reports that I prepared in connection
2 with the investigation. There are certain reports, obviously,
3 that my Ankura team that I just described in connection with
4 the investigation.

5 Q And has the Debtor, to your knowledge, produced all
6 non-privileged reports to the Tort Claimant Committee?

7 A That is correct. To my knowledge, all non-privileged
8 information has been produced.

9 Q And based on your involvement in this process, did the
10 Debtor come up with a settlement range of the estate causes of
11 action before going into mediation?

12 A It did.

13 Q And did the Debtor reach a settlement with the UCC and
14 the M2 parties after the August -- we talked about the August
15 settlement. Was the August settlement within that range?

16 A On the economics that I walked through on the
17 demonstrative earlier, the 37 million plus small -- let's call
18 it release -- those were within the range that we had
19 originally identified, yes.

20 Q And the terms of the August settlement were incorporated
21 into a Chapter 11 liquidating plan, right?

22 A That's correct.

23 Q Is the Debtor asking the Court to approve that Plan in
24 the settlement that was incorporated into the prior Plan?

25 A There is no request for the Court to approve a Plan or

1 the original settlement now.

2 Q And why not?

3 A Well, we're here today seeking approval of the 9019 or
4 the settlement agreement, first of all, from the second
5 mediation, not the first. And second we are not here seeking
6 approval plan perspective are, you know, some of the releases
7 that I think were discussed on Friday and this morning.

8 So the intention again, like I mentioned a second ago, is
9 if the order is entered for the settlement agreement, the
10 agreement is approved then what I would see as the parties now
11 moving to what I call Plan negotiation stage.

12 Which is taking the settlement, incorporating it within
13 the Plan and disclosure statement and working hopefully
14 collaboratively with the folks in this room to determine what
15 the allocation, distribution, or other mechanics needs to be
16 within the Plan.

17 Q Mr. Perry, I know you weren't here on Friday when we
18 began opening statements. Mr. Goodman -- I'll represent to
19 you, Mr. Goodman in his opening remarks, represented to the
20 Court that he believes the new settlement will only make eight
21 to \$9 million of cash available for the Tort Claimants.

22 Is this accurate in your view based on your analysis?

23 A I wasn't here for that presentation. I'm not sure where
24 that number could have even come from.

25 Q Okay. Let's talk --

1 A I don't know.

2 Q Let's talk about your demonstrative that we just walked
3 through with the Court. Is there an allocation of the funds
4 here on line 20? Has there been any allocation of those
5 proceeds -- the 49 to \$63 million? Has that been allocated
6 between Tort or non-tort claimants yet?

7 A It's why I didn't go below row 20. I don't know what
8 that allocation would be. To me, at least in my view as the
9 CRO, any of the provisions in the Plan that are not
10 incorporated in this settlement agreement, they're all subject
11 to further negotiations, discussion, quite sausage making
12 right of those mechanics. And I hope we get to that point.

13 Q You talked about a settlement range that the Debtor came
14 up with before the initial mediation in August. Is the
15 current settlement -- the \$54 million that's been represented
16 in the current settlement agreement -- is that within the
17 Debtors range of -- a settlement range?

18 A It exceeds it. But let me make sure we're all on the
19 same page. The 54 that you're referencing -- and Your Honor I
20 didn't mention this earlier -- the 54 that maybe referenced in
21 connection with the second mediation is row five of the
22 settlement, 40 million.

23 In row 12 the DIP releases -- because again it's the DIP
24 that's been advanced to date plus the contemplated new DIP --
25 so that -- roughly those three numbers together -- DIP

1 advance, new DIP plus the 40, those total 54 million.

2 That's the 54 million folks continue to reference and
3 just to answer your question that 54 million actually exceeds
4 the range that we had come into the first mediation with that
5 we thought would be fair.

6 Q I'm sorry. I just want to make sure I'm clear. You said
7 it exceeds -- the 54 exceeds the range that the Debtor came up
8 with before mediation?

9 A That's correct.

10 Q What is the Debtor's view of what's being released under
11 the settlement agreement?

12 A Looks like what was discussed a second ago. All estate
13 causes of actions against the release parties.

14 Q And was that component of the settlement agreement
15 heavily negotiated?

16 A Yes, very heavily.

17 Q At arms length?

18 A It was.

19 Q Among which parties?

20 A Well it was done so within two separate meditations.
21 I'll reference the two common interest -- well three interest
22 in both of those meditations were the Unsecured Creditors
23 Committee. The -- obviously the Debtor and then the
24 settlement parties.

25 The second mediation was led by Judge Sanche (phonetic)

1 or Mr. Sanche. I'm not sure how to reference him in here.

2 THE COURT: Me either.

3 THE WITNESS: But he led and then, of course, in
4 that second mediation I think folks are aware that the TCC's
5 representatives were at least present at that mediation. So
6 those were the individuals that negotiated on behalf of their
7 respective interest.

8 BY MR. KAUFMAN:

9 Q Let me ask the question this way. Did the Debtor, as
10 part of it's investigation, conduct an evaluation of each and
11 every possible legal theory against each and every release
12 party elicited in the settlement agreement?

13 A I've answered questions on this in the past. I'm a
14 financial professional so when you use the word valuation, I a
15 kind a valuation to an actual true valuation meaning by the
16 confides of the valuation, you know, credentialing in the
17 process.

18 No, the Debtor did not conduct a valuation in the context
19 in which you may have just asked or any context of valuation
20 of each and every individual claim distinctively and
21 individually.

22 Q How would you describe the Debtor's process for reviewing
23 claims, analyzing claims, and causes of actions against
24 release parties?

25 A From, I think, much of this language I believe that is in

1 the agreement already, but our process was really governed by
2 call it an over arching sort of theory that we sought to
3 prove. And then of that, when you take a step down to layers,
4 there were estate causes of action that we could really define
5 or calculate related to pre-petition transfers.

6 And then there were, you know, other potential causes of
7 actions, remedies, theories and the like that we really
8 couldn't put a value on.

9 Q And why couldn't it -- just so we can understand -- both
10 of those statements. Cash transfers. You're referring to
11 cash out the door?

12 A Cash that would have been transferred from the Debtor to
13 other parties. Correct.

14 Q And then the second bucket that you mentioned, things
15 that are harder to value. Why were they harder to value?

16 A Sure I don't mean to minimize. But the second bucket
17 really had to do with any and all call it claims, theories or
18 remedies related to the divisional merger.

19 (Pause in the proceeding.)

20 Exercised to understand exactly what you calculate, how
21 you calculate it and more importantly whether a fraudulent
22 transfer even occurred.

23 So, again I was able to identify literally to the penny
24 transfers that were made on the first category. But the
25 second category, you know, from a -- from just how we

1 approached it, we did not assign any type of estimate or
2 value.

3 Q And just so the record's clear. The first category
4 you're talking about cash transfers, right?

5 A First category are cash transfers which are memorialized
6 in the agreement or, you know, sort the four main categories,
7 the first three.

8 Q Okay. And the second category, divisional merger
9 theories, right?

10 A Divisional merger theories, correct. Yeah.

11 Q Okay. And let me try to phrase this in a way that
12 Mr. Goodman did in his opening. He mentioned it today. I
13 think you heard him talk about the grocery shopping cart
14 analogy.

15 If the releases in the settlement agreement were the
16 check out counter at a local grocery store, what is it that
17 the M2 parties are getting from the estate through the
18 settlement? What claims are being released under the
19 settlement?

20 A Well it's much like the dialogue when we began the
21 hearing. Estate cause of action, meaning causes of action
22 that the Debtor believes the estate, sorry that are property
23 of the estate, okay, in the two categories I just mentioned.
24 Cash transfers made from the Debtor to released parties, to
25 the extent there were.

1 And second, property of the estate related claims,
2 remedies, theories, related to the divisional merger. The
3 M2 parties are receiving releases of those claims in those two
4 categories.

5 Q Is the Debtor settling personal injury claims made
6 against the Debtor?

7 A No.

8 Q Is the Debtor settling creditors direct causes of action
9 that may exist against Yes Care or other release parties?

10 A I'm sorry, did you say the word "direct?"

11 Q Direct claims?

12 A Non of those direct claims are being settled through this
13 agreement.

14 Q So, let me see if I can move through here. Explain for
15 the Court the Debtor's process for considering the merits of
16 the settlement given the various different legal theories that
17 the estate causes of action could include.

18 A Sure, so this might sound a little ridged or calculated,
19 but it's the way that I understand the merits to be and how I
20 assess them.

21 First, we needed to, weaving the Debtor, we needed assess
22 the likelihood of success on bringing forth litigation on
23 these merits. Two, we need to at least form a view as to the
24 cost to bring those actions forward. Three, we needed to have
25 some view as it relates to the time it would take to pursue

1 litigation on those potential causes of action.

2 And then, you know, from my perspective the reason why we
3 needed mediation to occur is that we needed and at least in
4 mind again, creditors interaction and we needed to understand
5 the views of the creditors.

6 Which at least to the first in -- second mediation the
7 unsecured creditors committee provided.

8 Q I want to turn back to the Disclosure Statement which is
9 Exhibit 18 in your book in front of you.

10 (Pause in the proceeding.)

11 Q And for this one, I need you to turn to page 80 at the
12 top -- 8-0.

13 (Pause in the proceeding.)

14 Q When you get there, tell the Court what that document --
15 what that part of the Disclosure Statement is.

16 (Pause in the proceeding.)

17 A So page 80 is Schedule 5. This is in a section of the
18 Disclosure Statement that speaks to earliest references of the
19 investigation and the investigation prime records of the
20 schedule. And this schedule was really meant to disclose the
21 subpoenas, the Rule 2004 discovery notes. I believe the
22 extent of the work that went into gathering documentation.

23 Q And is this schedule that's filed with the Disclosure
24 Statement from October 27th of 2023, was it accurate at the
25 time that it was filed?

1 A It was.

2 Q And has the Debtor conducted additional discovery in
3 connection with this hearing -- with the Tort Claimant
4 Committee?

5 A It has and it's produced additional documentation.

6 Q has the Debtor made the documents listed here in Schedule
7 5 available to the Tort Claimant Committee?

8 A To my knowledge, yes.

9 Q And the subpoenas listed here on the first section, are
10 those the Exhibits in the Debtor's book -- I'm sure if we
11 could speed through it. We can go page-by-page if you like.
12 But Exhibits 44 through 61, do they correspond to the docket
13 items listed here in the first section of Schedule 5?

14 A I did glance through those before and that is my
15 understanding, yes.

16 Q And those have been admitted into evidence, for the
17 record. So in addition to the formal document request that
18 are listed here in Schedule 5 of the Disclosure Statement, did
19 the Debtor undertake additional and formal document requests?

20 A It did.

21 Q So describe those for the Court.

22 A So really, I boil it down to two forms. As I testified a
23 little bit earlier, In my capacity as the CRO, through the
24 Ankura team as well as the Gray Reed team, we had ongoing and
25 continuous dialogue with the former employees of the Debtor.

1 I would submit those as informal that related to per
2 matrix production, that related to understanding assets and
3 liabilities that were allocated. Obviously, financial
4 statements.

5 We requested and asked, you know, numerous questions and
6 requested calls and dialogues, emails, et cetera with former
7 employees of the Debtor so that we could understand better.

8 All those were informal requests that weren't done within
9 the confines of discovery.

10 Q But did they inform your views on the investigation?
11 Those informal discussions you had with the Debtor's former
12 employees?

13 A There was certainly information gathered from those
14 informal discussions that were a component of the
15 investigation, yes.

16 Q So, let's turn to the last section on page 2 of schedule
17 5. So that's page 81 of 177 of the Disclosure Statement.
18 What does this section describe?

19 A Page 81, this is the producing party of documentation --

20 Q No, no sorry, Mr. Petty. The last section.

21 A Oh, I see. I'm sorry. That was the second part of
22 documents reviewed.

23 The last part -- this is -- these are the depositions and
24 the witness interviews that were conducted.

25 Q And based on what's listed here in the Disclosure

1 Statement, as of October 27th, how many times had
2 Mr. Lefkowitz given sworn testimony in connection with this
3 case?

4 A Prior to the TCC's deposition of Mr. Lefkowitz, he was
5 deposed four times in four different capacities and then he
6 testified in the initial 341 meeting and then two subsequent
7 341 meetings.

8 Q And you mentioned the TCC's additional depositions. Do
9 you understand that TCC has taken Mr. Lefkowitz deposition two
10 more times?

11 A Yes.

12 Q Do you believe the Debtor and the UCC's investigation in
13 this case has been thorough?

14 A I think it's been extremely thorough and I think we spoke
15 to that in the motion.

16 Q Okay. Describe for the Court the extent to which you
17 believe the investigations conducted by the Debtor and the UCC
18 were independent.

19 A The Debtor and UCC. So I'm going to explain it from a
20 process perspective. The onset, the committee was very vocal
21 as it relates to the discovery it wanted to take, the
22 depositions it wanted to take.

23 What we committed to do with the committee is attempt to
24 not duplicate discovery and document requests. There was, you
25 know, effectively a handful of parties that were providing

1 documents. We chose to collaborate with the Committee so that
2 there wasn't duplicating efforts in that regard.

3 There were a couple of analysis that were shared with the
4 committee. Insurance, for example, that you'll see the
5 schedules within the Disclosure Statement. Some of the
6 information with respect to the funding agreement that I've
7 already testified on.

8 Those are the only two areas that we really collaborated
9 on. More information gathering and areas in which there was
10 information that we may have had or analysis that we shared.
11 Everything else was completely independent of themselves.

12 The Committee has their own financial advisor.
13 Obviously, their own counsel. They chose to investigate in
14 the manner in which they proceeded. I don't know how that
15 investigation was carried out. But it was very independent
16 from ours and they have their own views and conclusions as to
17 the results of their investigation.

18 The Debtor conducted its own investigation and brought
19 forth our own views into the investigation from that
20 perspective.

21 Q Let me ask this. I asked about independence. Was
22 Mr. Lefkowitz involved at all with the Debtor's side of the
23 investigation?

24 A He had no involvement in the investigation, but for
25 providing depositions, to which, obviously the Debtor attended

1 and was involved in.

2 And to the extent that there was information that he
3 provided in response to discovery, you know, that was the
4 extent of his involvement.

5 Q And was that done through counsel?

6 A All through counsel.

7 Q I'm going to turn back -- and I'm sorry to make you do
8 this -- back to Exhibit 2, which is the settlement agreement.
9 And now I want to talk about the released parties.

10 (Pause in the proceeding.)

11 Q And I'm trying to orient myself to this because I know
12 some of what's in the settlement agreement has been modified
13 by the proposed order uploaded this morning.

14 But can you describe for the Court why the M2 parties are
15 defined one way in the introductory paragraph and the release
16 parties include additional people?

17 A Yeah, it's very simple, at least in my mind. The
18 M2 parties being Yes Care, and it's totally owned subsidiary,
19 (indiscernible) Texas, M2 Loanco, M2 Holdco, (indiscernible),
20 they were effectively involved in the mediation or they had
21 representatives from their respected entities.

22 They participated in the mediation and based on my
23 understanding, they have now the responsibility to ensure that
24 the settlement is ultimately paid.

25 Now that's why they're labeled as M2 parties. I don't

1 know and I'm drawing a blank if they're referred to as
2 settlement parties in this document. But anyway, we'll refer
3 to them as M2 parties. Now you asked how they were different
4 than released parties.

5 Released parties just has a handful of names that are not
6 included in the M2 parties.

7 Q Can you describe for the Court your understanding of why
8 the Debtor and the UCC agreed to include additional released
9 parties who are not necessarily going to be financial
10 responsible for paying the funds required under the
11 settlement?

12 A Sure. So, you know, technically -- at least in my
13 experience -- as a restructuring fiduciary when a settlement
14 is reached, its at often time the settling party's or the
15 party's that are funding the settlement, receiving something
16 in return, will provide a list of individuals or parties that
17 they would seek releases for. Those are usually affiliated,
18 you know, and related parties.

19 That obviously happened here. There was a request to
20 include those. Now, as we sort of unpack that, at least in
21 our mind, the investigation the Debtor conducted really
22 included all these entities or individuals that are included
23 as release parties.

24 We didn't necessarily believe, at least as part of our
25 investigation, that there were meritorious claims against

1 these release parties.

2 (Pause in the proceeding.)

3 We thought that was substantial and was in a way we were
4 able to provide releases or at least willing to provide
5 releases to, you know, these parties in exchange for that
6 settlement.

7 Q Did you believe as the Debtors representative, that the
8 proceeds from the settlement -- the settlement funds -- were
9 sufficient value for the estate to confer these releases to
10 these release parties?

11 A That is my conclusion, yes.

12 Q Let's talk about the Debtor's views on the reasonableness
13 of the settlement. Based on your review of the -- let me back
14 up. What sorts of documents did you and the Debtor review as
15 part of the investigation? Did you review financial
16 documents?

17 A I think some of this is included in the Disclosure
18 Statement. So let me touch under my words. Financial
19 statements, emails, documents attached to emails, board
20 presentations, audits, underlying analysis. We didn't really
21 stop at anything.

22 We asked for literally everything and we gathered as much
23 data as we possibly could across, like I mentioned, financial,
24 legal, organizational, you know, and communications amongst
25 individuals.

1 Q Were bank statements included in that bundle of documents
2 reviewed?

3 A Bank statements were with a caveat. And I know we didn't
4 touch on this, but one of the parties that we looked at in
5 Schedule 5, is a group called Flagstar. We actually
6 subpoenaed Flagstar directly because we wanted the bank
7 statements from Flagstar -- formerly Signature Bank -- those
8 statements represented the accounts that for bank statements
9 that were opened in late '21 in connection with the
10 transaction.

11 The Debtor did not provide those as part of it's
12 discovery response. And so we subpoenaed Flagstar directly
13 and received those.

14 Q Were you able to get copies of the Debtor's old operating
15 accounts?

16 A Are you referring to the bank statements?

17 Q Sorry, bank statements from the Debtor's old operating
18 accounts, yes.

19 A We were.

20 Q And were those included as part of the Debtor's
21 investigation?

22 A They were.

23 Q What about loan documents? Did you review loan
24 documents?

25 A The answer is yes. The Debtor has a very extensive

1 history with its debt obligation. So there were significant
2 amount of loan documents, pages, amendments and debt to equity
3 type conversions and assignment type things. But there are
4 documents that were received by the Debtor and as part of the
5 investigation, we certainly reviewed those.

6 Q You mentioned audited financial statements. Did you
7 review -- what years for the Debtor's operating history did
8 you have audited financial statements available for your
9 review?

10 A Debtor -- at least my understanding is the last audit
11 that was performed ended in 2019. Which meant the audit would
12 have covered physical year '17, '18 and '19. Those three time
13 periods.

14 Q And did you have unaudited financial statements for the
15 period after 2019?

16 A We did. We had unaudited financial statements.

17 Q And are those financial statements that you referenced,
18 the audited and unaudited financial statements, are those
19 Debtor UCC exhibits 27, 28, and 31? And I think those will be
20 in the second book.

21 A That is correct. That's what I had reviewed previously,
22 yes.

23 Q Did you also review as part of the Debtor's investigation
24 enterprise valuations that had been performed for the company
25 and its subsidiaries?

1 A Yes, there were two. One in mid-2020 conducted by my
2 firm that White & Case also referenced in their word
3 presentation in connection with the divisional merger.

4 And then there was a second valuation that was produced
5 at the end of '21 by FTI. Well, the valuation date was the
6 end of '21. I think it was prepared in early '22. And my
7 understanding is that was in connection with their role as
8 divisional merger.

9 Q And the Disclosure Statement talks about a spin off
10 transaction of Pharma Corp (phonetic). Are you familiar with
11 that transaction?

12 A I am.

13 Q Was there a valuation of Pharma Corp done around the time
14 of that transaction?

15 A There was.

16 Q And did you view that valuation?

17 A I did. And I believe we produced it to the TCC
18 subsequent similar discussions that we had.

19 Q Did you take steps to verify the accuracy of the
20 unaudited financials, that you discussed a moment ago, in the
21 valuations that we've just gone through?

22 A I did.

23 Q Describe those steps for the Court.

24 A Sure. Well let me start by saying I am -- I'm a
25 restructuring professional, that's all I do. So myself and my

1 team were, unfortunately or fortunately, were experienced in
2 working with what I'll call imperfect information.

3 I would say an audit is largely as perfect as you can get
4 for the context in which it's trying to accomplish. Outside
5 of the audit, you really have to dig in to understand what's
6 being provided to you and whether or not you can utilize that
7 to form any conclusions.

8 So, I mentioned earlier that my team includes forensic
9 accounting -- forensic accountants and fraud examiners. They
10 are very experienced in pulling information from various data
11 points and various sources as is my restructuring team, to
12 understand (indiscernible) in the information.

13 So what we sought out to do because we didn't have an
14 audit after '91 is gather as many data points as we could.
15 Valuations, unaudited financials, bank records, trial
16 balances, general ledgers. Even all the way down to -- and I
17 think we provided a lot of this in discovery, check stubs,
18 wire statements, you know, actual true cash transactions.

19 And what we did is we said does all of this hold
20 together? We didn't have an audit. We said can we verify to
21 the best of our ability that this information is as accurate
22 as it can be.

23 And when you go all the way down to actual bank
24 statements and see cash transfers in and out, and the work
25 that was done to work through that, it's the best that we

1 could do with the information that we had and I would say it
2 was an extremely extensive exercise.

3 Q And have you, on behalf of the Debtor, summarized the
4 Debtor's operating history based on the information and the
5 data points that you just described?

6 A In the Disclosure Statement, yes.

7 Q And, that's fair. In Exhibit 18, Debtor UCC Exhibit 18,
8 is the Disclosure Statement right?

9 A Let me look. Yes, that's correct.

10 Q And the Disclosure Statement has two sections. Sections
11 two and three that describe the Debtor's operating history,
12 right?

13 A Yes, as I recall that is correct.

14 Q Do you believe those statements in Section s two and
15 three of the Disclosure Statement regarding the Debtor's
16 operation and operational history remain accurate today?

17 A I do.

18 Q Do you adopt those statements as your own?

19 A As it relates to explaining the operations of the Debtor
20 leading up to the Bankruptcy, I would.

21 Q From your review of the company's financials at the time,
22 what was the -- what was Corizons (phonetic) financial
23 position during the middle months of 2021?

24 A The middle months of 2021, the company is what I'll call
25 severe distress. Recall the Ankura team was still engaged in.

1 The time period prior to the end of '21 part of the
2 investigation work I told you that I did was to ask questions
3 of the partner that was involved in that engagement as to the
4 level of distress in '21.

5 He certainly gave me his view. Based on financial
6 statements, cash transactions and really just email
7 correspondence and communications again in the information
8 that we've already provided, it's pretty evident the company
9 was under severe distress in the middle of '21.

10 I think that's also evidence by kind of the book ends of
11 the enterprise valuations in the middle of '20, end of '21.
12 And if you simply take all those data points that I just
13 mentioned into play, the company was in a real downward
14 spiral. And I would say there was a real question as to
15 whether or not there was any going concern of the business
16 that could be materialized.

17 Q And the Disclosure Statement discusses strategic holding
18 alternatives being explored by the company in the middle to
19 third quarter -- middle -- let's call middle towards the end
20 of 2021.

21 Can you elaborate on what the company was planing based
22 on your review of the company records?

23 A Sure. It's detailed, again, really section three of the
24 Disclosure Statement. But based on our information and our
25 knowledge of what was the financial condition at the end of

1 '21, the company, like I said, had either re-engaged in Ankura
2 or Ankura was already involved. I don't know the exact times
3 that we started and stopped.

4 But Ankura was brought in the end of '21, sort of middle
5 to end not necessarily at that point, to seek a refinancing
6 party or lead any type of sale effort.

7 The Ankura team was preparing for bankruptcy.

8 Q And did you see any evidence in the Debtor's books and
9 records that indicated that the Debtor had an exit strategy
10 for the potential bankruptcy that it was planning to file at
11 the end of 2021?

12 A Based on our review of the information, there was no exit
13 strategy. I think there had been multiple bankers. Hired,
14 failed; hired, failed. And based on, again, what we
15 understand both Arnold and Porter and Ankura were preparing
16 for, really what I call free-fall bankruptcy.

17 I didn't see any indication that there was -- that
18 financing brought order or they had a term sheet that they
19 were negotiating with any party or were saying they were
20 negotiating. Really any path to push them through an 11.

21 Q In your experience -- and we talked about the cases
22 you've been involved in -- in your experience as a
23 restructuring professional, when a company files a Chapter 11,
24 a free fall Chapter 11 with no exit strategy, what is the
25 likely result for general unsecured creditors?

1 A Well in a free fall, liquidation it really comes down to
2 encumbered versus unencumbered assets. In a free fall which
3 there are substantial unencumbered assets for the collateral
4 is encumbered by call it a secured lender, to which there
5 isn't value that exceeds that loan amount, i.e., the fulcrum
6 security there's little to no value for the unsecured outside
7 of, you know, maybe some sort of settlement effort or
8 something of that nature.

9 So typically in a free-fall Chapter 11 -- which we try
10 not to get our client's into -- it's a very bad outcome for us
11 and the creditors.

12 Q Triesent (phonetic) didn't end up filing bankruptcy in
13 2021, did it?

14 A No.

15 Q What happened instead?

16 A Again, as we sort of lay out, the Paragrove 1018 entity
17 purchased the -- really the equity, assumed the debt of
18 Corizon at the end of '21. And the company avoided -- really
19 avoided Chapter 11.

20 Q And Mr. Buckner in his opening statements and I again
21 appreciate that you weren't here on Friday, but he mentioned
22 in his opening statements that there will be evidence of some
23 very bad things happening. Are those laid out in the
24 Disclosure Statement?

25 A We did our best to detail those really starting on page

1 20 of 177. And then it carries forward a couple of pages.

2 Q And are those matters also described in the Rule 9019
3 motion, which is Exhibit 1?

4 A They are.

5 Q Let's turn to Exhibit 1, if we could.

6 (Pause in the proceeding.)

7 Q And specifically, the infamous paragraph 27 that I'm sure
8 we'll hear a lot about.

9 (Pause in the proceeding.)

10 A Okay, I'm here.

11 Q Motion says there are forming categories of claims
12 identified by the Debtor and the UCC. Did the Debtor consider
13 other legal theories that are not described in this paragraph?

14 A It did. I think I addressed those a little bit earlier.
15 But yes that's correct.

16 Q And those legal theories are discussed in other motions
17 and other pleadings -- like the declaration that we talked
18 about a few moments ago?

19 A We had no intention to otherwise not be transparent as to
20 those theories that we were looking to invest in.

21 Q So lets start with the claims against M2 Loanco that's
22 discussed in the motion. How did the Debtor conclude that
23 there were potential claims against M2 Loanco?

24 A Well it just goes back to what I mentioned a second ago.
25 This was in connection with the review of cash transactions,

1 bank statements, you know, detailed trial balance level
2 information to which we identified transfers made which, to
3 based on our work, we couldn't connect to any type of at least
4 the time, ordinary course reason for those transfers to be
5 made.

6 Q And what's the Debtor's belief about the likelihood of
7 success on the merits of a recovery action for the \$24 and
8 half million listed in the motion against M2 Loanco?

9 A Well, we discuss it in the motion. We have no reason not
10 to believe that the M2 Loanco parties wouldn't otherwise
11 defend against this claim. But with that said this is an
12 actual value that we can identify. These are actual cash
13 transactions. We can assign a number to them. Point directly
14 to a transaction which has occurred.

15 So, we feel like we have a fairly strong position on the
16 likelihood of success.

17 Q Did you consider -- you mentioned some defenses. Did you
18 consider the risks and the costs of litigation if this claim
19 against M2 Loanco is not settled?

20 A We did.

21 Q Okay. Describe those factors. How did those factor into
22 the Debtor view on settlement?

23 A Well, again we -- my sort of formulaic approach here was
24 do we think we have the likelihood of success on the merits?
25 Is perusing the claim costly and will it take time?

1 We certainly think there would be cost and would be cost
2 to litigating.

3 Q Does the Debtor --

4 A We think there's real merits on these claims.

5 Q Does the Debtor have cash to pay counsel to pursue those
6 claims?

7 A Not currently, no.

8 Q So, how would the Debtor go about obtaining financing
9 for -- retain counsel to pursue those claims?

10 A Looks like we're going to talk on monthly. I think it
11 would be a on a contingency basis unless there was some way to
12 liquidate other assets.

13 Q And in your experience, what is a normal contingency
14 range for claims of \$20 million or more?

15 A Well in connection with kind of raised DIP financing,
16 those are some of the things that I was asking. I also
17 regularly retain contingency counsel to pursue claims, you
18 know, in other matters. And I've seen those range anywhere
19 from 20 percent at times to such as high as 50 percent just
20 based on the speculative nature of the claim they're pursuing.

21 Q So based on those factors, do you assume that you have to
22 take a discount to settle the claims against M2 Loanco to
23 account for the cost of litigation and the risk of litigation?

24 MR. MOXLEY: Objection leading, Your Honor.

25 THE COURT: Sustained.

1 BY MR. KAUFMAN:

2 Q What is the Debtor's expectation of the ultimate
3 settlement range for a claim based on the factors you've
4 discussed?

5 A I'm sorry are you referring only to M2 Loanco?

6 Q Well start with M2 Loanco. I'm going to ask these
7 questions again when we get to the other claims.

8 A Okay. Do you remind repeating the question?

9 Q Yeah, what -- I don't remember my question. But what is
10 your understanding of how you would have to discount the cause
11 of action against M2 Loanco based on the factors that you
12 already described?

13 A Look, I don't think it's a perfect formulary because I
14 think it's unpredictable. I think it's unpredictable because
15 of the cost that would need to be incurred. It's also
16 unpredictable because of the time.

17 Right, I'll just mention for all of these and it'll be a
18 standard response. I personally know M2 Loanco's counsel.
19 And I think they would be very vigorous in their defense.

20 Doesn't change my view on the likelihood of it, but I do
21 know that it would be likely costly and lengthy.

22 Q And that factored into your analysis?

23 A Sure.

24 Q The next two categories discussed in the motion. The
25 claims against Geneva and what we described as the Paragrove

1 1018 entities.

2 How did the Debtor determine that it might have claims
3 against those two entities or those groups of entities?

4 A Same sort of answer in regards to at least let's call it
5 Geneva and Paragrove 1018's involvement. The cash transfers
6 were, again, easy for us to identify once we had our process
7 in place.

8 The nature in which the cash transfers were made is where
9 we drew a conclusion that they were avoidable. Meaning, we
10 did discover evidence of an agreement. All right, that's
11 detailed here in the motion. So clearly there was a contract
12 in place, at least based on our (indiscernible).

13 But the idea that a \$3 million advance and then 500,000,
14 depending on payments and the way in which they were advanced,
15 did not agree to the exact payment terms in that contract.

16 So in our mind at least this created, I'll call it, a
17 claim that we thought was meritorious and could be meritorious
18 and therefore, we had put it in here in our motion with
19 respect to (indiscernible).

20 Q Like the M2 Loanco claim, does the Debtor take the view
21 that the claims against -- well, what is the Debtor's view on
22 the likelihood of success on the merits of claims against
23 Geneva and the Paragrove 1018 parties based on these
24 transfers?

25 A Yeah I don't think it necessarily changes compared to M2

1 Loanco. They're just different. There's a different rational
2 for why I think the opposing party may challenge and choose to
3 litigate.

4 But at the same time, we thought there were real merits
5 to these claims and we thought we could have a real likelihood
6 of success.

7 But, again, we thought it could be costly and take time.
8 We know the opposing counsel.

9 Q Did M2 Loanco and Geneva file claims in this case --
10 proofs of claims in this case?

11 A They both did.

12 Q And did you review those proofs of claims as part of your
13 investigation -- as part of the Debtor's investigation?

14 A Well I just reviewed them because they filed them. So,
15 yes -- and the answer is yes. But I also just reviewed them
16 in my capacity as CRO.

17 Q And M2 Loanco, it's claim is Exhibit 42 in the Debtor's
18 UCC Exhibit book, right?

19 (Pause in the proceeding.)

20 A That's correct.

21 Q And Geneva's proof of claim is Exhibit 43, right?

22 A That's correct.

23 MR. KAUFMAN: Your Honor, I'll offer Exhibits 42 and
24 43 from the Debtor's Exhibit books, which is docket 1410-42
25 and docket 1410-43 respectfully.

1 THE COURT: Similar to this, I'm going to admit them
2 just for the purposes that they were filed and that they say
3 what they say. But not necessarily for the truth of the
4 matter asserted therein.

5 (ECF 1410-42 and 1410-43 received in evidence.)

6 BY MR. KAUFMAN:

7 Q What can you tell the Court about the amount of M2
8 Loanco's claim based on what you see in Exhibit 42?

9 A Sure. Earlier I testified that early on in the case we
10 needed to get our hands around the funding agreement. And
11 what we discovered is in between the divisional merger and
12 filing bankruptcy, M2 Loanco would -- their position is that
13 there were roughly 38 to \$39 million that were distributed to
14 creditors or you know, claimants for the Debtor or at least
15 funded expenses.

16 Q And how much -- oh, sorry.

17 A Yeah, so maybe you're about to get there. But the 15
18 million was satisfied -- at least per our calculations and M2
19 Loanco would, I think, agrees, that the incremental amount
20 above the 15 million up to the 39, I believe is memorialized
21 in this proof of claim through the separate loan agreement
22 that I spoke about earlier.

23 Q And how much does M2 Loanco contend that it advanced over
24 and above the 15 million funding agreement?

25 A I think it's roughly 24 to 25 million.

1 Q And similar questions for Geneva. How much does Geneva
2 contend that it is owed under its consulting agreement?

3 A Proof of claim here I believe it says 300,000 and change.
4 Yeah, 315,000.

5 Q And as part of the proposed settlement agreement, what is
6 your understanding of what will happen to these proofs of
7 claim?

8 A Both of these proof of claim are being released.

9 Q Does that have value to the estate to release proofs of
10 claims of this size?

11 A Well absolutely there's value. Calculating the exact
12 amount depends on ultimately how the Plan is going to be
13 negotiated and how amounts are, you know, calculated to be
14 distributed to creditors. But, you know, they're absolutely
15 worth value.

16 THE COURT: What do you mean by released? I just
17 want to make sure I've got a clean record. What do you mean
18 by these two proofs of claims being released?

19 What's your understanding of what happens to them?

20 THE WITNESS: So in a restructuring context, I think
21 of -- adjudicate is a better word. Meaning they're completely
22 removing them from the claims register.

23 THE COURT: So they will not receive any
24 distributions on account of these claims or nor will they
25 assert any, right?

1 This would be subject, in your opinion, to one of
2 these claims where you file something to expunge the claim as
3 settled or something?

4 THE WITNESS: Exactly.

5 THE COURT: Okay.

6 THE WITNESS: Hold and release, but really --

7 THE COURT: No, no, I just wanted to make sure --

8 THE WITNESS: -- my lawyer's term that's exactly
9 right.

10 THE COURT: Okay.

11 THE WITNESS: It would not be part of the claim
12 pool.

13 MR. KAUFMAN: Your Honor, I believe the proposed
14 order has the word expunge in it.

15 THE COURT: Yeah, no, no. I just wanted to make
16 sure we're all using the same lingo.

17 As long as we get to the same meaning, that's all
18 that really matters. They're all made up words.

19 BY MR. KAUFMAN:

20 Q Mr. Perry, let's turn to the estate causes of -- the
21 fourth category mentioned in the motion. The estate causes of
22 action arising from the divisional merger.

23 So, it might be helpful for you to turn Exhibit 1,
24 paragraph 27.

25 A Okay, I'm here.

1 Q Does paragraph 27 assign a specific number to the claims
2 arising from the divisional merger?

3 A It does not.

4 Q Why not?

5 A Well, --

6 THE COURT: What exhibit are you on?

7 MR. KAUFMAN: One.

8 THE COURT: Oh, I'm sorry. Go ahead.

9 THE WITNESS: In paragraph 27, Your Honor.

10 (Pause in the proceeding.)

11 THE WITNESS: So just to orient, paragraphs 28,
12 paragraphs 30, paragraphs 32 actually have identified dollar
13 amounts. This goes back to what I testified on a few minutes
14 ago. Bank statements, cash transactions, trial ledgers we
15 were able to identify.

16 We did not assign a number or an estimate to any
17 potential avoidance actions arising out of the divisional
18 merger.

19 BY MR. KAUFMAN:

20 Q Does the Debtor believe there may be meritorious claims
21 arising from the divisional merge?

22 A The Debtor as it sits here today believes there maybe,
23 but we don't believe there's a very high likelihood of any
24 success on the merits related to the divisional merger. So we
25 assigned a very little settlement value to it.

1 Q Are you aware that TCC's position regarding success or
2 liability and alter ego theories?

3 A Sure, I am.

4 Q And does the Debtor share those views?

5 A When you say "views" to make sure I'm clear.

6 Q Does the Debtor agree with the TCC's views on success or
7 liability in alter ego theories?

8 MR. MOXLEY: Objection, Your Honor. The question is
9 vague. I'm not sure what he's talking about.

10 THE COURT: Yeah, why don't you rephrase it?

11 (Pause in the proceeding.)

12 BY MR. KAUFMAN:

13 Q Let me ask it this way. Have you read the TCC's
14 objection to the 9019 motion?

15 A I have.

16 Q And what is your understanding of the TCC's views on
17 success or liability?

18 A My understanding is there's two views. One again my
19 understanding is that TCC takes the view that these are
20 remedies that are not owned by the estate or not property to
21 the estate.

22 Two, they believe that they is very meritorious claims
23 related to the divisional merger and connected to remedies
24 such as successful liability, alter ego.

25 I wasn't here on Friday, but I think there was some other

1 ones that were brought up, specifically that were being
2 mentioned. So I think the TCC's view is there are extremely
3 meritorious claims. They have a significant value attached to
4 them in manner of which they calculated them.

5 And the successor and liability and alter ego are two
6 remedies that they would choose to pursue under that.

7 Q And again, we talked about Mr. Atkinson's report, his
8 declaration. Did you read it?

9 A I did.

10 Q And there's a case cited a court opinion cited in his
11 opinion. Are you familiar with that?

12 A I think you're asking about the William Kelly opinion?
13 Yes, I am familiar with the William Kelly opinion.

14 Q Have you reviewed that opinion?

15 A I have.

16 Q Based on your review of that opinion, I understand that
17 you're not a lawyer, did you see anything in that opinion that
18 applied Texas law as it relates to successor or liability
19 theories?

20 A As I recall the opinion or the magistrate Judge very much
21 referenced Texas law in a discussion around jurisdiction, but
22 it did not apply Texas law.

23 Q What law did it apply, if you know?

24 THE COURT: I'm not really interested in hearing
25 about that. I can read it. Thank you.

1 MR. KAUFMAN: Okay.

2 THE COURT: No offense.

3 BY MR. KAUFMAN:

4 Q Let me ask it this way. In your experience as a chief
5 restructuring officer or any kind of a financial advisor
6 acting as an estate fiduciary duty, would you find it a good
7 exercise of litigation or business judgment to risk a \$54
8 million to pursue litigation based on a single decision from a
9 non-binding court applying a different state's law?

10 A So I'm the CRO and the fiduciary of the estate. I
11 believe we have conducted a thorough investigation that the
12 \$54 million settlement is value maximizing. And the reason
13 I'm here seeking approval of these 9019 is because I think the
14 value supercedes the value that could otherwise be achieved
15 through an alternative.

16 And I wouldn't rest based on, you know, the opinion that
17 you just mentioned.

18 Q Did the company have separate advisors in connection with
19 the divisional merger?

20 A We did.

21 Q Who were those, if you know.

22 A The two that I am most aware of are Whiten Case and FTI.

23 Q And have you reviewed the plan of divisional merger in
24 connection with your testimony -- the testimony you're giving
25 today?

1 A I have.

2 Q And did you review it as part of your investigation?

3 A I reviewed it from, you know, starting the first day of
4 the case, absolutely.

5 Q What's your understanding of what the plan of divisional
6 merger did with respect to Corizon's assets and liabilities?

7 A Just from a simplistic standpoint, there were multiple
8 entities merged together. That merger -- call it balance
9 sheet -- assets and liabilities were allocated partially to
10 NewCo (phonetic) and partially to Remainco (phonetic).

11 So you asked specifically -- Your Honor, do you need a
12 pause?

13 THE COURT: No, keep going.

14 THE WITNESS: You asked specifically about Corizon.
15 Remainco were allocated assets and liabilities. NewCo was
16 allocated assets and liabilities. So the divisional merger
17 really accomplished well I'd say two things.

18 One, merged these entities together. Two, formed a
19 NewCo and then allocated, right, those documents -- those
20 assets and liabilities to NewCo and Oldco.

21 BY MR. KAUFMAN:

22 Q Did Remainco --

23 A Remainco.

24 Q -- under the divisional merger as you understand it, were
25 liabilities allocated to Remainco as well -- I'm sorry. The

1 NewCo, Remainco are confusing. CHS Texas, Inc. Is that the
2 NewCo as you understand it?

3 A The NewCo. Correct.

4 Q Is it okay with you if I just say CHS Texas?

5 A Fine.

6 Q Under the Plan of divisional merger, did CHS Texas take
7 on through allocation liabilities?

8 A they did.

9 Q And what liabilities were those?

10 A I put it in three broad categories. There were, as I
11 recall, accrued compensation related liabilities for current
12 employees. Two, there were liabilities related to on the
13 balance sheet what's called medical claims. Those are third
14 party service providers that were continuing to provide
15 services in connection with the ongoing contracts.

16 And then three, there was a roughly 100 million. I don't
17 have the exact number, but roughly 100 million of secured
18 debt.

19 Those sort of broad three buckets were all located to CHS
20 Texas.

21 Q What about personal injury claims? Were personal injury
22 claims allocated.

23 A I apologize. So medical claims and personal injury
24 claims those two amounts were both allocated in connection
25 with ongoing contracts, okay.

1 So medical claims, third party service providers, and
2 liabilities connected to those with ongoing contracts were
3 allocated to CHS Texas. And then the allied claims that were
4 again connected to ongoing contracts were allocated.

5 And the PI claims specifically or we reference them as
6 tort claims here, the balance sheet was roughly, call it
7 90 million, as I recall. Roughly 66 million from balance
8 sheets went to Remainco and roughly 20 and change were
9 allocated to NewCo or CHS Texas.

10 Q You mentioned FTI was advising Corizon in connection with
11 the divisional merger. Did FTI prepare an opinion regarding
12 the transaction?

13 A They prepared both the valuation and a fairness opinion,
14 yes.

15 Q Okay. And those are in Exhibits 34 and 35 of the
16 Debtor's book, correct?

17 (Pause in the proceeding.)

18 A Thirty-four is the analysis. Thirty-five is the
19 valuation. Yes. There's another document they produced which
20 was an opinion letter, I think is the way they described it.
21 But these two are the substantive.

22 Q And did you review those two documents as part of the
23 investigations that we've discussed?

24 A I did.

25 Q Did you review the underlying financial data discussed in

1 the opinions and the analysis?

2 A I did. I actually had my team cross reference the
3 numbers in those two to the both audit and unaudited financial
4 statements we received.

5 Q And what is your understanding of the opinion given by
6 FTI in the analysis and the fairness opinion?

7 A Well I answer that question two way because we talk about
8 it in this photo statement. One, the opinion concluded that
9 the divisional merger and the economics attached to the
10 divisional merger were at the time a better outcome than had
11 the company filed for Chapter 11 and therefore liquidated it
12 in the manner I mentioned a few minutes ago, right free-fall.

13 The analysis had a valuation of the ongoing enterprise.
14 The total enterprise -- they call it the company. And then it
15 had liquidation analysis to compare had a Chapter 11 occurred
16 versus divisional merger.

17 So anyway, in summary, the opinion itself and the
18 conclusion was that it was a fair transaction because
19 creditors were otherwise receiving a better recovery under the
20 divisional merger than they would have in our liquidation.

21 Q And based on your review of the underlying financial data
22 that we just discussed, do you concur in that conclusion?

23 A We detail this is in the Disclosure Statement that at
24 last the Debtor took issue to one specific calculation. I
25 think the committee has -- the unsecured creditors committee

1 has other issues.

2 We specifically had one calculation issue that had that
3 calculation been changed, I think the same conclusion would
4 have been reached.

5 Q Let's get it out in the open. What was the calculation
6 that you disputed?

7 A Sure. Earlier I mentioned that we subpoenaed Flagstar
8 for bank statements. Flagstar today was Signature Bank at the
9 time. When we, as I mentioned earlier, were validating
10 numbers, were looking for as many data points as we could.

11 One of the things we were doing to validate the balance
12 sheet was cash really company based on what the banks were
13 saying. And what we understood or basically what we
14 discovered from the Flagstar bank account is that at the time
15 there's a merger -- or the time in which this analysis was
16 completed, the cash wasn't actually in the bank.

17 The bank statement from Flagstar had a significant lower
18 number than what's referenced in the fairness opinion.

19 Q And how does that change the conclusion that FTI reached,
20 if any?

21 A Well, ironically that cash both Whiten Case -- I can't
22 remember if Whiten Case confirmed that FTI relied upon it or
23 vice versa, but that cash was unencumbered. It was identified
24 as being unencumbered as part of the divisional merger so
25 therefore in a hypothetical liquidation would have flowed down

1 to unsecured creditors for a source of recovery.

2 FTI included that number in their analysis, right. So in
3 their liquidation analysis, that -- I think it was roughly 22
4 million -- that 22 million flowed down to the unsecureds.

5 There's a lot to sort of unpack with that, but if you
6 just very simply remove the cash from the balance sheet per
7 the bank statements, then that 22 million wasn't there to flow
8 down to the unsecureds.

9 So at least in the Debtor's mind, that's a real
10 calculation flaw in the fairness opinion. But again as we
11 took a step back from that calculation error and we reviewed
12 the, you know, abundance of information around it, the Debtor
13 doesn't a view that the underlying opinion is incorrect. But
14 we certainly take a view that the calculations are incorrect
15 in the analysis.

16 Q So I expect you're going to hear some --

17 THE COURT: Let me just. Just thinking may make
18 good sense to just take a five minute break here and let
19 everybody stretch their legs. How much longer do you think
20 you have?

21 MR. KAUFMAN: Fifteen, twenty minutes is what I'm
22 hoping.

23 THE COURT: Okay. Why don't we just take a five
24 minute break. And I'll remind you that you're still under
25 oath. We'll come back in about five minutes. Thank you.

1 THE CLERK: All rise.

2 (Recess taken from 3:32 p.m. to 3:42 p.m.)

3 THE COURT: Okay. Back on the Record in Tehum.

4 MR. KAUFMAN: I think I'm missing someone.

5 THE COURT: Okay.

6 MR. KAUFMAN: Oh, there we go.

7 THE COURT: Oh. Oh, sorry.

8 MR. KAUFMAN: Got to wait for the defense.

9 UNIDENTIFIED SPEAKER: Your Honor, I apologize.

10 THE COURT: No, no, no worries.

11 MR. KAUFMAN: I think -- are we ready?

12 THE COURT: Yes, please.

13 MR. KAUFMAN: Okay.

14 DIRECT EXAMINATION (CONT'D)

15 BY MR. KAUFMAN:

16 Q Mr. Perry, I'm expecting that on cross-examination you'll
17 get a few questions, so, about this Paragraph 27 in Exhibit 1
18 which is the joint motion. So let's [indiscernible 3:43:34]
19 that. Why does Paragraph 27 of the 9019 motion only list
20 what -- I guess the quote is, Potential avoidance actions
21 arising out of the May 2022 divisional merger and not other
22 legal theories.

23 A I have testified on this in the past, and I think it
24 aligns with my comments earlier. The way that I sort of
25 bifurcated its state cause of actions were actual movements of

1 cash versus avoidance actions, remedies, et cetera that relate
2 to the divisional merger. So, you know, D sort of meant to
3 bring together as many of the actions, or all of the actions
4 that could be brought forth related to the divisional merger,
5 at least in the way that I have understood it and the way that
6 I approached it.

7 Q And I know from Mr. Barton's testimony last week, and
8 again I appreciate you weren't here for that, but he was asked
9 why Paragraph 46 does not include the words Alter Ego. Does
10 that mean the Debtor didn't -- the Debtor failed to consider
11 alter ego theories as part of its analysis?

12 A No, it doesn't mean that the --

13 Q Well, let me ask this, did the Debtor analyze alter ego
14 and successor liabilities -- theories as part of its analysis?

15 A It did.

16 Q You mentioned that you attributed very little settlement
17 value to claims and causes of action arising from the
18 divisional merger. Why, why is that?

19 A I'm going to come back to the formulaic way in which I
20 approached this process and this result. And the way that I
21 approached it is do I believe that there is the ability to
22 achieve success on the merits of pursuing a claim to what
23 would the cost be that the Debtor would need to incur to
24 pursue these claims, and 3, the length of time it would take.

25 My understanding is based on some of the joinders

1 that I've read, conversations I've had with creditors,
2 starting backwards and working the way forward is there have
3 been parties litigating for months, and I think against the
4 Debtors years, that have failed to collect pursuing, you know,
5 at least post-divisional merger the remedies or cause of
6 actions connected to that. So I do think the assessment of
7 the risk of time is fairly substantial, to the cost that we
8 talked about earlier I think would also be fairly substantial
9 to defend against those, or at least the cost that will be
10 brought forth.

11 But to me you have to really get past Door A in
12 order to go to Door B and Door C, and Door A would be do I
13 think there would be a successful claim brought forth based on
14 the merits. And that's where I sort of struggle with
15 assigning much settlement value to really any avoidance
16 action, remedy or theory attached to the divisional merger
17 because, you know, a number of different reasons.

18 Q Well, elaborate on that, what are those reasons why you
19 can't get past Door A?

20 A We spelled it out in the motion so, again, I'm going to
21 put it in my words. In my mind, because the divisional merger
22 occurred in Texas according to Texas state law, appeared to be
23 carried out in accordance with that law, and governed by the
24 Texas Business Organizations Code, right, which we detail
25 here, I think that law, at least in my analysis, in the

1 Debtor's analysis, provides a fairly difficult hurdle to
2 overcome in order to prove claims or otherwise theories
3 related to the divisional merger.

4 So I really struggle. The Debtor, at least in our
5 assessment, I know other folks disagree, but the Debtor's
6 assessment is it's very difficult to even get past Door A in
7 order to assess what the cost and the time would be to
8 litigate.

9 Q I'm going to turn to another matter. As part of your
10 investigation did you review -- you mentioned trial balances.
11 Right?

12 A I did.

13 Q Was one of those trial balances broken up by contract-by-
14 contract that the Debtor had -- or that Corizon had before its
15 divisional merger?

16 A It was.

17 Q What does that data tell you about the Debtor's
18 operations?

19 A Well, from an accounting perspective I'll use this term,
20 back trial balances, what's called consolidating, as opposed
21 to what folks are saying is consolidated. So a consolidated
22 trial balance is, you know, a single row of data, balance
23 sheet income statement, all reconciles. In a consolidating
24 view the accounting activity is comprised of components,
25 meaning the sum of the parts where you end up in a

1 consolidated view, so in consolidating view, the way the
2 company had prepared its trial balance data is by operating
3 contracts.

4 So at the time, at least in the trial balances that
5 I specifically recall, those trial balances were organized by
6 operating contracts or active contracts and then contracts
7 were terminated. Right. Because during this specific time
8 period that I was reviewing there was activity for
9 [indiscernible 3:49:52] contract.

10 But they organized it by active contracts,
11 terminated contracts, and it's a full trial balance. So what
12 that means for, you know, [indiscernible 3:49:59] lingo is
13 it's just, it's your income statement and it's your balance
14 sheet. And so the company had a methodology that it kept in
15 the ordinary course to actually account for revenue, expenses
16 and overhead allocation per contract.

17 Q And I think I asked the question, I'm not sure I heard
18 your response. This was part of your analysis and your
19 investigations leading up to the mediations, review of that
20 trial balance?

21 A It was, but it was really just part of our original
22 diligence that we performed on the company. Like I mentioned
23 earlier, really to draw conclusions around the level of
24 distress. We needed to understand where the divisional merger
25 and the contracts are allocated, you know, the data points

1 sort of align. So it was really in connection with more than,
2 you know, just the investigation.

3 Q Exhibit 73 in the Debtor and UCC's exhibit book, it's a
4 native file so it's not actually in your binder. Have you
5 reviewed that native exhibit -- Excel file before today?

6 A If you're referring to the trial balance we're talking
7 about, yes, I have.

8 MR. KAUFMAN: Your Honor, I would offer, and I don't
9 know how to do this because it's confidential, but I offer the
10 native Excel file that's described in Exhibit 73 and that
11 we've shared with TCC.

12 THE COURT: Any objection?

13 MR. MOXLEY: No objection, Your Honor.

14 THE COURT: Okay. It's admitted.

15 (Exhibit No. 73 received in evidence.)

16 MR. KAUFMAN: And in terms of getting that into the
17 Record, I guess we'll have to coordinate with --

18 THE COURT: Yeah.

19 MR. KAUFMAN: Okay.

20 THE COURT: What would be helpful for me is just
21 that there's -- is it going to be put on like a thumb drive or
22 something?

23 MR. KAUFMAN: I think so, yes.

24 THE COURT: If that's possible, I can take that.

25 MR. KAUFMAN: I think it prints very small in PDF by

1 the way.

2 THE COURT: I don't want that version.

3 MR. KAUFMAN: Right.

4 (Laughter)

5 BY MR. KAUFMAN:

6 Q Okay. Based on your analysis of the native Excel file
7 that's Debtor/UCC's Exhibit 73, were you able to reach any
8 views regarding the profitability of the Debtor's historical
9 contracts?

10 A I was.

11 Q Tell the Court about those views.

12 A Sure. As I mentioned there's a consolidated view and
13 then there's a consolidating. The consolidated view is what
14 you would typically see like in an audit financial statement.
15 The consolidating view, which is by contract, provides what
16 I'll call at least a guidepost for profitability by contract.

17 And so the company's process to account for revenues
18 and expenses by contract allows, at least for a reviewer of
19 the data to understand whether certain contracts are
20 profitable, and I'll define sort of profitable as like EBITDA
21 for example or any [indiscernible 3:52:45] amortization. And
22 so, you know, a material amount of the contracts, at least in
23 that file, per the company's books and records, had a negative
24 EBITDA, meaning they did not incur a profit, they did not make
25 money [indiscernible 3:53:02].

1 Q As part of your investigations did you also look at the
2 company's -- look into the company's terminated contracts over
3 the last 6 years?

4 A I did.

5 Q Is Exhibit 32 in your second binder, Debtor/UCC Exhibit
6 32, a list of those terminated contracts over the last 6
7 years?

8 A It actually starts in I think it's 5 years from 2017
9 forward but --

10 THE COURT: Exhibit?

11 MR. KAUFMAN: 32. 1410-32. Oh, sorry, this one is
12 filed under seal so it's 1413-8.

13 THE WITNESS: That is correct. This is a list of
14 the contracts the company -- that was terminated and
15 information related to those contracts including the dates of
16 service in which the company was active.

17 MR. KAUFMAN: Your Honor, I'd offer Debtor/UCC
18 Exhibit 32.

19 THE COURT: Any objection?

20 MR. MOXLEY: Your Honor, we do object to this
21 exhibit, it's not clear from the document and we -- I don't
22 think there's been any testimony on who created the list,
23 where it comes from. We're just a little in the dark on the -
24 -

25 THE COURT: Yeah. No, I think that's fair. Why

1 don't you provide a little bit more foundation.

2 BY MR. KAUFMAN:

3 Q Mr. Perry, how was this list compiled?

4 A When we -- I'll just give some reference, when we filed
5 our first set of Statement of Financial Affairs to the Debtor
6 within that Statement of Financial Affairs it had a declining
7 revenue number that we disclosed, and I think it was something
8 like 900 to 600 to 300 or something. And I think, I wasn't
9 sure if it was Mr. Jimenez or who it was, but there was a
10 question during the first 341 meeting that said, Give me some
11 additional information as it relates to that decline in
12 revenue, why did revenue decline.

13 And my answer was, and testimony, because of lost
14 contracts. And so to verify that and validate that further I
15 went back and spoke to and requested from the Debtor's former
16 employees that they provide me with additional detail on the
17 contracts that were either terminated or had expired leading
18 up to the divisional merger so that I could provide additional
19 detail in case that question came back up. So this was from
20 the former employees of the Debtor.

21 Q And is this information -- based on your understanding
22 and knowledge based on your review of the Debtor's books and
23 records is this information that's kept in the ordinary course
24 of business?

25 A Well, I think it is their ordinary course, I mean they

1 manage contracts. And so if you lose contracts, it is
2 absolutely in the ordinary course of business. And I would
3 say this is all fairly public. In connection with just making
4 sure that we sort of trusted the data, we went out and did,
5 you know, independent verification just through various
6 sources as well separate and apart.

7 MR. KAUFMAN: Your Honor, I'll offer this Exhibit
8 32, which I think he's established is based on the Debtor's
9 books and records and information kept in the ordinary course
10 of business.

11 THE COURT: [indiscernible 3:56:08].

12 MR. MOXLEY: Your Honor, it sounds like this --
13 they're attempting to have this be a demonstrative. I just --
14 we maintain our objection to this document.

15 THE COURT: Yeah, I'm going to -- for the purposes
16 of -- demonstrative purposes I'll admit it, but not for the
17 truth of the matter asserted.

18 MR. KAUFMAN: That's fine.

19 (Exhibit No. 32 received in evidence.)

20 BY MR. KAUFMAN:

21 Q Let's turn to the next exhibit, Mr. Perry, Exhibit 33.

22 MR. KAUFMAN: For the Record, Your Honor, it's file
23 under seal at 1413-9.

24 BY MR. KAUFMAN:

25 Q What is this document, Mr. Perry?

1 A It's really just a summary of 2 data points, 1 being the
2 list of contracts that we just discussed lined up with the
3 applicable year in which they either expired or were
4 terminated. That data is represented in the Xs, in the
5 columns 2017 through '22. And then the revenue by year, which
6 is at the top of the page, is simply '16, '17 and '18 audited
7 consolidated revenue, and then 2021 and '22 just simply from
8 the company's internal financial statements that we discussed.

9 Q And who prepared this summary?

10 A The Encura [phonetic 3:57:41] team prepared it.

11 Q And did you review it before it was produced?

12 A I did.

13 Q Do you believe it accurately reflects and summarized
14 voluminous data that can't be easily -- cannot be easily
15 represented?

16 A I do.

17 Q And has the Debtor produced the underlying financial data
18 of the tort claimant committee in advance of the hearing?

19 A Yes.

20 Q Is that underlying data referenced in the exhibit list
21 that was filed last week?

22 A I believe so, yes.

23 MR. KAUFMAN: Your Honor, I'll offer this summary,
24 Exhibit 33.

25 THE COURT: Any objection?

1 MR. MOXLEY: We take the same position on this
2 exhibit --

3 THE COURT: Yeah, I'll admit it --

4 MR. KAUFMAN: Your Honor, on that one I do want to
5 respond because this one is an admissible summary, it's not a
6 demonstrative.

7 THE COURT: Are we talking summary of voluminous
8 documents?

9 MR. KAUFMAN: Yes, Your Honor.

10 THE COURT: All right. What's your response,
11 Counsel?

12 MR. MOXLEY: Your Honor, I'm not sure that there's
13 a -- that there's been a foundation laid for how there's
14 voluminous documents that we couldn't summarize here so.

15 THE COURT: I think that's fair.

16 MR. MOXLEY: Yeah [indiscernible 3:58:46].

17 MR. KAUFMAN: Okay.

18 MR. MOXLEY: We have not objection to it being a
19 demonstrative, Your Honor, for the -- you know, just to be
20 clear, but not for the truth of the matter asserted.

21 THE COURT: Got it. Well, let's get to the summary
22 of the voluminous documents.

23 BY MR. KAUFMAN:

24 Q Mr. Perry, what is the voluminous data summarized in this
25 summary?

1 THE COURT: You can't call it the voluminous data
2 but --

3 (Laughter)

4 MR. KAUFMAN: Well, I think I already asked him and
5 he said it was voluminous.

6 THE COURT: Okay.

7 BY MR. KAUFMAN:

8 Q Describe the data that's summarized in this chart.

9 A Sure. The top of the analysis represents financial
10 statement, or call it financial results of the company for a
11 course of 12 months, and all the underlying, right, detail
12 that would be used to calculate those financials. And each or
13 the respective contracts that are indicated here with the Xs
14 represent contracts that were, again, either terminated or
15 lost. The information was compiled by information provided by
16 the company.

17 Q So let's just go column-by-column. In the 2016 --

18 THE COURT: Let me ask this, and I'm sorry, is there
19 any analysis of this, or is this a summary, or is there Encura
20 analysis in this document?

21 THE WITNESS: This is the summary that's called
22 analysis.

23 THE COURT: No, no, I'm just -- just in lay terms
24 for me, are you summarizing information here, or are you -- is
25 there any analysis that Encura did in connection with

1 producing this document? Or is there any analysis, an Encura
2 analysis reflected on this document here?

3 THE WITNESS: So if you see at the very top, Your
4 Honor, contract revenue analysis. We called it the analysis
5 because what it's showing is reduction in revenue and how
6 that's correlated to loss of contracts. So to me that's an
7 analysis as opposed to a summary of just numbers on a page or
8 numbers in boxes because there's a correlation factor that's
9 represented here. So therefore that's why I called it an
10 analysis because it does sort of analyze revenue growth in
11 correlation with all contracts.

12 THE COURT: Is this simple math or is this --

13 THE WITNESS: Simple math. Because, Your Honor,
14 it's revenue change year-over-year. But the revenue generated
15 by the business was generated by these contracts and so
16 therefore when a contract is removed, revenue declines. It's
17 the analysis.

18 MR. MOXLEY: Your Honor, may I be heard? Judge,
19 under the rules we appreciate that Mr. Perry did not need to
20 prepare a written expert report, but I think, Judge, that the
21 prejudice to the TCC is that they're trying to get in the
22 truth of the matter asserted through a demonstrative. But
23 what a written analysis from Mr. Perry in an expert report
24 form may have looked like, that's where the prejudice is, Your
25 Honor.

1 So from an evidentiary perspective we think the
2 appropriate ruling is to take it as a demonstrative and not
3 for the truth of the matter asserted because we haven't had an
4 opportunity to question Mr. Perry on that or understand what
5 the analysis is that he did with respect to this
6 demonstrative, Judge.

7 MR. KAUFMAN: Your Honor, I do want to respond to
8 that because that's just not true. This was produced on
9 February 2 with our production request -- request for
10 production responses, and Mr. Perry's deposition was 2 weeks
11 later. They did have the opportunity to ask him questions
12 about this summary.

13 MR. MOXLEY: We maintain the objection, Your Honor.

14 THE COURT: Yeah, I'm going to -- I'm going to
15 sustain the objection. I think the -- I think if what you're
16 summarizing -- there is revenue by year, unless you're going
17 to tell me -- it's seems to me that someone has done some
18 analysis and it's not just summarizing the information, that
19 someone has gone through, and tell me if I'm wrong, but you --
20 someone at Encura has done some math to determine whether the
21 revenue growth -- and plugging some analysis in there so that
22 something climbed by 11 -- 17.7 percent decline.

23 You're not simply summarizing a document that I
24 can't review, you're summarizing the document but then
25 providing a layer of analysis as to what these summaries then

1 show, and that starts to look more like a demonstrative than
2 just here are 10 contracts and here's what they say. So I'll
3 treat this as a demonstrative. Thank you.

4 MR. KAUFMAN: That's fine, Your Honor.

5 (Exhibit No. 33 received in evidence.)

6 BY MR. KAUFMAN:

7 Q Mr. Perry, let's walk through this summary that's in
8 Exhibit 33. And just walk the Court through where the data
9 came from and what your summary is, what your analysis is.

10 A Sure. I think it's more simplistic than what's being
11 referenced by me, so let me make sure I clear it up. The line
12 that says, Revenue by year --

13 Q Where did that data come from?

14 A -- it's simply from the annual financial statements of
15 the business that have been provided. Annual, annual 2016,
16 what was the total consolidated revenue of the business,
17 1,000,089,000 all rounded. In 2017 what was the -- your
18 revenue for this [indiscernible 4:03:33]? I believe you'll
19 find the same numbers in the Debtor's SOFAs. They're just
20 simply the total revenue generated by the Debtor in these
21 respective fiscal years.

22 But summarized down below is just simply the
23 contracts that were terminated or lost and an X next to a
24 column in the year of the loss. There really is not
25 underlying, nor do we -- I don't believe we have the data to

1 even connect that a contract specifically calculates to, for
2 example in 2017 a 17.7 percent decline. We're simply saying
3 in 2017 revenues climbed by 17.7, 5 contracts were lost. And
4 that's really the extent of the analysis.

5 Q And we talked about Exhibit 73, the trial balance,
6 contract-by-contract trial balance. How does that help you
7 understand the downward trend that you referenced before, if
8 at all?

9 A Only because -- I'll say the connection between those 2
10 are that the consolidated trial balance provides financial
11 performance by contract. However, there's a revenue
12 component, but more importantly there's a profit component in
13 trial balances. This is not profit, this is strictly revenue.
14 So there is a difference between those 2.

15 Q Why is revenue growth or loss relevant to the Debtor's
16 financials, or Corizon's financials before the divisional
17 merger?

18 A It's just a data point to indicate the distress the
19 company was in. My understanding is if you go even back
20 before 2016 the company's, I think, revenues at one point
21 might have been a billion and a half, a billion five, billion
22 six. This starts at 2016 so it's a billion.

23 And the 2022 number is an annualized number of what
24 the company was incurring in revenue through the first call it
25 4 months of 2022 annualized, to the extent that the Debtor was

1 to continue its business for a whole year. So again, it's
2 just meant to show that the Debtor's revenues were
3 substantially declining here.

4 Q And how do these negative trends in revenue over the
5 period described in this summary inform the Debtor's view
6 regarding claims arising from the divisional merger in 2022?

7 A Well, again, my view is that claims related to the
8 divisional merger -- my view is that there's a low likelihood
9 of successful merit simply because I don't know that the
10 activities related to the divisional merger necessarily caused
11 harm to the Debtor because the Debtor was in such severe
12 financial distress at the time that the alternative to a
13 divisional merger I think the outcome, at least based on
14 everything I reviewed, would have been worse for unsecured
15 creditors than had it not.

16 Q Let's turn to the personal injury claims asserted in this
17 case. Again, we talked about Mr. Atkinson's report. Are you
18 aware that he takes the view that successor liability theories
19 may be viable in this case?

20 A I do.

21 Q And do you understand what he believes the proper measure
22 of damages would be for successor liability theories?

23 MR. MOXLEY: Objection, Your Honor. I'm not sure
24 how the witness knows [indiscernible 4:07:08] --

25 THE COURT: Yeah, do you know?

1 THE WITNESS: [indiscernible 4:07:11] the deposition
2 so I recall the process that he played out, but I don't --
3 yeah, I didn't write his report, but I do recall the position
4 he took.

5 THE COURT: [indiscernible 4:07:22].

6 UNIDENTIFIED SPEAKER: Sorry, I didn't hear you.

7 THE COURT: No, no, no.

8 MR. KAUFMAN: I mean if we don't want to talk about
9 the Atkinson report, then let's not talk about the Atkinson
10 report for the rest of the case.

11 THE COURT: No, no, that's not really true. I mean
12 I think we have to establish that he actually knows what's in
13 the report, or maybe not even what's in the report because
14 that's in evidence yet or even been discussed, but maybe you
15 can discuss generally what he understands Atkinson to say.
16 I'm okay with kind of a general theory on successor liability,
17 or alter ego claims or proper measure of value, but I think
18 you can put your position forth. But if you don't know, you
19 know, maybe you can do it on rebuttal. But I'm just thinking
20 through --

21 MR. KAUFMAN: I'm trying to be efficient with our
22 court time.

23 THE COURT: No, don't worry about me.

24 MR. KAUFMAN: If you'd rather us wait --

25 THE COURT: Why don't you ask questions and let's

1 see if someone objects. But I think I'll sustain that
2 objection because I think we still have to establish that he
3 has personal knowledge of what we've been talking about.

4 BY MR. KAUFMAN:

5 Q Mr. Perry, did you review the expert report?

6 A I did.

7 Q And did you attend Mr. Atkinson's deposition?

8 A I did.

9 Q And based on your review of his report and your
10 attendance at the deposition what is your understanding of Mr.
11 Atkinson's view on the proper measure of damages for successor
12 liability theories?

13 A My recollection is he laid out a general process and that
14 process involved both an understanding of the financial
15 wherewithal of the other party and too, a value of the
16 underlying claims subjected to the theory.

17 Q And as part of your work for -- as a CRO for the Debtor
18 in this case have you conducted a valuation of personal injury
19 claims?

20 A No.

21 Q Describe the process that -- how would you describe the
22 process for what you've done with respect to the personal
23 injury claims?

24 A [indiscernible 4:09:29] valuation [indiscernible
25 4:09:32]. What I have done is I've estimated amounts related

1 to those claims. They were memorialized and classified in the
2 prior Disclosure Statement that is on file. In that
3 Disclosure Statement I really just assigned a dollar amount to
4 Class 5, what I called, you know, tort claimants, personal
5 injury claimants, and it was, again, an estimate for purposes
6 of the best interest test for the Disclosure Statement and I
7 do believe it served as a number to help guide parties to come
8 up with an allocation.

9 Q An allocation of the settlement proceeds?

10 A [indiscernible 4:10:17]?

11 Q Since the Debtor's final liquidation analysis with its
12 Disclosure Statement in October of 2023 have you spent more
13 time reviewing personal injury claims filed in this case to
14 better -- get a better understanding of the likely amounts
15 that those claims may be allowed?

16 A Naturally we have conducted more, you know, reviews,
17 yeah.

18 Q Describe that process for the Court.

19 A Well, I would say that there were multiple instances in
20 which we reviewed and analyzed the claims, and I'm only
21 mentioning here what we had originally referred to a Class 5,
22 or the tort claims. Since we prepared the original
23 liquidation analysis we did review more on a claim-by-claim
24 basis whether the claims for example were filed in a duplicate
25 nature, whether the claims that were filed were filed as for

1 example a priority claim or an administrative claim as opposed
2 to, you know, an unsecured claim.

3 There is a claim that we, I think we included in
4 Class 5 for purposes of call it soliciting had we solicited a
5 Disclosure Statement that I think was filed, for example it
6 was like a priority sort of relation claim so it wasn't
7 necessarily a real -- in the way the Proof of Claim was filled
8 out, right, an unsecured personal injury claim. So we had to
9 go through each claim and really understand and we took more
10 time to understand where it sort of fit within the respective
11 categories.

12 2, and I'm going to describe these broadly, so 2,
13 since we prepared the liquidation analysis we have also
14 received additional information on the experience the company
15 had in paying these claims, claims that had been closed out
16 for the 10 years prior. This was the analysis that I
17 mentioned earlier that Cigna Health produced at the request of
18 the TCC. And then I've also received additional information
19 from Cigna as it relates to the underlying information for the
20 actual filed claims.

21 So, you know, as part of the review of the claims
22 I've certainly gone through both the filed claims as well as
23 tried to understand more information on the historical nature
24 of the settlement and pay out of the claims.

25 Q You mentioned that Sigma produced some reports to you

1 based on the company's historical payments. Was that all
2 produced to the TCC last year?

3 A It was.

4 Q Let's turn to Exhibit 25 in the Debtor/UCC book.

5 MR. KAUFMAN: Your Honor, for the Record this is
6 filed under seal at 1413-1. And I believe it's been admitted,
7 25?

8 THE COURT: You said 25. Right?

9 MR. KAUFMAN: Yes, Your Honor.

10 BY MR. KAUFMAN:

11 Q Did you prepare this document?

12 A My -- the Encura team prepared this at my direction.

13 Q And what can you tell the Court about this document,
14 Exhibit 25?

15 A Sure. It's -- this is a summary of the what I'll call
16 the tort claims or the personal injury claims in this case.
17 So starting from the top we identified 292 personal injury
18 claims that were actually scheduled, meaning included in
19 Schedule F of the Debtor's schedules of assets and
20 liabilities. Of the 292 scheduled claims 162, so dropping
21 down 2 lines, actually filed claims, filed a Proof of Claim.
22 So 162 of the 292.

23 Now total filed claims per our accounting is roughly
24 242 total filed personal injury claims, filed but not
25 scheduled, pure math, would be, you know, 80, and then the

1 scheduled claims but not filed, again, pure math, is 130. The
2 last line that we have included on the schedule I think, you
3 know, was important when we prepared the analysis but it's
4 even important now, but I think we've cleared this up in the
5 proposed order, 61 of the 242 claims. Again, 61 is the very
6 bottom row, allocated to YesCare. 61 of the 242 filed
7 personal injury claims in this case were actually allocated to
8 YesCare in connection with the divisional merger.

9 My understanding is the revisions to the settlement
10 agreement are that these claims would not be claims against
11 the Debtor, therefore are not included in or impacted by the
12 settlement today.

13 Q So I want to make sure the Court understands that last
14 line, the 61. We talked about, under the divisional merger,
15 some personal injury claims were actually allocated to CHS TX.
16 Is that what's described in this line here?

17 A Correct. This would be a subset of those claims, that's
18 correct.

19 Q And what's the Debtor's view on whether those claims are
20 properly asserted against the Debtor?

21 A Well, I don't think they're Debtor claims at all.

22 Q And, in fact, the Debtor has already objected to 2 of
23 those claims. Is that correct?

24 A That's correct. And so just to connect the dots, of the
25 242 claims in my view you'd have to reduce the 242 by 61 to

1 actually, you know, get a measurement of the total asserted
2 personal injury claims in this case.

3 Q And the objection that I just mentioned is that under
4 Debtor/UCC Exhibit 7?

5 A Yes, that is correct.

6 Q So of these 242 claims listed in Exhibit 25 here, when
7 you take out the claims that are allocated to CHS TX the
8 Debtor believes are not properly asserted against the Debtor
9 and could be asserted directly against [indiscernible 4:17:00]
10 how many are left?

11 A There's probably 180 or so.

12 Q And of that 180 or so do you how many of those are pro se
13 claims?

14 A Yes, it's not here, but it's roughly half and half.

15 Q Why does it matter whether claims are pro se versus
16 represented cases?

17 A Well, I think it's important really -- it really started
18 at the very beginning of the case from a noticing perspective
19 we had to make sure that pro se claimants who didn't have
20 represented counsel receive notice for them that we could
21 reach them, we could notify them, they were receiving
22 correspondence. So we talked about that a little bit earlier.

23 2, it was important for us -- it wasn't
24 [indiscernible 4:17:49] original relation analysis because we
25 had understood through discussions and understanding the

1 historical behavior of the settlement process, that pro se
2 claimants typically settle for much lower amounts, which is
3 why when they prepared the original liquidation analysis, the
4 calculation that had a lower [indiscernible 4:18:12] assign
5 lesser amounts to pro se claims, at least on the low end than
6 the high end.

7 Now to take it further when we received the 10-year
8 data that TCC requested --

9 Q Well, I'm going to get to that.

10 A Oh, okay.

11 Q Why don't we do that now. Turn to Exhibit 26 in your
12 notebook --

13 A Okay.

14 Q -- which I believe has been admitted.

15 MR. KAUFMAN: And for the Record this is filed under
16 seat at Docket 1413-2.

17 THE COURT: What number would that be?

18 MR. KAUFMAN: It's 26.

19 THE COURT: [indiscernible 4:18:47].

20 BY MR. KAUFMAN:

21 Q Mr. Perry, while the Court's turning to that exhibit, can
22 you describe what this is?

23 A I'm not sure. I didn't realize we -- we've gone through
24 a lot of numbers so let me try to summarize this. This is
25 what I'll call a compilation, this is a summary of the

1 underlying data that has been produced and was provided,
2 again, in response to the TCC's requesting 10 years of
3 historical data of settlement activity.

4 The far left basically says that of all cases that
5 were closed over the previous 10 years pro se cases
6 represented 2,358 of all claims filed, or cases brought forth.
7 And roughly 5 percent of them represented -- or resulted in a
8 payment. So 121 of the 2,358 actually received a payment on
9 account of their claims.

10 Q I want to make sure the Court appreciates that. 5
11 percent, so 1 in 20 of the total 2300 claims resulted in a
12 payment above zero. What happened to the other 95 percent of
13 those claims?

14 A They were closed with no payment.

15 Q Okay. And then the remaining lines, total paid
16 indemnity, average indemnity and the rest, what are you
17 describing there?

18 A It's very simple. Indemnity just means payment in sort
19 of actuarial or [indiscernible 4:20:19] terms, so paid
20 indemnity total is just the total amounts of payments that
21 were made, the average is just simply the average, so it's
22 math, 828 divided by the 121 and then the \$351 is just simply
23 the total paid divided by the total claims brought forth.
24 Basically what it means is over the 10-year history for the
25 pro se claimants that actually received money the average

1 payment was 6,848.

2 If I flip to the middle --

3 Q Well, before you do that, let's talk -- what is -- what
4 does that median indemnity payment describe?

5 A Again, that's just a math term. So if you take all of
6 the claims that were paid and you take the mid point of the
7 total claims paid, it just represents the mid point. So 5,000
8 is just the mid point of the data.

9 Q And under the old plan, the one that we're not pursuing
10 confirmation of anymore, are you aware that there was a
11 settlement offer, an initial settlement offer that creditors
12 could elect into?

13 A Yes.

14 Q And what was the amount that was offered for those
15 claimants?

16 A \$5,000.

17 Q Are you aware of any claimants who prematurely agreed to
18 accept that number?

19 A Yeah, a handful actually reached out to the Debtor, I
20 don't recall if there were correspondence filed on the docket,
21 but I do know the Debtor received correspondence, a couple of
22 pro se claimants actually asked where -- when we could send
23 them a check and gave us an address to send it to them. So,
24 yeah, that was a component of the first plan. I don't know
25 whether or not, you know, it will be in the new plan.

1 Q Okay. Now let's move to that middle column, and describe
2 for the Court what you're describing there.

3 A Sure. And I assume since I oriented, you know, Your
4 Honor and the rest of the folks as to what this means, the
5 represented cases just are just the different numbers, right,
6 859 claims were filed and closed, roughly 43 percent of those
7 actually received payment.

8 Q A larger number than the pro se.

9 A Sure. A larger number, \$64.6 million of payments were
10 made by the Debtor.

11 Q Over the 10-year history?

12 A Over the 10-year history. That equates on an average,
13 again, only focused on the 376 that were paid of about
14 171,000, but if you take into account all the claims that were
15 filed or brought forth, it's roughly 75,000 with a median of
16 30.

17 Q And let's turn to -- well, before I turn to the next
18 page, Page 2 of the document, we talked about you attended Mr.
19 Atkinson's deposition. Right?

20 A I did.

21 Q And he was asked about the 10-year history, payment
22 history of the Debtor. Right?

23 A That's what I recall, yes.

24 Q And can you describe for the Court your understanding of
25 whether he believed it was reliable or useful in his analysis?

1 A Sure. I don't mean to simplify his testimony at all, but
2 his comment was that, really two-fold, 1, he thought there was
3 a wide range of disparity in the data, meaning too wide of a
4 range of payments in order to use it as any type of guidepost.
5 And then he just basically said, you know, along the same
6 lines, This case doesn't call for applying a simple average.

7 Q Okay. And now turn to Page 2 and describe for the Court
8 your view on whether there's a wide disparity in payments made
9 over the last 10 years, according to the Debtor's historical
10 records.

11 A Sure. And again, this is, so we're clear, a 10-year
12 history. The top left of the page really is pretty self-
13 explanatory, 100 percent of the pro se claimants received a
14 payout less than 100,000, and nearly 3/4 of all represented
15 claimants received a payout under 100,000.

16 Q What's the significance of the summary described here in
17 Exhibit 26 of the Debtor/UCC's joint exhibits as it relates to
18 the Disclosure Statement and the liquidation analysis that you
19 used in the Disclosure -- the old Disclosure Statement?

20 A Well, very simply the prior liquidation analysis applied
21 the high end, an average of call it \$330,000 to every single
22 filed claimant. I think one would likely consider this data
23 if we sought to revisit any type of estimated amounts for
24 those claims.

25 Q Mr. Perry, I know it's been a long afternoon. Hopefully

1 we can speed through the rest of this. Do you believe the
2 settlement agreement that's been proposed was negotiated in
3 good faith?

4 A I do.

5 Q Do you believe it was negotiated at arms length amount
6 numerous parties that included the Unsecured Creditors
7 Committee in this case?

8 A I do.

9 Q Do you believe the settlement is in the best interest of
10 creditors?

11 A I do.

12 Q Why?

13 A I think it's in the best interest because I think it's
14 value maximizing. I think if the plan is confirmed with at
15 least the ability to quickly liquidate claims, or a process to
16 liquidate claims, then the money that would be received by the
17 Debtor on the effective date could be distributed hopefully in
18 some timely fashion, and I believe when taking all the factors
19 that I mentioned today into account, I think it's in the best
20 interest of creditors.

21 Q Does the settlement dictate any specific allocation of
22 funds between different classes of creditors in this case?

23 A No, not the settlement.

24 Q Are you asking the Court to confirm a plan today that
25 would lock in treatment of creditors?

1 A For distributions, no.

2 Q In seeking approval of this settlement do you believe the
3 Debtors take into account the reasonable views of creditors?

4 A I do.

5 MR. KAUFMAN: Your Honor, I'll pass the witness.

6 THE COURT: Okay. Let me just ask if everyone --
7 anyone who supports the relief has any questions they wish to
8 ask.

9 MR. KAUFMAN: Your Honor, before I formally pass,
10 even though I've already passed the witness, I do have a thumb
11 drive with Exhibit 73 if I --

12 THE COURT: Okay. You can just leave it with my
13 courtroom deputy. Thank you.

14 Okay. Let's turn to cross.

15 UNIDENTIFIED SPEAKER: Your Honor, we have witness
16 binders for the Court and the witness. We'll hand those out
17 now if we could?

18 THE COURT: Thank you.

19 UNIDENTIFIED SPEAKER: Thank you.

20 (Pause in the proceedings.)

21 MR. MOXLEY: Your Honor, again for the Record,
22 Cameron Moxley of Brown Rudnick for the TCC. Judge, do you
23 have a copy of the Perry witness binder?

24 THE COURT: I do. Thank you.

25 MR. MOXLEY: Okay. Mr. Perry, do you have a copy of

1 the binder as well, sir?

2 THE WITNESS: I do.

3 MR. MOXLEY: Excellent.

4 CROSS-EXAMINATION

5 BY MR. MOXLEY:

6 Q Good afternoon, sir.

7 A Good afternoon.

8 Q Mr. Perry, I had a chance to meet you at your deposition
9 and a couple of other depositions as well. Nice to see you
10 today, sir. Mr. Perry, today in the course of our discussion
11 we may reference certain materials which are in the binder
12 that you have there, the white binder.

13 We'll also put them up on the monitor. That may,
14 for some exhibits, be helpful to you. It's entirely up to you
15 which one you want to consult, but we may put them there as
16 well and highlight certain things that may aid you and the
17 Court and those participating in the proceedings today. Okay?

18 A Okay.

19 Q Mr. Perry, when I took your deposition on February 16 of
20 2024 you testified on behalf of the Debtor. Correct?

21 A Correct.

22 Q Your firm, sir, Encura, became involved with the Debtor
23 years before. I believe you testified the actual name of
24 Tehum was used back in approximately 2017. Right?

25 A No, that's not correct. Tehum's name wasn't used then,

1 it was Corizon's name.

2 Q Correct, before Tehum's name was used, back in --

3 A Right.

4 Q -- 2017. Correct?

5 A Right.

6 Q Okay. Under the previously-filed second amended plan
7 that the Debtor and the UCC jointly proposed you individually,
8 sir, were an exculpated party. Correct?

9 A That's my understanding.

10 Q And under the definition of released party in that second
11 amended plan you were also a released party. Correct?

12 MR. KAUFMAN: Your Honor, I'm just going to lodge a
13 best evidence objection. If we're going to talk about a
14 specific document, let's put it in front of the witness.

15 THE COURT: Okay.

16 MR. MOXLEY: I was going to say can we --

17 THE COURT: Yeah --

18 MR. MOXLEY: -- put the document on -- I'm not sure
19 if it's --

20 THE COURT: -- I'm sure Mr. Perry knows if he was a
21 released or an exculpated party in the plan. But he can
22 answer if he knows. If not, we'll put the document in front
23 of him.

24 THE WITNESS: I believe that's the case. If we want
25 to review the document, we can, but I do believe I was a

1 released party, yes.

2 BY MR. MOXLEY:

3 Q Okay. Let's talk about what's at issue in this hearing,
4 sir. You're aware that 1 of the motions this hearing concerns
5 is the Debtor's and the UCC's joint motion asking the Court to
6 approve the Debtor's and the UCC's settlement agreement.
7 Right?

8 A Correct.

9 Q If you look at the third tab of your binder, sir, it's
10 labeled as TCC-125, that's a copy of the joint motion seeking
11 approval of the settlement agreement. Right?

12 A Yes [indiscernible 4:30:47].

13 Q And Exhibit 1 to this document is the settlement
14 agreement itself. Correct? It begins at Page 37 of the
15 filing, if that helps you, sir.

16 A That is correct.

17 Q Okay. For ease of reference can we -- we'll refer to the
18 settlement agreement that is Exhibit 1 to this as the
19 settlement or the settlement agreement today. Is that fine
20 with you, sir?

21 A Yes, that works.

22 Q Okay. Let's go back to the motion itself and let's turn
23 to Page 2 of the filing and let's look at Paragraph 1.

24 A Okay. I'm here.

25 Q Okay. Great. Mr. Perry, the Rule 9019 motion in

1 Paragraph 1 states that the Debtor and the UCC each undertook
2 investigations of various claims and causes of action
3 belonging to the Debtor's bankruptcy estate. Right?

4 A After a lengthy thorough -- yeah, that's correct
5 [indiscernible 4:31:46].

6 Q Okay. And these may appear on your screen if that helps
7 you, sir.

8 A Sure.

9 Q Obviously you have glasses.

10 A I believe you -- yeah, you just read the highlighted
11 version, sir. Okay.

12 Q Yes. Okay. Let's discuss that investigation that the
13 Debtor undertook, you testified a bit about that on direct.
14 Let me ask you a few questions about that. I see at
15 Paragraphs 1, and I know you're familiar with this document,
16 Paragraphs 27 through 35 of the motion there are descriptions
17 of the investigations into potential avoidance actions against
18 M2 LoanCo, Geneva, Pear Grove, as well as potential avoidance
19 actions arising out of the divisional merger. Right?

20 A That is correct.

21 Q And I think you testified on direct that the Debtor
22 doesn't believe that there are particularly meritorious
23 avoidance action claims arising out of the divisional merger.
24 Is that right?

25 A Correct.

1 Q Do you recall when I asked you that question at your
2 deposition you were cautioned not to reveal privileged
3 information. On that basis you testified you couldn't answer
4 my question, do you recall that?

5 A I don't think I understand your question. Repeat that
6 again to me what you're saying I testified to.

7 Q Sure. Let's actually -- it'll be easier, let's just take
8 a look at your deposition transcript. This is the first
9 document in your binder, and it's, for identification
10 purposes, TCC-150.

11 A Okay. I'm there.

12 Q Turn to Page 124, please, sir.

13 UNIDENTIFIED SPEAKER: What page again?

14 MR. MOXLEY: 124.

15 THE WITNESS: Okay.

16 BY MR. MOXLEY:

17 Q Do you see, sir, at Line 8 I said, So, Mr. Perry, as the
18 Debtor's Rule 30(b)(6) designee, can you tell me why it is the
19 Debtor does not think that there are meritorious claims,
20 avoidance action claims arising from the transactions in
21 connection with the divisional merger?

22 Mr. Kaufman objected to form and cautioned you not
23 to reveal privileged or attorney work product information, and
24 your answer at Line 20 was, I'm not able to identify any
25 answers that I can give you outside of those directions. Do

1 you see that? Is that your testimony, sir?

2 A I do, but just so we're clear, this was in response to me
3 testifying that I did not believe there were meritorious
4 claims, which is what I just testified to.

5 Q When I asked you why that was you said you couldn't tell
6 me. Right?

7 MR. KAUFMAN: Your Honor, I'm going to object to
8 this limited reading of a very lengthy deposition. There are
9 many instances if we were to read the --

10 THE COURT: I know, but he's allowed to ask about
11 this one though. So I'll overrule the objection.

12 BY MR. MOXLEY:

13 Q My question, simply the question pending right now, Mr.
14 Perry, is just that was what you testified to at your
15 deposition. Correct?

16 A It's what I'm reading on the page here, correct.

17 Q Thank you. At Paragraph 46 of the motion -- let's go
18 back to the motion, sir. Are you familiar with Paragraph 46
19 of the Rule 9019 motion?

20 A I am.

21 Q And at Paragraph 46 there's a reference to the Debtor
22 having also "evaluated the viability of potential claims
23 against CHS TX/YesCare based on the divisional merger under
24 theories based on or derivative of successor liability. Do
25 you see that?

1 A I do.

2 Q Mr. Perry, are you aware that Corizon Healthcare of New
3 Jersey, LLC, a New Jersey LLC, was a part of the combination
4 merger that was the first step in the divisional merger?

5 A I would have to reference the divisional merger document
6 to understand exactly which entity. So I'm happy to -- if you
7 want to go to the divisional merger document, I think there's
8 a section that says where it merged.

9 Q My question is, as you sit there today are you aware of
10 that entity, sir?

11 A I don't specifically recall without referencing the
12 document if that specific entity was part of the merger.

13 Q Are you aware that under New Jersey law lawyers and
14 advisors who advised on a fraudulent transfer may be held
15 liable for that fraudulent act?

16 MR. KAUFMAN: Objection, calls for a legal
17 conclusion.

18 MR. MOXLEY: Just asking if he's aware of it.

19 THE COURT: Just ask him if he's aware. Overruled.

20 THE WITNESS: I'm not aware in my capacity, no.

21 BY MR. MOXLEY:

22 Q Did the Debtor investigate potential causes of action
23 against lawyers and advisors under New Jersey law?

24 A I'm not aware.

25 Q One way or the other. You're not aware one way or the

1 other, is that your testimony?

2 A Correct, I'm not aware.

3 Q And some states allow for aiding and abetting liability
4 in connection with fraudulent transfers, are you aware of
5 that?

6 A That I'm not aware of.

7 Q Did the Debtor investigate potential aiding and abetting
8 fraudulent transfer causes of action?

9 A I assume counsel did through its investigation.

10 Q That's an assumption you're making as you testify today,
11 sir?

12 A That would be part of the investigation which I believe
13 would be privileged according to conversation with counsel.

14 Q My question, sir, is as you sit there today do you have
15 personal knowledge of whether or not aiding and abetting
16 fraudulent transfer causes of action were investigated by the
17 Debtor?

18 A I don't know personally whether or not that's the case.
19 I believe it is.

20 Q What's the basis of that belief?

21 A Because there was a thorough and lengthy investigation
22 directed by [indiscernible 4:36:59] counsel and [indiscernible
23 4:37:01] the investigation of all the various legal theories.

24 Q Did the Debtor investigate whether any of the law firms
25 that advised on the divisional merger may have liability in

1 New Jersey [indiscernible 4:37:13]?

2 A I'm not aware.

3 Q You are aware that the settlement agreement releases
4 claims against the attorneys and professional advisors for
5 each of the released parties. Right?

6 A I am.

7 Q But you're not aware of whether the Debtor investing --
8 investigated those potential claims against attorneys or
9 advisors. Is that right?

10 A I'm sorry, the claims you just mentioned or claims --

11 Q Yes, sir.

12 A -- in general? The claims of the abetting and the like
13 I'm not aware on those very specific claims.

14 Q Mr. Perry, are you aware of which law firms and advisors
15 provided advice on the divisional merger? I believe you
16 testified previously as to who those advisors were.

17 A I believe the law firm was White & Case, financial
18 advisor was FTI.

19 Q Do you know one way or the other whether or not the
20 Debtor investigated whether or not there may be any estate
21 causes of action against either of those advisors?

22 A The investigation did look into whether or not there were
23 estate causes of action against those advisors, yes.

24 Q You have personal knowledge of that?

25 A That was part of our investigation was to determine

1 whether or not there was meritorious claims against those
2 advisors.

3 Q Okay. I asked you a moment ago whether or not you were
4 aware of whether or not claims against law firms or advisors
5 were undertaken, and your testimony was that you were not
6 aware. Correct?

7 A Mr. Moxley, you asked me about a very specific claim, I
8 told you I wasn't aware, my personal knowledge of that very
9 specific claim you just mentioned. I just now testified to
10 your new question that counsels' connection with the
11 investigation did absolutely investigate whether or not there
12 were meritorious claims against the advisors.

13 Q I see. Okay. Thank you, sir. Mr. Perry, did -- I
14 believe you testified on direct about the timing of when
15 Encura previously was involved with advising Corizon. Did
16 Encura provide any advice to Corizon on the divisional merger?

17 A Not to my knowledge, no.

18 Q You're not able to tell me, Mr. Perry, as you sit here
19 today, what value the Debtor thinks could be recovered from
20 the avoidance actions relating to the divisional merger. Is
21 that right?

22 A That's fair.

23 Q The Debtor understands that a potential \$1 billion
24 Alabama contract that YesCare eventually was awarded was on
25 the horizon prior to the divisional merger. Right?

1 MR. KAUFMAN: Your Honor, I will object to the best
2 evidence of this.

3 THE COURT: He's just asking if he's aware.

4 THE WITNESS: [indiscernible 4:40:23].

5 BY MR. MOXLEY:

6 Q You can answer the question, sir.

7 A Your question was was a contract on the horizon. Based
8 on my understanding there were discussions about responding to
9 a request for a proposal prior to the divisional merger. I
10 don't know if that meets the definition that there was a
11 contract on the horizon, but there absolutely were discussions
12 related to responding to an RFP.

13 Q Mr. Perry, you did no work on the Tehum engagement before
14 February 13 I believe you testified. Right?

15 A Correct, there wouldn't have been a Tehum engagement, but
16 I did no work for Tehum before February 13, that's correct.

17 Q Fair enough. Understood, sir.

18 A The question -- yeah.

19 Q Yes, the matter that is now this bankruptcy proceeding,
20 that resulted in this, you didn't work on this matter before
21 February 13, before you got that call from Mr. Lefkowitz
22 [phonetic 4:41:42]. Right?

23 A Correct.

24 Q All right. Where did you get your information from in
25 order to provide your first day declaration?

1 A A culmination of information we received from former
2 employees of the Debtor, Sigma Risk Management, discussions
3 with Mr. Lefkowitz, and documents and other information we
4 would have collected immediately upon the filing.

5 Q Looking again, sir, at Paragraph 46 of the motion, you
6 see -- look at that, it says -- the very bottom line, sir, on
7 Page 18 of the document that begins, In additional to
8 presenting, do you see that? If you read with me, sir, it
9 says, In additional to presenting a novel legal theory,
10 recovery under such a successor liability theory would require
11 a court of competent jurisdiction to disregard the relevant
12 portions of the Texas Business Organizations Code more
13 directly than under the fraudulent transfer context. Do you
14 see that?

15 A I do.

16 Q Mr. Perry, have you read the Texas Business Organizations
17 Code?

18 A I referenced the sections that discussed the divisional
19 merger.

20 Q Okay. Are you familiar with Section 10.901 of that Code?

21 A I have not memorized it. If you want to pull it up, I'm
22 happy to read it.

23 Q Sure. Let's -- we'll look at that in a minute, but would
24 you agree that successor liability theory provides a creditor
25 with certain rights vis-á-vis a successor entity?

1 A Let me make sure you're not asking me a legal question.
2 Can you repeat that again so I'm sure --

3 Q Now we've talked a lot about successor liability and
4 alter ego. You and I talked about it at your deposition. I
5 think you testified to it on direct as well today, sir. Is
6 that right?

7 A Uh-huh.

8 Q Okay. Do you have an understanding of what successor
9 liability is?

10 A Generally, from a non-lawyer's perspective.

11 Q What is that understanding, sir?

12 A Very simply that there was a continuation of the business
13 such that a successor would be liable for liabilities of the
14 predecessor party.

15 Q Okay. So a creditor of a predecessor party would have a
16 right under successor liability theory to assert and seek to
17 recover damages from that successor entity. Correct?

18 A If it was determined that that was a successor entity,
19 then from a non-lawyer layman's terms that sounds correct.

20 Q That's your understanding.

21 A Yeah, I do a lot of healthcare bankruptcies and so we
22 deal with this in the context of Medicare quite often.

23 Q It's in the context of bankruptcy that you're familiar
24 with it, successor liability provides a creditor with a right
25 to bring a lawsuit against a successor entity. Right?

1 A Sorry, repeat that again for me.

2 Q Sure. No, of course, sir. So you referenced your
3 experienced with this. My question is, successor liability
4 provides a creditor with the right to bring a lawsuit against
5 successor entity. Right?

6 A I think a creditor could bring a lawsuit asserting
7 successor liability, sure.

8 Q Okay. And are you familiar -- you're familiar with the
9 alter ego doctrine I believe you testified earlier. Is that
10 right?

11 A Generally, from a non-lawyer's perspective.

12 Q And what is that general non-lawyer's understanding of
13 alter ego liability?

14 A In a non-lawyer's perspective I sort of equate it to like
15 a Jekyll and Hyde, meaning the shareholder has the same
16 responsibility as the company --

17 Q Okay.

18 A -- [indiscernible 4:45:06].

19 Q And so that alter ego doctrine allows for a creditor to
20 bring a claim seeking damages against the Jekyll or the Hyde,
21 whichever side you're on. Is that right?

22 A Sure. A claimant could pursue a claim based on that
23 theory, sure.

24 Q Okay. And fraudulent transfer law, you're familiar with
25 fraudulent transfer law generally. Right?

1 A Generally.

2 Q Okay. And it provides a creditor with rights to avoid
3 transactions. Right?

4 A That's correct.

5 Q Okay. And fraudulent transfer claims, those are causes
6 of action with their own elements. Right?

7 A I think that's fair.

8 Q Yeah, as juxtaposed to successor liability or alter ego
9 which are more akin to remedies. Correct?

10 A Correct.

11 Q Okay. Let me show you that Section 10.901 of the Texas
12 Business Organizations Code. It's going to come up on your
13 screen there. I believe it's in your binder as well. It is
14 in your binder at Tab 10, it's the 10th tab, I don't really
15 what it's called here. Oh, you see it's labeled 10.901
16 Creditors.

17 THE COURT: It should be on the screen too for you.

18 BY MR. MOXLEY:

19 Q Yeah, do you see how your binder had labels on it, sir?

20 A Okay. 10.901. Okay.

21 Q You see the one that says 10.901. So you can turn to it
22 there or you can see it on your screen.

23 A Okay. Is that a single page?

24 Q It is, sir.

25 A Okay.

1 Q Okay. So you have 10.901 of the Texas Business
2 Organizations Code in front of you. You see it provides that
3 this Code does not affect, nullify or repeal the antitrust
4 laws or abridge any right or rights of any creditor under
5 existing law. Do you see that?

6 A I do.

7 Q Were you aware of this provision of the Texas Business
8 Organizations Code prior to looking at it just now in the
9 courtroom?

10 A I may have reviewed it, but I don't recall exactly
11 reading the words on the page.

12 Q Okay. Would you agree with me, sir, that based on these
13 terms of the Code the Texas divisional merger statute
14 expressly provides that it does not abridge any right or
15 rights of any creditor under existing laws?

16 MR. KAUFMAN: Objection, this one actually does call
17 for him to conclude.

18 THE COURT: I do agree. I'll sustain the objection.

19 BY MR. MOXLEY:

20 Q Are you aware, sir, of the July 2022 decision in the
21 bankruptcy case of DVMP?

22 A Is there a further definition of DVMP?

23 Q I'm just asking if you're aware, but I'd like to know if
24 that means anything to you, sir.

25 A As I sit here today it doesn't, but as we talk about it I

1 may.

2 Q Okay. Let me show you the decision. It's at TCC Exhibit
3 180, and it's in your binder at -- it's the next tab I
4 believe, sir, it's labeled DVMP.

5 A What's the number?

6 Q Oh, you know what, I'm sorry, I apologize. Let's take
7 that -- we'll leave that up on the screen. I apologize, sir,
8 it's not in your binder, I made a mistake.

9 A Are you referring to the asbestos --

10 Q No, I'm going to bring this up on your screen actually.
11 It's not a document that we put in your binder. It's TCC
12 Exhibit 180, it's in our exhibits.

13 THE COURT: It's in my binder. It may be in his
14 binder.

15 MR. MOXLEY: Oh, it is in your binder.

16 THE WITNESS: I've got a lot of documents here,
17 we're getting into regarding an asbestos claim?

18 THE COURT: That's what I looked at.

19 MR. MOXLEY: Okay. Okay.

20 THE COURT: You're referring to a July 7, 2022
21 hearing transcript?

22 MR. MOXLEY: Yes, the transcript, sir.

23 THE COURT: All right. It may be -- if you go 1
24 page back, that's what I'm --

25 THE WITNESS: Okay.

1 THE COURT: If you want to approach, you certainly
2 can, just to make sure we're looking at the same thing.

3 THE WITNESS: Yeah, I think so. This it here?
4 Okay.

5 MR. KAUFMAN: I don't have it in my binder, but
6 beyond that I would object to relevance and hearsay at this.

7 MR. MOXLEY: Well, I haven't even asked the question
8 yet, Your Honor.

9 THE COURT: He didn't ask the question yet so I
10 don't know.

11 MR. KAUFMAN: Yeah, I'll wait.

12 MR. MOXLEY: Okay. You can have a seat, sir. Thank
13 you. Are you --

14 THE WITNESS: It's okay, ask your question.

15 BY MR. MOXLEY:

16 Q Okay. Mr. Perry, do you know that any of the cases that
17 are currently pending before Judge Whitley that involve cases
18 that involve divisional mergers under the Texas Business
19 Organizations Code?

20 MR. KAUFMAN: Objection to relevance.

21 THE COURT: Overruled.

22 THE WITNESS: I'm not aware.

23 BY MR. MOXLEY:

24 Q Okay. Are you at all familiar with the case of *In re*
25 *Aldrich Pump* that's before Judge Whitley in the Western -- in

1 the Bankruptcy Court for the Western District of North
2 Carolina?

3 A I have a very high level layman term -- layman
4 understanding.

5 Q Okay. And are you also aware of the case *In re Murray*
6 *Boiler* that involved an affiliate of Ingersoll Rand?

7 A That I'm not familiar with, no.

8 Q Okay. So there are 3 cases right now pending before
9 Judge Whitley in the Bankruptcy Court for the Western District
10 of North Carolina that involve divisive mergers under Texas
11 law. Now that I've represented that to you does that -- are
12 you familiar with those cases?

13 A From a very high level I'm familiar that there are
14 divisional merger bankruptcies, but I don't have any detail or
15 really any understanding of the overall mechanics or merits of
16 those bankruptcies.

17 Q Okay. So looking at what's in your binder there, TCC
18 Exhibit 180, the transcript from a DVMP hearing. We'll put it
19 up on the screen.

20 MR. MOXLEY: If we could turn to Page 23.

21 MR. KAUFMAN: Your Honor, I object, this one's not
22 in evidence and I would object that it's hearsay.

23 THE COURT: And what's the relevance --

24 MR. MOXLEY: Your Honor -- Your Honor --

25 THE COURT: -- of showing another transcript from

1 another --

2 MR. KAUFMAN: And I was going to also object to
3 relevance.

4 MR. MOXLEY: Your Honor, let me make the relevance
5 argument if I could, sir.

6 THE COURT: Okay.

7 MR. MOXLEY: At Paragraph 46, which I showed the
8 witness earlier, the Debtor and the UCC make the argument that
9 successor liability is a novel theory that would require
10 disregarding the Texas Business Organizations Code. There is
11 case law coming out of Judge Whitley's decision as well as
12 other decisions that we plan to talk to the Court about
13 through Mr. Perry and an argument that specifically hold --

14 THE COURT: You can talk --

15 MR. MOXLEY: -- that's not the case.

16 THE COURT: -- to me about it. You're not going to
17 talk to Mr. Perry about what a hearing transcript is or what
18 he determines about it. You can bring it up here and I can
19 weigh the wisdom of Judge Whitley, which I have no idea about
20 until just about now, you can -- we can take up legal argument
21 with me and people can talk cases and case law and
22 transcripts. I'm really good at that stuff, but I don't think
23 we need to ask the witness about it who said he barely had an
24 understanding of these other cases. So if you have other
25 questions for the witness that don't relate to this, let's

1 continue.

2 MR. MOXLEY: Okay. Thank you, Your Honor.

3 BY MR. MOXLEY:

4 Q Mr. Perry, why is it, at Paragraph 46, that the Debtor
5 thinks disregarding the Texas Business Organizations Code is
6 necessary in order to bring a successor liability claim? Why
7 does it ever think that, that's my question, sir.

8 A My answer is because that's the conclusion that the
9 Debtor reached.

10 Q Okay. We need to understand, sir, the basis for the
11 Debtor's view in your prior testimony on the fact that the
12 successor liability claim is a novel theory. I'd like to
13 understand how it is the Debtor reached that conclusion.

14 A As I testified earlier, the divisional merger that's
15 memorialized within the Texas Business Organizations Code has
16 been a state law from my understanding, you know, I think for
17 much longer than I've been practicing, and based on the way in
18 which we assessed the ability to successfully litigate a
19 divisional merger, or claims related to a divisional merger,
20 you would need to disregard the portions of the Business Code
21 that allowed the divisional merger to occur.

22 Q Did anyone before today bring to your attention the fact
23 that there are cases that have decided that successor
24 liability claims do not require disregarding the Texas
25 Business Organizations Code?

1 A Not to my knowledge.

2 Q No one brought that to your attention before today.

3 A Not to my knowledge, no.

4 Q Okay. Do you think that the Texas divisive merger
5 statute gives anyone the right to commit fraud, sir?

6 A I'm sorry, will you repeat that question?

7 Q Yes, Mr. Perry. Do you think that the Texas divisive
8 merger statute gives anyone the right to commit fraud?

9 A No.

10 Q Do you think that the argument that the divisive merger
11 statute does not give companies the right to commit fraud is
12 novel?

13 A No.

14 Q Mr. Perry, let me ask you a question. If you were
15 completely wrong on the law as set forth in Paragraph 46, does
16 that mean the settlement's unreasonable?

17 MR. KAUFMAN: Your Honor, I'm going to object that
18 this calls for speculation.

19 THE COURT: I don't know what you mean by if you're
20 wrong on the law. Who is the you in this situation?

21 MR. MOXLEY: Yes, Your Honor. If the Debtor is
22 wrong -- I'll rephrase the question, Your Honor.

23 THE COURT: Uh-huh.

24 BY MR. MOXLEY:

25 Q Mr. Perry, if the Debtor and the UCC are wrong about

1 their assertion at Paragraph 46 in the Rule 9019 motion that
2 disregarding the Texas Business Organizations is necessary in
3 order to bring a successor liability claim, the Debtor and UCC
4 are wrong about that, does that mean that the settlement is
5 unreasonable?

6 A No, not at all.

7 Q What's your basis for that answer, sir?

8 A If we're wrong on the law, there is a concept within the
9 settlement agreement the creditors can bring forth their
10 claim, put forth in front of Your Honor and litigate whether
11 or not we're wrong. And if that's the case, then, you know,
12 we've presented that.

13 Q Isn't the fact that the Debtor and the UCC think that
14 successor liability claims are novel and would require
15 disregarding the Texas Business Organizations Code, isn't that
16 a reason why you discount their value?

17 A A component.

18 Q Right. So if you're wrong about that, then their value
19 is higher than you currently ascribe it. Correct?

20 A I just want to make sure I understand, Mr. Moxley, what
21 you're saying. Are you implying that if the -- okay, I just
22 want to make sure I understand --

23 Q Uh-huh.

24 A -- because I'm kind of wading into legal territory. I
25 think what you're asking me, tell me if I'm wrong, is that if

1 the divisional merger can be unwound --

2 Q I'll stop you there, that's not what I'm asking.

3 A Then I don't know what -- Mr. Moxley, you're sort of
4 asking the same question about divisional -- you know, the
5 Texas Business Organizations Code. So I'm going to ask you to
6 ask me a question that doesn't require me to form some sort of
7 legal conclusion from a non-lawyer's perspective.

8 Q Okay. We'll let the Judge rule on the questions about
9 whether my questions are proper or not, okay, so don't concern
10 yourself with that.

11 A I'm not concerned about it, but I'm going to ask you to
12 repeat it to me --

13 Q I'm going to -- I'm absolute --

14 A -- in a way that I can understand it.

15 THE COURT: Hold on. Hold on. Just --

16 MR. MOXLEY: I'm going to repeat it.

17 THE COURT: Hold on. You don't -- Mr. Perry, you
18 don't get to ask questions. You get to answer them and he
19 gets --

20 THE WITNESS: Your Honor, I'm trying.

21 THE COURT: -- people get to object. And so he
22 gets to ask the questions.

23 Go ahead and ask your question.

24 MR. MOXLEY: Thank you, Judge.

25 BY MR. MOXLEY:

1 Q Mr. Perry, my question is this -- actually let's do it
2 this way, I want to be careful. I appreciate you want to be
3 careful. Let's look at Paragraph 46 of the Rule 9019 motion.
4 Okay. Do you have it in front of you, sir?

5 A Oh, I do.

6 Q Okay. In the Rule 9019 motion at Paragraph 46 the Debtor
7 and the UCC state, In addition to presenting a novel legal
8 theory, recovery under such a successor liability theory would
9 require a court of competent jurisdiction to disregard the
10 relevant portions of the Texas Business Organizations Code
11 more directly than under the fraudulent transfer context. Do
12 you see that sentence I read, sir?

13 A I do.

14 Q Okay. So my question, sir, is not about unwinding the
15 divisional merger, my question is about whether or not if the
16 Debtor is wrong that the Texas Business Organizations Code,
17 the statute has to be disregarded, what affect does that have
18 on the reasonableness of the settlement?

19 A As I sit here today the settlement is still reasonable
20 even under that scenario.

21 Q And we talked a moment ago about the fact that one of the
22 factors that leads the Debtor to discount successor liability
23 claims is that the Debtor thinks they are not as viable.
24 Correct?

25 A That's correct.

1 Q Okay. And so if the Debtor is wrong about that and they
2 are more viable, then the value of those claims should be
3 ascribed a higher value than what the Debtor currently
4 ascribes to them. Correct?

5 A That would require a different conclusion than the Debtor
6 reached. The Debtor reached the conclusion that's laid out in
7 the motion and therefore ascribe the very small settlement
8 [inaudible 4:58:07].

9 Q Right. And so the Debtor hasn't done an analysis of
10 whether or not the successor liability claims may be more
11 properly ascribed a higher value if the divisional merger
12 statute did not need to be disregarded. Correct?

13 A Sure. That was part of our analysis.

14 Q That was part of your analysis.

15 A Well, sure, Mr. Moxley, we, as part of our analysis as I
16 testified a little earlier, the Door A that I referenced was
17 do the merits provide for successful litigation. As part of
18 our investigation and the conclusions the Debtors reached, we
19 concluded that the merits of disregarding the Texas Business
20 Organizations Code would be complicated and complex among
21 other things.

22 Q Okay. And if they weren't complicated and complex and,
23 in fact, if there was case law saying its easy, you don't have
24 to do that, that would change the analysis. Correct?

25 A If the analysis changed, the outcome could change. I

1 suppose if the analysis -- the facts that we investigated
2 changed, then the outcome could change, yes.

3 Q I think, Mr. Perry, you said earlier that you considered
4 the likelihood on the merits of the claims that the Debtor is
5 trying to settle. Is that right?

6 A That's right.

7 Q Okay. How did you assess the likelihood of success on
8 the merits?

9 A I'm going to try not to wade into privilege because a lot
10 of what we discussed on this was privileged conversation.
11 From a non-privileged standpoint we assessed the fact that we
12 thought it would be extremely complicated and complex to
13 otherwise disregard Texas law to create a path to litigate
14 those claims.

15 Q So if the Debtor's analysis as you just described it is
16 actually contrary to the Texas Business Organizations statute
17 and to case law, doesn't that undermine the Debtor's analysis
18 regarding the likelihood of success on the merits of those
19 claims?

20 MR. KAUFMAN: Your Honor, I'm trying not to object,
21 but I feel like this one's been asked 3 or 4 times and
22 answered 3 or 4 times.

23 THE COURT: I'll let this one last -- well, I do
24 agree. What about that point? Go ahead and answer this one.

25 THE WITNESS: If one was to assume that the approach

1 we took, which is assuming that disregarding the relevant
2 portions of the Code is very complicated and complex, would
3 require time and expense, if someone was to conclude that we
4 were wrong, then it could, in fact, modify a conclusion that
5 someone would reach. It's not the conclusion we reached.

6 Q Okay. Mr. Perry, the Debtor did not negotiate any
7 consideration specifically for the successor liability claims
8 that it is releasing on behalf of personal injury creditors,
9 did it?

10 A No, that's not a true statement.

11 Q Why is that not a true statement? So you did do that?

12 A Our settlement is releasing all causes of action against
13 released parties, that's what we're proposing. And to the
14 extent that someone other than the Debtor believes there's a
15 meritorious claim that could be brought about in connection
16 with the divisional merger, i.e. other parties that were
17 involved in negotiations, then, you know, there would have
18 been value.

19 What I testified at earlier is that I could easily
20 identify a value for the other 3 categories, I couldn't
21 identify a number to assign to the fourth category. But we
22 absolutely negotiated on the basis that we were releasing all
23 estate causes of action.

24 Q Okay. But Paragraph 46 doesn't say anything about
25 specifically what consideration the Debtor is obtaining in the

1 settlement from those causes of action. Correct?

2 A No.

3 Q It just states that the successor liability recovery here
4 presents a novel legal theory. Right?

5 A No, it says that we have valuated the viability of the
6 claims based on the successor liability. Recovery would
7 present additional challenges beyond those that would -- you
8 know, the state would encounter by simply challenging the
9 divisional merger.

10 So what we're doing in Paragraph 6 is we're saying
11 we, A, have evaluated the viability of the claims and B, that
12 we determined the Debtor and the Committee as this was a joint
13 motion that the evaluation of the viability of those claims is
14 extremely challenging because of the word better here in the
15 paragraph.

16 Q I think you testified before on direct that you're
17 generally aware of the *Kelly v Corizon* decision in that case.
18 Correct?

19 A Generally, yes.

20 Q Give me one moment.

21 (Pause in the proceedings.)

22 BY MR. MOXLEY:

23 Q Have you reviewed that decision before?

24 A I have.

25 Q Let's take a look at that decision. It's at TCC-172.

1 MR. KAUFMAN: Your Honor, before we get into this, I
2 started to get into this on direct but the Court indicated
3 that the Court didn't want to hear about this, so --

4 MR. MOXLEY: I have just a -- I'm sorry, please
5 continue, Mr. --

6 THE COURT: No, no, I've got to hear a question
7 first before I know where this is going.

8 BY MR. MOXLEY:

9 Q Do you have the decision in front of you, sir?

10 A I do.

11 Q Okay. Do you understand that the William Kelly who is
12 the plaintiff in this decision is the same William Kelly who
13 has filed a Proof of Claim in this case?

14 A That's my understanding.

15 Q Okay. And it's your understanding that in the Kelly
16 decision the Eastern District of Michigan magistrate judge
17 determined that CHS TX could be substituted in as a defendant
18 in that case. Correct?

19 MR. KAUFMAN: Your Honor, I'll object that that
20 calls for hearsay and this is a document that's not in
21 evidence.

22 MR. MOXLEY: Your Honor, I'm just asking if he's
23 aware of what Mr. Kelly, who's filed a claim in this case, I'm
24 going to ask him questions about Mr. Kelly's claim in a
25 moment, sir, I want to understand if he's aware of what --

1 THE COURT: But we're not referring to the document
2 now. You're just asking him general questions.

3 MR. MOXLEY: Just if he's aware.

4 THE COURT: Okay.

5 MR. MOXLEY: I was using the document so he would
6 see the individual's name, sir.

7 THE COURT: Okay. I'm just -- we're not referring
8 to the doc, you're just asking general questions at this
9 point.

10 MR. MOXLEY: That's right.

11 THE COURT: Okay. Yeah, he can answer.

12 THE WITNESS: I am aware that a magistrate judge in
13 a pretrial matter reached a conclusion adding CHS TX to the
14 claim, correct.

15 BY MR. MOXLEY:

16 Q Okay.

17 A The lawsuit.

18 Q And you don't need to read the document, sir, I'm just
19 asking if you're aware. Are you aware in reaching that
20 conclusion the Michigan court determined that the Texas
21 Business Organizations Code had to be disregarded?

22 A No, I'm not aware of that.

23 Q One way or the other?

24 A I'm not going to argue what is stated in the text, but
25 I'm not aware that that's the position they took, no.

1 Q Okay. If the settlement agreement attached to the Rule
2 9019 motion that the Debtor seeks approval of is approved,
3 would Mr. Kelly's claim against CHS TX be released?

4 A To the extent that it's not a direct claim against CHS
5 TX, that underlying remedy to pursue would be released.
6 However, the settlement agreement as modified would allow Mr.
7 Kelly to come before the Court, state his position as to
8 whether he has a direct claim against CHS TX.

9 Q I see.

10 A We have not taken that right away from them.

11 Q If he had a successor liability claim though, then that
12 claim would be released. Correct?

13 A Same answer. If it's a direct claim against CHS TX for
14 what I believe this opinion's doing he would have the ability
15 to bring forth to the Court his argument as to the fact that
16 he would have a direct claim. If he has a direct claim, it's
17 not being released.

18 Q Your understanding of the Kelly decision is that it
19 allows for a direct claim by Mr. Kelly?

20 A No, that's not my understanding. I'm not forming any
21 legal conclusion on this event.

22 Q Okay. My question is a little bit different than I think
23 the question that you're answering, sir. So let me just ask
24 a slightly different question. My question is, if Mr. Kelly's
25 claim against CHS TX is a claim asserted on a successor

1 liability basis, that claim is released under the as modified
2 form of order that the Debtor has submitted. Correct?

3 MR. KAUFMAN: Your Honor, I'm going to object that
4 this is asked and answered, and to the extent that Mr. Moxley
5 doesn't think it was asked and answered, he's asking for Mr.
6 Perry to make a legal conclusion about what the opinion says.

7 MR. MOXLEY: Your Honor, may I respond?

8 THE COURT: Uh-huh.

9 MR. MOXLEY: Your Honor, we're trying to get clarity
10 on what's in the shopping cart.

11 THE COURT: Yeah.

12 MR. MOXLEY: We're trying to understand what claims
13 are being released. This is the Debtor's witness, he's the
14 CRO.

15 THE COURT: No, I think he can answer. There have
16 been a lot of questions about successor liability and alter
17 ego questions that were asked up front and I think he's fair
18 to peruse about his understanding about how the settlement
19 agree would affect someone's claims or not.

20 So you can answer. Here. Here.

21 THE WITNESS: Sure. To the extent the claim is a
22 derivative claim and not a direct claim against CHS TX, it
23 would be released under the motion, correct.

24 BY MR. MOXLEY:

25 Q Okay. Was the value of Mr. Kelly's claim against CHS TX

1 considered in reaching the settlement agreement?

2 A Define value -- I'm sorry, Mr. Moxley, can I ask you to
3 repeat the question again?

4 Q Yes. Let me take a step back. Are you aware of any
5 documents in the Record in this case produced by the Debtor
6 that ascribe value, a dollar figure, to Mr. Kelly's claim?

7 A The -- I'm sorry, you're asking if there was a filing?

8 Q No, sir.

9 A I'm sorry, repeat your question again. I just want to
10 make sure I answer your question very clearly because we're
11 using the term value and I want to make sure I --

12 Q Sure.

13 A -- I can answer your question.

14 Q And I appreciate that you want to be careful. My
15 question is, are you aware of any documents in the Record,
16 meaning produced in discovery in the case as well, sir --

17 A Sure.

18 Q -- that reflect any kind of a dollar figure estimate for
19 Mr. Kelly's claim?

20 A As I sit here today the document that I would reference
21 to answer that question would be the Proof of Claim that Mr.
22 Kelly would have filed in the case.

23 Q Okay. Let me show you what's been marked as Debtor's
24 Exhibit 33. And we're going to -- that's an Excel file so
25 we're going to bring that up on the screen if we could.

1 MR. MOXLEY: If that's okay, Your Honor.

2 THE COURT: Uh-huh.

3 MR. MOXLEY: Because there's no real easy way to do
4 that with an Excel file. So if we could bring up Debtor's
5 Exhibit 33.

6 MR. KAUFMAN: Exhibit 33 is not an Excel file and it
7 is a confidential document filed under seal. So I would -- I
8 would ask that it not be projected.

9 THE COURT: Well, it's not going to go -- no one
10 else outside this courtroom can see it.

11 MR. KAUFMAN: There are people in this courtroom
12 that are not subject to the protective order.

13 MR. MOXLEY: I'm sorry, Your Honor, I was making
14 sure the --

15 THE COURT: No, no.

16 MR. MOXLEY: -- document wasn't visible.

17 THE COURT: I understand. I think the objection
18 is -- hold on a second, don't put anything up on the screen
19 yet -- there are documents that are filed under seal that --
20 we have folks who are not subject to the protective order.

21 MR. KAUFMAN: Yeah, and we may be referencing a
22 different document because 33 is just a PDF.

23 MR. MOXLEY: I have it as Debtor 624827.
24 [indiscernible/inaudible 5:11:05].

25 MR. KAUFMAN: Oh, I see, this -- so 33 is a summary

1 of the document Mr. Moxley is referring to. So you're
2 referring to what's underneath.

3 MR. MOXLEY: Yeah, I think you put this on a zip
4 drive just a moment ago. Isn't this --

5 MR. KAUFMAN: No, that was --

6 MR. MOXLEY: Oh, it was a different one.

7 MR. KAUFMAN: -- that was 73.

8 MR. MOXLEY: Okay. All right. So I'm referring to
9 what is Debtor's Exhibit 33.

10 MR. KAUFMAN: Okay.

11 THE COURT: Okay.

12 MR. KAUFMAN: That one hasn't been offered, but go
13 ahead. I would ask that we clear the courtroom, the parties
14 that aren't subject to the protective order, if we're going to
15 put this on the screen.

16 THE COURT: Let me -- who's not subject to the
17 protective order here?

18 MR. NGUYEN: Your Honor, the US Trustee is not. We
19 generally don't sign protective orders.

20 THE COURT: Yeah, no.

21 MR. NGUYEN: But we just have agreements with the
22 parties.

23 THE COURT: Just agreements with the parties. We
24 can put it up on the screen. Let's go.

25 MR. MOXLEY: Thank you, Your Honor.

1 BY MR. MOXLEY:

2 Q Mr. Perry, what's on your screen --

3 THE COURT: I would ask is if you just -- just so
4 we're clear, you can put it up on the screen or you can just
5 show it to them. I mean we can turn the camera -- can't we
6 turn the cameras off still? We can turn the TVs off if you
7 want, and then you can just ask your question. But he can see
8 it.

9 MR. MOXLEY: He can -- okay. I just want to make
10 sure that Mr. Kaufman --

11 THE COURT: Wait, is there a --

12 UNIDENTIFIED SPEAKER: [indiscernible 5:12:10].

13 THE COURT: Yeah.

14 UNIDENTIFIED SPEAKER: Okay.

15 MR. MOXLEY: Okay.

16 THE COURT: So you can just turn around and turn
17 that television right on.

18 UNIDENTIFIED SPEAKER: [indiscernible 5:12:15].

19 UNIDENTIFIED SPEAKER: Yeah.

20 THE COURT: Yeah. I'm saying if you don't want
21 anyone in the courtroom to see it, we can turn those --

22 UNIDENTIFIED SPEAKER: You can turn all those
23 screens off.

24 THE COURT: -- you can turn the screens off, yeah.

25 UNIDENTIFIED SPEAKER: Let's see [indiscernible

1 5:12:25].

2 THE COURT: Okay. Just giving you the option, but
3 just don't make me push the button, you push the button.

4 (Laughter.)

5 MR. MOXLEY: Thank you, Your Honor.

6 BY MR. MOXLEY:

7 Q So, Mr. Perry, what's on your screen now -- let me just
8 make sure you see an Excel file on your screen.

9 A I do. I do.

10 Q Okay. So this is Debtor's Exhibit 33. This document is
11 part of an exhibit that is labeled on the exhibit list as --
12 I'll just represent to you, sir, on the exhibit list as
13 Summary of Revenue Growth (Loss by Terminated Contracts 2016
14 to 2022). Let me direct your attention, please, if I could,
15 and we'll bring this up to Line 2665. Are you familiar with
16 this Excel file, sir?

17 A I am.

18 Q Okay. And you understand it's a document that was
19 produced by the Debtor. Right?

20 A Correct, this is the information we gathered from Sigma,
21 correct.

22 Q Okay. And what -- just generally what does this
23 document, what does this Excel file show?

24 A So I only see a snippet so I'm going to trust that it's
25 the sort of native file of what was produced but this appears

1 to be what's called loss run information for filed claims.

2 Q Okay. You see there's a line here that says, Inmate, the
3 top heading for that column is Inmate and then there's a
4 Kelly, William. Do you see that?

5 A I do.

6 Q Okay. And that's the same William Kelly from the *Kelly v*
7 *Corizon* decision. Are you aware of that?

8 A That's my understanding.

9 Q Okay.

10 MR. MOXLEY: Let's go over to Column W if we could
11 in this.

12 BY MR. MOXLEY:

13 Q Okay. You see there's a heading to this column called
14 Claim Likelihood. Do you see that?

15 A I do.

16 Q Okay. And do you see that what's listed for Line 2665,
17 Mr. Kelly's line, the words are High exposure, 750K to 1.99
18 million. Do you see that?

19 A I do.

20 Q And the Debtor's position, Mr. Perry, is that if Mr.
21 Kelly's claim is, I think you called it before a derivative
22 claim, then it would be released under the settlement
23 agreement. Correct?

24 A No, the claim against CHS TX --

25 Q The claim against CHS TX --

1 A -- not a claim against the Debtor.

2 Q Yes, sir. It's going to be against CHS TX. I'll
3 rephrase, sir. The Debtor's position is that Mr. Kelly's
4 claim against CHS TX, not the Debtor, would be released under
5 the settlement agreement if that claim was, as you described
6 it, a derivative claim. Correct?

7 A Correct, if it was determined to be a derivative claim,
8 that's correct.

9 Q And your understanding is that successor liability claims
10 are derivative claims. Is that right?

11 A My general non-lawyer's understanding, correct.

12 Q Okay. And the lowest range for Mr. Kelly's claim that's
13 listed here is \$750,000. Right?

14 A Sure, per the Sigma spreadsheet we're looking at.

15 Q Okay. Mr. Kelly won't receive \$750,000 from this
16 settlement, will he?

17 A I can't answer that, Mr. Moxley.

18 Q You can't? You cannot answer that?

19 A No, I can't answer what any individual creditor would
20 receive as part of the settlement --

21 Q Is it your --

22 A -- on an individual basis.

23 Q How much -- how many dollars is it your understanding
24 that will go to creditors in this case, creditors, all
25 creditors, from the settlement agreement?

1 A Well, I walked through a demonstrative earlier today and
2 I think there's potentially 50 to \$60 million of distributable
3 value here.

4 Q Okay.

5 A That's only if I estimated the insurance properly and the
6 other causes of action, I think there's probably other parties
7 in the room that would contest that insurance would be worth
8 more, at least to certain claimants, and that they could
9 attest the cause of actions could be worth more. If that's
10 the case, my numbers could be conservative, but to answer your
11 question, 50 to 60 million is my estimate as it stands as I
12 sit here today of what could be distributed to creditors.

13 Q Let's take 1 quick sidebar, sir. Let's look at your
14 deposition transcript quickly if we could.

15 A Okay.

16 MR. KAUFMAN: Can we take the confidential document
17 down now, Your Honor?

18 THE COURT: Yeah.

19 BY MR. MOXLEY:

20 Q Turn to Page 87 in your deposition transcript.

21 THE COURT: Thank you.

22 MR. MOXLEY: Page 87.

23 THE WITNESS: Okay.

24 BY MR. MOXLEY:

25 Q I apologize, 86, it's just --

1 A Okay.

2 Q -- Page 86.

3 A Okay.

4 Q Line 11 on Page 86 my question to you was, I'm reading
5 now, my question was, Have you done an assessment of insurance
6 recoveries in connection with this case? Mr. Kaufman lodged
7 an objection. And then your answer was, I don't believe
8 assessment of insurance has anything -- or is anything to do
9 with the 9019 motion so I'm not sure I have an answer to give
10 you.

11 Is that still your testimony, sir, or you're
12 thinking insurance recoveries are today relevant to the 9019
13 motion?

14 A Well, the 9019 motion does not include a discussion of
15 the other assets that can be otherwise collected. But based
16 on my understanding of Friday and some of the discussions I've
17 had, there were questions as it relates to what amount of call
18 it distributable value would drop to creditors.

19 So to me the only way to really answer that question
20 is not to look at individual pieces or components, which would
21 just simply be looking at the 40, my view you have to take
22 into account other potential recoveries in order to answer
23 that question.

24 Q I see. So taking into account whatever potential
25 recoveries you think are appropriate, as you sit here today

1 under oath is it your testimony that it is possible that Mr.
2 Kelly will receive \$750,000 under this settlement agreement?

3 A I can't testify that it's possible, but I also can't
4 testify it's not possible. As we leave here, Mr. Moxley,
5 hopefully with a 9019 approved, the TCC, the Committee, the
6 Debtor will work collaboratively I hope on figuring out how to
7 allocate the proceeds properly and updating the waterfall
8 analysis.

9 Q How do you know, sir, whether or not Mr. Kelly's claim is
10 a derivative one or not?

11 A Well, I'm not a lawyer --

12 Q Uh-huh.

13 A -- first, but I have been a practicing -- or a
14 practitioner in the restructuring space for, you know, nearly
15 20 years. My general understanding when I'm involved in cases
16 is that successor liability, alter ego, those sorts of
17 remedies are both property of the estate and derivative
18 claims.

19 Q Are you aware, Mr. Perry, that Mr. Kelly opposes this
20 approval of the settlement?

21 A I believe that's the case, yes.

22 Q Have you reviewed the joinder that he filed to the TCC's
23 objection to the Rule 9019 motion?

24 A I reviewed 3 or 4 joinders fairly generally so I think I
25 did review it, but I didn't memorize it.

1 Q That's fine, but you've reviewed it.

2 A I have.

3 Q Okay. Do you think that this settlement is fair to Mr.
4 Kelly?

5 A I think the settlement maximizes the value for the estate
6 and I believe it maximizes the value that once the case moves
7 forward would maximize the recovery to Mr. Kelly and other
8 claimants as part of this engagement -- or part of this
9 filing.

10 Q If Mr. Kelly -- if it turns out that Mr. Kelly won't
11 receive \$750,000 or more, then would you agree with me that
12 the settlement agreement is not in his best interest?

13 A No, I don't agree at all.

14 Q And why is that?

15 A 2 answers. First of all the 750,000 is a reference in a
16 loss run analysis provided by Sigma. I didn't have anything
17 to do with that, I didn't value that, I don't know where that
18 number came from. So you're using that as a bit of a yard
19 stick and I really can't comment on the 750 and make a
20 decision one way or the other.

21 But I will say that as a fiduciary in this case, and
22 as the CRO, my job is really two-fold to put it broadly.
23 Maximize value to the estate and distribute that value fair
24 and equitably across all creditors. So what my job here is to
25 do is to maximize the value of the estate and maximize the

1 recovery to Mr. Kelly and all the creditors in the estate.
2 That's why I'm here to do.

3 Q Mr. Perry, why is it in Mr. Kelly's best interest for
4 him to be forced against his consent to have his claim
5 channeled to a trust that will not have funding to pay him in
6 full when in the event of dismissal of this bankruptcy case he
7 will be free to pursue his claim against CHS TX in the Eastern
8 District of Michigan.

9 MR. KAUFMAN: Your Honor, I'll object that that's a
10 compound question --

11 THE COURT: It is compound.

12 MR. MOXLEY: I can rephrase, Your Honor.

13 BY MR. MOXLEY:

14 Q Mr. Perry, if the settlement is approved and a plan -- I
15 appreciate there's not a plan that's part of the settlement
16 agreement, the plan is contemplated, but you would agree with
17 me that the contemplated plan would have a trust that claims
18 would get channeled to. Correct?

19 A I don't know the answer. I think that's what you all
20 have discussed as a potential avenue, but I don't know that
21 that's been advanced very far.

22 Q Okay. Okay. Let me ask you this -- let me ask it this
23 way then, sir. Why do you think it is that it's best for Mr.
24 Kelly that his claim be addressed via the settlement agreement
25 and that he not be free to pursue it in the Eastern District

1 of Michigan?

2 A Very simply I think we can return value to Mr. Kelly on
3 account of his claim in a predictable and timely manner. I
4 don't think that exists outside the Bankruptcy Court.

5 Q So your testimony is you think that the Debtor is best
6 suited to decide what's in Mr. Kelly's best interest.

7 A That's not what I said.

8 Q Okay. Don't you think Mr. Kelly and his attorneys who
9 have objected to the settlement know what in their best
10 interest -- know what's in his best interest, excuse me?

11 A I can't testify on the -- as to what Mr. Kelly or Mr.
12 Kelly's attorneys believe or don't believe.

13 Q If it were the case that there is case law that says you
14 don't have to -- sorry, excuse me. Strike that. Mr. Perry,
15 if there is case law that holds that you don't have to
16 disregard the Texas Business Organizations statute to bring a
17 successful liability claim against CHS TX, do you think that
18 the argument that you'd have to disregard that statute to
19 bring a successful liability claim is a novel one?

20 MR. KAUFMAN: Objection, this calls for speculation
21 and I think it's been asked and answered a few times already.

22 THE COURT: I do think it calls for speculation.

23 MR. MOXLEY: Okay. I'll withdraw the question, Your
24 Honor. I appreciate the Court's ruling.

25 BY MR. MOXLEY:

1 Q What authority are you aware of, Mr. Perry, for the
2 position that you would have to disregard the Texas Business
3 Organizations statute in order to bring a successor liability
4 claim?

5 A I think it's two-fold --

6 Q Okay.

7 A -- based on my knowledge and the results of the work
8 that we conducted in this engagement. One is my understanding
9 is disregarding the Organizations Code either has never been
10 done or has been done in a very limited number. I don't know
11 if it's ever been done. And Number 2, my understanding is
12 that if it is to be done, it's going to be extremely
13 expensive, extremely costly and will take a significant amount
14 of time to litigate that point. That's our view.

15 Q Right. So you're not aware of any cases that say that
16 you have to disregard the Texas Business Organizations statute
17 in order to bring a successor liability claim, are you?

18 A I'm not a lawyer, Mr. Moxley, I don't know what cases
19 have and haven't been done from a case law perspective.

20 MR. MOXLEY: Your Honor, I'd like to put up a
21 demonstrative, a board that we have. I don't know if the
22 Court would like to take a short break [indiscernible 5:25:25]
23 or I can just do that right now in the --

24 THE COURT: No, I'll give you a couple of minutes to
25 set up.

1 MR. MOXLEY: Thank you, Judge.

2 THE COURT: And just from a housekeeping standpoint
3 how much longer do you think you have, and it's not to rush
4 you, it's just for me to just get a sense of --

5 MR. MOXLEY: No, I appreciate that, Your Honor.

6 THE COURT: -- are we [indiscernible 5:25:37]
7 today --

8 MR. MOXLEY: I think --

9 THE COURT: -- with the other witness and kind of
10 what we're thinking about.

11 MR. MOXLEY: No, I appreciate that. You know, I had
12 thought that we would have a couple of hours of cross, but
13 that was when I think we thought there was about an 1-1/2 or 2
14 hours of direct and went I think a little over 3-1/2. So --

15 THE COURT: Yeah, but are we going to finish -- are
16 we just going to finish 1 witness today is --

17 MR. MOXLEY: I think I will --

18 THE COURT: -- is the real question.

19 MR. MOXLEY: -- I think I will have a least an hour
20 and a half.

21 THE COURT: Okay. So why don't -- so why don't we
22 just plan on finishing Perry today --

23 MR. MOXLEY: Sure.

24 THE COURT: -- and then we'll -- just I'm thinking
25 about whoever may be called, Mr. Dunman [phonetic 5:26:06],

1 that at least he knows what's up.

2 MR. ZLUTICKY: Yes, thank you, Your Honor. So
3 despite the Court's 615 ruling earlier about invoking the
4 Rule, we thought it best to just keep Mr. Dunman out of the
5 proceedings so he didn't hear Mr. Perry's testimony. He's
6 here in the courthouse and he will be here to testify, but it
7 sounds like we're probably not going to get to him today.

8 THE COURT: That's right. I figure --

9 MR. ZLUTICKY: And so that'll be our --

10 THE COURT: -- we'd give him a heads up.

11 MR. ZLUTICKY: Yeah, and so I'll give him that heads
12 up and that'll be part of what we'll have to work out with
13 scheduling.

14 THE COURT: Okay. All right. Let's take our
15 five-minute break. And do you need anything from the Court in
16 terms of set up or --

17 MR. MOXLEY: No, we can do it ourselves, Your Honor.
18 Thank you. Thank you, Judge.

19 COURT SECURITY OFFICER: All rise.

20 (Recess taken from 5:26 p.m. to 5:36 p.m.)

21 THE COURT: Back on the Record in Tehum.

22 Counsel, you may proceed.

23 MR. MOXLEY: Thank you, Your Honor. I think on your
24 screen, the witness' screen and then here in the courtroom, we
25 have a demonstrative.

1 THE COURT: Oh, all right. I'll look at the big
2 screen. Okay.

3 MR. MOXLEY: Very good. Thank you, Judge.

4 CROSS-EXAMINATION (CONT'D)

5 BY MR. MOXLEY:

6 Q Mr. Perry, you can see Demonstrative No. 1, I think in a
7 few places on your screen in front of you.

8 A I can.

9 Q Okay.

10 A Four places.

11 Q Okay. And you see that we have here in the
12 courtroom, that demonstrative with the heading "Pre-Bankruptcy
13 Framework." Do you see that?

14 A I do.

15 Q And on the left of that demonstrative we have the
16 Claimant. Do you see that?

17 A I do.

18 Q This is -- okay.

19 A The right.

20 Q And you see the arrow pointing from the claimant to
21 YesCare/CHS Texas, Inc., based on the doctrine of successor
22 liability, as that arrow is labeled. Do you see that?

23 A Top arrow points it To Whom. Second arrow points to Yes
24 Care; correct.

25 Q Okay. The second arrow I'm going to ask you a

1 question about, sir.

2 A Okay.

3 Q Would you agree with me that before the bankruptcy
4 petition was filed, that successor liability-based causes of
5 action against YesCare and CHS Texas was something that was
6 owned by the claimant?

7 A I don't have an answer to that. I don't know.

8 Q Okay. And is that -- you don't have an answer? You
9 don't -- strike that. You don't have any understanding of
10 whether or not pre-bankruptcy filing, a claimant would own a
11 successor liability claim against YesCare and CHS Texas?

12 MR. KAUFMAN: Your Honor, I tried not to object, but
13 the more I hear it -- the more I'm hearing that he's asking
14 for Mr. Perry to make a legal conclusion about ownership.

15 THE COURT: I think that's right. You can probably
16 ask it a different way where it doesn't like you're asking for
17 a legal conclusion.

18 MR. MOXLEY: Okay. Thank you, Your Honor.

19 BY MR. MOXLEY:

20 Q Mr. Perry, we talked before about your general
21 understanding from a non-lawyer's perspective of what
22 successor liability is; correct?

23 A Correct.

24 Q Okay. And you understood, I believe -- and we talked
25 earlier about that -- that successor liability would allow a

1 claimant to assert a claim, a cause of action, against a
2 successor entity; correct?

3 A Correct. Pursue a remedy of successor liability and
4 collect on that claim; correct.

5 Q Right. Okay. Is it the Debtor's understanding that the
6 ownership of that claim, a successor liability claim, changed
7 pre- and post-petition filing?

8 MR. KAUFMAN: Your Honor, the same objection as
9 before. Ownership is a legal conclusion.

10 MR. MOXLEY: I asked him what --

11 THE COURT: No, it's not. No, it's not. I think
12 he's a CRO who has dealt with sophisticated companies. I
13 think he can express his understanding of the concept of
14 ownership. To the best of your ability, I think you can
15 answer the question if you know the answer.

16 THE WITNESS: I know part of the answer. I am, to
17 Your Honor's point, a restructuring professional. I deal
18 often times in Chapter 11 situations in which successor
19 liability is asserted, and in those situations they are
20 property of the estate, it's been my understanding. I have
21 not dealt with, nor do I have much experience in successor
22 liability being brought forth prior to a bankruptcy to give
23 you an answer of who's the owner of that.

24 MR. MOXLEY: I see, okay.

25 BY MR. MOXLEY:

1 Q So post-bankruptcy filing, your understanding is that
2 successor liability-based claims would be the estate's
3 property; correct?

4 A I've never understand it any different than that.

5 Q Understood. That is your understanding; correct?

6 A Correct.

7 Q Okay. Let me ask you this question. If Mr. Kelly won
8 his lawsuit against CHS Texas in Michigan, who would -- who
9 would the money go to?

10 A Well, do you mean one lawsuit?

11 Q If he has a claim against CHS Texas in the Eastern
12 District of Michigan. If he wins on that claim and he gets a
13 judgment, and that judgment is paid, who does the money get
14 paid to?

15 A My understanding is it would be paid to a single
16 creditor. It would be paid to him only.

17 Q It would be paid to him only; correct?

18 A But he may have legal fees and expenses and the like, but
19 yes. He would receive payment on that claim individually, is
20 my understanding.

21 Q Okay.

22 A So that's correct.

23 Q Okay. But if -- okay, got it. And is it your
24 understanding that if the settlement agreement is approved,
25 then Mr. Kelly would no longer be able to pursue that claim in

1 Michigan? Is that your understanding?

2 A No.

3 Q Your understanding -- your testimony is that me may be
4 able to continue to pursue his claim against CHS Texas in
5 Michigan, if the settlement agreement's approved?

6 A Sure. We have a provision in the settlement agreement
7 that provides him with the ability to come to court to present
8 an argument that it's a direct claim.

9 Q And if he loses --

10 A If he proves that argument that it's a direct claim
11 against CHS Texas, then absolutely he can pursue it.

12 Q And if he -- what is your understanding of what a direct
13 claim is?

14 A That CHS Texas caused him harm.

15 Q Okay. That's a direct claim.

16 A My non-lawyer layman's description of a direct claim,
17 correct.

18 Q Okay.

19 A If harm was caused by that party; correct.

20 Q Okay. And if he wanted to assert -- who, in Mr. Kelly's
21 case, caused the harm? Corizon; right?

22 A My understanding is the incident occurred prior to the
23 divisional merger, and therefore his original claim, to my
24 understanding, was against Corizon, who he asserted originally
25 committed a harm to him; correct.

1 Q Right, okay. So he suffers a physical injury, and the
2 entity that caused that suffering, the claim, the direct claim
3 would be against Corizon. That's your understanding; correct?

4 A That's my understanding.

5 Q Okay. Now Mr. Kelly has a claim against CHS Texas in
6 that Michigan case. You understand that as well, I believe
7 you testified earlier; right?

8 A I understood the Michigan case added CHS Texas to the
9 lawsuit.

10 Q Right.

11 A Correct.

12 Q Okay. If Mr. Kelly were -- strike that. The entity, CHS
13 Texas didn't exist at the time Mr. Kelly was injured; correct?

14 A I don't have the exact dates memorized, so I'm not aware
15 that it existed at the exact time of the injury.

16 Q When is your understanding that CHS Texas came into
17 existence?

18 A Sometime around the divisional merger, so early '22.

19 Q Right. So if Mr. Kelly was injured prior to the
20 divisional merger, it was Corizon who injured him, not CHS
21 Texas; correct?

22 A Well, here's how I can answer it. His claim was
23 allocated to Corizon, and therefore the claim, at least per
24 the divisional merger, was a claim of Corizon's.

25 Q Okay. So if he has a claim against CHS Texas now, that

1 claim would be based on a successor liability theory of
2 recovery; correct?

3 A Well, to my understanding, yes.

4 Q Okay. And your understanding also is that successor
5 liability claims, once you're in the bankruptcy world, are
6 property of the estate; correct?

7 A I so.

8 Q Okay. Do you think the bankruptcy filing caused the
9 claimants to lose causes of action that they may have had
10 against YesCare or CHS Texas?

11 A When you say claimants, claimants against the Debtor or
12 claimants in general?

13 Q Any claimants, sir.

14 A No. If there's a claimant that their claim was allocated
15 directly to YesCare or a claimant that believes they have a
16 direct claim to YesCare or CHS or any non-Debtor entity, then
17 the bankruptcy court -- well, let me put it this way. The
18 9019 settlement we're seeking doesn't impact their claim at
19 all.

20 Q Is Mr. Kelly's claim against CHS Texas now the Debtor's
21 property?

22 A To the extent that it's a derivative claim, it's property
23 of the estate.

24 Q Okay. Can you identify for me, Mr. Perry, any form of
25 notice that a claimant like Mr. Kelly would have received

1 before he -- before his claim turned into property of the
2 Debtor's estate?

3 A Sorry, Mr. Moxley, it's my fault. I don't understand
4 your question.

5 Q Okay. My question is: Your testimony, I believe, just
6 now, Mr. Perry, was that Mr. Kelly's claim against CHS Texas,
7 if derivative, is now part of the Debtor's estate; correct?
8 The Debtor's property now.

9 A Correct.

10 Q My question is, when did claimants like Mr. Kelly get
11 notice of the fact that their claims may now be property of
12 the Debtor's estate?

13 A I'm going to give you the answer from the CRO's
14 perspective. When we originally filed the automatic stay
15 extension, I personally filed a declaration by which I took a
16 position -- the Debtor took the position that remedies such as
17 successor liability, alter ego and the like were properties of
18 the estate. In fact, we actually abbreviate an appellee, and
19 there's a demonstrative in some of the hearings that say POE
20 and there's a column next to a specific claimant that would
21 have been incorporated in that automatic stay, there would
22 have been words like successor liability, alter ego -- those
23 are the two that I think were the most prominently used in
24 connection to claimants that would have sought that remedy.

25 So very early on, in March of '23, within a month or

1 so, maybe the last half of the case filed, the Debtor did, in
2 fact, put forth notice of a hearing, did put forth information
3 with respect to identifying those remedies as property of the
4 estate and, as I recall, we were very transparent in open
5 court with regard to our position.

6 Q So let me just make sure I understand, sir. A
7 claimant's cause of action to recover damages suffered prior
8 to the May 2022 divisional merger against YesCare, that's now
9 property of the Debtor's estate; correct?

10 A You'll have to repeat that again.

11 Q A claimant's cause of action to recover damages suffered
12 prior to the May 2022 divisional merger against YesCare are
13 now property of the Debtor's estate. Is that right?

14 A The answer is now, if I understand what you're asking
15 correctly. And here's why. An injury may have very well
16 occurred prior to May of 2022, but had that claimant been,
17 let's say, connected to or related to an ongoing contract that
18 YesCare ultimately was allocated as part of the divisional
19 merger, that claim survived the divisional merger. What I
20 mean by that is that claim is a direct claim against YesCare.

21 Q What if the claim wasn't so allocated? Then it's part of
22 the Debtor's estate; right?

23 A Let me make sure because I've been answering questions so
24 long, I want to make sure I give you the -- if the claim was
25 not allocated to YesCare and the injury occurred prior to May

1 of 2022, and the claimant therefor allocated
2 to -- to whom, asserted a successor liability or alter ego
3 remedy with their claim, then that is property of the estate.

4 Q Right. And that claim that you just described would be
5 released by the settlement agreement if it's approved;
6 correct?

7 A To the extent that it's a derivative claim, and the
8 claimant otherwise doesn't come to court to prove something
9 otherwise, then that's correct.

10 Q Okay. The Debtor thinks that it is settling alter ego
11 claims; right?

12 A The Debtor thinks? I don't understand your question.
13 The Debtor thinks?

14 Q The Debtor thinks that it is -- the Debtor's
15 understanding of the settlement agreement is that it is
16 settling alter ego claims; correct?

17 A The Debtor evaluates alter ego claims as derivative
18 claims and therefore property of the estate, and therefore are
19 being released as part of the settlement.

20 Q And the Debtor has not assigned any estimate or value to
21 alter ego causes of action; right?

22 A Correct. I testified on that earlier, that we didn't
23 chop up any type of value on a cause-by-cause action; correct.

24 Q And the Debtor hasn't ascribed a specific value to
25 successor liability causes of action either; right?

1 A That's correct.

2 Q Okay. The Debtor's view -- strike that. Your view, Mr.
3 Perry, is that even though you don't know the value of those
4 claims that we just talked about, you don't think they're
5 particularly valuable, and \$54 million is a lot of money and,
6 all things considered, the settlement's a good deal. Is that
7 your view?

8 A \$54 million is a lot of money, I will agree with you on
9 that for sure. I will also agree with you that it didn't
10 carve up settlement value on a claim-by-claim, remedy-by-
11 remedy basis. But what my conclusion was earlier today and in
12 response to your question, I do believe that taking all of
13 these causes of action into account, the \$54 million is
14 absolutely a value maximizing an out for all of these causes.

15 Q Okay. Wouldn't it be nice to know, though, before you
16 release them, to know whether or not the claims that we just
17 described, that you haven't ascribed a particular value to,
18 were worth hundreds of millions of dollars?

19 A Sure, it would be nice to know whether or not claims were
20 worth hundreds of millions of dollars, yes.

21 Q I believe you testified earlier on direct that the estate
22 causes of action caused harm to the Debtor. Do you recall
23 that testimony?

24 A I do.

25 Q Could you explain what you meant by that?

1 A Sure. In a simplistic way -- and I think I testified
2 along these same lines -- in the first category, which I
3 described, which is my best example, to the extent that real
4 cash was transferred out of the Debtor that based on the
5 Debtor's conclusion wasn't substantiated in some form, then,
6 you know, that is harm caused by the Debtor, i.e., cause to
7 all the creditors such that when you can avoid that and get
8 that cash back, you can then distribute it to creditors in a
9 fair and equitable way.

10 Q I see. So, well how, Mr. Perry, does a personal injury
11 claim against YesCare, based on a successor liability theory,
12 involve an injury suffered by the Debtor?

13 A You'll have to repeat that, I apologize.

14 Q Well, you would agree with me that some of the successor
15 liability claims against YesCare may involve wrongful death;
16 correct?

17 A Claimants that assert successor liability may involve
18 wrongful death. They may.

19 Q They may; right?

20 A They may.

21 Q The Debtor didn't die in prison; right?

22 A Those are claims asserted against the Debtor.

23 Q I'm talking about a successor liability claim against
24 YesCare. How was the Debtor injured -- strike that. My
25 question is: How does a personal injury claim against

1 YesCare, that is asserted on a successor liability theory of
2 recover, involve an injury to the Debtor?

3 MR. KAUFMAN: Your Honor, this is an extremely
4 compounded, confusing question, that also requires some legal
5 analysis.

6 MR. MOXLEY: The question is not compound, Your
7 Honor.

8 THE COURT: I don't think it was compound. Can you
9 ask the question again?

10 MR. MOXLEY: Yes, Your Honor.

11 BY MR. MOXLEY:

12 Q How does a per -- yes, Your Honor. My question, Your
13 Honor, is how does a personal injury claim against YesCare,
14 based on a successor liability theory, involve an injury
15 suffered by the Debtor?

16 THE COURT: He can answer.

17 MR. KAUFMAN: Same objection.

18 THE COURT: Well, that was a lot. It was a lot
19 there. "By the Debtor." Who are you defining as the Debtor?
20 That's the question I've got. Tehum?

21 MR. MOXLEY: Tehum, yes, Your Honor.

22 THE COURT: Yeah, I'll let you ask it. Just use the
23 word Tehum in there and you can ask your question, and he can
24 answer if he knows.

25 THE WITNESS: I really don't know the answer to the

1 question.

2 MR. MOXLEY: Okay. Let me start again.

3 BY MR. MOXLEY:

4 Q You testified before that estate causes of action caused
5 harm to the Debtor; correct? That's what you testified to.

6 A In our analysis, if there was harm to the Debtor through
7 our causes of action, that is correct, we would pursue those;
8 yes, right.

9 Q My question to you, sir, is if the Debtor takes the
10 position that a personal injury claim is based on successor
11 liability against YesCare, on an injury that occurred prior to
12 the divisional merger, is an estate cause of action, how does
13 that involve harm to the Debtor?

14 MR. KAUFMAN: Your Honor, it's the same compound and
15 confusing.

16 THE COURT: I'm going to overrule. He can answer if
17 he knows.

18 THE WITNESS: I don't know the answer to that
19 question.

20 MR. MOXLEY: Okay.

21 BY MR. MOXLEY:

22 Q And that's because -- that's because the harm that was
23 suffered was a personal injury to that human being; correct?

24 A Correct. The claimant asserting the claim was injured.

25 Q Right.

1 A Correct.

2 Q Right. The Debtor was not injured by Corizon's actions;
3 correct?

4 A The Debtor is Corizon. I'm not following you.

5 Q No, the -- sorry. My question -- my question, Mr. Perry,
6 is that it wasn't the Debtor who suffered in a personal injury
7 tort claim. It was the person who was physically injured, who
8 suffered; correct?

9 A The claimant who had a personal injury, the Debtor is who
10 harmed that creditor in that situation. That's your position.

11 Q Yeah.

12 A Correct.

13 Q And if you're going to bring that claim on a successor
14 liability theory against YesCare, it's the Debtor's position
15 now that that's the Debtor's asset; correct?

16 A The Debtor's position is that a successor liability
17 remedy to pursue an underlying claim, recoveries under that
18 claim is property of the estate.

19 Q Right. And so the estate wasn't actually harmed in that
20 scenario; right? So not all estate causes of action actually
21 do involve harm to the Debtor; correct?

22 A I don't know how to answer your question.

23 Q If YesCare is required to pay on a personal injury claim
24 asserted by a claimant, would that harm the Debtor?

25 A (No response.)

1 Q I can ask that question again if you'd like.

2 A Okay, please.

3 Q Sure, of course. And I can do that any time you like,
4 okay? Do that any time you like.

5 My question is: If YesCare is required to pay on a
6 personal injury claim asserted by a claimant in this case,
7 that would not harm the Debtor; would it?

8 A A claimant of the Debtor or a claimant of YesCare? I'm
9 sorry, I don't mean to ask a question. I'm just trying to
10 clarify. Maybe you'll have to ask it again --

11 Q Sure.

12 A -- because the definition of claimant in the question, I
13 think has me confused.

14 Q Okay. So imagine a scenario where YesCare has a judgment
15 against it, and it has to make a payment, okay?

16 A Got it.

17 Q YesCare has a judgment against it and has to make a
18 payment.

19 A Perfect, got it.

20 Q Okay. Now, assume that the judgment creditor in that
21 case is a tort claimant in this case.

22 A Are you talking about YesCare or Corizon?

23 Q For the claim against YesCare on a successor liability
24 theory. They have a claim against YesCare, they get a
25 judgment, and YesCare has to pay them. YesCare, having the

1 right to object to that claimant in that scenario, doesn't
2 harm the Debtor; does it?

3 MR. KAUFMAN: Your Honor, I'm going to object to the
4 extreme compoundedness of this question. He's clearly
5 confusing the witness and I just want to keep the record
6 clean.

7 THE COURT: Overruled. YesCare pays a claim against
8 the Debtor, is what he's trying to ask. Does it harm the
9 Debtor? That's my distilled version of the question.

10 THE WITNESS: Yeah, I'll have to process that, Mr.
11 Moxley. As I sit here, I can't give you an answer.

12 MR. MOXLEY: Okay. Let me ask it again.

13 THE WITNESS: I think I can get there if I process
14 it for awhile, but I'm not sure I fully follow where you're
15 going and what you're asking. So I really can't give you an
16 answer.

17 BY MR. MOXLEY:

18 Q YesCare is a non-Debtor; correct?

19 A Correct.

20 Q If YesCare has to expend money to pay a vendor, does that
21 affect the Debtor?

22 A Who is that, please?

23 Q YesCare's vendor.

24 A If YesCare pays their own vendor, it has nothing to do
25 with this bankruptcy case.

1 Q Correct?

2 A Correct.

3 Q Okay. So now imagine that instead of a vendor, YesCare
4 is paying a claimant with a personal injury tort claim against
5 YesCare. Same answer, right? The Debtor's not harmed by
6 YesCare having to make that payment.

7 A Correct. YesCare making payments to YesCare claimants
8 has nothing to do with the Debtor; correct.

9 Q Thank you, sir. If CHS Texas paid Mr. Kelly, based on
10 his claim, would that harm the Debtor?

11 A I don't believe it would cause harm to the Debtor unless
12 it caused other creditors to not receive recoveries on account
13 of their claims.

14 Q Would the Debtor be better off if CHS Texas and YesCare
15 had to pay the claims against them that may be asserted on a
16 successor liability basis?

17 A I'm sorry. As that one again, please.

18 Q Would the Debtor be better off if CHS Texas and YesCare,
19 non-Debtors, had to pay the claims against them based on
20 successor liability?

21 A It's a hypothetical that I think is perhaps binary. So
22 I'll answer it based on my understanding of your question,
23 which is: If YesCare and CHS Texas paid a claim of the
24 Debtor, would it -- yes, I believe the Debtor would be better
25 off because the claimant pool would reduce and we would

1 maximize value for the rest of the claimants.

2 Q No, not my question.

3 A Okay, I'm sorry.

4 Q So I'll ask my question --

5 A I am trying very hard, sir. Please feel free --

6 Q No, and I'm not trying to be difficult with you. I'm
7 trying to be as clear as I can. Would the Debtor be better
8 off, sir, if CHS Texas and YesCare had to pay claims asserted
9 against them, YesCare and CHS Texas? Not claims asserted
10 against the Debtor; claims asserted against YesCare and CHS
11 Texas. Would the Debtor be better off if YesCare and CHS
12 Texas paid thsoe claims rather than the Debtor?

13 A If there were direct claims brought forth against YesCare
14 that they had to pay, it would reduce the claimant pool of the
15 Debtor, and the Debtor could always maximize value for the
16 rest of the creditors.

17 Q Okay. Now, I'm asking it -- now I'm asking, you said
18 direct claims in that answer. now, I'm asking you about
19 successor liability claims.

20 A I don't have an answer for you on that.

21 Q And why is that?

22 A Because, again, I don't think I could have achieved for
23 the Debtor -- could have achieved this settlement with this
24 amount of money, in a value-maximizing way, had successor
25 liability claims, alter ego claims, and other derivative

1 claims, not been released.

2 So I do think the Debtor would be harmed in your
3 hypothetical if, in fact, those claims were allowed to be
4 pursued, they were interpreted as not property of the estate,
5 and I couldn't bring forth a settlement.

6 MR. MOXLEY: Your Honor, I think we have -- could we
7 just take a five-minute break? Is that possible?

8 THE COURT: Yeah, of course. Yup, you got it.

9 COURT CLERK: All rise.

10 (Recess taken from 6:03 p.m. to 6:11 p.m.)

11 COURT CLERK: All rise.

12 THE COURT: Back on the Record in Tehum, and I
13 remind you that you're still under oath. Counsel, you may
14 proceed.

15 MR. MOXLEY: Thank you, Your Honor.

16 CROSS-EXAMINATION (CONT'D)

17 BY MR. MOXLEY:

18 Q Mr. Perry, let me -- let me try to pick up where wre left
19 off and see if we can do that.

20 A Sure.

21 Q Mr. Perry, your view is that wrongful death claims
22 against YesCare or CHS Texas under a successor liability that,
23 in your view, is derivative, are estate causes of action and
24 would be released under the settlement agreement.

25 MR. KAUFMAN: All right, Your Honor, I have to --

1 oh, I'm sorry, finish your question.

2 MR. MOXLEY: I think I finished it.

3 MR. KAUFMAN: Oh, okay. I object that that is a
4 compound question, talking about wrongful death claims against
5 YesCare being derivative, and it's compound and very
6 confusing.

7 THE COURT: Overruled. You can answer.

8 THE WITNESS: Please ask the question again.

9 MR. MOXLEY: Of course, sir.

10 BY MR. MOXLEY:

11 Q Your view is that wrongful death claims against YesCare
12 or CHS Texas, under a successor liability theory that in your
13 view is derivative, is an estate cause of action released
14 under the settlement agreement; correct?

15 A Correct.

16 Q So it's your view, then, that personal injury and
17 wrongful death claims can be settled under the settlement
18 agreement without those tort victims' consent.

19 A Repeat the question again, please, for me.

20 Q It is your view then, sir, that personal injury and
21 wrongful death claims are being settled under the settlement
22 agreement without those tort victims' consent.

23 A The settlement agreement, they are seeking approval of
24 that agreement. We have an opportunity to solicit a plan that
25 would allow creditors to vote yes or no under the plan, but

1 the settlement agreement could very well be approved over the
2 objection of certain claimants.

3 Q And but for the fact that the settlement agreement, if
4 approved, and the plan if confirmed, would release personal
5 injury tort claims without those victims' consent, you would
6 not have the \$54 million settlement that you now have with the
7 M-2 parties; correct?

8 A Okay, I'll ask you to repeat it again, one more time.

9 Q But for the fact that without being able to release
10 personal injury tort claims, without those tort victims'
11 consent, you would not have the \$54 million settlement that
12 you now have with the M-2 parties; correct?

13 A The releases are connected to the settlement, so without
14 the releases I would not have a settlement, as it stands
15 today, correct.

16 Q Isn't this settlement then, Mr. Perry, effectively
17 monetizing the value of the personal injury and wrongful death
18 claims against YesCare?

19 A Successor liability or direct claims?

20 Q Yes, sir, successor liability.

21 A By way of releasing estate causes of action, and
22 therefore liquidating those, we are in fact settling those
23 claims in order to bring money into the estate to distribute
24 to creditors.

25 Q And you appreciate, sir, that you're essentially

1 advocating for a settlement under which the entities
2 controlled by Mr. Lefkowitz are purchasing personal injury and
3 wrongful death claims from the Debtor without those victims'
4 consent.

5 A I don't believe that I define it, or the Debtor defines
6 it, as purchasing personal injury claims. I think we are
7 releasing estate causes of action in order to return value to
8 claimants.

9 Q Doesn't this settlement agreement essentially sell the
10 pain and suffering experienced by members of our committee in
11 this courthouse?

12 A I'm sorry, please repeat the question again.

13 Q Doesn't this settlement agreement essentially sell the
14 pain and suffering experienced by the members of our
15 committee, the TCC, on the steps of this courthouse?

16 A I don't believe it sells at all. I think what this
17 settlement does is provides substantial value to the estate
18 that we can then distribute to creditors in a value-maximizing
19 way.

20 Q Well, how is the Debtor insuring that the appropriate
21 amount of settlement funds are allocated to personal injury
22 tort claims?

23 A I would welcome the TCC's cooperation in assuring that we
24 get the allocation right when we form the plan, after we have
25 a settlement approved.

1 Q You would agree with me, Mr. Perry, that the face value
2 of the personal injury tort claims here is approximately \$775
3 million; right?

4 A Not my definition of face value, no, I don't agree.

5 Q You don't agree?

6 A No. That's the value of a proof of claim, not the face
7 value.

8 Q Okay. So the value of the personal claims for the
9 personarl injury tort claimants in this case total
10 approximately \$775 million; correct?

11 A Sure, approximately, uh-huh.

12 Q And you would agree with me that, if you look at the
13 proof of claims for commercial cred -- for commercial
14 creditors, those total approximately \$75 million; right?

15 A Proof of claim totals, I think it's somewhere around
16 there, maybe a little bit north of there. That seems right.

17 Q Why isn't the Debtor advocating for a settlement where 90
18 percent of the settlement proceeds are reserved for tort
19 claimants?

20 A I'm sorry. I don't understand, Mr. Moxley. There is no
21 allocation even contemplated in the settlement agreement.

22 Q You're aware there was a prior plan that provided for
23 allocation; correct?

24 A Sure, but we're not arguing a plan today.

25 Q Right. So at that point in time, though, the Debtor

1 wasn't advocating for an allocation of 90 percent of the
2 settlement proceeds to go to the tort claimants; was it?

3 A Under the old plan structure?

4 Q Yes.

5 A Under the old plan structure, there was a mechanism that
6 allocated claims, let's call it as fair and equitably as the
7 allocation could arrive at based on an estimated amount of
8 claims.

9 Q Okay, and it didn't --

10 A Based on proof of claims.

11 Q And that allocation methodology didn't provide for 90
12 percent of the settlement funds to go to the tort claimants;
13 did it?

14 A Not that I'm aware of, no.

15 Q And wasn't that prior allocation essentially taking the
16 proceeds from the sale of the tort claimants' liability and
17 giving it to commercial creditors?

18 MR. KAUFMAN: Your Honor, I'll object to that
19 question. Mr. Perry's already testified that he doesn't view
20 it as a sale.

21 THE COURT: Overruled. You can answer.

22 THE WITNESS: Correct. I don't view it as a sale,
23 but let me answer it -- let me answer your question. Mr.
24 Moxley, the allocation was not -- in the previous plan was not
25 based upon, as you referred to it, face value of proof of

1 claim amounts.

2 It was based on an estimated amount for each
3 respective class, and the allocation in the old plan that's
4 not in front of the Court, was based on that approach at that
5 time. Nowhere in this settlement are we discussing,
6 memorializing or seeking approval for any allocation.

7 BY MR. MOXLEY:

8 Q Do you think it's appropriate for a family's wrongful
9 death claim against YesCare to be sold and controlled by the
10 Debtor?

11 A If a family has a wrongful death claim against YesCare, I
12 would assume that they would pursue that claim against YesCare
13 and the Debtor wouldn't stand in their way of pursuing a claim
14 against YesCare.

15 Q If that claim was a successor liability claim, which you
16 understand to be a derivative claim, the settlement agreement
17 would stand in the way of that family pursuing that claim
18 against YesCare; correct?

19 A No. The settlement agreement would liquidate that claim
20 to provide value to that victim --

21 Q Right.

22 A -- or to that claimant.

23 Q Right. The Debtor would control that claim, not the
24 claimant.

25 A The Debtor would return value to the claimant quickly,

1 fair and equitably, along with all the creditors.

2 Q You testified, sir -- switching gears just a bit for a
3 minute. You testified that you've reviewed personal injury
4 claims in this case; right?

5 A I have.

6 Q Okay. Do you have medical records for the personal
7 injury claims asserted against the Debtors?

8 A To the extent medical records were included in claim
9 arguments we would have reviewed, we would have them, but we
10 otherwise don't have possession of a plethora of medical
11 records, no.

12 Q And the same for medical bills. You don't have
13 possession of the tort claimants' medical bills; correct?

14 A Correct. That would be part of what I would assume they
15 would assert as part of their claim.

16 Q Have you conducted any interviews with any personal
17 injury claimants in this case?

18 A I have not.

19 Q Have you attempted to calculate the damages suffered by
20 any personal injury claimant?

21 A I have attempted to estimate the amount of total claims
22 for personal injury claimants. I think for that definition of
23 damages, then I have attempted to estimate an amount for
24 purposes of a liquidation analysis.

25 Q In the aggregate, I take it; right?

1 A For all personal injury claimants that have filed claims
2 in this case; correct.

3 Q Right. Not for any particular individual claimant;
4 right?

5 A As part of the analysis by which we arrived at an
6 estimate, we had to review individual claims, in particular
7 the proof of claims that were asserted and the type of the
8 claim that may have been asserted, so that we could properly,
9 to the best of our ability, come up with an actual estimate of
10 that for purposes of the liquidation analysis.

11 Q How did you go about calculating the value of the
12 wrongful death claims?

13 A I didn't calculate the value, and I believe I've never
14 testified that I've ever calculated the value of a wrongful
15 death claim. I've estimated an amount for that claim in
16 connection with the liquidation analysis and then, as I
17 testified earlier, there's been new information provided at
18 the request of the Committee, Mr. Moxley, that helps provide
19 additional data points that could sharpen the pencil, so to
20 speak, on that estimate amount.

21 Q And the estimate amount that you referenced twice in your
22 last answer, is that the amount that the Debtor thinks is
23 recoverable on that particular wrongful death claim?

24 A Well, it's the amount that I -- the Debtor used in order
25 to estimate what the potential claim may be worth with respect

1 to liquidation analysis purposes.

2 Q Okay. So you prefer the term "worth" instead of "value,"
3 fair?

4 A We estimated an amount of what we believe to be at least
5 -- and, again, in connection with liquidation analysis
6 -- of that class of claims.

7 Q Okay. So let me ask you the question then, slightly
8 differently. How did you go about calculating the worth of a
9 wrongful death claim?

10 A My using "worth" was maybe a -- I wasn't referring to
11 value. I was referring to an estimate amount, and I'll give
12 you an explanation of how we arrived at an estimated amount of
13 those what I'll call classified tort claims or personal injury
14 claims. And that is, at least in connection with the
15 liquidation analysis, we sought to understand how many filed
16 claims were personal injury claims, how many of those
17 claimants were represented by counsel versus how many of those
18 claims were pro se, i.e. didn't have counsel.

19 We then applied a methodology by which on the low
20 end, we assumed pro se claimants would accept the \$5,000,
21 which was a mechanism under the old plan. The represented
22 would effectively -- in terms of estimating the amounts, we
23 calculated the represented cases multiplied by the average in
24 a peer-reviewed article.

25 On the high end, we assumed all claimants, every

1 claimant that filed a claim, would effectively be multiplied
2 by that number that we discovered in a peer-reviewed article,
3 and that represented the high end.

4 In terms of estimating the amounts, it was simply
5 what I'll call formulaic based on that methodology that I just
6 laid out.

7 Q Got it. So it wasn't you sitting down, looking at a
8 wrongful death claim and coming up with the worth or dollar
9 figure that you would ascribe to that particular wrongful
10 death claim; correct?

11 A No, I did not ascribe an individual -- you know, like an
12 estimate on each and every individual claim. In the
13 liquidation analysis, the Debtor performed the analysis as I
14 just mentioned.

15 Subsequent to preparing that liquidation analysis,
16 again -- sorry to be redundant, but the analysis that -- or
17 the information and data that we produced to the TCC, and that
18 I testified on a bit earlier, may allow for the parties to
19 take a more detailed claim-by-claim of valuation of whether
20 the estimate can be assigned different than the methodology we
21 took in the liquidation analysis. That process and evaluation
22 will, you know, be determined as we move forward.

23 Q Okay. So part of your process was not to calculate the
24 damages that were suffered by any particular wrongful death
25 claimant; correct?

1 A I'm sorry, part of my what?

2 Q Part of the analysis that you undertook --

3 A Uh-huh.

4 Q -- was not to ascribe -- was not to come to a view on
5 what the analysis of the damages that were actually suffered
6 by any particular wrongful death claimant?

7 A Mr. Moxley, the analysis that I did was to calculate the
8 estimated amount of claims. The Debtor doesn't necessarily
9 view that as damages; we view that as the estimate amount of
10 claims.

11 Q That's what I'm trying to understand, sir. What, in your
12 mind, is the difference between the estimated amount of the
13 claims and the damages that were suffered by a particular
14 wrongful death claimant?

15 A Well, to answer your question, the difference would be
16 the estimated amount of the claims. It's just the methodology
17 and approach that I just laid out for you in the liquidation
18 analysis that, to some extent, form the basis of how the
19 allocation was arrived at.

20 The damages -- and you asked me how they're
21 different. The damages, ultimately of the personal injury
22 claims, to me that's a reference to liquidated claims. And
23 the old plan put forth a process by which claimants could
24 liquidate their claims to arrive at that number that would
25 represent the damages.

1 Q Mr. Perry, have you ever testified in a medical
2 malpractice case before?

3 A I have not.

4 Q Do you think that you're qualified to offer an opinion
5 regarding the worth of a medical malpractice claim?

6 A I haven't been asked to do that, nor have I been involved
7 in it, so I don't have an answer for you.

8 Q I believe you testified on Direct that the Debtor, Tehum
9 Care Services, is in financial distress; right?

10 A I don't believe that was mentioned, Mr. Moxley.

11 Q Okay. Is the Debtor in financial distress?

12 A Today? I'm sorry, Mr. Moxley. I testified that the
13 Debtor was in financial distress prior to the divisional
14 merger and leaving up to the division merger. I don't believe
15 I testified that it's in financial distress today.

16 Q Okay. Well, given the distress the Debtor was in then at
17 that time, wouldn't the deeper pocket for claimants of any
18 type, to assert claims against the YesCare?

19 A I don't think I could conclude that YesCare has a deeper
20 pocket.

21 Q Let's go -- let's turn to -- let's turn back to the
22 settlement agreement, sir, which is at TCC 125 in your binder.

23 A Oh, yeah, 125.

24 Q 125, yeah.

25 A Okay, I have it.

1 Q Okay. And let's go to Section 9 of the settlement
2 agreement, which is at page 41 of 47 of the filing. I think
3 this will be brought up on your screen also, if that helps
4 you, sir.

5 A Okay.

6 Q Okay. And you see Section 9 has a heading "Conditions
7 Precedent." Do you see that?

8 A I do.

9 Q Now, we know that this may have changed, given that the
10 Debtor filed around noon today a revised agreement and
11 proposed order. And we'll take a look at that revised version
12 in a moment.

13 A Okay.

14 Q I'd like to look at just this version for now, if we
15 could, okay?

16 A Okay.

17 Q All right. So at Section 9, are these -- are these
18 conditions that must be satisfied before any settlement funds
19 are released for payment to creditors?

20 A Yes, that's correct.

21 Q You see condition number romanette ii? Do you see that
22 condition, sir?

23 A I do.

24 Q Okay. So under this prior version, the version that is
25 TCC-125, appreciating, again, that there's been a subsequent

1 filing. But under this prior version, for the claimant in
2 this case who opted out, received distributions from the
3 settlement payments.

4 MR. KAUFMAN: Your Honor, I'll object to the
5 relevance of this question, given the changes.

6 THE COURT: Well, I think he can talk about what it
7 was before and then what it is currently now. I think that's
8 fair game. Understanding that it's changed, but I think they
9 can explore what was going on before.

10 MR. KAUFMAN: Yes, sir. Thank you.

11 THE WITNESS: So in the previous construct and per
12 this Section 9, subsection ii, parties who opt out of the
13 agreement shall not be authorized to receive distributions or
14 pursue claims unless they seek authority from the Court finding
15 that that claim was not released or otherwise enjoined.

16 BY MR. MOXLEY:

17 Q Okay. What was the phrase that you used? It was the
18 "previous construct," I think. Just now in your answer?

19 A Yes, and I read from the previous settlement agreement
20 that the new revised -- I'm sorry. Settlement order would
21 supercede.

22 Q Let's use that phrase, "previous construct," which is
23 easier, correct?

24 A Okay.

25 Q So under the previous construct, could a claimant in this

1 case, who opted out, bring a lawsuit against a released party
2 based on the doctrine of successor liability?

3 A They could bring a lawsuit over to Your Honor under any
4 doctrine.

5 Q No, no. My question is, if it was based on the doctrine
6 of successor liability, would that lawsuit be allowed to go
7 forward or, under the previous construct, would it be
8 prohibited?

9 A This subsection is a condition on what the Court would
10 decide as to whether that could move forward, not the Debtor.
11 The clause basically said -- and this was -- you know,
12 obviously we've removed this. But what this clause says is,
13 if you opt out of the settlement you won't receive
14 distributions, but you are entitled to bring forth a lawsuit
15 to the Court to seek authority under the plan.

16 Q (Glitch in the audio) finding that such creditors' claims
17 or causes of action were not released or otherwise enjoined
18 under the plan. Do you see that?

19 A I do.

20 Q And claims for successor liability or alter ego would
21 have been released under the plan -- or under this prior
22 construct; correct?

23 A Under this prior construct, a remedy such as successor
24 liability and alter ego are being released under the current
25 and the former construct.

1 Q Okay. So what was the point of the prior construct's
2 opt-out if the claimant couldn't recover from anyone?

3 A Well, the point was we didn't want to take claimants' day
4 in court away if they believed they had a claim that wasn't
5 being released under this agreement. We wanted them to bring
6 it forth to court. We didn't want to stop them from being
7 able to do that.

8 Q Okay. Under the prior construct, if they opted out, they
9 couldn't get any of the settlement payments; right?

10 A That's correct, under the current -- you know, prior
11 construct, that's right.

12 Q And if their claim was based on successor liability, then
13 that claim was released, so they couldn't bring that claim;
14 right?

15 A If a -- under the -- correct. The Debtor believes
16 successor liability claims are, by nature, derivative property
17 of the estate an they're being released.

18 Q Right. So what was the point of the agreement? What
19 recourse did the claimant have?

20 A Constructive. We moved to strike it and it doesn't exist
21 any longer. I really can't tell you what the point of it was.
22 I can tell you in a way that, you know, provides any clarity
23 other than the fact that we struck it.

24 Q Okay. So, now I'd like you to explain to me how the new
25 version works, and I think we can bring that up on the screen.

1 Is that the agreement up on the screen, the new filing?

2 (Conferring with associate.)

3 Q We'll bring that up on our screen for the ease of
4 reference.

5 A Okay.

6 Q You're familiar with it, of course; right? You're
7 familiar with the new filing?

8 A You know, we worked on this over the weekend, and then
9 finalized it literally minutes before we filed it with the
10 Court, so --

11 Q Okay. So I'd like to show you the redline of that
12 section, of that Section 9. And I'd like -- my question, sir,
13 is -- you worked on it over the weekend. And my question,
14 sir, is how does that section work now? Can you explain that
15 to the Court?

16 A Sorry, you're referring to Section 9?

17 Q Yes, sir.

18 A How does it work. Who's controlling the screen? I'm
19 curious.

20 Q If you --

21 A If we could maybe zoom out a little bit so I could see
22 all of Section 9?

23 Q All right.

24 A Or they can just scroll down. I don't know. Or maybe
25 there's a piece of paper I can look at.

1 Q We can hand up a copy.

2 A Okay, perfect.

3 MR. MOXLEY: May I approach?

4 THE COURT: Certainly.

5 (Document presented to witness.)

6 THE WITNESS: Okay, thank you very much.

7 MR. MOXLEY: So just noting for the Record, Judge,
8 that I've handed the witness a copy of the new proposed
9 filing.

10 THE COURT: Yes.

11 THE WITNESS: And just so we're on the same page,
12 what I am looking at is page 3 of this Notice of Proposed
13 Order. Subsection 9 -- well, Section 2, which says paragraph
14 9 is stricken and replaced in its entirety with the following.

15 The redlines here, this is not the redline, however
16 to answer your question, what Section 9 is doing now is
17 removing really any notion of an opt-out at all, meaning if
18 there was a plan solicited, there wouldn't be a box to check
19 for an opt-out. Parties would only have the ability to vote
20 for or against the plan.

21 And we have effectively allowed for any claimant,
22 again, to bring forth a lawsuit to Your Honor to allow Your
23 Honor to determine whether or not they either have a direct
24 claim against a non-Debtor or, you know, some other argument
25 that would allow for a payment by a non-Debtor entity, and

1 therefore wouldn't be subject to the release.

2 In addition, we have defined more clearly that these
3 releases have no bearing whatsoever on claimants that have
4 direct claims against third parties on or after -- for harm
5 caused to them on or after May the 5th, 2022. I believe that
6 was an issue that was brought to the Court on Friday.

7 Further, claims that were allocated to CHS Texas in
8 connection with the divisional merger, to which I testified
9 earlier there was roughly 61 of those, of the 242 filed
10 claims, that those claimants would effectively be -- I think,
11 Your Honor, I discussed it as released or, you know, removed
12 from the docket, so it was a claim register so to speak, and
13 they can allow them to pursue their claim directly.

14 So, really what we've done is we've removed the opt-
15 out provision entirely, but what's remained is the ability for
16 a claimant to bring forth to the Court an argument as relates
17 to what their claim basis may be.

18 BY MR. MOXLEY:

19 Q Under the new construct, Mr. Perry, could a creditor
20 allocated to CHS Texas, assert a claim against YesCare under a
21 theory that YesCare was a successor to Corizon?

22 A I don't have an answer to that. I don't know.

23 Q And you don't have an answer to that and you don't know
24 because -- I'm asking you, is that because such a claim would
25 go before the Bankruptcy Court and the judge would decide?

1 A No.

2 Q All right. Can a claimant in this case, under the new
3 construct, whose injury arose prior to May 1st of 2022, bring
4 a lawsuit against a released party to recover on account of
5 that injury?

6 A If it's a direct claim, of course they can.

7 Q And if it's a claim that's based on successor liability,
8 it would be an estate cause of action and they couldn't;
9 correct?

10 A If it was a claim -- well, I'm sorry. I think your first
11 question, Mr. Moxley, was if the claim was allocated. If the
12 claim was not allocated to CHS and the claim was allocated to
13 the Debtor --

14 Q Uh-huh.

15 A -- and that claim is asserting a theory of successor
16 liability, and that claim, therefore, is derivative in nature,
17 it's being released, then they aren't able to pursue unless it
18 is a direct claim. If the claimant that was allocated the
19 claim, was allocated to NewCo, they can pursue that claim.

20 Q Got it. So under the new construct, the holder of a tort
21 claim, whose claim arose prior to the divisional merger, and
22 it was a successor liability claim, their sole remedy would be
23 to seek compensation from whatever mechanism the plan
24 provides; correct?

25 A It's binary. If they have a direct claim, the settlement

1 agreement allow for them to assert that claim directly.

2 There's a mechanism they can bring to Your Honor. If it's not
3 a direct claim and it's allocated to the Debtor, and that
4 claimant is asserting remedies that are property of the
5 estate, that claim would reside in the Bankruptcy Court and we
6 are settling that and providing a value to creditors.

7 Q Are you aware, Mr. Perry, sitting here today, of any
8 direct claim that a personal injury claimant of this estate
9 would have against any of the released parties?

10 A I'm aware that of the 242 claims filed in this case --
11 and let me be clear, these are claimants that filed a proof of
12 claim asserting a liability in this case, meaning the Debtor,
13 Tehum Care Services, has a liability connection to that
14 claimant. To the extent that that claimant's claim was
15 allocated to YesCare in connection that there's a merger, my
16 view is they are not a claimant of the Debtor.

17 Q Okay.

18 A They, therefore, have a direct claim against a released
19 party and we are basically putting a process in place to
20 release them from this estate, and not enjoin them in the
21 settlement, and giving them at path to pursue that claim.

22 Q Okay. Now, imagine you have a claim that's allocated to
23 Tehum.

24 A Okay.

25 Q Okay. The claim seeks recovery on a successor liability

1 theory of liability. What position would the Debotr take if
2 that claimant, under this new construct, brought that claim to
3 Judge Lopez?

4 A The Debtor doesn't take any position. If they want to
5 bring a claim to Judge Lopez, they should bring a claim to
6 Judge Lopez. The judge will rule whether or not it's a direct
7 or indirect claim, meaning per the language, whether that
8 claim was released as part of the settlement or not.

9 Q And how would the judge decide whether or not a claim was
10 a successor liab -- was a successor liability claim that was
11 released or not?

12 MR. KAUFMAN: I'll object to that because it
13 requires the judge to be clairvoyant but (indiscernible due to
14 very low audio volume.)

15 THE COURT: And me, too.

16 BY MR. MOXLEY:

17 Q So am I right, Mr. Perry, that you don't know, as you sit
18 here today, which personal injury tort claims that are filed
19 in this case will or will not be settled under the settlement
20 agreement; is that right?

21 A I'm sorry, repeat the question again.

22 Q As you sit here today, do you know which of the personal
23 injury tort claims filed in this case, will or will not be
24 released under the settlement agreement?

25 A I don't understand the question, Mr. Moxley. I don't

1 think we're releasing tort claims.

2 Q Okay.

3 A Personal injury tort claims aren't being released.

4 Q If they're -- if the personal injury tort claims that
5 allege -- that assert or seek -- strike that. Personal injury
6 tort claims that would seek recovery from YesCare on a
7 successor liability basis are being released under the
8 settlement agreement; correct?

9 A That is correct.

10 Q Okay. Do you know which of the claims on file in this
11 case would be released?

12 A Well, as a matter of fact, let me answer that. Of the
13 242 claims that have been filed in this case, 61 of those are
14 allocated to YesCare. That's not your question but I just
15 want to make sure that we're working through this mess so I
16 can answer your question in a way that we all understand it
17 and I understand it.

18 242 have been filed, 61 are allocated to YesCare.
19 The Debtor filed in March of '23 an extension of the automatic
20 stay to non-Debtors subject to -- I think it was roughly 39
21 claims at the time. We received a short extension of that
22 from Your Honor. We came back. We then sought an extension
23 of that automatic stay.

24 In that proceeding, there was an exhibit attached to
25 maybe my declaration or at least the motion, that detailed

1 roughly 34 claims because, you know, five had been otherwise
2 settled out.

3 And of those 34 claims that we sought extension of
4 stay, I believe three, maybe four of those claims asserted
5 successor liability or alter ego. The analysis that the
6 Debtor undertook, leading up to that extension, was to
7 identify other non-Debtor entities that would serve as a
8 Defendant to which there may be an indemnification
9 relationship between those two parties, i.e. YesCare and the
10 Debtor or others, such that if there was a successor liability
11 claim asserted, we could put a stay and we could figure out
12 that claim.

13 So the reason I needed to explain it to you, Mr.
14 Moxley, is based on the Debtor's analysis and understanding of
15 the claims that have been filed in the case, we believe the
16 number of claims, as we sit here today, that have asserted
17 successor liability or alter ego, are probably three or four
18 of the 242.

19 Q Okay. I know you weren't here on Friday, but you're
20 aware generally that there's been some discussion in some of
21 the openings and other comments throughout the hearing, about
22 the concern, about what would happen to pro se claimants if
23 this case were dismissed.

24 A If you can explain to me. I wasn't here on Friday.

25 Q Okay.

1 A So I don't have a knowledge of what was discussed on
2 Friday in that regard.

3 Q Okay. Well, we talked a little bit earlier about
4 -- I think it was Debtor's Exhibit 26, where you went through
5 a little bit of how much pro se claimants have received over
6 the last ten years in terms of settlements; correct?

7 A Correct.

8 Q Okay. And there's been some discussion, I'll represent
9 to you, during the openings about concern about what happens
10 to the pro se claimants if this -- if this bankruptcy case
11 were to be dismissed, okay?

12 A Okay.

13 Q Okay. Are you aware, sir, of the Amicus filing in this
14 case by a number of organizations, including the American
15 Civil Liberties Union and others? Are you aware of that
16 filing?

17 A I am aware that they filed, you know, something in the
18 case recently.

19 Q And have you read that filing?

20 A I've read it, you know, quickly, but I did read it, sure.

21 Q Okay. It's on the docket in the case. It's at Docket
22 No. 1398, and it was filed on February 26th. I'm going to
23 show it to you on your screen. I don't have this in the
24 binders. It's a -- it's just a docket that's been -- or an
25 item that's been filed on the docket.

1 Let's look at page 2 of the filing, if we could.

2 MR. KAUFMAN: Your Honor, I object to -- this is
3 hearsay.

4 THE COURT: I haven't seen it yet, so I don't know
5 what he's putting up. Okay, what's the question?

6 MR. MOXLEY: The question is, I asked him if he's
7 read the document. And now I'm just turning to a page in the
8 document, sir. There's no question pending right now.

9 THE COURT: Okay.

10 BY MR. MOXLEY:

11 Q Mr. Perry, do you see on the -- on page 2 of this filing,
12 it's on your screen, that the Amicus -- the Amicus parties
13 that filed this are the ACLU, the Center for Constitutional
14 Rights, Human Rights Defense Center, Public Justice, Rights
15 Behind Bars, and the UC Berkeley Center for Consumer law and
16 Economic Justice.

17 MR. KAUFMAN: I do object because Mr. Moxley just
18 asked if Mr. Perry can see what the document says on the
19 screen, which is hearsay.

20 MR. MOXLEY: Your Honor, there's an Amicus filing in
21 the case. I'm asking the witness just if he's aware of who's
22 filed the filing.

23 MR. KAUFMAN: Different question.

24 THE COURT: Why don't you re-ask that one.

25 MR. MOXLEY: Sure.

1 BY MR. MOXLEY:

2 Q Mr. Perry, are you aware of who -- which organizations
3 made this filing?

4 A My understanding is the organizations represented here in
5 the text on the screen made the filing.

6 Q Okay. Would you agree with me, sir, that there are
7 likely claimants in this case who missed the bar date?

8 A I don't have a conclusion whether that's likely. There
9 have been a very small handful, again I want to say five or
10 six and I may have that estimate a little off, but of claims
11 that have -- proof of claims that have come in past the bar
12 date. And we actually included that in the claims register
13 data that we provided.

14 Q Okay. Could a claimant, who missed the bar date, recover
15 from whatever trust is set up as part of the plan, if the
16 settlement is approved?

17 A The Debtor really hasn't concluded whether it's going to
18 object to claims that missed the bar date. It's not something
19 we've discussed at this point.

20 Q Could such a claimant, who missed the bar date, bring a
21 derivative successor liability claim against YesCare?

22 A A claimant that missed the bar date could bring any
23 claim, whether it's direct, derivative or other. Sure. A
24 claimant that missed the bar date could bring any claim they
25 wanted. I don't object to that just because they missed teh

1 bar date.

2 Q Could they bring a derivative successor liability claim
3 against YesCare? That's the question, sir.

4 A You may be asking the question a little bit differently
5 because I'm perhaps not following.

6 Q Sure. Could a claimant, who missed the bar date, bring a
7 derivative successor liability claim against YesCare?

8 A A claimant that missed the bar date can file a claim in
9 this case asserting successor liability against YesCare. Yes,
10 they can do that.

11 Q They can file that. Would that claim be released under
12 the settlement agreement?

13 MR. KAUFMAN: Your Honor, I do have to object
14 because this is both speculative and requires a legal
15 conclusion.

16 THE COURT: I'll sustain.

17 BY MR. MOXLEY:

18 Q Let me ask you this question, Mr. Perry. A pro se
19 claimant who missed the bar date would likely receive zero
20 dollars for his or her claim if the settlement is approved;
21 correct?

22 A No, I would disagree with that.

23 Q What's the basis for that disagreement, sir?

24 A First of all, I just testified taht the Debtor hasn't
25 concluded that claims filed after the bar date would be

1 otherwise, you know, expunged or discharged or what have you.
2 We haven't concluded that. And I'll -- you know, there are
3 other cases that I've been involved in where claimants that
4 did miss the bar date were considered in terms of their
5 participation in the claims.

6 So if a pro se claimant filed a claim after the bar
7 date, and the Debtor and other stakeholders discussed and
8 concluded that it would bring forth an exception, and sought
9 relief from Your Honor on that, I don't know what the process
10 would be legally. But if there was a conclusion that a
11 claimant could assert a claim after the bar date, and that
12 claim could be allowed, and they asserted successor liability,
13 then they would absolutely be considered in the plan.

14 Q Let's look again -- you looked at this on your Direct.
15 Let's look again at Debtor Exhibit 26.

16 THE COURT: Counsel, just so we can kind of just do
17 a little housekeeping how much more do you think you have?

18 MR. MOXLEY: Your Honor, I would need a -- I would
19 need a short break to determine that, to be honest with you.

20 THE COURT: Why don't we -- why don't I give it to
21 you, just so I can get a sense of kind-of just timing. I
22 think it would just be important, but I think that's entirely
23 fair, so would like three or four minutes make sense?

24 MR. MOXLEY: Yes, it would, Your Honor.

25 THE COURT: Okay.

1 MR. KAUFMAN: And in terms of Redirect, Your Honor,
2 so far I've got just like five minutes or less.

3 THE COURT: Okay. Well, let's just see where we go.
4 Thank you.

5 COURT CLERK: All rise.

6 THE COURT: Well, actually one question that you
7 can answer for me in connection with the order, the proposed
8 order. I don't know if -- I'm just doing this now so I don't
9 forget. It's a little out of order. Okay. Paragraph 3, the
10 new paragraph 60, the Released Parties language. Just a point
11 of clarification for me. Just so it says: Provided however
12 that the capital p, Parties do not release any claims. I
13 don't know if that's intended to be Parties because Parties is
14 defined in the preamble as a certain group, or whether that
15 means Released Parties Just --

16 MR. MOXLEY: No. That means that the Parties are a
17 subset of the Released Parties.

18 THE COURT: I just wanted to make sure that that
19 was --

20 MR. MOXLEY: That was intentional.

21 THE COURT: Okay. That's all I needed to --

22 MR. MOXLEY: To the extent that there's a breach of
23 the agreement, the signatories retain all claims against each
24 other for the breach of the agreement.

25 THE COURT: You got it. That's what I needed to

1 know. Thank you.

2 (Recess taken from 6:56 p.m. to 7:01 p.m.)

3 MR. MOXLEY: We have a number of specific topics
4 that we have no addressed today yet, to still get to. I
5 think, given the pace we've been going, I think on those
6 discrete topics we'll maybe go a little faster than we have
7 been.

8 I think it's probably 60 to 90 minutes. And so
9 we're happy to come back or --

10 THE COURT: Let's figure out another time where we
11 can complete this examination. It doesn't make a lot of sense
12 to -- this is really important to a lot of people, including
13 the Debtors.

14 We'll pick days and the two days that I'll pick, I
15 know I'm going to be here and we're going to start early and
16 we're going to go really late on those. And so we won't be
17 the afternoon; we'll go -- we'll go late and we'll get
18 everything done, so we're going to try to pick days that we
19 can get everyone in here.

20 So I'll remind, you're going to be under oath for a
21 long time.

22 So I just thank everyone. I'm going to get with my
23 case manager today and we'll figure out two days where we can
24 block off and maybe start around 9:00 a.m. and then just go
25 'til 9:00 -- maybe 9:00 'til 8:00, 9:00 'til 9:00 on those

1 days, and see if we can do them consecutively back-to-back,
2 and see if we can get all the witnesses here. Okay?

3 MR. MOXLEY: Thank you, Judge.

4 THE COURT: Thanks everyone.

5 MR. KAUFMAN: Thank you.

6 COURT CLERK: All rise.

7 THE COURT: Everyone's excused. I'm just going to
8 turn off computers. You're welcome to go. Thank you.

9 MR. MOXLEY: Thank you, Your Honor.

10 (Proceedings adjourned at 7:02 p.m.)

11 * * * * *

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

15 /S./ MARY D. HENRY

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19 JTT TRANSCRIPT #68354
20 DATE FILED: MARCH 15, 2024
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Exhibit B-3

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

IN RE: § CASE NO. 23-90086-11
§ HOUSTON, TEXAS
TEHUM CARE SERVICES, INC., § MONDAY,
§ MARCH 25, 2024
DEBTOR. § 9:31 A.M. TO 8:28 P.M.

CONTINUATION OF TRIAL (VIA ZOOM)

BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE
COURTROOM DEPUTY/ERO: ZILDE COMPEAN

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19
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25

INDEX

| <u>WITNESS:</u> | <u>Direct</u> | <u>Cross</u> | <u>Redirect</u> | <u>Recross</u> |
|------------------|---------------|--------------|-----------------|----------------|
| RUSSELL PERRY | | | | |
| By Mr. Kaufman | . | . | 175 | . |
| By Mr. Moxley | . | 55 | . | . |
| ISAAC LEFKOWITZ | | | | |
| By Mr. Brookner | 183 | . | . | . |
| By Mr. Zluticky | . | 207 | . | . |
| By Ms. Meyers | . | 211 | . | . |
| SCOTT GRIFFITHS | | | | |
| By Mr. Moxley | 377 | . | 479 | . |
| By Ms. England | . | 417 | . | . |
| By Mr. Hemenway | . | 430 | . | . |
| By Mr. Patterson | . | 456 | . | 486 |

| <u>EXHIBITS:</u> | <u>Received</u> |
|------------------|-----------------|
| Exhibit 42 | 203 |
| Exhibit 43 | 199 |
| TCC Exhibit 116 | 372 |

1 **HOUSTON, TEXAS; MONDAY, MARCH 25, 2024; 9:31 A.M.**

2 THE COURT: Good morning, everyone. This is
3 Judge Lopez. Today is March 25th. I'm going to call the
4 9:30 a.m. case and continuation of trial in Tehum Care
5 Services, 23-90086.

6 I hope everyone had a great weekend. And there
7 are about -- a number of people on the line I've been unable
8 to mute feature. Why don't I take appearances in the
9 courtroom, and then maybe we can talk a little housekeeping
10 this morning?

11 Good morning, Mr. Kaufman.

12 MR. KAUFMAN: Good morning, Your Honor. For the
13 Debtor, Aaron Kaufman with the Gray Reed Law Firm. Also,
14 from the Gray Reed Law Firm, Jason Brookner, Amber Carson,
15 London England. And for the Debtor, you have Russell Perry,
16 the CRO and Michael Rosano from the Ankura.

17 THE COURT: Oh, okay. Good morning. Good morning
18 to all of you.

19 Good morning.

20 MR. ZLUTICKY: Good morning, Your Honor.
21 Nick Zluticky and Zack Hemenway for the Official Committee
22 of Unsecured Creditors.

23 THE COURT: Good morning.

24 MR. MOXLEY: Good morning, Your Honor, for the
25 Official Committee of Tort Claimants DCC, Cameron Moxley of

1 Brown Rudnick. With me today, Your Honor, is Eric Goodman,
2 Jessica Meyers, Gerard Cicero, and Meghan McCafferty. We're
3 also with our co-counsel, Michael Zimmerman.

4 THE COURT: Okay. Good morning. Good morning to
5 all of you.

6 MR. JIMENEZ: Good morning, Your Honor and court
7 staff, Andrew Jimenez, together with my colleague Ha Nguyen
8 for the United States Trustee.

9 THE COURT: Good morning.

10 MS. HAYWARD: Good morning, Your Honor.
11 Melissa Hayward here on behalf of the settling parties.

12 THE COURT: Okay. Good morning.

13 MR. GLUCK: Good morning, Your Honor.
14 Kristian Gluck on behalf of M2 LoanCo.

15 THE COURT: Ah. Good morning, Mr. Gluck.
16 Mr. Patterson, good morning.

17 MR. PERRY: Good morning, Your Honor. Johnie
18 Patterson here on behalf of the RMSE plaintiffs, the
19 New York plaintiffs.

20 THE COURT: Okay. Good morning. Let's see.
21 Anyone on the line? There's about -- close to 50 people on
22 the line. Let's just see. Okay.

23 Mr. Kaufman?

24 MR. KAUFMAN: So for housekeeping, we'll continue
25 with Mr. Perry. I think Mr. Moxley said about 60 to 90 more

1 minutes with Mr. Perry. We'll see where we are on redirect,
2 Recross after that. And then we'll go to Mr. Lefkowitz, who
3 I understand we've kind of estimated, combined, about two
4 and a half to three hours. Hopefully, we can stick to that
5 and then get to Mr. Griffiths, the TCC's witness where I
6 think we've estimated a combined two hours.

7 So hopefully we can get that done today. If we
8 have extra time, we'll move to the TCC's witness --

9 THE COURT: Okay.

10 MR. KAUFMAN: -- Mr. Atkinson (phonetic).

11 THE COURT: I didn't -- there was a new case they
12 filed a little while ago, and I didn't get it. So we're --
13 the road is clear.

14 I have a little bit of housekeeping to just ask
15 the parties and really more for the lawyers. Since we last
16 met, I've been giving a lot of thought to, obviously,
17 everything that's transpired and the revised order.
18 Everyone has done a fine job explaining it. There's just
19 something I'm -- it's unclear to me, and maybe I can ask a
20 couple of questions, and it'll become, like, super clear to
21 me, but I wanted to make sure I kind of asked it on the
22 outset.

23 Here's the -- well, assuming I approve the motion
24 and the order, right, and the proposed form of order as
25 stated, what's enforceable? What does the Court enforce

1 immediately there? Or not immediately, but what can the
2 Court enforce between that and by the time we get to a plan,
3 if we get to one?

4 MR. KAUFMAN: Do you want us to go through this
5 now?

6 THE COURT: Yes.

7 MR. KAUFMAN: Okay.

8 THE COURT: In other words, it's been on my mind a
9 lot. I'm still unclear as to what's enforceable. I want to
10 call it stages. I don't want to call it a --

11 MR. KAUFMAN: Right.

12 THE COURT: -- two-step because then it's just --
13 it feeds -- right. But maybe for purposes of -- I approve
14 this order. What's enforceable is question one.

15 MR. KAUFMAN: Yeah.

16 THE COURT: Question two is what findings would I
17 be making in this case that would be binding in a Chapter 11
18 plan.

19 MR. KAUFMAN: So the first -- the answer to your
20 first question, Your Honor, I think what's enforceable is
21 that the agreement itself is enforceable.

22 THE COURT: What does that mean?

23 MR. KAUFMAN: Right. So it is a binding contract
24 between the Debtor -- among the Debtor, the Committee, the
25 UCC, and the settling parties. And I understand the issue

1 is the releases aren't yet enforceable, but the terms of the
2 agreement themselves -- so you have the settlement, the
3 initial settlement payments, the 2 million that's already
4 being held in escrow, as Your Honor will hear later this
5 morning --

6 THE COURT: Right.

7 MR. KAUFMAN: -- the second 2 million, pursuant to
8 the DIP order, which would come in within 72 hours of
9 approval, and then the fifth million dollars, another
10 million dollars under the DIP, which would come in
11 thereafter. The 40 million would have to come in through
12 the plan.

13 THE COURT: Can the -- can the DIP money be used
14 immediately or is it held in escrow?

15 MR. KAUFMAN: The DIP money could be used
16 immediately, pursuant to the DIP order.

17 THE COURT: Right.

18 MR. KAUFMAN: A separate --

19 THE COURT: Separate, a separate DIP order. So is
20 this an RSA?

21 MR. KAUFMAN: We haven't thought of it that way,
22 but if you're -- if that gives Your Honor some comfort.

23 THE COURT: Well, no. I don't approve RSA. So
24 that's the question.

25 MR. KAUFMAN: Right.

1 THE COURT: So is this an RSA? In other words,
2 that's why I'm trying to figure out what's -- what --

3 MR. KAUFMAN: I would say, Your Honor, it is not
4 --

5 THE COURT: What am I being asked to do today?

6 MR. KAUFMAN: -- an RSA because, when I think of
7 an RSA, I'm thinking we're kind of binding parties to vote a
8 certain way. We're binding parties to certain planned
9 treatment, and we haven't done any of that other than --

10 THE COURT: But you're agreeing --

11 MR. KAUFMAN: -- the narrow releases.

12 THE COURT: -- you're agreeing to agree on the
13 terms of a plan and what payments would look like if there
14 was a plan. Right? No. You are. You're agreeing that
15 somebody's going to put in the money.

16 MR. KAUFMAN: Yes.

17 THE COURT: And they're going to be entitled to
18 releases. Are the releases that I approve, if I were to
19 approve under this -- are my -- in other words, are those --
20 is someone going to -- will I be making findings today in
21 connection with the Settlement Agreement that would be
22 binding as to whether I've approved the releases under the
23 plan?

24 MR. KAUFMAN: I think the answer is no, and I'll
25 let other parties speak who are in support of the Settlement

1 Agreement.

2 THE COURT: No.

3 MR. KAUFMAN: But my understanding --

4 THE COURT: I want the Debtors to understand it,
5 and that's what I'm trying to -- in other words, this is me
6 just trying to figure out what exactly I'm being asked to do
7 today. And then -- because we don't have a plan in front of
8 us. So I just want to understand kind of what are we
9 locking in in connection with the Settlement Agreement
10 that's separate than what will happen in connection with the
11 plan?

12 MR. KAUFMAN: So separate, what would happen under
13 a plan and what we're hoping to engage with the TCC further
14 on, once the Settlement Agreement is approved, is we still
15 have a lot of things that would need to go into a plan.

16 THE COURT: I know.

17 MR. KAUFMAN: We need --

18 THE COURT: But I'm just trying to figure out --
19 but what am -- what am I locking in today by approving this
20 agreement? That's what I don't --

21 MR. KAUFMAN: Yeah.

22 THE COURT: That's what I'm -- I --

23 MR. KAUFMAN: The only thing we're locking in, as
24 I understand, as the Debtor understands it, is the DIP funds
25 that would help us get through so that we can propose the

1 plan of liquidation and the releases, the narrow releases
2 for the parties that are contributing the additional 40
3 million, pursuant to a plan --

4 THE COURT: So I'll throw --

5 MR. KAUFMAN: -- but nothing else.

6 THE COURT: -- I'll throw a hypothetical out at
7 you. If -- let's assume the plan -- they don't agree to
8 anything. They're not -- you've got to put your own plan --
9 Debtors and Creditor. A tort claimant votes no in, let's
10 just say, a class, a hypothetical class. So you've got to
11 satisfy 1129(a)(7). Is the liquidation analysis going to
12 show that there's a settlement that Lopez approved for this
13 amount of money? And so there's the bag of money and that
14 this is what you would get under the plan.

15 MR. KAUFMAN: So, as Your Honor may recall from
16 Mr. Perry's first day of testimony a few weeks ago, we gave
17 a hypothetical waterfall that includes some assets that are
18 not dealt with under the settlement. That's the --

19 THE COURT: Agreed.

20 MR. KAUFMAN: -- that's the ECR. That's the --

21 THE COURT: That's what I'm saying. But would you
22 include this -- the pot of money that, pursuant to the
23 settlement as part of the liquidation analysis, say?

24 MR. KAUFMAN: Of course.

25 THE COURT: But there's going to have to be a

1 separate valuation? In other words, are the findings that
2 I'm making about the value of those claims going to be
3 binding in in a Chapter 11 plan? The only reason I'm asking
4 is the question is do I have to start thinking about 1129
5 factors today? Or am I going to be locking in findings that
6 I would be making under 1129? Are essentially the Tort
7 Claims' Committee going to have two cracks at the -- two
8 cracks at this? That's what I'm trying to figure out.

9 MR. KAUFMAN: It -- Your Honor, I don't -- I don't
10 understand that there are any findings today that lock in
11 the Court's findings under 1129(a) in a plan that hasn't yet
12 been filed. So if that gives the Court some comfort --

13 THE COURT: But if I approve a settlement and the
14 settlement approves says that the plan will include
15 releases, and I've approved that under 9019, have I -- have
16 I approved the releases?

17 MR. KAUFMAN: I think --

18 THE COURT: I bet you the folks who are going to
19 put in \$40 million probably think I did.

20 MR. KAUFMAN: -- I think the Court is making
21 findings that the settlement is a reasonable -- a fair and
22 reasonable resolution of this specific bucket shopping cart
23 --

24 THE COURT: But --

25 MR. KAUFMAN: -- of causes of action.

1 THE COURT: -- but what's binding today?

2 MR. KAUFMAN: That would be binding. That would
3 be binding in a plan. So we're not --

4 THE COURT: No, no, no.

5 MR. KAUFMAN: -- proposing under a plan a separate
6 settlement.

7 THE COURT: Right. So you can't -- the Debtor
8 can't -- the Debtor has agreed to lock itself into proposing
9 a plan that says this, and parties have agreed to put that
10 in there. But is that an RSA?

11 MR. KAUFMAN: I don't think it is an RSA because
12 --

13 THE COURT: Tell me why it's different.

14 MR. KAUFMAN: Because an RSA -- my understanding
15 of an RSA -- and maybe we're discussing different things.

16 THE COURT: It's just a restructuring support
17 agreement. Two -- a bunch of parties agree, and everybody
18 is bound by the terms of that agreement.

19 MR. KAUFMAN: An RSA --

20 THE COURT: In other words, it -- is it --

21 MR. KAUFMAN: -- locks in voting. An RSA locks in
22 certain classification of claims often.

23 THE COURT: The committee -- the committee -- the
24 committee has agreed; right? If people are providing
25 releases, the committee has agreed to support. So have the

1 release parties. So have the Debtors. That's locking --

2 MR. KAUFMAN: But this Settlement Agreement
3 doesn't lock in a specific way of treating Creditors other
4 than the few proofs of claim by the settling parties that
5 they're agreeing to release. That's all it does with
6 respect to claims against the estate. There's no -- there's
7 no allocation of proceeds to specific Creditors. There's no
8 treatment of Creditors in the Settlement Agreement. That's
9 all up for negotiation after the Court approves the
10 Settlement Agreement, and TCC reserves its right to object
11 to anything we do if they don't (crosstalk).

12 THE COURT: What's binding? What -- how does the
13 Settlement Agreement then get used in connection with the
14 Chapter 11 plan?

15 MR. KAUFMAN: So a Chapter 11 plan often includes
16 settlements.

17 THE COURT: Uh-huh.

18 MR. KAUFMAN: In fact, we proposed that back in
19 September and October. And then we decided, you know what,
20 let's bifurcate that.

21 THE COURT: Why --

22 MR. KAUFMAN: But a plan --

23 THE COURT: -- why was that? Why was that? I
24 guess you don't have to tell me that.

25 MR. KAUFMAN: I mean, candidly, Your Honor,

1 reading the Court's view of how the Court wanted to take
2 these up -- take up the issues of whether the settlement is
3 fair and reasonable and whether the allocation of proceeds
4 were fair and reasonable.

5 THE COURT: You read that from me?

6 MR. KAUFMAN: We -- if we misread it, we
7 apologize.

8 THE COURT: No, no, no.

9 MR. KAUFMAN: That was -- is our read.

10 THE COURT: You don't have to apologize. I'm just
11 wondering. In other words, but are -- am I giving -- are we
12 essentially setting ourselves up where the Tort Claimants'
13 Committee is going to have two cracks -- two cracks at this?
14 Right? Like saying that the settlement isn't fair and
15 reasonable here and then getting to a plan and then saying
16 don't approve any of the -- don't approve any of the --
17 fine, Lopez. We lost on round one, but here comes round
18 two. Don't approve any of these releases, and you're not
19 bound to approve any of the releases. And if I can prove to
20 you that one of these parties shouldn't be released, then
21 the whole Settlement Agreement gets blown up again.

22 In other words, am I giving the Tort Claimants'
23 Committee and the, you know, potentially tort claimants and
24 the United States Trustee essentially -- not giving them,
25 but do -- would they essentially have two cracks at the

1 apple to stop the Settlement Agreement? I just view it
2 differently if someone puts in all the money or has agreed
3 to say -- in other words, it's one thing if somebody says,
4 we're going to settle, and I'm going to put \$40 million up,
5 making a number up. I'm putting \$40 million today. It's
6 sold. Approve this settlement, and this is the sale. I'm
7 putting \$40 million, whatever, and we can go forward in a
8 plan.

9 It's a different kind of deal where you're saying
10 everything is contingent upon the filing of a plan. I don't
11 think I've ever seen anything like this. That's why I'm
12 asking. I'm not saying it doesn't exist because I haven't
13 seen every plan, obviously, all across the country, but it
14 just -- it's what I'm trying to understand in terms of
15 what's being locked in today because there's a lot of
16 testimony.

17 Are the -- are the -- are the findings -- right?
18 The findings would be binding; right? In other words,
19 right, it would have a collateral estoppel effect for sure
20 in terms of, you know, what Mr. Perry sent me. Is he going
21 to get back up again and have to go through a separate
22 cross? That's what I'm trying to figure out. I think, if
23 the answer is no, then I think I just need to know that.

24 MR. KAUFMAN: I think what we're talking about, in
25 a normal plan, where we put everything on the table as we

1 did in September --

2 THE COURT: Uh-huh.

3 MR. KAUFMAN: -- a settlement is one component of
4 how we're addressing, how we are valuing, how we're dealing
5 with certain estate causes of action under that plan. What
6 we're doing, instead, today, and asking the Court to do, is
7 approve the Debtor and the UCC's way of addressing a narrow
8 subset of the causes of action, the estate causes of action,
9 so that we can take -- we can monetize those causes of
10 action.

11 And so the binding -- what you're asking -- what
12 Your Honor is asking is what is binding when we get to
13 confirmation is the Debtor and the UCC have addressed the
14 narrow estate causes of action in the plan, and the Court
15 has already approved the way that that is being done. The
16 releases -- I -- we're asking the Court to approve that the
17 way of dealing with that, the monetizing, and in exchange
18 for monetizing the estate causes of action, we're giving
19 these releases that will be in a plan. But I do think --

20 THE COURT: Right. But the --

21 MR. KAUFMAN: -- just so we're clear --

22 THE COURT: -- money doesn't come in until there's
23 a final order.

24 MR. KAUFMAN: Correct.

25 THE COURT: Right?

1 MR. KAUFMAN: The additional 40 million. Now we
2 do get the prefunding.

3 THE COURT: You get the prefunding.

4 MR. KAUFMAN: The DIP.

5 THE COURT: The DIP sum.

6 MR. KAUFMAN: Yes.

7 THE COURT: Yeah.

8 MR. KAUFMAN: Which is essential to maintain that
9 the estate is administratively solvent. We can get a plan
10 confirmed, or we can file a plan. We're not asking the
11 professionals to work for free --

12 THE COURT: No, no, no.

13 MR. KAUFMAN: -- as Mr. Goodman will appreciate.

14 THE COURT: No.

15 Mr. Goodman, what's your understanding of what the
16 -- the way this -- what I'm being asked to do?

17 MR. GOODMAN: Can you hear me okay,, Your Honor?

18 THE COURT: Yeah. Yeah. I don't think there's a
19 right or wrong answer. I just need -- I'm -- I've been
20 thinking about this. In other words, what am I -- what's
21 enforceable? So when I sign the order, parties can come in,
22 and then I -- what I don't want to do is come two, three
23 months down the line, if I approve this one way or the
24 other, or assuming that I would approve it, but just
25 assuming that it would, then there's confusion about what I

1 did two, three months down the line.

2 I'd rather do it now, and I'd rather think about
3 these issues before the parties, you know, get to closing
4 and then I ask the questions. I just think that'd be highly
5 unfair to all the parties.

6 MR. GOODMAN: So, Your Honor, Eric Goodman, Brown
7 Rudnick, on behalf of the TCC. I can share with you my
8 understanding of it. But, of course, we're not the ones who
9 are the parties to (crosstalk) --

10 THE COURT: No. I know. But what do you think --

11 MR. GOODMAN: Yeah.

12 THE COURT: -- is happening?

13 MR. GOODMAN: So, first, I will say that we've
14 never seen it done this way either. In all the mass tort
15 cases that we have worked on, ordinarily, what we see happen
16 is that the Debtor wants to do everything through a plan of
17 reorganization. And the reason for that is, again, the --
18 sort of the exchange is someone's paying money, right, into
19 the plan, whether it's as part of the settlement, 524(g)
20 injunction, whatever mechanism is occurring there, the money
21 is being paid. And in return for that, they're getting the
22 benefit of the releases that are set forth in the plan.
23 Right?

24 So that's the ordinary way that we see it. I'm
25 certainly not objecting to this process because I think it

1 does give us two bites at the apple if you will. We get to
2 litigate the 9019 motion and then, of course, turn around
3 and litigate all of the plan confirmations' issues as well.
4 So I'm not going to, you know, take what's been given to us
5 in that sense. But I will note, first off --

6 THE COURT: Mr. Goodman, I guess part of what I'm
7 trying to think through -- the issue -- is, if it's the case
8 that you would then have two opportunities -- and let's just
9 say to attack releases. I'm just making up one aspect of it
10 -- I'd rather everyone know that now or at least my views on
11 whether you would have that perspective now or not before we
12 actually kind of run into disagreement, you know, and
13 several months down the line, assuming this got approved.
14 That's what I'm really just trying to make sure that I
15 understand -- that we're all really clear as to what this
16 does. And then, if that's the case, then there'll be
17 another opportunity. Or is this, today, binding parties,
18 you know, for a potential plan several months down the line?
19 That's what I'm just trying to make sure that's -- that
20 everybody's crystal clear about the way we all think about
21 this, so that there's no confusion, so when I sign this or
22 don't sign it, that everybody's really clear about what that
23 means.

24 MR. GOODMAN: So the plan releases are currently
25 not before the Court --

1 THE COURT: Uh-huh.

2 MR. GOODMAN: -- by virtue of the fact that they
3 are releases in a plan of reorganization. The plan isn't
4 before the Court today. What's before the Court is the 9019
5 motion as well as our motion to dismiss the bankruptcy case
6 as a bad-faith filing. So those are the two things that are
7 before the Court.

8 What's strange about the settlement that we're
9 looking at here -- and I actually do think it's an RSA, and
10 I'll get into that in a minute as to why I think it is an
11 RSA. But if you look at the settlement, right, it's akin to
12 a conditional sale. Right? You have -- the Debtor saying I
13 have these estate causes of action. Right? The estate
14 causes of action are really the only Debtor's -- the
15 Debtor's only assets. So that's the only thing that's
16 available for them sort of to sell or to settle in this
17 context.

18 And what they're -- my understanding of what
19 they're proposing is they're saying we have a buyer, right,
20 who wants to purchase these estate causes of action. That
21 buyer has agreed to a price. But the sale, even if it's
22 approved by the Court, pursuant to the 9019 motion, is still
23 conditioned upon this Court approving the releases and the
24 plan which are not before the Court at this time.

25 So it's really a conditional sale. And if you

1 look carefully at the changes that were made to the proposed
2 order, it's a sale that doesn't actually go effective until
3 there is a final non-appealable order confirming a Chapter
4 11 plan of reorganization. Right?

5 So I don't think Mr. Lefkowitz actually parts with
6 the settlement proceeds or really would pay anything until
7 -- you know, the court would have to first approve the 9019
8 motion. The Court would then have to deny the motion to
9 dismiss, obviously. Then we would have to get through the
10 Disclosure Statement hearing. We'd have to figure out how
11 to do plan voting with a population that's incarcerated.

12 Then you would have a Contested Confirmation
13 Hearing and then, you know, all the appeals that would
14 follow from that. You wouldn't actually get to final
15 non-appealable order until all the appeals have then been
16 exhausted. That would be the point in time where the sale,
17 if you think of it as a sale, would finally be consummated.
18 Right?

19 So it's not up until that point way, way down the
20 road that you would actually see any of the money coming in
21 and being available to pay Creditors in this case. That's
22 my understanding of how they have just set this up from a
23 mechanic's standpoint if that's helpful to Your Honor.

24 THE COURT: Yeah. No, no. It is.

25 MR. GOODMAN: And --

1 THE COURT: And just what I'm trying to figure out
2 -- and maybe the question is better set for, like, M2 and
3 Mr. Lefkowitz's counsel. What do you think you're getting
4 if I sign this order in connection with the plan? It may be
5 helpful for me to -- go ahead, Mr. Goodman. I've just been
6 thinking. I just -- I don't want someone who signs a
7 Settlement Agreement to have a different understanding than
8 what I think I'm being asked to do, and I'm just -- I just
9 want to air all this out at the beginning. But I'll give
10 you --

11 MR. GOODMAN: Yeah.

12 THE COURT: -- I'll give you time to finish.

13 MR. GOODMAN: I think this is really helpful, but
14 I have a couple other points to get to, but I think this is
15 a very important conversation. The issues that you're
16 raising are things that we've been thinking through as well.
17 To the extent that they are getting something right now by
18 the Court approving a settlement or a sale that doesn't
19 actually go effective for, you know, two, three years down
20 the road, to the extent that they are getting something, if
21 there is going to be any kind of collateral estoppel issues,
22 you know, that raises a concern that we have in terms of
23 appeals that would occur prior to plan confirmation. Right?

24 I mean, ordinarily, when you have a 9019
25 settlement and someone says, I'm settling -- you know, let's

1 get out of the estate causes of action framework. Let's
2 just say that the Debtor has a claim against someone based
3 on litigation that was running prior to the bankruptcy. So
4 it's not like a bankruptcy type cause of action. It's just
5 a lawsuit that was pending. And they come before the Court
6 and they say, we would like to settle this lawsuit. The
7 defendant -- you know, we've been in the world of litigation
8 for two years. We've finally reached a resolution. They're
9 willing to pay this money today to settle that claim. The
10 Court hears the 9019 motion. You say approved. The money
11 is then paid. You know, the Settlement Agreement is
12 executed, and that's kind of a done deal.

13 Ordinarily, that would be considered a final
14 non-appealable order, right, and that could be then taken up
15 if someone objected and didn't like it. This is, again, I
16 would call strange land and not something that I'm
17 accustomed to seeing in mass tort cases is because, even
18 though you have before the Court the 9019 motion, you have
19 before the Court this proposed sale of estate causes of
20 action, they're not actually willing to consummate that sale
21 transaction until -- again, this is just based on the
22 documents that they have filed -- until there is a final
23 non-appealable order confirming the plan which, again, is
24 not before Your Honor. Right?

25 So if you were to say, for example, I am

1 approving the settlement today, practically speaking, what
2 that means is that you've set a ceiling, right, in terms of
3 the amount of money that the release parties will pay. I
4 can't imagine, practically speaking, a scenario where you
5 say, I approve the 9019 settlement -- you said that this was
6 fair and reasonable. That means the dollars, practically
7 speaking, aren't going to go up. That's why I said at the,
8 you know --

9 THE COURT: Because --

10 MR. GOODMAN: -- opening argument that you've now
11 sort of locked the case path into a Contested Confirmation
12 Hearing because there's just, at that point, not going to be
13 enough dollars in the system, right, to ever reach any kind
14 of resolution involving the tort claimants.

15 But in terms of the reason why I think it's an
16 RSA, if you think through sort of the RSA or kind of the
17 essence of an RSA, right, it's folks saying, if the plan
18 includes these provisions, I will support it. Right? I
19 mean, whether it's the bondholders saying we will vote for
20 it; if it's the party who's going to pay the money saying, I
21 will pay the money; if the Debtor is saying, I will propose
22 this plan, like, it's sort of like the stepping stone to try
23 to get to a plan of reorganization. Right?

24 THE COURT: Is this like -- is this like exit
25 financing?

1 MR. GOODMAN: I wouldn't -- exit financing is an
2 interesting way of thinking of it, but exit -- not really
3 because exit financing would occur upon exit from
4 bankruptcy. Their settlement doesn't actually pay until
5 entry of final non-appealable order. So that's, like, two
6 years after exit financing. So it's not exit financing
7 either.

8 What you have is you have a population, like a
9 subset of this bankruptcy proceeding. Right? And these are
10 interesting proceedings because you have multiple parties
11 and groups and constituencies, committees representing
12 different groups.

13 You have certain parties who've said we've come
14 together and we have agreed on a framework for a plan.
15 Right? And so long as the plan contains these things, one
16 of which is the, you know, full and complete release that
17 Mr. Lefkowitz and the M2 and all of those parties are
18 demanding, as long as the plan satisfies these conditions,
19 then we support it, right, that we're on board and we want
20 to move forward, and we will, you know, support the
21 transaction as it's proposed.

22 But, like, an RSA, typically speaking, it's with a
23 subset of parties in a Chapter 11 case. Right? You could
24 begin a case with an RSA between the Debtor and bondholders.
25 Or the RSA could be with the Debtor and certain

1 constituencies, and then maybe a committee signs on to it
2 later on. But what you don't have here is the other parties
3 in interest, right, aren't part of this.

4 Like, the TCC is objecting. You have individual
5 tort claimants who are objecting. So we're not parties to
6 the Settlement Agreement. In fact, we're the opposite.
7 Right? We're opposing it. We're saying, you know, the
8 Honor -- Your Honor shouldn't approve it.

9 THE COURT: I sat watching -- I thought about it
10 over the weekend, and I thought about it when I picked this
11 up after a very gut-wrenching game last night. I am a
12 University of Houston -- and I just kept -- I kept coming
13 back to, you know, am I just approving the DIP money coming
14 in? Is that the only enforceable thing that I'm doing? And
15 so that's then got me to question. And I think a lot about
16 kind of -- you know, I've given a lot of thought to -- and
17 obviously I haven't reached any conclusions. We're not at
18 the close of evidence, but I've been thinking a lot about
19 kind of what everyone's understanding as to what they're
20 getting. And I think a lot about Mr. Patterson, who was
21 here saying, you know, my client's not going to get anything
22 unless they get something here, but is this what locks it
23 in, or is it the plan?

24 You know, I grew up in Queens. I know exactly
25 where Riker's Island is. I -- so these things are certainly

1 on my on my mind, but, you know, what I -- what I would -- I
2 just want to make sure everybody's on the same page as to
3 what this settlement would do or not do and what's -- that's
4 why I start with the question of, first, principles. What's
5 -- I got the relief requested. But what's enforceable?

6 MS. HAYWARD: Your Honor, if I may?

7 THE COURT: Yeah.

8 MS. HAYWARD: Melissa Hayward for the settling
9 parties. I think from the settling parties' perspective, we
10 are asked -- we are asking the Court to approve a
11 settlement.

12 THE COURT: Uh-huh.

13 MS. HAYWARD: The releases are effectuated as part
14 of that settlement. The releases do not become effective
15 until there is effective date under a plan. Right? And
16 that's when the payment comes in. But to answer Your
17 Honor's question, yes, I believe that the Settlement
18 Agreement, and to the extent Your Honor approves it and
19 finds that it's a valid exercise of the Debtor's business
20 judgment, the Settlement Agreement, upon being approved, is
21 effective.

22 Now it does not determine the terms of the plan.

23 THE COURT: Kind of like a sale, subject to --

24 MS. HAYWARD: Subject. Exactly, Your Honor. It's
25 like a conditional sale, subject to, you know, other things.

1 And so --

2 THE COURT: So certain closing conditions.

3 MS. HAYWARD: Exactly.

4 THE COURT: Maybe you get there, maybe you don't.

5 But I've approved --

6 MS. HAYWARD: That's exactly right.

7 THE COURT: -- I've approved everything today.

8 MS. HAYWARD: That's exactly right. So I do not
9 believe that the Committee has a second bite at the apple as
10 far as the releases go because the plan -- while the plan
11 will incorporate those releases, the releases are actually
12 effectuated through the approval and entry of a Settlement
13 Agreement. The obligations to make the settlement payment
14 are effectuated upon the approval of a Settlement Agreement
15 here.

16 Now they're conditioned upon, obviously,
17 confirmation of a plan and the effective date. But what we
18 are asking the Court to do today --

19 THE COURT: In other words, somebody couldn't come
20 in -- well, and, I guess, somebody could, but,
21 theoretically, if someone were to challenge -- and I'll just
22 use M2 because it's just an easy one -- said, they are not
23 entitled to a release, Your Honor, and/or -- you know,
24 they're not entitled to the releases for X, Y, and Z reasons
25 under this plan, theoretically, that --

1 MS. HAYWARD: That ship will have sailed.

2 THE COURT: That ship will have sailed because --

3 MS. HAYWARD: Yes, Your Honor.

4 THE COURT: -- it's been settled.

5 MS. HAYWARD: Because it's -- because the Court
6 has approved a settlement finding that it is a reasonable
7 exercise. The terms of the settlement are approved.

8 THE COURT: Right.

9 MS. HAYWARD: Right?

10 THE COURT: But here's the confusion for me: is
11 that all that is contingent upon a plan that none of us have
12 seen what it looks like. So, in other words, if there's a
13 plan that is just -- let's just say it gives -- I'm coming
14 up with a -- I'm not saying anybody would do this. I'm
15 coming up with a really bad example, but it makes the point.
16 What if the plan says, you know, non-tort claimants, if you
17 opt out, you get 2 percent? You know, tort claimants --
18 tort claimants, you get 2 percent if you opt out.

19 MS. HAYWARD: Uh-huh.

20 THE COURT: Everybody else gets 98 percent.
21 There's no way in the world I could -- I could approve a
22 plan that would say something like that, but, if you had the
23 votes, then, theoretically, someone would be able to say,
24 like, Your Honor, like, this is exactly what we said we --
25 this was exactly what was going to happen. You know, this

1 is -- we're now creating -- because this -- your original --
2 your original version of the Settlement Agreement was like a
3 9019 with a death trap provision in it. Right? Like, you
4 can -- yes, it was because you can opt out. You know, you
5 can opt out in the settlement. So you kind of took that
6 out.

7 But where -- it's still subject -- it's all
8 subject to kind of a plan that we haven't seen, and that's
9 what I'm wrestling with. How can I have it subject to a
10 plan when I don't know how these releases fit within the
11 greater structure of a plan that we just haven't seen?

12 MS. HAYWARD: Well, Your Honor, I don't think that
13 the releases do fit within the structure of a plan. The
14 releases are effectuated from the settlement. Right? The
15 plan will incorporate those releases.

16 THE COURT: That's what I mean.

17 MS. HAYWARD: But --

18 THE COURT: But then how do -- say the plan
19 incorporates the releases in a plan that I just -- that just
20 makes me really uncomfortable. That's the -- that's the
21 question. And what do we do there?

22 MS. HAYWARD: Then the plan doesn't get confirmed.
23 Right? And then we have that issue. But the settlement has
24 nothing to do with the terms of a plan. I mean, it's
25 contingent upon some plan going effective at a -- at a later

1 date. But the settlement itself has nothing to do with the
2 terms of a plan or a confirmed plan.

3 THE COURT: That's why this feels like an RSA.
4 Right? Because no money has to exchange until there's a
5 final non-appealable order. Right? Nobody's bind --
6 nobody's bound on the -- like, the effective -- the
7 effective date could occur and the -- well, it's even
8 unclear when the effective date would be because the plan
9 couldn't go effective until there's a -- until the
10 settlement kicked in, until the \$40 million at least --

11 MS. HAYWARD: Right.

12 THE COURT: -- came in. So I'm really confused as
13 to --

14 MR. GOODMAN: Your Honor, if I could, I think,
15 answer the question. The releases in the 9019 cannot be
16 effective upon the entry of an order approving the
17 settlement. The reason for that is that they are explicitly
18 conditioned upon the entry of a final non-appealable order
19 --

20 THE COURT: Right. Somebody can go sue.

21 MR. GOODMAN: -- of a plan.

22 Right. So let's just hypothetically play this
23 out. Okay? The Court says, based on the evidence, that you
24 approve the settlement. Right? So that's approved. The
25 Court says I'm going to approve the DIP order. I'm going to

1 deny the motion to dismiss. We then proceed to Disclosure
2 Statement. There's objections. The Court approves the
3 Disclosure Statement. Then we go to solicitation. Then we
4 go to a Contested Plan Confirmation Hearing. We argue
5 unfair discrimination. We argue best interest of Creditors.
6 We object to the releases that are in the plan because now
7 they're finally before the Court for the first time.

8 If the Court were to then confirm that plan, it
9 goes up on appeal and joins -- at that point, it could also
10 join the appeals of the 9019 and the motion to dismiss. And
11 those appeals finally work themselves through the system.
12 And you finally get it to the day where you have a final
13 non-appealable order confirming the plan of reorganization
14 and approving the releases, right, that are the sort of
15 central issue. Like, again, without the releases, there's
16 no money. Right? That's the condition. Right?

17 If at that point in time you have a denial of
18 certiorari by the U.S. Supreme Court, the Fifth Circuit's
19 opinion is now a final, you know, non-appealable order.
20 Mr. Lefkowitz and the M2 Loan parties could say, nah, never
21 mind. I'm not paying money. Right?

22 Because, at this point, they still have the money
23 in their bank account. Right? They haven't paid anything
24 to anyone at this point. They could say no, at that point
25 in time, because they haven't satisfied that condition.

1 They're not going to get released. They're not going to be
2 in a situation where they've been released, you know, and
3 they have gotten the benefit of the sale transaction without
4 actually paying the money. That'd be like saying, you know,
5 I showed up at 363 Sale. I was the highest bidder. I won
6 the auction. The Court approved the sale. Right? And then
7 I never paid the sale money. You don't own the property.
8 Right? You've got to pay it.

9 So it's not until you have that final step.
10 Right? You have to have final non-appealable order plus
11 payment, right, in order for the, quote, releases to be
12 effective. We're not going to be a situation where the
13 Debtor is saying, I am selling the property. I am releasing
14 all of my causes of action, right, without actually getting
15 the money in the door. Right?

16 And because they have put that payment date so far
17 down the road in the future, right, I don't think that you
18 could say that the releases are effective upon the Court
19 entering an order approving the 9019 because, again, the
20 settlement itself is contingent upon the plan coverage.

21 THE COURT: I think what Ms. Hayward is saying is
22 that, essentially, the inclusion of a party as a release
23 party probably couldn't be challenged because I would have
24 approved it in the settlement (indiscernible). In other
25 words, not whether they would actually be released, but, you

1 know, someone couldn't try to pick off and say
2 (indiscernible) or someone, you know, who's a release party.
3 DG Realty Management can breathe a little easier in the
4 sense that because, you know, they can't be taken out.
5 That's what I was trying to figure out. Can someone take
6 them off?

7 MR. GOODMAN: But can --

8 THE COURT: Can someone take -- I don't want to
9 stop naming names here, because then it starts getting
10 weird, because I --

11 MR. GOODMAN: But, again, Your Honor --

12 THE COURT: FTI, right, Capital. You know, can
13 they be taken out? Or am I making that decision now?
14 That's where I'm going.

15 MR. GOODMAN: But, again, if the money's never
16 paid, right --

17 THE COURT: No, no. I agree with that there.

18 MR. GOODMAN: Right.

19 THE COURT: I guess what I'm saying is -- but am I
20 -- am I -- am I, in essence, agreeing that these folks
21 should be entitled to a release under a Chapter 11 plan
22 today? That's what's in my --

23 MS. HAYWARD: Your Honor is approving release as
24 part of a settlement -- that releases should be given, not
25 as part of a plan but as part of the terms of this

1 Settlement Agreement --

2 THE COURT: But then why do you want it in a plan?

3 MS. HAYWARD: -- which will be incorporate --

4 THE COURT: But then why do you want it in a plan,
5 then? Why do you need both? Because that's not what you're
6 saying. What you're saying now is I'm approving it today.

7 But then why am I just not approving it today? Why does it
8 need to be in a plan if that's what the parties need?

9 MR. GOODMAN: From the Debtor's perspective, I
10 think it was because we were concerned that doing releases
11 of this many parties outside of a plan might give the Court
12 some heartburn. If the Court is willing to grant these
13 releases outside of a plan, we can probably go back into our
14 --

15 THE COURT: Well, I'm sure they'll take it. Yeah.
16 But the problem is they're not going to put the 40 million
17 in.

18 MR. GOODMAN: Correct.

19 THE COURT: But --

20 MR. GOODMAN: I think we can have some
21 negotiations.

22 MS. HAYWARD: I --

23 THE COURT: No, no, no. I got it. I'm just
24 thinking out loud here.

25 Ms. Hayward --

1 MS. HAYWARD: I think a lot of this, Judge, was
2 leftover from sort of the original structure --

3 THE COURT: No, no, no, no. I got it.

4 MS. HAYWARD: -- and sort of how it was --

5 THE COURT: I think it makes sense. That's why
6 I'm just trying to figure out today -- I think, if parties
7 agree to be release parties, they should know exactly what
8 -- if I sign an order, what they're getting today or, you
9 know, at some point or not.

10 MR. GOODMAN: I --

11 THE COURT: Mr. Goodman, I've got questions for
12 you, too.

13 MR. GOODMAN: Yeah.

14 THE COURT: Because I've been doing a lot of
15 thinking about this. So the dismissal that you're -- that
16 the Tort Claims' Committee is -- they're seeking it to be --
17 my understanding it's preferred to be structured. Right?
18 Or just --

19 MR. GOODMAN: I'll take any dismissal.

20 THE COURT: Well, no, no. Because I was going to
21 say because that's an almost an -- a non-consensual one, in
22 this case, is almost a nonstarter for me; so that won't
23 happen. So the question is, if the case is dismissed, then
24 it -- then it's a -- it's a strong hammer, and we all go --
25 everybody goes their own ways. That's what's on the table.

1 And I'm not -- I'm not structuring it. I don't think the
2 code requires me to do it. And I think, under these facts,
3 where I've got folks here to say, no, I'm not going to even
4 consider this proposal -- I'm going to dismiss it -- but
5 we're going to do this in a way where we're setting up a
6 bunch of other things that start to look planny to me as
7 well, I think is almost a nonstarter.

8 I think what's on the table is maybe denial of
9 everything or telling the folks to go back and put something
10 in a plan or dismissing the case, and everybody goes where
11 they are, and the case ends. That's what's, to me, in my
12 mind, on the table because -- and I'm not sure that's -- I
13 just think this case is so different than other even cases.

14 I think YesCare is just -- Tehum is just -- it's
15 different than Aero (phonetic) or all the other cases, in my
16 mind, for a lot of different reasons. I'm not saying for
17 better or for worse. It's just different. In other words,
18 you've got a different set of facts, a different parent --

19 MR. GOODMAN: Yeah.

20 THE COURT: -- if you will.

21 MR. GOODMAN: Well --

22 THE COURT: But I don't -- but I -- I'm just
23 telling everybody what I think is really on the table.

24 MR. GOODMAN: And to answer your question about
25 dismissal, I just want to be clear. We are seeking just

1 dismissal. I feel bad that we have interjected the concept
2 of structured dismissal because that's probably not the
3 right word to use for what we're asking for. I know that
4 you usually think of structured dismissal in a case where
5 the Debtors are, you know, a real business. They come and
6 they file for bankruptcy. They sell their assets. They
7 don't have enough money to consummate a plan. So you
8 dismiss it, pursuant to a certain structured process.
9 That's not what we're doing here.

10 So I think the use of the word structured probably
11 was not our best choice of words. We're seeking dismissal.
12 Right? The same relief that was sought in LTL, the same
13 relief that was sought in the Aero case. We just note that,
14 you know, in those dismissal orders, it wasn't just one line
15 saying, you know, case dismissed. Because there was, you
16 know, housekeeping and administrative issues that had to be
17 dealt with.

18 THE COURT: Yeah. This case is different than the
19 --

20 MR. GOODMAN: But that was really smart.

21 THE COURT: -- others because --

22 MR. GOODMAN: Yeah.

23 THE COURT: -- this case is so -- well, it's
24 different than the others. Right? That was done really
25 early on, and you can find a way out. I'm just telling you

1 the way I'm thinking about it.

2 MR. GOODMAN: Yeah. But --

3 THE COURT: That what the parties want. That's
4 what I'm --

5 MR. GOODMAN: The one thing I just wanted to sort
6 of flag to the Court's attention --

7 THE COURT: Uh-huh.

8 MR. GOODMAN: -- is that if you think about the
9 9019 as it was initially proposed -- right?

10 THE COURT: Uh-huh.

11 MR. GOODMAN: So the 9019 motion that was filed
12 with the court back in January -- the Settlement Agreement
13 that was attached to that agreement is actually very
14 different than the one that's now before the Court. Think
15 about it. The initial 9019 motion, the initial settlement
16 agreement, provided for payment on the effective date. And
17 if you look at the version of the plan that was on file, the
18 term effective date was defined to mean administrative order
19 --

20 THE COURT: It was a different definition. Right.

21 MR. GOODMAN: -- confirming the plan. So, in
22 theory --

23 THE COURT: Uh-huh.

24 MR. GOODMAN: Or I think not in theory. I think
25 the agreement, as drafted, contemplated that Mr. Lefkowitz

1 would actually consummate the sale transaction if and when
2 the Court entered an order confirming the plan,
3 notwithstanding the appellate risk. Right? They could
4 follow from that. They have changed that. I think the
5 Court noticed when they --

6 THE COURT: Uh-huh.

7 MR. GOODMAN: -- you know, introduced the redline
8 order --

9 THE COURT: Uh-huh.

10 MR. GOODMAN: -- they changed it --

11 THE COURT: Uh-huh.

12 MR. GOODMAN: -- you know, all so carefully so
13 that no longer is the sale, you know, effective, upon Your
14 Honor entering an order confirming a plan. Now the money
15 doesn't get paid until there's a final non-appealable order
16 which, in my experience, sadly takes a very long time to go
17 through in certain cases.

18 THE COURT: Okay.

19 MR. GOODMAN: We're actually still dealing with
20 this issue in the Boy Scouts case, and that plan was
21 confirmed close to two years ago. So, you know, that change
22 means that, practically speaking, your sale doesn't actually
23 get consummated again until we're way down the road, in
24 terms of, you know, the timing of this case.

25 This is why I actually come back to -- when you

1 think about the changes that they made, right, it kind of
2 started off like an RSA, and now it really looks like an RSA
3 in the sense that you just have parties saying, Your Honor,
4 if you approve the settlement -- and, practically speaking,
5 you cap, right, the amount that they have to pay for these
6 releases.

7 Again, I assure you it will probably not go any
8 higher if the Court approves the settlement. That would be
9 -- your Court will have now found -- Your Honor will have
10 now found that these causes of action can be --

11 THE COURT: I think that's right.

12 MR. GOODMAN: -- settled for the specific dollar
13 amount. Right?

14 THE COURT: I think that's right.

15 MR. GOODMAN: That's what your finding would be in
16 that sense. But the plan releases -- they haven't been
17 approved. The Chapter 11 plan itself hasn't been confirmed.
18 So all of the conditions that have to be satisfied for that
19 sale to actually consummate -- none of that has been, you
20 know, determined approved. And we, of course, would argue,
21 and, I think, correctly have the ability to present all of
22 our objections to all of those documents and, you know,
23 continue to litigate these issues.

24 THE COURT: Thank you.

25 Mr. Zluticky?

1 MR. ZLUTICKY: Yes, Your Honor. So what this
2 settlement is doing is it's settling the estate's causes of
3 action against the settling parties, and the settling
4 parties are getting releases. There's conditions to the
5 payment of the 40 million, but they are paying 14 of the 54
6 million in advance. The 40 million is when the plan goes
7 effective.

8 And, look, I understand people will -- people may
9 appeal things. It may take time. But the converse is
10 there's this discussion of they're not making the payment
11 until it goes effective. They also don't get the releases
12 either. Like, if they don't pay the money --

13 THE COURT: Yeah.

14 MR. ZLUTICKY: -- they don't get released. And so
15 the point of this, from the Committee's perspective, is all
16 we are doing is settling the estate's causes of action
17 against the settling parties. We are not deciding today how
18 that money will be divided. We're not deciding today any
19 other plan issues. That's all up for negotiation. We're
20 hopeful --

21 THE COURT: I will everybody what I'm really
22 concerned about. Okay?

23 MR. ZLUTICKY: Yeah.

24 THE COURT: Everybody has the right to appeal. So
25 if people want to appeal --

1 MR. ZLUTICKY: Sure.

2 THE COURT: -- all the way to Supreme Court,
3 that's --

4 MR. ZLUTICKY: Of course.

5 THE COURT: Everyone has the right to go do that.
6 Right? And so I -- my job is to try to make the best
7 decision on the ground that I can.

8 MR. ZLUTICKY: Yes.

9 THE COURT: I am concerned about the burn rate
10 here. Right? It's --

11 MR. ZLUTICKY: We are too.

12 THE COURT: I know. I'm sure everybody is
13 incredibly conscious of that. And so at some point it then
14 -- you know, having a long trial here and then, if it turns
15 out that, you know, there's going to be another bite at the
16 releases on the back end, right, then that's a second
17 animal. And all that essentially is cutting into a
18 potential recovery that would be entitled to the folks who
19 have signed and said we support this. Right?

20 And so that's -- I'm concerned about plan
21 distributable value as well although that doesn't
22 necessarily change the legal answer. It's just if we're
23 going to -- you know, the question is are we doing this
24 twice, or are we just doing this once? That's where I'm
25 going with --

1 MR. ZLUTICKY: Your Honor --

2 THE COURT: -- where we are.

3 MR. ZLUTICKY: -- Your honor, from the Committee's
4 perspective on the releases, we're doing this once. We're
5 doing it today. It -- to the extent that the plan contains
6 other releases or releases that are broader or treatment
7 that is broader or different from what's in the settlement
8 agreement, then everybody's going to have an absolute
9 ability to attack that and we'll be ready for a robust
10 debate, and we hope negotiation with the tort claimants and
11 other creditors on a plan.

12 But to the extent that the releases in the plan
13 are the same releases in the Settlement Agreement and no --
14 and nothing different, then those releases are being
15 approved as part of this settlement.

16 THE COURT: Okay. Thank you.

17 MR. GOODMAN: Can I -- can I just clarify
18 something? Because I hear the word release being used, and
19 I don't know that we're being precise enough with the term.
20 So you're talking about releases in a plan of
21 reorganization.

22 THE COURT: Uh-huh.

23 MR. GOODMAN: Right? Those are the releases that
24 the plan effectuates. And you can have voluntary or
25 consensual releases that trigger whether or not someone

1 votes in favor of the plan or not, whether they object or
2 not. And then you have sort of the other breed of plan
3 releases, which is the non-consensual third-party release
4 that you see in planned reorganization. So those are
5 releases that are part of the plan.

6 When you're talking about a 9019 transaction,
7 right, you're really talking about the sale or the
8 settlement of --

9 THE COURT: Uh-huh.

10 MR. GOODMAN: -- estate causes of action. Right?
11 So in that context, the question really is what's in the
12 grocery cart, right, and how much is -- how much are the
13 items in the grocery cart worth, and is the settlement, you
14 know, within the range of reasonableness such that I could
15 approve it under the 9019 standard, giving due consideration
16 to the fact that you have the insiders and all of those
17 issues.

18 In both instances, right, it's conditional.
19 Right? The sale of the estate causes of action, again,
20 isn't effectuated until the money is paid. The money isn't
21 paid until you have a final non-appealable order confirming
22 the plan. The plan releases are also conditional, right,
23 upon the Court approving or confirming the plan of
24 reorganization and then those going effectuated.

25 What I understand the M2 Loan parties and

1 Mr. Lefkowitz to be saying -- I hear this in. you know,
2 almost every mass tort case -- is I don't pay my money until
3 I get finality. Right? And that applies not just for plan
4 releases, but that also applies to the settlement of the
5 estate causes of action. Right?

6 Mr. Lefkowitz doesn't swipe his credit card,
7 right, at the grocery store until he knows that he's buying
8 finality. That's the issue. So that's why I actually do
9 sort of view this as more akin to an RSA. Now from our
10 perspective, we obviously need to make sure that we object
11 to and make every argument, you know, possible, because I
12 don't want to be in a situation where we're deemed to have
13 waived anything.

14 So we have to do our job in this case and make all
15 the arguments and all the objections that we can make. So
16 from that standpoint, it does feel, to me, like it's two
17 bites of the apple because I can't think of any other way to
18 do this from our perspective. Right?

19 I mean, we're kind of put in the position where we
20 have to object to the 9019. We're going to have to then
21 turn around and raise all of the objections at plan
22 confirmation because I can't be in a situation where someone
23 says, well, you should have done this, and you didn't.
24 Right? So that's the situation that we're in.

25 THE COURT: And the legal basis -- or I should say

1 that I was thinking about this too, and I -- we're not at
2 the close of evidence. So -- but I want to start thinking
3 about this in terms of to just flat out dismiss a case,
4 I've got to find, among other things, that you know, there's
5 not a reasonable likelihood of, you know, of confirming a
6 plan. Right?

7 But if I tell them go put this in a plan and put
8 it out for a vote, then how do I dismiss the case?

9 MR. GOODMAN: So our --

10 THE COURT: In other words --

11 MR. GOODMAN: Yeah. Yeah. Yeah. I hear what --
12 I --

13 THE COURT: That's where I'm going.

14 MR. GOODMAN: Very good question, Your Honor, and
15 one that we've been thinking about as well. So if you're
16 thinking about dismissal in terms of the 1112(b), I think,
17 (1) factor, right, which is, you know --

18 THE COURT: (Indiscernible).

19 MR. GOODMAN: (Indiscernible). Well, you have,
20 you know, inability to confirm a plan of reorganization.
21 You can combine that with administrative insolvency. You
22 know, professionals not being paid their fees, I think --

23 THE COURT: Uh-huh.

24 MR. GOODMAN: -- you know, would trip that gate if
25 the 9019 is denied, and the argument is, well, we just can't

1 get a plan confirmed, then I think you could run into a
2 dismissal under those factors and based on those
3 circumstances.

4 The other sort of side to this, right, is the
5 dismissal that you saw in the Antelope case, right, where
6 the court says, wait a second. If the whole purpose of the
7 bankruptcy proceeding is for insiders/defendants to take
8 control over and settle estate causes of action -- and, you
9 know, there they were truly derivative claims. Right?
10 There was a shareholder lawsuit in that case.

11 Here we have a situation where the Debtor is
12 arguing that it is an ascent created derivative for estate
13 causes of action through the divisive merger and the
14 bankruptcy proceeding. Right?

15 Our argument would be is that's just not a
16 legitimate use of the bankruptcy system, per se, and that
17 the case should be dismissed on -- for cause on that basis.
18 So that's not what I would call, you know, the 1112(b)(1)
19 form of dismissal. That's more of the -- you know, the
20 Fifth Circuit has, you know, thought in these terms going
21 back to -- I'm blanking on the name of the case, but I think
22 it was one of the first cases involving dismissal for cause.
23 It was actually a 1990s case. And it's bothering me --
24 really, really bothering me that I can't remember the name
25 of it. So I really apologize to Your Honor --

1 THE COURT: No worries.

2 MR. GOODMAN: -- for falling down on that one.

3 But if the Court were convinced that this case is basically
4 just the use of the bankruptcy system, right, to take
5 control --

6 THE COURT: But now we're getting back to whether
7 -- kind of a policy perspective, whether divisive mergers
8 are appropriate or not, because it's really what you're
9 saying. Because this -- again, this case is different than
10 others. And, again, I'm making no comment about LTL, Aero,
11 or any of those cases. I'm just talking about the facts of
12 this case. Right?

13 This divisive merger is different than other cases
14 where I know the courts have kind of thought about these
15 issues. And there's no telling what I would think about
16 them if I was put in those situations. So I don't -- I
17 don't like putting myself in shoes where I didn't sit
18 through evidence.

19 But in this case, a divisive merger took place a
20 while back. Right? And so I just think this case is
21 different than a lot of other cases, and that doesn't mean
22 that the plan is going to get confirmed. That doesn't mean
23 that. But, again, I'm just telling everyone I read texts
24 really literally, and I agree. I think Fifth Circuit case
25 law is really based on kind of a single asset real estate

1 case. So it's not the --

2 MR. GOODMAN: That was (crosstalk).

3 THE COURT: Yeah. So I am --

4 MR. GOODMAN: But to be very clear, Your Honor, I
5 don't -- I don't have any qualms --

6 THE COURT: No, no. I know.

7 MR. GOODMAN: -- whatsoever --

8 THE COURT: I'm not saying anyone does.

9 MR. GOODMAN: -- with the Texas statute or
10 divisional -- I don't have any issue with divisional
11 mergers. I'm in cases all the time where companies go and
12 enter into demerger agreements, and they separate assets and
13 liabilities. That, you know, happens all the time. And,
14 you know, the suggestion or the, you know, view is that
15 we're coming in and we're saying that, you know, divisional
16 mergers are wrong. I'm saying unequivocally we're not
17 taking that position. That's never been our view.

18 Our view simply is that, if you have a -- if you
19 use the statute, right, in an improper way, right, and you
20 say I'm going to create a company where I'm going to put all
21 of the assets over here and assign nothing but the
22 liabilities to this entity, now you've fallen into a fact
23 pattern where it is -- can be attacked as a fraudulent
24 transfer. That was Judge Whitley's, you know, analysis in
25 the DBMP decision was, yeah, you know, you can do these

1 things, but the consequence is that you're, you know,
2 hindered, delaying, defrauding creditors, all of those
3 rights and remedies survive under the Texas statute. And
4 you can continue -- you can bring those claims and those
5 causes of action.

6 So our point simply, in terms of back to this
7 dismissal concept, is, in our view, they went through these
8 corporate machinations. They used the statute in order to
9 give themselves an argument, right, that these are now
10 derivative or state causes of action. Again, we will, you
11 know, continue to argue that they didn't succeed, right, and
12 that, you know, party is alleging successor liability still
13 on their tort claim.

14 But to the extent that they did, you know, put the
15 Debtor in a position where it can claim ownership of these
16 causes of action, you do then fall into the Antelope fact
17 pattern, right, where you have a case that's being used for
18 that litigation purpose. And that's -- you know, that would
19 be the argument that we would be presenting to the Court for
20 dismissal.

21 And, Your Honor, if I could -- I appreciate we're
22 starting to get into closing arguments a little bit now.

23 THE COURT: No, no, no.

24 MR. GOODMAN: We still have --

25 THE COURT: I totally did it. Right?

1 MR. GOODMAN: We have three witnesses today, three
2 witnesses for Wednesday. Our estimates are showing, you
3 know, seven to eight hours today, seven to eight hours on
4 Wednesday, plus closing arguments. We'd really like to get
5 to the evidence unless the Court has some additional
6 questions.

7 THE COURT: You shutting me down?

8 MR. GOODMAN: No, I'm hoping we can get to
9 evidence.

10 THE COURT: I'm just saying --

11 MALE SPEAKER: Your Honor, I actually would like
12 to take you back up on your prior statement. I think you
13 said --

14 THE COURT: No, no, no. I've gotten -- let's get
15 to your evidence then. All right. And --

16 MR. KAUFMAN: Thank you for your thought. Thank
17 you.

18 THE COURT: Yeah. Yeah.

19 (Recess taken from 10:25 a.m. to 10:34 a.m.)

20 THE CLERK: All rise.

21 THE COURT: Okay, let's proceed.

22 MR. MOXLEY: Good morning, Your Honor, Cameron
23 Moxley of Brown Rudnick for TCC. Judge, I think we're going
24 to continue with Mr. Perry's cross-examination.

25 THE COURT: Let's do so. Mr. Perry, come on up.

1 (Pause in the proceeding.)

2 THE COURT: Good morning, I'll remind you that
3 you're still under oath. Okay.

4 MR. MOXLEY: And, Your Honor, Your Honor has at
5 the bench, two binders that I handed to your clerk, Judge.
6 One is the documents binder. I find it be convenient for
7 everybody to have a second binder that just has transcripts
8 in it. So it has his deposition transcription in it as well
9 as the first two days of the hearing.

10 So that's the reason for the two binders, Judge.

11 THE COURT: Got it.

12 CROSS-EXAMINATION OF RUSSELL PERRY

13 BY MR. MOXLEY:

14 Q And Mr. Perry you have those binders at your -- at your
15 witness stand as well, sir.

16 Just so you know, I think the other two binders, I
17 believe, are the exhibits from the Debtor and the UCC.

18 A Okay, great.

19 Q Those are the materials in front of you.

20 MR. MOXLEY: And, Your Honor, what I thought we
21 would do is, I'll do the same thing as we did last time
22 where I'll have a reference the document in the binder.
23 We'll also put it on the screens for convenience, if that's
24 helpful to Your Honor and to the witness.

25 THE COURT: Okay. And before we start do I need

1 to -- anyone I need to give presenter roles to? Are you
2 going to put the -- if someone's going to put the doc on the
3 screen or someone controlling the screens and all that good
4 stuff.

5 MR. MOXLEY: Let me just check if Mr. Barber knows
6 how to do it.

7 THE COURT: All right.

8 (Pause in the proceeding.)

9 MR. MOXLEY: He does, okay. And Your Honor, what
10 we would suggest we do as well is invoke the rule. I think
11 there maybe some fact witnesses in the room. I believe I
12 saw Mr. Lefkowitz at some point in the room.

13 THE COURT: All right.

14 MR. MOXLEY: And I'd argue that he should not be
15 present in the room.

16 THE COURT: Is there anyone in the room?

17 MR. KAUFMAN: Well Mr. Lefkowitz is not in the
18 courtroom, but I think he's a party representative for the
19 settling parties. So to the extent he comes back in, I
20 think he's entitled to hear just like the Griffiths and
21 anyone else.

22 THE COURT: Okay, let's proceed. Let's just keep
23 going.

24 MR. MOXLEY: Very good Judge. Thank you, Your
25 Honor.

1 BY MR. MOXLEY:

2 Q Again, good morning, Mr. Perry.

3 A Good morning.

4 Q Cameron Moxley, Brown and Rudnick on behalf of the TCC.
5 Mr. Perry, we've obviously had a chance to meet a few times
6 now. It's good to see you, sir.

7 Mr. Perry, we're of course, picking up on your cross-
8 examination continued from March 5th. Since Court adjourned
9 on March 5th, have you had any discussion at all with
10 counsel to the Debtor?

11 A I have.

12 Q Have any of those discussions with counsel for the
13 Debtor pertained in anyway with this case?

14 A They have.

15 Q And have any of those discussions pertained in any way
16 with the topics of your testimony?

17 A No.

18 Q Since the hearing adjourned on March 5th, have you had
19 any discussion with Mr. Lefkowitz?

20 A I believe just in short conversation after the hearing
21 last time. That's it.

22 Q Okay. And did that conversation concern the topics of
23 your testimony?

24 A Oh, no.

25 Q Okay. Did you have any conversations or other

1 communications, electronic or otherwise, with anyone other
2 than counsel for the Debtor or with Mr. Lefkowitz that
3 concern the topics of your testimony?

4 A No.

5 Q Mr. Perry, in response to Mr. Kaufman's questions on
6 direct examination, you testified that you believed the
7 Debtor is not administratively solvent, correct?

8 A Correct.

9 Q And the basis for reaching that conclusion is that the
10 Debtor will have sufficient funds to pay administrative
11 claims at the settlement, correct?

12 A Correct.

13 Q If the settlement is not approved, will the Debtor have
14 access to sufficient funds to pay administrative claims in
15 full?

16 A As I sit here today, my understanding is yes.

17 Q And what's that understanding based on?

18 A it's based on assets that I believe the Debtor can
19 modify in order to fund incur but outstanding administrative
20 claims to date.

21 MR. MOXLEY: And, Your Honor, I have a few
22 questions on these lines. I just want to note we're very
23 cognitive of -- TCC is very cognitive of the conversation
24 had this morning and the questions that Your Honor is
25 thinking about.

1 We just think it would be helpful to have some of
2 the evidence developed in the record on those points.

3 THE COURT: Take your time.

4 MR. MOXLEY: Thank you, Judge.

5 BY MR. MOXLEY:

6 Q Absent -- let me ask you this, Mr. Perry. Absent the
7 settlement, does the Debtor have access to sufficient funds
8 to pay the estate professionals in this case?

9 A It will. It requires monetization of certain assets
10 the Debtor owns.

11 Q Okay. And you're an estate professional, correct?

12 A I am.

13 Q Is the payment of your fees and expenses contingent on
14 the Court's approval of the settlement and the confirmation
15 of the Plan?

16 A I wouldn't say it's contingent, no.

17 Q Okay. If it's not contingent on those things, who will
18 pay you?

19 A The resources the estate otherwise liquidates. The
20 value that is brought into the estate in order to fund
21 administrative expenses and to fund creditors. I will get
22 paid out of those amount.

23 Q And you mentioned in a couple of your answers so far
24 that there would be assets that would be monetized. What
25 assets do you have in mind?

1 A When I originally testified on direct, we walked the
2 Court through a demonstrative that included both the 54
3 million that we're discussing 919 as well as other potential
4 pockets of what I'll call assets or value or value.

5 One of those, just for example, is the employee
6 retention tax credit. When I originally began this case, I
7 felt those were worth any where from \$9 million to maybe
8 somewhere in the high teens.

9 Throughout the process of this case, we have engaged
10 with third parties to where I have filed what's called 941
11 X's of the IRS to the tune of roughly 20 -- I want to say
12 just a shy under \$30 million.

13 There's a \$10 million priority tax claim. So if we
14 were to confirm a plan, I would anticipate that 10 million
15 being set off by that roughly 30 with 20 million left for
16 the estate.

17 Q Okay. And Mr. Perry, we're going to take a look at the
18 ERCs today. But let me just ask you a couple of questions
19 based on that response there.

20 My understanding of your testimony then from the last
21 time on direct and then your answer just now, is that you
22 now realize that the Debtor will be able to get ECR tax
23 money earlier than it previously thought it would; is that
24 right? Earlier in time?

25 A No, I've never -- I don't believe I've ever testified

1 to a timing issue with that.

2 Q Okay, so it's not a timing issue. It's an amount
3 issue; is that right?

4 A It's both.

5 Q Okay. I think you testified on direct that it went up
6 by a certain amount. And I think you just testified now as
7 well that you thought it would be a lower number. Now you
8 think it's a higher number, correct?

9 A When I originally the -- when the Debtor filed its
10 original schedule of assets and liabilities, I think we had
11 estimated ERCs -- I'm going off of memory, but somewhere
12 around 9 million to 15 million. Something like that.

13 The reason that the amount has gone up from where I sat
14 from the original filing of the souls to today is really a
15 matter of adding additional years under the filing. And
16 then completing additional analysis with the third party
17 consultant by which I could -- that allowed me to file
18 those.

19 So, when we originally estimated the amount, it was for
20 one certain fiscal year. Since that point in time, we've
21 added another fiscal year and then we've completed an
22 analysis on top of that.

23 Q Got it, okay. We'll come back to the ERCs and we'll
24 look at your demonstrative in a bit. Mr. Perry, is the
25 payment of the fees and expenses of the TCC's professionals

1 contingent upon the Court's approval, the settlement and the
2 confirmation of the Plan?

3 A I don't know the answer to that.

4 Q Okay. So your testimony is that your fees and expenses
5 will be able to be paid even absent the approval and
6 settlement because you'll be able to monetize assets, but
7 you're not sure if the TCC's professional fees will be paid?
8 Is that your testimony?

9 A At this point in time, the administrative expenses in
10 the case really across the board, I think, are subject to
11 final fee application, Court's orders things of that nature.
12 I was answering a question as it relates to whether were
13 administrative insolvent including my fees.

14 I'm not at this point taking a position as it relates
15 to whether anybody's fees are going to be official approved
16 by the Court and then otherwise allow to be paid. That's a
17 different topic in my mind.

18 Q Okay. The settlement as it existed at the time the
19 Rule 9019 motion was filed, provided for the payment of the
20 settlement proceeds at the effective date of the Plan,
21 correct?

22 A That's correct.

23 Q I'd be happy to show you that if you want to see that
24 document. So at any point, I mean we'll look at it in a
25 second. But if you want to see a document, at any point

1 today let me know, okay?

2 Are you familiar with the last Plan that's currently on
3 file?

4 A The Plan?

5 Q The second amended plan?

6 A Generally familiar, yes.

7 Q Okay. And are you familiar with how that Plan on file,
8 the second amended plan, defines the term effective date?

9 A I'd have to look at the language.

10 Q That's fine. Let's do that. It's in Tab 12 of your
11 binder.

12 MR. MOXLEY: This is -- Your Honor, this is TCC's
13 Exhibit 167 for the record. And we're looking at Page 8 of
14 42 at Tab 12.

15 BY MR. MOXLEY:

16 Q I believe it will come on your screen as well,
17 Mr. Perry, if that's helpful.

18 (Pause in the proceeding.)

19 Q Are you there, sir?

20 A I am.

21 Q Okay. And you see that the definition of effective
22 date at number 48. There it references Article X of the
23 Plan as what specifics the conditions precedent to the
24 effective date. Do you see that?

25 A I do see number 48, yes.

1 Q Okay. Do you see the reference to Article X with
2 respect to the conditions precedent to the effective date in
3 that definition?

4 A I do see a reference, yes.

5 Q Okay. Are the conditions precedent to the effective
6 date set forth in Article X of the Plan? Are you aware of
7 that?

8 (Pause in the proceeding.)

9 A I would have to review the Plan that was filed and I'd
10 have to Article X.

11 Q Okay. Do you know sitting here today without looking
12 at it, sir, what the conditions precedent to the effective
13 date as set forth in Article X of the second amended Plan
14 are?

15 A I would need to reference Article X and we could walk
16 through it.

17 Q Okay, so let's look at that then. It's at Page 36 of
18 42 of this document.

19 (Pause in the proceeding.)

20 MR. MOXLEY: So just for the record, Judge, we're
21 looking at Article X, second amended Plan, TCC's
22 Exhibit 167. And we're now Page 36 of 42 of the filing.
23 The conditions precedent to the effective date.

24 BY MR. MOXLEY:

25 Q Do you see that section, sir?

1 MR. KAUFMAN: Your Honor, just for the record, if
2 we could show the entire Article X, which carries on to the
3 next page, that would be --

4 THE COURT: I think he gets to conduct this
5 examination, Counsel.

6 Go ahead.

7 MR. MOXLEY: Thank you, Your Honor.

8 BY MR. MOXLEY:

9 Q There are nine conditions to the effective date listed
10 in Article X, do you see that?

11 A See nine under section A, correct.

12 Q Okay. With the benefit of seeing this provision now,
13 Mr. Perry, what are the nine conditions precedent to the
14 effective date as set forth in Article X of the Plan that is
15 currently on file?

16 And I appreciate that it's not a Plan the Debtor is
17 advocating for at this time. I just want to understand what
18 the conditions precedent to the effective date were under
19 the last filed Plan.

20 A Happy to read all nine. There is a condition that says
21 the Bankruptcy Court shall have entered the confirmation
22 order. The settlement parties shall have funded the initial
23 settlement amount.

24 The liquidation trust shall be established and funded
25 and the trustee shall have been appointed in accordance to

1 the provision of the Plan in terms of the trust agreement.

2 The personal injury trust shall be established and fund and
3 the personal injury trustee shall have been appointed in
4 accordance with the provisions of the Plan and the terms of
5 the personal injury trust agreement.

6 The Debtor shall have obtained all authorizations,
7 consents, regulatory approvals, ruling or documents that are
8 necessary to implement and effectuate the Plan.

9 Substantially final version of the Plan supplement, all
10 the schedules, documents and exhibits contained therein.
11 And also their schedules, documents, supplements and
12 exhibits to the Plan have been filed.

13 The administrative and priority claims reserve shall
14 have been established and funded. Professional fee escrow
15 shall have been established and funded and the other secured
16 claims reserve shall have been established and funded.

17 Q And are you aware, Mr. Perry, of that the term final
18 order is a defined term in the Plan that is currently on
19 file -- the Plan that we're looking at right now?

20 A I'd have to go back to the definition. It's been
21 awhile since we filed it.

22 Q Let's look at that definition. It's on Page 9 of 42 in
23 the same document.

24 (Pause in the proceeding.)

25 Q Do you see it there, sir, at definition number 58?

1 A I do.

2 Q Okay. So final order, you see as a defined term,
3 paragraph -- definition number 58 on Page 9 of 42. If you
4 look back with me now, at Article X. So go back to Page 36.

5 (Pause in the proceeding.)

6 Q Do you have Article X in front of you again, sir?

7 A I do.

8 Q The term final order is not used in Article X of the
9 plan, is it?

10 A I don't believe that I read those words at all, no.

11 Q So, Mr. Perry, under the Second Amended Plan that is
12 the last filed Plan by the Debtor in the case, the entry of
13 a final order confirming the Plan is not a condition
14 precedent to the effective date, correct?

15 A I don't see the words in Article X. I'd have to study
16 a little bit closer Article X as it relates to any
17 correlation to the final order. But I also the words in
18 Article X.

19 Q Okay. You had an understanding, though, to the prior
20 Plan when it was filed, correct?

21 A I did have an understanding when we filed it back in
22 October.

23 Q Was it your understanding at that time that a final
24 non-appealable order was a condition precedent to the
25 effective date?

1 A My understanding was what was written in the Plan at
2 the time was, in fact, the mechanics that we had potentially
3 solicited to be disclosed.

4 Q Okay. So under this Plan, the Second Amended Plan --
5 which again I appreciate the Debtor is not advocating for
6 that Plan right now. But under that Plan, the effective
7 date could occur after the Bankruptcy Court enters the
8 confirmation order, correct?

9 A That's likely, yes. It's likely in every plan.
10 Effective date usually occurs after the confirmation order
11 is entered.

12 Q Thank you, sir. And are you aware that the term
13 confirmation order is a defined term in this Second Amended
14 Plan?

15 A Yes.

16 Q Okay. Do you know what it means, confirmation order,
17 in this Plan?

18 A I'm happy to read the definition.

19 Q You can look back at the definition. That's fine. So
20 that's on Page 7 of 42.

21 (Pause in the proceeding.)

22 Q So if you look at Page 7 of 42, it's at definition
23 number 28. Do you see confirmation order defined there,
24 sir?

25 A I do.

1 Q And the term final order is not used in the definition
2 of confirmation order as defined in this Plan, is it?

3 A I do not see the word final order, correct.

4 Q So under the settlement as it existed at the time the
5 Rule 9019 motion was filed, the settlement funds would have
6 been available for distribution on the effective date,
7 correct?

8 A The effective date, per the definition of the
9 settlement agreement.

10 Q Right.

11 A There's no -- there's not a Plan today that connects
12 the settlement agreement to a plan. We're looking at an old
13 plan.

14 Q And I understand. Except for now, my question -- I
15 should have made that more clear. I apologize.

16 A Okay.

17 Q So now stepping away from this document, sir.

18 A Okay.

19 Q Under the settlement as it existed at the time of the
20 Rule 9019 Motion was filed, settlement funds would have been
21 available for distribution on the effective date, right?

22 A Per the definition of the 9019 agreement.

23 Q Yes, sir.

24 A Yes.

25 Q Okay. So the claimants under this version of the Plan,

1 the settlement agreement before. Strike that.

2 The claimants under the prior version of the settlement
3 agreement did not have to wait for all the appeals that may
4 follow a confirmation order to be exhausted before they
5 could receive a distribution, correct?

6 A I don't have an answer for that. I'd have to study the
7 plan much closer.

8 Q Okay.

9 (Pause in the proceeding.)

10 Q Let's go back now to the Second Amended Plan. So, --
11 and picking up on your answer a couple of answers ago. I
12 think you recognize that it's common that a confirmation
13 order may happen on one date and later in time the effective
14 date would occur, correct?

15 A Correct.

16 Q Okay. And so that was the case under the Second
17 Amended Plan as well. And, in fact, under the Second
18 Amended Plan, the confirmation order would occur first, the
19 effective date would then occur and then if there were
20 appeals, a final non-appealable order may issue at some
21 point in time, correct? Those would be three separate
22 dates.

23 A Sounds correct.

24 Q Is it still contemplated that the effective date will
25 occur before there is a final order confirming the Plan

1 under the new proposed order?

2 MR. KAUFMAN: Objection, Your Honor. This calls
3 for speculation.

4 MR. MOXLEY: Your Honor, it calls for the witness
5 -- the witness is the Debtor's CRO. It calls for an
6 understanding of what the current newly proposed form of
7 order provides for.

8 MR. KAUFMAN: I heard it as asking him what's
9 going to be in the Plan that's not filed. But if --

10 THE COURT: If we're just talking about the order
11 -- the current version of the proposed order, I think it's
12 fair. We're talking about what maybe included in the Plan.
13 I think that expands -- sounds like you're going to the
14 order, so.

15 MR. MOXLEY: Yes, Your Honor.

16 THE COURT: Okay.

17 THE WITNESS: Sure, can we flip to the order and -
18 -

19 BY MR. MOXLEY:

20 Q I need to understand your --

21 A Okay.

22 Q -- as you sit there today, what's your understanding.

23 A My understanding is what the language in the revised
24 form of order will govern when the payment would come in.

25 Q Okay. So, Mr. Perry, you previously testified on

1 direct examination that you believe that the Debtor is not
2 administratively insolvent as the settlement funds will be
3 available to pay administrative claims on the effective
4 date, correct?

5 A Upon the effective date that is correct.

6 Q Okay. You're aware that about an hour before you began
7 your testimony on March 5th -- which was several calendar
8 days after this hearing began on March 1st -- the Debtor
9 filed a revised form of order on the Rule 9019 Motion,
10 right?

11 A There's been a lot of filings. So I need to get my
12 dates correct. Can you re-ask your question and I'll think
13 about the dates while you're asking.

14 Q My question is very simple. You're aware that about an
15 hour before you began your testimony on March 5th -- which
16 was several calendar days after the hearing began on March
17 1st -- the Debtor filed a revised form of order on the Rule
18 9019 Motion?

19 A Correct.

20 Q And you worked on that over the weekend before you
21 began testifying, right?

22 A Counsel worked on it. I was party -- part of that
23 process, correct.

24 Q Okay. I just want to be very clear about that. So
25 let's just take a quick look at your direct testimony, which

1 if you look at your transcript binder, sir. And I just
2 direct you to Tab C, which is day two of this hearing.

3 (Pause in the proceeding.)

4 Q And if you turn in that binder to Page 228 at Tab C.

5 (Pause in the proceeding.)

6 A I'm here.

7 Q Okay. And you see your answer beginning at line 8.

8 You know, we worked on this over the weekend and then

9 finalized it literally minutes before we filed it with the
10 Court. See that?

11 A I do. I see that.

12 Q That testimony was accurate, correct?

13 A Of course.

14 Q Okay. And you reviewed the revised form of order
15 before it was filed, right?

16 A I did.

17 Q Okay. You were aware of the terms of the revised form
18 of order before you began testifying that day, correct?

19 A Generally, yes. I reviewed it quickly before one set
20 was a final form. It was moving up until literally minutes
21 before we filed.

22 Q Okay. Did the Debtor share a copy of the revised form
23 of order with the UCC before it was filed on March 5th?

24 A that would have been discussions between counsel. I
25 don't know. I believe so.

1 Q What's the basis of that belief?

2 A Because my understanding is there was conferment in the
3 agreement over the weekend between UCC and the Debtor.

4 Q There was --

5 A There was discussions and agreement as it relates to
6 language between the settlement parties, the UCC and the
7 Debtor.

8 Q And those discussions happened over the weekend?

9 A It happened up until minutes prior to the filing of it,
10 yes.

11 Q That's what I'm trying to understand. Were those
12 discussions happening up until minutes before it was filed?

13 A Yes.

14 Q And, so your understanding is and your belief is that
15 the UCC saw a draft of the form of order in the form it was
16 filed with the Court on March 5th, before it was filed; is
17 that right?

18 A I can't testified to what the UCC did or didn't see.
19 My understanding is that drafts were exchanged. But I can't
20 testified to what the UCC actually did see, didn't see.

21 Q Okay. Do you have an understanding of whether the UCC
22 approved the revised form of order before it was filed?

23 A I don't.

24 Q You just don't know one way or another?

25 A I don't.

1 Q Okay. Did the Debtor share a draft of the revised form
2 of order with the TCC before it was filed?

3 A I don't know the answer to that. I believe so, but I
4 don't know the answer.

5 Q Would it surprise you if I told you the answer to that
6 was no a draft of the form of order was not shared with TCC
7 before it was filed?

8 A I have no response, Mr. Moxley. I don't know one way
9 or another.

10 Q You're not aware of any discussions having happened
11 with the TCC over the weekend about the revised form of
12 order, right?

13 A No one discussed with me from TCC the order or whether
14 counsel discussed I wouldn't have knowledge of that.

15 Q You're not aware -- were you told by anybody that we
16 just talked to the TCC about this form of order they think
17 X, Y and Z?

18 A Not that I recall.

19 (Pause in the proceeding.)

20 Q Who worked on those revisions with you over that
21 weekend?

22 A The counsel to the Debtor.

23 Q Anyone else?

24 A Counsel to the Debtor. That's it.

25 Q Okay. Who was involved with the negotiations over the

1 changes to the proposed form of order; do you know?

2 A It would have been counsel for the Debtor, counsel for
3 the settlement parties, counsel for the UCC.

4 Q And you know that to be the case; is that right?

5 A That's the only thing I know. Whether or not there
6 were other parties involved, I'm not aware of that.

7 Q Okay. So who for the settling parties was involved in
8 the negotiations?

9 A My understanding, their counsel.

10 Q Is that Ms. Hayward?

11 A It is.

12 Q Anybody else, counsel to the settling parties, who was
13 involved to your knowledge?

14 A My understanding is Mr. Cluck (phonetic) was also
15 involved.

16 Q Okay. Was counsel -- is it your understanding that
17 Ms. Hayward, among the settling parties that she represented
18 in connection with those discussions about the changes to
19 the form of order represented YesCare?

20 A Yes, I believe Ms. Hayward represents YesCare.

21 Q Are you aware of anybody else? Any other counsel who
22 represented YesCare in connection with those discussions
23 about changes to the revised form of the proposed order

24 A As I sit here today, I'm not aware.

25 Q Okay. Did Mr. Lefkowitz participate in those

1 discussions?

2 A I'm not aware.

3 Q Is it your understanding that Mr. Lefkowitz
4 participated through counsel, Ms. Hayward, in those
5 discussions?

6 A I'm not aware.

7 Q Who first raised the idea of revising the proposed form
8 of order at all?

9 A Discussions between Debtor's counsel and myself. I
10 don't know who initially raised it, but over the weekend
11 there were discussions around revising the order following
12 the hearing.

13 Q Okay. But you don't know if the first suggestion that
14 we may want to consider revising the form of proposed order
15 came from the Debtor or not; is that right?

16 A That's correct. I don't know who first suggested it,
17 correct.

18 Q Okay. In the revised form of order, the Debtor changed
19 the trigger date for the settlement payment from the
20 effective date to the date that a final order is entered
21 confirming the Plan, right?

22 A That's my understanding, yes.

23 Q Okay. Let's look at Tab 19 of your binder at the red
24 line of the proposed form of order.

25 (Pause in the proceeding.)

1 MR. MOXLEY: And, Your Honor, this was filed on
2 the docket at 1432 on Motion.

3 BY MR. MOXLEY:

4 Q And if we look at the -- if we look at the red line,
5 let's turn to Page 3, if we could, sir. And it's Page 6 of
6 the filing if you're looking at those pages, at the top of
7 that.

8 (Pause in the proceeding.)

9 A Okay.

10 Q You see where it says in Paragraph 2 conditions
11 precedent of the effectiveness of the settlement agreement
12 is conditioned upon "the entry of a final order of the Court
13 that is not subject to an appeal confirming a Chapter 11
14 plan."

15 A The words are a little different than what you
16 described, but I can read it.

17 Q We'll be very clear. We'll just read it. So you see
18 at Paragraph 2 it says, "Paragraph 9 of the settlement
19 agreement is stricken and replaced in its entirety with the
20 following: Nine. Conditions precedent: A. The
21 effectiveness of this agreement is conditioned upon an entry
22 of an order of the Court in form and substance acceptable to
23 the M2 parties, approving this agreement pursuant to Rule
24 9019 of Federal Rules of Bankruptcy Procedure and the entry
25 of a final order of the Court that is not subject -- that is

1 not thus subject of an appeal, confirming a Chapter 11 Plan
2 containing to the fullest extent committed by applicable law
3 the following provisions." And there's romanettes one
4 through five.

5 Do you see that?

6 A I do.

7 Q So under the revised form of order filed on March 5th
8 of this year, the settlement money does not show up until
9 there is a final order confirming the Plan, correct?

10 A Correct.

11 Q Okay. Let's look at the old version of Paragraph 9,
12 this is at Tab 3 of your binder, sir. Flip to Tab 3 of me.
13 It'll come on the screen too, Mr. Perry. I'm not trying to
14 play gymnastics.

15 A Okay. I worry about the other one open.

16 Q Very good. We're going to Tab 3.

17 (Pause in the proceeding.)

18 A Okay, I'm here.

19 Q And then at Tab 3 if you'll turn to Page 41 of 47 of
20 the filing. The numbers at the top.

21 (Pause in the proceeding.)

22 Q And so we're looking again now on -- at this page of
23 Paragraph 9, conditions precedent. And that A under
24 Paragraph 9 A of the prior version of the proposed order
25 that was initially filed with the Rule 9019 Motion states,

1 "the effectiveness of this agreement is conditioned upon the
2 entry of an order of the Court in form and substance
3 acceptable to the M2 parties approving this agreement
4 pursuant to Rule 9019 of the Federal Rules of Bankruptcy
5 Procedure and the entry of an order of the Court confirming
6 a Chapter 11 Plan containing, to the fullest extent
7 permitted by applicable law the following provisions." And
8 there's romanettes one through six that follow.

9 Do you see that?

10 A I do.

11 Q Okay. So there the effectiveness of the settlement
12 agreement was conditioned upon the entry of an order of the
13 Court confirming the Plan not a final non-appealable order,
14 correct?

15 A I believe that's correct.

16 Q So, Mr. Perry, an hour before you began your testimony
17 in this case -- again as we talked about several calendar
18 days after this hearing began -- the Debtor changed a
19 condition, the obligation to make the settlement payment of
20 the settlement coming from at the time of the confirmation
21 order to the time of a final non-appealable order, correct?

22 A That change was made, correct.

23 Q Okay. But, Mr. Perry when you were asked on direct
24 examination by Mr. Kaufman about how the Debtor would have
25 access to the funds necessary to pay administrative claims,

1 you testified that the Debtor would have the funds on the
2 effective date, correct?

3 A Correct.

4 Q Okay. You actually did not just say that once. You
5 actually twice testified that it would be the effective date
6 when the money would come in. Remember that?

7 A I don't remember if I testified to it twice, but I do
8 recall the effective date being the trigger date so to
9 speak.

10 Q Okay. I just want to make sure that you and I are both
11 clear on what your testimony was with that. Because I don't
12 want you to feel like I'm misrepresenting anything to you.

13 So let's just take a quick look at your testimony which
14 is again in your transcript binder. And if you could turn
15 with me to Page 48.

16 (Pause in the proceeding.)

17 Q If you would look with me of Page 48 of your -- the
18 second day of this hearing -- the transcript of the second
19 day of this hearing. And I'm at line 25, Mr. Perry.

20 A Okay.

21 Q The question begins how much do you project -- do you
22 see that?

23 A I do.

24 Q So Mr. Kaufman asked you how much do you project of the
25 settlement proceeds will be available to creditors in this

1 case. And your answer was, "well of the settlement proceeds
2 by themselves the way that I look at that is within the
3 settlement agreement there's a \$40 million amount that would
4 be funded upon let's call it the effective date -- really
5 there's I feel the situation like, but that 40 million would
6 be funded and then netted out of that would be occurred or
7 call it incurred and owing or unpaid administrative
8 expenses."

9 And your answer continues from there. Do you see that,
10 sir?

11 A I do.

12 Q Okay. And then if you look at Page 55 of your
13 transcript, sir. And if you look with me at line 17. See
14 you testified the current 9019 is for the 40 million to be
15 received on the effective date.

16 A I do see that.

17 Q Are you aware that an appeal of a confirmation order
18 can take two to three years before all appeals are exhausted
19 and you get to that final non-appealable order? Are you
20 aware of that?

21 A I'm not aware of the general timeline of how an appeal
22 shake out other than the fact that it would take some time.

23 Q Okay. How can the Debtor receive the settlement funds
24 on the effective date if the parties now have to wait some
25 time -- I'll represent to you it could take a couple of

1 years -- for a final order confirming a plan?

2 MR. KAUFMAN: Objection, Your Honor. It does call
3 for speculation.

4 THE COURT: It does call for a bit of speculation.
5 I think you can -- well --

6 MR. MOXLEY: May I be heard?

7 THE COURT: Yeah, go ahead. But I get the point.
8 It won't be there on the plan effective date as defined in
9 the Plan. In the current version of the Plan, but we don't
10 know how the Plan is going to define plan effective date.

11 MR. MOXLEY: That's right.

12 THE COURT: Any future date. So, that's why I
13 think Mr. Kaufman has a good point about what may lead to
14 speculation.

15 MR. MOXLEY: Okay, my question, though, was --
16 thank you Judge and I appreciate that. I'll rephrase the
17 question if I could.

18 BY MR. MOXLEY:

19 Q Mr. Perry, what I'm trying to understand is when you
20 testified in response to Mr. Kaufman's question about how it
21 would be that you knew that administrative claims would be
22 paid that your understanding was it was because the
23 settlement proceeds would be received on the effective date.
24 That's what your testimony was, right? Twice.

25 A Correct.

1 Q Okay. So my question is how did you have that
2 understanding if the changes that we just went through in
3 detail to the proposed order were made. So the question is
4 very narrow. It's how did you have that understanding when
5 you gave that answer to Mr. Kaufman given the changes to the
6 proposed order?

7 A My understanding was that the payment would be made
8 upon the effective date. I don't believe there's anything
9 in the new order that would have modified my answer.

10 Q Okay.

11 A The effective date is the date in which I anticipate
12 the payment to come in.

13 Q Okay. But we looked at your testimony, just to be
14 clear. What you didn't say to the Court was that we have to
15 wait for the settlement payment to arrive and there's a
16 final non-appealable order. You didn't testify to that,
17 correct?

18 A I don't know that I was asked the question if I needed
19 to wait for an appeal to be exhausted.

20 Q Is there anything going to the exchange that we and the
21 discussion that we just had with the Court about the
22 definition of effective date and what the Plan might provide
23 in that regard. Is there anything in the proposed form of
24 order for the Rule 9019 Motion that's now proposed, that
25 would alert parties to the notion that the Debtor and the

1 UCC intended to revise the Plan and that definition of
2 effective date in a new Plan?

3 A Well, there isn't a Plan that connects that item.

4 Q Right.

5 A The 9019 speaks to conditions in certain plan
6 constructs. But that's there. We haven't proposed a Plan
7 that correlates with this yet.

8 Q Exactly. So there's nothing in the 9019 -- strike
9 that. There's nothing in newly proposed form of order for
10 the Rule 9019 Motion that would alert anybody to the fact
11 that the definition of the effective date might be different
12 than the last definition you supplied to that term, in the
13 last plan, right? Because there isn't one.

14 A Well, Mr. Moxley, in my deposition and my testimony and
15 others I think there's been discussions multiple times that
16 the Plan that was filed back in October is not the Plan.
17 Otherwise what we sought for approval of this Court.

18 Q Right.

19 A I would be surprised that folks would be confused by
20 the fact that this Plan doesn't connect with this 9019
21 because I think we discussed that whole time.

22 Q Right. I understand what you're saying, Mr. Perry.
23 What my point is -- I think we're actually just talking past
24 each other a bit.

25 A Okay.

1 Q My point, sir, is simply that there is a definition of
2 effective date in the last filed Plan. A Plan that the
3 Debtor is no longer advocating for, correct?

4 A Correct.

5 Q Okay. And there's nothing in the 9019 Motion -- I'm
6 sorry. There's nothing in the 9019 new proposed form of
7 order that says to anybody that we're going to supply a new
8 definition of effective date; is that right?

9 A I don't have an answer to that.

10 Q Okay. The revised plan of -- let's just do it this
11 way. The revised form or order that we looked at -- it's at
12 Tab 19 in your binder if you want to look at it again. It
13 revises Paragraphs 6 and 9 of the settlement agreement,
14 right?

15 (Pause in the proceeding.)

16 Q I don't mean to rush you sir. Let's turn to Tab 19.

17 (Pause in the proceeding.)

18 Q So if you turn to Tab 19 and if you turn again, with
19 me, to Page 3 of the -- page of the document. It's Page 6
20 of 13 of the filing.

21 I use the phrase of the filing when I mean the top
22 numbers.

23 A Sure.

24 Q Okay. So if you look at Page 6 of 13 of the filing,
25 you see that Paragraph 2 says that Paragraph 9 of the

1 settlement is stricken and replaced. Do you see that?

2 A I do.

3 Q And if you look at the next page at Paragraph 3 it says
4 that Paragraph 6 of the settlement agreement is revised to
5 read as follows. Do you see that?

6 A I do.

7 Q Okay. It doesn't -- no where in this proposed form of
8 order it doesn't purport to make any edits to Article X of
9 the old Plan that you're no longer advocating for, right?

10 A I don't see a reason why I need to.

11 Q So you would agree with me?

12 A The document reads in Section 9 the effectiveness of
13 this agreement is conditioned upon order of the court, form
14 and substance as we read a second ago, entry of a final
15 order of the Court, not subject to appeal, confirming a
16 chapter 11 plan. It doesn't say confirming the Plan filed
17 in October.

18 It says a chapter 11 plan. That Plan has not been
19 proposed yet.

20 Q Right. So when you gave your testimony that the Debtor
21 would have the funds to pay administrative claims on the
22 effective date, is it fair, in your view, that parties may
23 have assumed that you meant the effective date as that term
24 was defined in the prior plan?

25 A I can't testify as to how parties may assumed my

1 testimony, Mr. Moxley. I was referring to the effective
2 date of a Plan yet to be filed.

3 Q Okay, that's fair. And is there any document in this
4 case that supplies a definition of effective date since the
5 second amended plan was filed?

6 A I don't believe so.

7 Q So the last definition in time -- and I would submit
8 probably the only definition of effective date that has been
9 supplied in this case, are the definitions that were
10 supplied in prior iterations of a plan that the Debtor is no
11 longer advocating for, correct?

12 MR. KAUFMAN: Your Honor, I'm going to object at
13 this point that this has been asked and answered a few times
14 and I'm objecting to the relevance at this point.

15 THE COURT: I will agree with you on the asked and
16 answered. I get the point

17 MR. MOXLEY: Okay, thank you, Judge.

18 BY MR. MOXLEY:

19 Q So, Mr. Perry, just to be clear, when you gave your
20 testimony the Debtor would have funds to pay administrative
21 claims in the effective date, did you want anybody to assume
22 that you were referencing the old date -- the old
23 definition, excuse me, for effective date?

24 A No.

25 Q Okay. I noticed, Mr. Perry, that when you first

1 testified the settlement funds would be received on the
2 effective date, we read it. You stumbled a bit on the
3 answer. Do you recall that?

4 A Sure. I can explain why.

5 Q Sure. I'd like to hear the explanation.

6 A Sure, because the effective date in the old plan does
7 not reference or relate to the effective date in this 9019.
8 I'm using effective date broadly. An effective date as a
9 term that is typically understood within a Chapter 11
10 context.

11 Q Okay. I don't think the Debtor's counsel asked you any
12 questions that would have -- that prompted you after you
13 gave that testimony to say, let me clear now before
14 settlement funds come in, you've got to have a final non-
15 appealable order. Is that right?

16 A I don't recall whether that question was asked or not.
17 I don't believe so.

18 Q You didn't testify as to that, correct?

19 A I don't believe that I was asked that.

20 Q Were you in the courtroom that day before your
21 testimony began?

22 A I was.

23 Q Did you hear Judge Lopez ask Debtor's counsel to walk
24 through the changes that were made in the proposed new
25 filing?

1 A Yes, I was here for that exchange.

2 Q Okay. I don't recall there being any discussion about
3 the need for a final non-appealable order when we walked
4 through those changes for the settlement fund to be paid.
5 Do you recall any such discussion?

6 A I only recall there was an exchange of the information.
7 I don't exactly recall the exact exchange.

8 Q Okay. Mr. Perry let me ask you this question. Why did
9 the Debtor change section 9, conditions precedent, in the
10 middle of the hearing on this Rule 9019 Motion?

11 A I think the changes were made based upon discussions
12 with parties as to certain things they heard from the Court
13 and the Court's concerns. And other discussions amongst the
14 parties.

15 Q Okay. Who does the change requiring a final non-
16 appealable order benefit?

17 A I think it benefits likely all parties.

18 Q How does it benefit creditors?

19 A Well, first and foremost, providing a firm definition
20 for when settlement proceeds will be received allows for the
21 distributions to be made to the creditors quickly and
22 efficiently. I think it just provides for guidance and
23 finality on that.

24 Q Okay. We just talked about this though, Mr. Perry,
25 under the prior Plan, the distributions could be made after

1 confirmation of a Plan because the settlement payments would
2 be made at that time and not subject to appellate risk,
3 correct?

4 A The Article X that we referenced earlier provides for
5 certain conditions of the plan. Whether that changes how
6 quickly the distributions can made to creditors versus the
7 current Plan, I don't know.

8 Q That's your testimony that you don't know how it
9 changes Plan distributions can be made to creditors? I just
10 want to be clear, that's your testimony.

11 A I think because we haven't negotiated a new Plan, the
12 mechanics of a new Plan.

13 Q Okay. But you have negotiated the mechanics of the
14 proposed form of order for the settlement agreement. And
15 it's mechanics are that the settlement payments don't have
16 to be made until there's a final non-appealable order,
17 right?

18 A Correct.

19 Q Okay. Can you identify any conceivable benefit to the
20 Debtor from this change requiring a final non-appealable
21 order before the settlement payments arrive?

22 A I may be losing my voice. Yes, the Debtor is able to
23 effectuate the plan mechanics; it's able to distribute
24 proceeds to creditors and carry out the plan mechanics.

25 Q Is the benefit to the Debtor, sir, that absent agreeing

1 to money not coming in until there's a final non-appealable
2 order that you wouldn't have a settlement?

3 A Can you repeat that question?

4 Q Yes, sir. The question is --

5 A Can I get some more water?

6 MR. MOXLEY: Oh, let's pause for a moment, Your
7 Honor.

8 THE COURT: Of course, thank you.

9 (Pause in the proceeding.)

10 BY MR. MOXLEY:

11 Q Take a moment.

12 A I think they call it a frog in your throat, I think.

13 Q Yeah, take a moment, sir.

14 (Pause in the proceeding.)

15 A Okay. Mr. Moxley, would you mind asking the question
16 again?

17 Q Not at all, Mr. Perry. Not at all. My question was,
18 let's just take a quick step back.

19 A Sure.

20 Q I'd ask you could you identify a benefit for the Debtor
21 in this change. And I think your testimony was,
22 essentially, that it allowed for the Debtor to proceed with
23 these settlement mechanics. Is that essentially what your
24 answer was?

25 A Settlement mechanics partly. But also allows us to

1 carry out whatever may be the mechanics in the plan to
2 distribute proceeds to the creditors. The settlement
3 agreement does not address how funds will ultimately be
4 distributed to creditors, the mechanics of that and the
5 timing of that.

6 Q Okay.

7 A It simply brings money into the estate.

8 Q Okay. My question though, sir, is the real benefit to
9 the Debtor for making this change, the change being the
10 change to a final non-appealable order being required before
11 settlement payments are required to be paid. Is the real
12 benefit for the Debtor that but for reaching that agreement,
13 the Debtor wouldn't have a settlement with the settlement
14 parties?

15 A The settlement parties were -- my understanding as I
16 testified earlier -- were included in and part of the
17 negotiations and discussions to reach this language. If the
18 Debtor is unable to receive the settlement dollars but for
19 this language, then absolutely the Debtor needs to
20 effectuate this language if this is what the settlement
21 parties are requiring in order to bring the money into the
22 estate to distribute to creditors.

23 Q And is it your understanding, sir, as the CRO of the
24 Debtor who participated and was aware of the nature of those
25 discussions, that that was a requirement of one or more of

1 the settling parties before they would agree to the
2 settlement?

3 A I'm not aware. I believe they were part of the
4 discussions. I'm not aware of the answer to that question.

5 (Pause in the proceeding.)

6 Q Under the prior construct of the proposed order, it was
7 the settling parties. The M2 parties, Mr. Lefkowitz, who
8 were exposed to appellate risks because they would have paid
9 the money before appeals were exhausted, correct?

10 A I don't know the answer to that.

11 Q Okay. It is your understanding, though, that under the
12 prior construct settlement payments had to arrive at
13 confirmation. They were not able to wait to pay until there
14 was a final non-appealable order, correct?

15 A Under the language that we reviewed a minute ago for
16 the old plan not connected to this 9019, my understanding is
17 the Plan conditions in Article X state the confirmation
18 order would need to be entered.

19 Q That would mean, mechanically, that the creditors could
20 have been paid those funds earlier in time, under that prior
21 construct than under the new construct, correct?

22 MR. KAUFMAN: Your Honor, this is calling for
23 speculation.

24 THE COURT: I'll sustain the objection.

25 MR. MOXLEY: Thank you.

1 (Pause in the proceeding.)

2 BY MR. MOXLEY:

3 Q Mr. Perry, is it your understanding of the mechanics
4 here that the M2 parties will not have to pay anything until
5 all appeals are exhausted, assuming there is a confirmation
6 order and a plan -- the 9019 is approved and there's a
7 confirmation order?

8 A I'm sorry. Mr. Moxley that was --

9 Q I'll rephrase it.

10 A Yeah, repeat that for me because --

11 Q Is it your understanding, just as the mechanics of how
12 the new proposed form of order works, that the M2 parties,
13 including Mr. Lefkowitz will not have to pay anything for
14 years until after appellate process have run their course
15 and a final non-appealable order is made?

16 A That's not my understanding.

17 Q Not your understanding. When do you understand the
18 settlement payments will be made?

19 A Upon the entry of a final order of the Court, not
20 subject to an appeal. But, you said years. I don't have an
21 understanding of whether it's years, months, days.

22 Q So whatever that pass of time is, that's when it
23 happens?

24 A It happens when there's a final order that's not
25 subject to an appeal.

1 Q Okay. Is it part of the new construct that the
2 settlement payment will be put into escrow at confirmation
3 to void any risk of the settlement money might not be there
4 when that time arrives when a final non-appealable order is
5 obtained?

6 A Are you referencing a doc -- I'm sorry. There's no
7 document that I'm aware of that has that mechanic.

8 Q Right.

9 (Pause in the proceeding.)

10 Q Why was it that the prior version of Section 9 of the
11 settlement agreement did not require the entry of a final
12 order confirming the Plan as a condition, the effectiveness
13 of the agreement? Why wasn't the new construct, the
14 construct previously?

15 A It was a result of a negotiations initially in which
16 Judge Sanchez (phonetic) was -- Mr. Sanchez was involved
17 during mediation.

18 Q Right. That was something that was negotiated
19 previously with the UCC, right?

20 A It was.

21 Q You attended the -- did you attend the first day of the
22 hearing? No, you weren't here on March 1st?

23 A Correct, I was not here.

24 Q Okay. Did you hear about Mr. Barton's testimony on the
25 first day of the hearing that the most important reason from

1 the committee's perspective why the UCC supports the
2 settlement is because it gets money into the hands of
3 creditors now?

4 A I wasn't here. Mr. Moxley, for that I don't recall
5 that testimony.

6 Q Did anybody make you aware of the fact that Mr. Barton
7 testified that his understanding of what that meant, the now
8 money in the hands of creditors now meant that on
9 confirmation of the Plan?

10 A No one made me aware of Mr. Barton's testimony.

11 Q Okay. New proposed form of order doesn't provide for
12 settlement payments to arrive now at confirmation of the
13 Plan. It's down the road when a final non-appealable order
14 is obtained, right?

15 A The new language as it's written in 9A requires a final
16 order not subject to an appeal.

17 (Pause in the proceeding.)

18 Q And I think, Mr. Perry, that you actually previously
19 testified on questioning on the second day of this hearing
20 that one of the reasons you thought the deal was a good
21 deal, was because people would be paid quickly, right?

22 A Happy to look back at the transcript, if I used the
23 word quickly.

24 Q You can look at that.

25 A Talk about timing.

1 Q Let's look at the transcript. Again, it's Tab C of the
2 transcript binder, sir. And if you would turn with me to
3 Page 141.

4 (Pause in the proceeding.)

5 Q And if you look at Page 141, Mr. Kaufman on direct
6 asked you, "Do you believe the settlement is in the best
7 interest of creditors?" Your answer was, "I do."

8 Question, "Why?"

9 Your answer, "I think it's in the best interest because
10 I think it's value maximizing. I think if the Plan is
11 confirmed, with at least the ability to quickly liquidate
12 claims or a process to liquidate claims, then the money that
13 would be received by the Debtor on the effective date could
14 be distributed hopefully in some timely fashion.

15 "And I believe when taking all the factors that I
16 mentioned today into account, I think it's in the best
17 interest of the creditors."

18 That was your testimony, right?

19 A Yeah.

20 Q Is it your expectation, Mr. Perry, that Ankura is going
21 to have to wait until a final order confirming the Plan as
22 entered before it gets paid its fees and expenses in this
23 case?

24 A I don't -- Ankura has not filed a final fee
25 application, nor has there been, I think, a hearing set for

1 that. So I don't have an (indiscernible).

2 Q Okay, is the Debtor intending to pay its professionals
3 -- its professionals, the Debtor's professionals, prior to
4 the entry of a final order confirming a plan in this case?

5 A There are fee compensation procedures set up today.
6 And that's what the Debtor would follow until the Court
7 would change that -- those mechanics.

8 Q Okay. And the Debtor intends to do that, I take it,
9 from your earlier testimony by monetizing certain assets,
10 correct?

11 A I'm sorry, intends to do what?

12 Q I'll just ask it. How does -- under the -- your last
13 answer where you say the Debtor plans to pay professionals
14 in accordance with the current mechanics in place. How does
15 the Debtor plan to have money to do that?

16 A Well, currently within the 9019 there's a construct
17 where an additional 5 million would be received. That 5
18 million is memorialized within the budget, that I believe I
19 testified on originally, that the budget has budgeted
20 payments to be made to professionals according to the
21 mechanics of the compensation procedures today.

22 And there is a final column, at least in the budget
23 that's been filed, that has what I'll call effectively a
24 plug of monies that would be available to fund professionals
25 upon final fee application.

1 Q Okay. Is there -- other than those mechanics that are
2 set forth, is there any other agreement, any side agreement
3 for Ankura to be paid its fees in connection to this case?

4 A No, there's no side agreement.

5 Q Is the Debtor intending to pay the TCC's professionals
6 in this case prior to the entry of a final non-appealable
7 order confirming the Plan?

8 A I don't know.

9 Q What would inform that decision whether the TCC's
10 professionals would be paid prior to a final non-appealable
11 order confirming the Plan?

12 A I would need to study the compensation procedures
13 today. I would need to understand whether or not there's a
14 court order that would allow for the Debtor to fund fees. I
15 would need to understand whether there's objection periods
16 that have run, whether there's a fee application process
17 required.

18 It's really mechanics of both compensation and
19 available funding the Debtor may have.

20 Q Okay. And you previously testified the Debtor had
21 under estimated the fees and expenses for the TCC's
22 professionals in the budget, correct?

23 A Compared to the filed fee statements as of today, that
24 is correct.

25 Q Other than the DIP loan, does the Debtor have any other

1 source of funds available to pay professional fees and
2 expenses in this case?

3 A Yeah.

4 Q The ECR credit?

5 A If they're liquidated, yes.

6 Q Anything other than that?

7 A I receive small amounts -- I say I, the Debtor receives
8 small amounts. Usually a couple of times a week we receive
9 checks on old AR, old reimbursement claims, small amounts.
10 Those are fairly small dollars, but they are received.

11 There are, you know, clearly other type of cause of
12 actions that aren't being released in the 9019 that could
13 effectively be liquidated. The ERC's, there's two elements
14 of that. One is, we would wait for the IRS to actually fund
15 those ERC's or we could, you know, potentially monetize them
16 with third party.

17 Q Okay. And I appreciate that there are mechanics for
18 making payments. This question is slightly different from
19 the mechanics. I'm asking, Mr. Perry, for your knowledge.
20 Do you have knowledge of whether or not M2 Loan Co will make
21 money available to pay TCC's professionals in this case?

22 A I don't have knowledge of that outside of what's in the
23 budget today.

24 Q Okay. What is -- do you have any understanding at all
25 the amount of money that M2 Loan Co would make available to

1 pay the TCC professionals in this case?

2 A I do not.

3 Q How is -- how will the Debtor be able to satisfy its
4 obligation to pay the TCC's professionals in this case?

5 A My testimony originally, I walked through a
6 demonstrative where I had three numbers on a page. And I'm
7 happy to reference it.

8 But I had total anticipated administrative expenses. I
9 had amounts that had been paid or anticipated to be paid.
10 And then I had a delta, meaning an A minus. A being total
11 fees, B meaning amount available under the DIP for funding.

12 Well my testimony way, I believe, and I'm probably not
13 going to have state it perfectly, but there was about a
14 \$3 million number that I've estimated as part of the DIP
15 budget through a date certain in which that 3 million would
16 need to be funded by assets of the Debtor, including the
17 liquidation of the cause of action, the 40 million that
18 we're talking about today.

19 To the extent that that number is either too high or
20 too low, I would still expect the mechanics to be the same
21 as it relates to how those are funded.

22 Q Okay. And can the Debtor currently pay its debts as
23 they become due in the ordinary course of business?

24 A Yes.

25 Q Their obligations.

1 A We -- the Debtor currently has, you know, assets to the
2 extent that there is an agreement to fund or make payments
3 on those debts today. And when I say debts, I mean if folks
4 have filed fee statements or there's fee applications and
5 there are procedures in place to allow them to be paid.

6 I haven't done the exact math, but I believe we would
7 have enough in reserve to fund up until a point in time and
8 then I would need to liquidate other assets.

9 Q Okay. Well let me ask you as a matter of fact. As we
10 sit here today, can the Debtor currently pay its obligations
11 to the estate professionals as they become due and owing
12 each month?

13 A I have two forms of assets. Assets I can to liquidate
14 and assets I have already liquidated. As I sit here today -
15 - and I would need to run the calculations specifically, but
16 I believe I would be able to use the amounts that I have
17 already liquidated to fund certain amounts. And then I
18 would need to liquidate other assets to fund other incurred
19 amounts yet to be approved by the Court to be paid.

20 Q Okay. But your testimony is you could take those
21 steps; is that right?

22 A Sure.

23 Q So, -- okay.

24 (Pause in the proceeding.)

25 Q Mr. Perry and Your Honor, I have -- I'd like to move to

1 a different topic now. I would be happy to just carry on, I
2 really don't want to do that. But if the Court or the
3 witness would like a break, I'd be happy to take a short
4 break as well.

5 THE COURT: Mr. Perry?

6 THE WITNESS: No, I don't need a break.

7 MR. MOXLEY: Carry on?

8 THE COURT: How long do you think you have?

9 MR. MOXLEY: For the entirety of it sir? I
10 believe -- I would love to say I can finish in one more
11 hour.

12 THE COURT: Okay, let's keep going.

13 MR. MOXLEY: Okay, very good.

14 BY MR. MOXLEY:

15 Q So we talked a little bit, Mr. Perry, about the
16 employee retention credits or commonly referred to as the
17 Eric's, right?

18 A We have.

19 Q And the ECR is a refundable tax credit for certain
20 eligible businesses that have employees that were effected
21 during the COVID 19 pandemic, right?

22 A Generally that's correct, yes.

23 Q Okay. That's what it says in the IRS website?

24 A Yeah, I can't remember if it says reimbursable or what,
25 but yes that's correct.

1 Q Okay, very good. Very good. And the Disclosure
2 Statement and the notes to the liquidation analysis,
3 discusses ERCs. I'd like to take a look at that.

4 If we could go to Tab 18 in your binder, sir.

5 (Pause in the proceeding.)

6 Q Tab 18 -- and this is just for the record, this is
7 TCC's Exhibit 27. It's the second amended Disclosure
8 Statement. And if you turn with me to Page 65 of the
9 filing.

10 (Pause in the proceeding.)

11 Q Mr. Perry, so I stopped saying this. Can we -- you
12 understand when I say of the filing, you mean the pages that
13 are written on the top of the page?

14 A I do.

15 Q Okay. That's what I say, so. Very good. So we're on
16 Page 65 of the filing. The Disclosure Statement says that
17 -- and I'm looking at Section G. Do you see Section G on
18 the page?

19 A I do.

20 Q And the Disclosure Statement there says the Debtor
21 filed ECR returns after June 27th for 2020 in the aggregate
22 amount of approximately \$7.6 million. And returns for 2021
23 in the aggregate amount of approximate \$9.21 million, right?

24 A It does say that.

25 Q And the Disclosure Statement goes on to state that the

1 Debtor assumes the IRS will combine the ECR credits of 2020
2 and 2021 and offset the approximate \$8.2 million in priority
3 IRS claims and remit the balance to the Debtor, right?

4 A Correct.

5 Q And the prior seconded amended plan estimated Eric's to
6 be 12.6 million to \$16.7 million, right? I think you
7 pointed to a cite for that, if that's helpful, sir. That's
8 at Page 63 of the filing.

9 (Pause in the proceeding.)

10 Q I'm looking at row two in particular.

11 A That is correct.

12 Q Okay very good. And you testified on direct that on
13 the morning of this bankruptcy filing, February 13th, you
14 received, I think you said, a really extensive report from
15 Synergy indicating the Debtor would have access to
16 approximately \$10 million of ERCs. Do you recall that
17 testimony?

18 A I don't recall using really extensive, maybe I did.
19 But I did receive a report from Synergy, yes, that allowed
20 for the application of the additional proceeds.

21 Q If you used that phrase -- I'll represent to you that
22 you did.

23 A Oh, no worries.

24 Q If you used it -- if you used it, that was accurate
25 correct? Is that right?

1 A It is accurate that the amounts were increased by an
2 additional analysis provided to us by Synergy.

3 Q No, no. My question is a little bit different, sir.
4 So let's just make sure we're clear on this. Let's go to
5 the transcript. Just quickly. It's at Page 40 of your
6 direct examination.

7 (Pause in the proceeding.)

8 Q Are you with me on Page 40, sir?

9 A I am.

10 Q If you look at line 11 to 24. Do you see line 11, "So
11 if there was no amounts left under the funding agreement,
12 did you investigate other source of capital or cash that
13 could be used to fund the bankruptcy case?" You said,
14 "Absolutely."

15 "Explain that process to the Court." You were asked to
16 do that and you said, "The day we filed, February 13th, we
17 had received that morning correspondence from Synergy, our
18 third party, that was called the Employee Retention Tax
19 Credit. We had received a really extensive report from them
20 that basically indicated that the Debtor had access to it,
21 roughly \$10 million from Employer Retention Credits." That
22 was your testimony, right?

23 A What, that relates to \$10 million.

24 Q I understand. That's my question. That was your
25 testimony about the 10 million, correct?

1 A Different 10 million.

2 Q Different 10 million?

3 A Correct.

4 Q Okay, explain to me what you mean by different 10
5 million.

6 A Sure. So on February the 13th, when we filed, Synergy
7 Debtors third party tax consultant, we'll call them,
8 provided a report that morning as well as calculations,
9 files, things that I believe have been shared with TCC, that
10 "describe why the Debtor was qualified to receive these
11 credits." And explained the calculations.

12 Now, the reason why I testified that it was roughly 10
13 million is because that 10 million relates to the
14 liquidation analysis where it says, before June 27th -- and
15 I'm looking at Section G -- the Debtor filed ECR returns for
16 2021 in the aggregate amount of approximately 9.1 million."
17 One fiscal year.

18 My testimony here -- and I appreciate the words really
19 intensive -- because I felt relative to what I think you
20 others have received in this context -- the Debtor did
21 receive a fairly extensive report on why the Debtor
22 qualified for roughly 10 million. The liquidation analysis
23 had a perfect number of 9.1 and change.

24 But that was for fiscal year 21. Now as I testified a
25 minute ago, the Debtor has filed what we call 941 X's for

1 2021. It's now filed 941 X's for 2020. And when you
2 combine those fiscal years, the number is much higher per
3 what I have in my demonstrative which takes almost less than
4 \$30 million.

5 Q Okay, that's very helpful. Thank you for explaining
6 that. Let's look at that demonstrative, if we could. It's
7 in Tab 20 of your binder. This is your demonstrative.

8 If you go to Tab 20, just to set this out for the
9 record.

10 A Okay.

11 Q Let me know when you're there, sir.

12 (Pause in the proceeding.)

13 A I'm here.

14 Q You're there. Okay. And just for the record and for
15 the Court's benefit, I'll just note that there's the
16 handwriting at the top that says Perry Demo One that is --
17 I'll represent to you that's my handwriting.

18 A Okay.

19 Q So this is a scan of my copy of the demonstrative that
20 was handed out in hard copy form. I'm making the Court --

21 A Correct.

22 Q So, if you look at the employee retention credits line
23 two, you have the August 2023 settlement and January 2024
24 settlement columns. And you have the numbers there for each
25 of those, the same, with the estimates of the high and the

1 low. Do you see that?

2 A I do. Yeah they're the same.

3 Q They're the same as of that time, right? As of each --

4 A They're the same as of the time of this demonstrative
5 was prepared, correct.

6 Q Right. Okay, okay. Now you had testified, I think, on
7 direct that the Eric's went up a fair extent, was the phrase
8 that you used, from what was in the liquidation analysis
9 versus what you now represent in the demonstrative, correct?

10 A That's correct.

11 Q Okay. And can you just explain why it was that those
12 amounts increased to that magnitude from what was in the
13 liquidation analysis to what's in the demonstrative?

14 A Sure. So the third party consultant, Synergy, was
15 engaged to calculate the amounts of the credits that would
16 be available to the Debtor. Both whether the Debtor
17 qualified for those and then the calculations connected to
18 that qualification.

19 Synergy performed I believe months of work around this
20 both to confirm the qualification and then obviously to
21 calculate it.

22 As I mentioned a second ago, when we -- when the case
23 was filed, I was aware of 9.1 million for fiscal year '21.
24 Synergy had yet to complete its analysis for fiscal 2020. I
25 don't have the exact date, but I believe that analysis was

1 completed I want to say sometime towards the end of the
2 year. Maybe September, October.

3 That added an additional 7 million in change to the
4 total. Okay, fiscal year 21. We then asked Synergy to go
5 back and determine whether or not there were additional ECR
6 credits available to the Debtor.

7 I think they call it -- they reference it as a term
8 like payroll optimization, I believe, is their word for it.
9 But whether there was additional amounts available to the
10 Debtor for both fiscal years 2020 and 2021. Synergy
11 performed additional diligence. They completed additional
12 calculations. And they provided us with a analysis both
13 supporting our qualifications information as well as the
14 actual self filed backup calculations.

15 And those numbers revised from this -- let's call it
16 7.6 plus the 9.1. They revised up to the numbers on the
17 high end of my demonstrative.

18 Q Got it.

19 A Close to 26 million.

20 Q Thank you.

21 A It's technical, so I hope --

22 Q No, no. I appreciate the explanation. When in time
23 did you receive that analysis from Synergy that caused your
24 estimation to go up as reflected in the demonstrative?

25 A It was sometime before I shared the file with TCC as

1 part of their request for information. So probably
2 December, maybe late December, early January. I don't have
3 an exact date.

4 Q Okay. But before you received that analysis in
5 December or early January, you didn't have reason to think
6 that -- strike that. You received that analysis in December
7 or early January, that's when your understanding of the
8 number went up? That's when, in time, it happened?

9 A I needed the analysis to be complete before I could
10 even take a position on whether or not there was there
11 additional amounts. I didn't know until I received the
12 report.

13 Q Okay. Okay. So is it -- so when the Disclosure
14 Statement was filed on October 27th -- and I'm looking back,
15 just so you know, I'm looking at Page 63, which is that
16 chart we just looked at in the liquidation analysis. The
17 numbers that are reflected in row two there for the ECR
18 credits, those numbers are the 12.5 to 16.7 million, right?

19 A Correct.

20 Q Okay. So what I guess I'm trying to understand, sir,
21 is why was it that in October, that was what was represented
22 in the Disclosure Statement on the likely recovery on the --
23 I say recovery, the likely amounts to be received on the
24 ERCs. Was that all based on Synergy? Was it based on your
25 work? How was it that those numbers came to be in the

1 Disclosure Statement.

2 A And the Debtor didn't calculate these numbers. The
3 Debtor's tax advisor, as I call it, Synergy Tax Credit
4 Advisor. Synergy provided the Debtor with both the written
5 reports confirming qualifications as well as the
6 calculations.

7 Those are all the numbers that I had at the time that I
8 could essentially verify. The 941 X's for 2021 had been
9 filed. The 2020 had not been filed.

10 So therefore, the IRS wasn't even informed yet of the
11 additional 7.6. They were only informed of the 9.1.

12 Q Got it.

13 A So at that point in time, it's the only numbers that I
14 was aware of.

15 Q Would this had been possible for Synergy to calculate
16 the numbers that resulted in the approximately \$26 million
17 that you estimate now in the high end for the ERCs, would it
18 have been possible to do those calculations before the
19 Disclosure Statement was filed?

20 A Oh I pushed them all the time. And we had pushed them
21 to do the calculations.

22 Q Right, you were pushing them.

23 A It wasn't available to me until they submitted the
24 report and they were giving me no guidance on what the
25 potential opportunity was.

1 Q Right. So you were just waiting on them to complete
2 that task?

3 A I didn't know for sure that it was a task that they
4 were going to complete because number one, the idea of this
5 sort of optimization, this third, sort of stage in the
6 process. And my mind was a bit speculative as it relates to
7 whether or not we qualified; whether or not the calculations
8 were going to be completed; whether or not it was even
9 available.

10 I mean, it was very speculative up until the point in
11 time where I received a report, reviewed the report and felt
12 comfortable with filing.

13 Q Okay. What I'm wondering is, I know how much care you
14 wanted to take in terms of feeling comfortable with the
15 report and being able to file accurate forms. I'm wondering
16 why the same level of care wasn't taken with respect to the
17 Disclosure Statement? Why were these numbers that could
18 have been calculated in October, put in here at these lower
19 figures when if only that task had been completed, you could
20 have had more accurate information in the Disclosure
21 Statement?

22 A The Disclosure Statement was accurate as I understood
23 it at the time. I didn't have a payroll optimization
24 analysis. I had no idea -- I don't even think Synergy had
25 really begun the analysis at that point in time.

1 Q You're a restructuring professional.

2 A Very correct. I am.

3 Q You understand the importance of Disclosure Statements
4 as to the process, right?

5 A I do.

6 Q Okay. You understand the Court has to approve a
7 Disclosure Statement as containing adequate information
8 before you can solicit those on the Plan, right?

9 A I do.

10 Q And the difference is between the Disclosure
11 Statement's estimates and your estimates now and the
12 demonstrative that you shared with us on March 5th and with
13 the Court, they're pretty dramatically different, aren't
14 they?

15 A Yeah, I was elated. Another \$10 million of proceeds to
16 distribute to the creditors. I thought it was a fantastic
17 result. When the report came in, I was -- yeah, I was
18 extremely excited and to be honest I worked very hard
19 getting these numbers in.

20 And once they were received, you know, obviously beyond
21 filing a -- this Disclosure Statement, you know, I was ready
22 to incorporate it into an updated analysis.

23 Q And how certain as you sit there today, sir, are you
24 that the ECR range will remain that estimate 19 to \$26
25 million?

1 A That's probably a better question for the IRS. I have
2 been engaging with the IRS since the, you know, probably a
3 week or two after the case filed.

4 There was an IRS officer that attended one of the 341
5 meetings. We have engaged with that individual. We have
6 engaged with other individuals. I've received
7 correspondence from the IRS that effectively has confirmed
8 the filing of the 941 X's.

9 And the IRS has personally confirmed to me that three
10 of -- of three tax id's, one of tax ids they've already
11 applied some of the credits to some of the outstanding
12 taxes.

13 So as I sit here today, I can't speak for the IRS. I
14 don't pull the trigger for the IRS. I don't otherwise file
15 the forms, you know, inside the IRS to make this official.

16 What I do know is that the IRS has communicated to me
17 that there is a moratorium in place for filed ECR credits.
18 That there was a potential deadline of a date, but I think
19 it was sometime in January, in which all ECR 941 X forms
20 needed to be filed.

21 And to this date, the IRS has yet to communicate it to
22 me that they're not going to follow along with the logistics
23 in the plan, which is to apply the credit once the
24 moratorium is lifted, to the priority tax claim amount and
25 distribute the rest to the Debtor.

1 Q Any chance you might find another \$10 million tomorrow?

2 A Well, since you asked. You know, part of my original
3 testimony was back on the demonstrative for number 20.

4 Q Yep.

5 A I think my testimony was that some of these other
6 amounts in here -- for example the 1.5 to 3 million there
7 maybe other folks that enter evidence, I believe, that
8 number might be like.

9 There's amounts in here on the insurance line at 5 to
10 10 million. You know, that process clearly needs to play
11 out, particularly in the State of Arizona to determine
12 whether or not there's additional proceeds for claimants and
13 those amounts.

14 So, Mr. Moxley, I can't tell you there's another 10
15 million, but you know, my hope is as the CRO, that there are
16 additional amounts that can be distributed to the estate.

17 Q Okay. Let's turn to the insurance please. On direct
18 examination, you testified that among the sources of capital
19 to fund the bankruptcy case that you looked at, were
20 insurance policies that were allocated to Debtor in the
21 divisional merger, right?

22 A That's correct.

23 Q And at the outset, you knew there were insurance
24 policies, but you didn't know much beyond that about, I
25 think you said, the extent that we could use those insurance

1 policies, right?

2 A Correct. The divisional merger documentation I think
3 provided for the insurance policies that were allocated to
4 called RemainCo, obviously the Debtor, today, but we knew
5 the presence of insurance policies. We didn't know the
6 mechanics of those policies and that took some time to
7 determine.

8 Q Okay. Are you an expert in insurance loss, sir?

9 A I'm not, no.

10 Q Are you an expert in coverage defenses?

11 A No, I'm not.

12 Q Do you have any special certifications in insurance
13 coverage?

14 A I have no certifications in insurance, no.

15 Q Did you evaluate the insurance coverage?

16 A Counsel did.

17 Q Not you, right?

18 A I evaluated the results of the analysis. I
19 participated in two separate mediation sessions and I have a
20 general understanding of, you know, the insurance policies
21 and the mechanics that we disclosed.

22 Q Who are the counsel that analyzed the insurance
23 coverage?

24 A Both the Unsecured Creditors Committee, I believe,
25 provided counsel, insurance specialist, as well as the

1 Debtor.

2 Q You say the insurance specialist. Are you aware of
3 which attorneys at Gray Reed for the Debtor are insurance
4 specialist as you said?

5 A Yes. Stephanie is one and I'm just drawing a blank on
6 the other. But there's a practice in Gray Reed my
7 understanding specializes in strictly insurance. They were
8 part of the first mediation, assisted with the analysis and
9 developed an analysis leading up to both mediations and I
10 think assisted with development of the exhibits that were
11 filed with the plan.

12 Q Did those two Gray Reed insurance attorneys provide you
13 with a memoranda concerning insurance available in this
14 case?

15 MR. KAUFMAN: Your Honor, I'm going to object.
16 This is calling for attorney/client privilege information.

17 MR. MOXLEY: Your Honor, he put in his
18 demonstrative a value for the insurance coverage which we
19 think -- spoiler alert -- is too speculative. And so I can
20 understand the basis for his understanding that the
21 insurance can be between 5 and \$10 million.

22 THE COURT: I think you can answer without
23 revealing any attorney/client privilege.

24 THE WITNESS: Okay, so the analysis of the
25 insurance and any further analysis of the insurance would

1 have been part of the mediation because we mediated
2 insurance policies twice. So I can't answer and I won't
3 answer anything that may invoke communication privilege.

4 But what I can do if assuming in any of these
5 binders the insurance exhibit exists, I can walk us through
6 that. And I can explain my rationale to 5 to 10 million and
7 why, you know, the number is really an estimate.

8 BY MR. MOXLEY:

9 Q And we'll get to that. I want to hear your analysis on
10 the 5 to 10 million. But before we get there, what I'd like
11 to understand, Mr. Perry, just what that analysis is based
12 on. So I appreciate those things happened in mediation.
13 I'm not asking you to disclose substantive mediation
14 discussions.

15 All I'm asking you to do is just to confirm whether or
16 not you were provided with any written analysis by the Gray
17 Reed lawyers that you said were insurance coverage
18 attorneys. Did they provide you any written analysis
19 coverage?

20 Don't tell me what it is. Just did they provide you
21 any?

22 A There was analysis provided to the Debtor, the
23 mediator, and to other parties in connection with the
24 mediation.

25 Q By those insurance attorneys about insurance?

1 A Yes.

2 Q Okay. And did anyone for -- you mentioned that counsel
3 to the UCC, the Stenson firm, also had insurance analysis
4 undertaken. To your knowledge, was -- were those lawyers
5 who also specialized in insurance?

6 A It's my understanding, yes.

7 Q Okay. And did you receive any written analysis from
8 the Stenson firm insurance lawyers about insurance coverage
9 in this case?

10 MR. KAUFMAN: Your Honor, I'm going to object on
11 the basis of mediation privilege. If the settlement party
12 or the mediation party provided written materials to
13 Mr. Perry, that would be strictly covered by the mediation.

14 MR. MOXLEY: Your Honor, again, I'm not asking for
15 the substance, I'm just asking were written materials on
16 insurance provided. We really need to, I think Your Honor,
17 to understand what the basis of Mr. Perry's demonstrative
18 numbers are with respect to insurance.

19 He's testified now that he received some written
20 analysis from the Debtor. I'd like to understand if he
21 received written analysis from the UCC. I'm not going to
22 ask for what the conclusions were. I just want to know
23 whether he got any analysis.

24 THE COURT: Counsel?

25 MR. KAUFMAN: It's whether he got written

1 materials or not in the context of mediation is strictly
2 covered by mediation.

3 THE COURT: I think that's right. I think that's
4 right. I'll sustain the objection.

5 MR. MOXLEY: Okay.

6 (Pause in the proceeding.)

7 BY MR. MOXLEY:

8 Q Mr. Perry, do you know how long coverage actions
9 typically take?

10 A I only know generally that there could be a length of
11 time between when an incident occurs and when a final payout
12 to a claim that may exist. And part of those payouts may be
13 insurance related.

14 Q Okay. If I told you sometimes insurance coverage
15 disputes can last years, if not decades, would that surprise
16 you?

17 A It wouldn't surprise me.

18 Q Do you know how much those coverage litigations that
19 can last years or decades may cost?

20 A My understanding it could be a costly process depending
21 on the nature of the claim and the litigation that adheres.

22 Q Have you every personally advised on a coverage action?

23 A I have not.

24 (Pause in the proceeding.)

25 Q I'm going to ask this question without attempting to

1 invade any mediation issues. If there's a mediation
2 component, just let me know.

3 But outside of mediation, did you evaluate claims and
4 defenses that may arise in actual coverage in this case?

5 A Not outside of mediation.

6 Q You testified on direct examination about insurance
7 being available herewith "low SIRs." I can show you that
8 testimony if you need it. But my question to you is just,
9 what is an SIR?

10 A SIR stands for self insured retention. In layman's
11 terms it basically means work that can do with the
12 deductible. Meaning you have to fund a certain amount prior
13 to being able to have access to the actual underlying
14 proceeds of the insurance policy.

15 Q What other risk factors that you consider when you're
16 preparing your demonstrative regarding specifically the
17 insurance estimates.

18 A Risk factors just would have included the process by
19 which a claimant would otherwise be able to liquidate
20 proceeds under the policy. Part of the initial mediation,
21 as a result of that mediation was procedures that had been
22 produced from that.

23 Other mediation or other processes that would allow a
24 claimant to mediate with that insurance provider and seek a
25 liquidation of their claim.

1 Q Who are the insurance companies that issue policies to
2 the Debtor?

3 A I'd have to look at the demonstrative and I can walk
4 you through those. There's a handful of them.

5 Q The names of the policies are in your demonstrative?

6 A Yeah.

7 Q Let's look at that and it's at Tab 20.

8 (Pause in the proceeding.)

9 A It's not a demonstrative. In the exhibit to the
10 Disclosure Statement.

11 Q Oh, the exhibit to the Disclosure Statement.

12 A Correct.

13 Q I see. Could you turn us to that -- that where you're
14 referring to?

15 A I was just handed the binder this morning, so if you're
16 telling me it's not here, then I won't --

17 Q Oh you --

18 A -- flip every page.

19 Q -- I'm sorry. I apologize. I can refer you to the
20 Disclosure Statement.

21 A Okay.

22 Q Where in the Disclosure Statement? You can do that,
23 okay. All right, so we're looking at Tab 18, sir.

24 MR. KAUFMAN: Your Honor, I think the TCC's binder
25 at Tab 18 is not the entirety of the Disclosure Statement.

1 So just to help Mr. Moxley, we may want to use the one
2 that's in the Debtor's, in UCC's exhibit.

3 MR. MOXLEY: That's fine. I assure, Your Honor,
4 that was an advertent.

5 MR. KAUFMAN: Which, incidentally, is Tab 18 in
6 our binder, too.

7 MR. MOXLEY: Well, there you go.

8 MR. KAUFMAN: It's at Debtor UCC Exhibit 18. It's
9 docket number 1410-18.

10 MR. MOXLEY: Thank you, Mr. Kaufman.

11 (Pause in the proceeding.)

12 BY MR. MOXLEY:

13 Q So that's in the black binder, sir.

14 A Okay.

15 Q Go to Tab 18 there. And, again, Mr. Perry, just the
16 question as you're going to that is just what are the names
17 of the insurance companies?

18 A Okay.

19 Q And I'm happy for you to reference the Disclosure
20 Statement noted.

21 (Pause in the proceeding.)

22 A Okay, so I am on Page 72 of 177, Tab 18. And this is a
23 schedule that was attached to the Disclosure Statement filed
24 last October.

25 The schedule here lays out the policy and the column

1 that says policy most of these are the names of the
2 insurance companies. Some of the policies have, obviously,
3 much longer names, but Lone Star Alliance, Lexington,
4 Ironshore, Plymadico (phonetic), Coveries (phonetic),
5 Nationwide, Oxford.

6 These are names of the policies and often times also
7 the name of the insurance company.

8 Q Very good, sir. And my question now is did you read
9 any of these policies?

10 A I read and reviewed the analysis that was produced as
11 part of mediation.

12 Q Okay. Is it your understanding that someone for the
13 Debtor reviewed the policies that are scheduled here?

14 A Yeah.

15 Q Okay. Are you aware -- this also sets forth the limits
16 on each of the policies, correct?

17 A It does, yes.

18 Q Okay. And what is the column excess unpaid limits
19 represent?

20 (Pause in the proceeding.)

21 A Okay, you're referring to Page 73.

22 Q I apologize, yes.

23 A Okay so Page 72 is professional liability policies.
24 Page 73 are excess policies.

25 Q Right.

1 A What that basically means is these are policies that
2 sit on top of underlying policies. Meaning these are
3 sometimes we refer to them as like balloon policies or
4 umbrella policies. They step in, you know, when there are
5 large claims that are liquidated and SIR is not satisfied.

6 So excess limits just basically means these are the
7 limits underneath the policies that would begin at certain
8 points in time.

9 Q Okay. Are you aware of the remaining limits on these
10 policies? Is that set forth anywhere in this schedule?

11 A Which policy?

12 Q Of any of the policies that are listed on the schedule
13 two that you're pointing us to where the remaining limits.
14 What's left on those insurance policies is that represented
15 anywhere in this?

16 A Well, the schedule two or Page 72 has a column that
17 says outstanding self insured retention. Second to the
18 right. In -- I'll just focus on the what we call LSA
19 policies, Loan Star Alliance.

20 And what you see is outstanding self insured retention.
21 For example for the first two policies are zero. That means
22 that number that I referenced a second ago or the
23 terminology where I used the term deductible because it's
24 technical insurance for most of us, that's what would be
25 synonymous with the self insured provision. Those amounts

1 have already been paid.

2 Now the far right column of aggregate unpaid limits,
3 those are the unpaid limits available underneath the policy
4 that the SIR would need to be satisfied in order to get to
5 those. Okay, so it's just pure math.

6 Q Right.

7 A So, for example, the first two, there's a \$4.4 million
8 amount unpaid under that policy without an SIR. So that
9 would be the amount available under that policy.

10 Q That's how this chart works. I just want to make sure
11 the record was clear on how the chart works.

12 A That's correct.

13 Q Okay, so for each of these policies, we can do that
14 math, I think using those two columns, correct?

15 A You can.

16 Q Okay. Are you aware of what the triggering events are
17 for these policies?

18 A I don't know what you're referring to triggering
19 events.

20 Q That's fine. Are you aware if the claims have been
21 submitted under these policies -- if any claims been
22 submitted?

23 A That would have been part of mediation analysis.

24 Q Okay. I'm not trying to interfere with that, so if
25 that's the case, just let me know that. Are you aware of

1 whether or not any claims have been paid or denied under any
2 of these policies?

3 A I won't answer what was in the mediation analysis, but
4 what I will tell you is that, for example, the first row
5 again says \$6 million aggregate, \$2 million per claim would
6 be the third column on the left.

7 And the aggregate unpaid limit is less than that. That
8 just basically means there have been claims paid. I don't
9 know under each individual policy, as I sit here today,
10 outside of the mediation analysis, whether there is claims
11 that have been denied. But I do know that just based on the
12 numbers in this demonstrative, there have been paid a claim.

13 Q Thank you, understood. Have you, Mr. Perry, met with
14 any of the insurers that are listed in schedule two?

15 A Yes, we mediated twice with insurance.

16 Q Oh, I'm sorry. Outside of mediation?

17 A Outside of mediation I believe counsel has interacted
18 with every single one of the insurers because early on in
19 this case there was a process set forth where which we would
20 mediate with the insurance companies separate and apart from
21 a global mediation.

22 So the goal was to mediate with the various insurance
23 policy -- insurance carrier, set forth a process or even
24 liquidate policies. Only two of those insurance carriers
25 agreed to met with us.

1 Q Do you know why that is the others did not agree --

2 A Those have been likely discussions between counsel.

3 But my understanding is, you know, there were others --

4 other policy -- insurance carriers that didn't agree to

5 mediate because they wanted to see the results of, you know,

6 earlier mediation or initial mediation.

7 Meaning no one wanted to be the first mover. Once, you

8 know, we mediated with LSA and set forth, then, you know,

9 only one of the parties came forward to mediate.

10 Q So let's look at your demonstrative now, which is

11 Page -- Tab 20 of our binder, sir. I think you can set the

12 Debtor's binder aside now.

13 A I'll leave it open. I think I know where we're headed.

14 Q Okay. Don't steal my thunder.

15 A Okay.

16 Q So in your demonstrative -- and let me just ask do you

17 happen to know if demonstrative (indiscernible). Okay, very

18 good. All right.

19 In your demonstrative, it's Tab 20 of your binder, you

20 testified on direct examination about line four, the

21 insurance line, right?

22 A I did.

23 Q Okay. And the low estimate in your insurance line,

24 line four of your demonstrative, was -- you ascribed to

25 insurance proceeds and third party recoveries \$5 million in

1 low end and \$10 million on the high end, right?

2 A That's correct.

3 Q Okay. So, what is your basis for those low and high
4 estimates?

5 A If we flip back to the liquidation analysis. Schedule
6 2 within that analysis, and the steps that I just walked the
7 Court through we go see in that far right column -- again
8 when you just simply perform math, is that first policy
9 alone has \$4.4 million available.

10 The next policy 400, the next policy call it 4.4. The
11 next policy, you know, 3.7. The next policy 5.8. The next
12 policy 4 million. The next policy 4 million, the next
13 policy another 4 million. I could keep going.

14 But the point is if the SIR's are satisfied, then there
15 are substantial amounts available under these insurance
16 policies. My view \$5 million is just simply a, you know,
17 call it an estimate of what could be available for
18 claimants.

19 Now, the issue is the process would need to take place
20 in order for both claims to be liquidated and the insurance
21 carriers to pay out. But, of course, that was the intent of
22 mediation and, you know, the LSA process that we then put in
23 place, provides for the debt to occur.

24 Q And just to make sure that we're clear on -- let me ask
25 you this first. How could the SIR be satisfied?

1 A Well the SIR historically have been satisfied just
2 through, you know, payments to claimants or payments to you
3 know, individuals underneath the policy or folks that had
4 filed claims and which amounts have already been paid.

5 Q Right. So let's just go through this process so that
6 the record is clear. So the process to get to these
7 insurance amounts, you have to file the claim and
8 potentially win any coverage dispute if the claim was
9 contested by the insurance company, right?

10 A I can't testify on behalf of an insurance company and
11 exactly what their process would be. But at a very high
12 level, you would file a claim. There would be a process by
13 which you would liquidate that claim and then the insurance
14 carrier would pay out.

15 Q Okay. And you understand, Mr. Perry -- well let me
16 strike that. Let me just lay this foundation. You
17 obviously -- I think you testified on direct about this --
18 you read Mr. Atchinson's declaration that was exchanged in
19 connection with this case, right?

20 A I did. It's been a while, but yes I did read it.

21 Q Okay. And you understand that Mr. Atchison used the
22 insurance asset as too speculative to assign any particular
23 value to it, right?

24 A I don't recall him taking that position, but if it was
25 part of his analysis then, you know, it's fair.

1 Q Okay. Well what I'd like you to -- I don't know if you
2 can answer this next question given that last answer,
3 Mr. Perry, but I'll ask it anyway.

4 What's the basis for your disagreement with MR.
5 Atchinson that the insurance is too speculative to value
6 since you ascribe a value?

7 A Well, I can't testify as to what Mr. Atchinson
8 thinking. I think he can testify and I think will testify
9 to that. But what I can say is both the Debtor and the
10 committee -- again I want to be careful with mediation --
11 but there has been sensitive analysis of each and every one
12 of these policies of claims that have been filed within each
13 of these policies.

14 And the analysis that was produced at mediation was,
15 you know, comprehensive, was fulsome and you know, allowed
16 for us to effectively mediate.

17 Q Okay. Will there be enough money paid to the personal
18 injury trust to satisfy the SIRs in these policies?

19 A Each individual claim requires its own process and have
20 satisfied the SIR assuming it hasn't already been satisfied.

21 Q Okay. Let me ask you this very basic question. How
22 certain are you that the insurance recoveries will be
23 between five and 410 million?

24 A I really can't answer the question as to how certain
25 of. You know, I'm confident that the process that the

1 Debtor and the committee mediated, that allows for a
2 claimant to bring forth its claim, mediate, otherwise
3 litigate its claim and you know, reach a liquidated amount.
4 I believe that process is very certain at least as it
5 relates to what resulted from the mediation.

6 And I believe it provides an opportunity an opportunity
7 for creditors bring forth their claim in a forum that allows
8 them to liquidate it. And, you know, based on what I
9 testified around the aggregate unpaid limits here, are
10 substantial amounts of insurance policies or amounts under
11 the insurance policies available.

12 Q Okay. Let's just contrast your thinking on the level
13 of certainty that you have around five to \$10 million
14 insurance asset against the level of certain that you have
15 in ERC credit.

16 I believe on direct examination I can point you to
17 testimony if you like. You testified that you had no reason
18 to believe those amounts won't be liquidated. It's just a
19 matter of time for the ERC, is that right?

20 A That's correct.

21 Q Okay. So your level of certainty around the ERCs is
22 that you filed out the form, submitted the form. It's just
23 a matter of time of the IRS running through its processes
24 and that money will come in one day. We don't know when,
25 but it'll come in one day, right?

1 A That's correct.

2 Q Okay. Not so with the insurance recoveries, right?
3 They're subject to the process that you just outlined for
4 us, right?

5 A Apples to oranges and the reason for that is I already
6 completed a process on the -- for the ERC's by which we
7 "liquidated" that amount meaning we've run -- we've engaged
8 third party consultants to run the numbers.

9 We've determined that we're qualified. We have filed
10 those amounts and we are now waiting for payment. That's a
11 different process at least at it relates to how we are in
12 the stage, in an insurance policy process.

13 Q Very different process, right?

14 A Not necessarily but it is different as it relates to
15 where I am in the ERC process and where we are in the
16 insurance process.

17 I, the Debtor, am the one that has brought forth the
18 amounts under the ERC credits. I have personally signed the
19 941 X forms. I personally engaged with the IRS. And I have
20 the ability to say that this is a liquidated amount that I'm
21 waiting for payment.

22 The insurance process is a little bit different because
23 there are claims that have been filed under each of these
24 insurance policies. We have put forth a process that would
25 allow for the claimant to move forward.

1 The claimant will have the ability to bring forth its
2 argument of why it believes the claim would be liquidated at
3 a certain amount. The insurance company and the claimant
4 will otherwise litigate that. That will determine or result
5 in a liquidated claim that my hope is the plan would provide
6 payment for.

7 Q Mr. Perry, to whom do you owe fiduciary duties?

8 A I owe fiduciary duties to all the creditors in this
9 case.

10 Q Do you owe a fiduciary duty to Mr. Lefkowitz?

11 A Well, as it states currently, Mr. Lefkowitz has filed
12 or at least related parties have filed proof of claims. To
13 the extent that makes him a creditor in this case through
14 those proof of claims, then I have a fiduciary duty to all
15 creditors in this case.

16 Q Right. And so that means also you owe a fiduciary duty
17 to tort claims, right?

18 A All creditors in this case, correct.

19 Q After the TCC was formed, did you meet with any TCC
20 members?

21 A I don't believe I've met with any TCC members, no.

22 Q Did you, Mr. Perry, request a meeting with a TCC
23 member?

24 A No, we engaged with TCC professionals to begin my
25 process in the restructuring matter and in Chapter 11.

1 Q After the TCC was formed, did you make any
2 presentations to the TCC members or their professionals?

3 A Yes. At the first mediation that the TCC joined I
4 specifically remember a discussion at the beginning of that
5 mediation in which there were -- oh, I'm sorry. I'm sorry.

6 MR. KAUFMAN: I'm going to cut Mr. Perry off at
7 this point --

8 MR. MOXLEY: All right.

9 MR. KAUFMAN: -- we're going to get into
10 mediation.

11 MR. MOXLEY: I know and I did not mean to elicit
12 the mediation testimony. That's fine. Thank you.

13 THE WITNESS: My fault. Ask your question again
14 and I'll --

15 BY MR. MOXLEY:

16 Q Let me just --

17 THE COURT: It's privileged to say whether someone
18 gave a presentation at mediation?

19 MR. KAUFMAN: I think Mr. Perry answered the
20 question, but then he was going a step further.

21 THE WITNESS: Yeah, I was probably going to keep
22 talking, so I appreciate that.

23 THE COURT: Okay.

24 BY MR. MOXLEY:

25 Q So just to the Judge's point, just so the Record is

1 clear, you gave a presentation to the TCC. Your testimony
2 is that you gave a presentation to the TCC and their
3 professionals at the mediation.

4 Outside of mediation have you given any presentations
5 to TCC members or their professionals?

6 A I count on the professionals to provide any information
7 that I provide to the TCC to the members, just to be fair.
8 I have provided and responded to a number of inquiries from
9 TCC professionals.

10 Analyses, diligence question things of that nature. I
11 would consider that to be presentation. Presentation has a
12 lot of different meanings. So in the diligence responses
13 that I provided the TCC professionals I think that
14 absolutely would, you know, would constitute a presentation.

15 Q Under the last filed plan -- so we're going back to the
16 second amended plan now -- all the ERCs would go to the
17 trust for the non-PI plans, right?

18 A Under the October plan, there was an allocation that
19 was created that had a lot of different mechanics that I
20 would fully anticipate we would restructure and reset based
21 on new mechanics under a new Plan.

22 Q Okay, so restructuring and resetting was not my
23 question. But let's just do this is a more formal way than
24 Mr. Perry. Look at Tab 18 in your binder.

25 (Pause in the proceeding.)

1 Q That again is the -- it's actually the seconded amended
2 Disclosure Statement, Tab 18. UCC's Exhibit 27 for the
3 Record. And if you could turn with me to Page 142 of the
4 filing.

5 And if you look at section number one, pull up the --

6 A Okay. I'm here.

7 Q -- see if that's all right title and interest of the
8 Debtor and in to all tax credit refunds including without
9 limitation, all employee retention credits are in the trust
10 distribution plan.

11 A I do.

12 Q And the insurance coverage and the insurance recoveries
13 went to the separate trust of the PI claims, right? That's
14 at Page 164.

15 (Pause in the proceeding.)

16 A And there's a Subsection (d) on page 142 that says, "All
17 rights under policies not assigned to first injury trust."
18 So under the old construct of the Plan, I believe what that
19 meant was all the insurance policies would be assigned to
20 the PI trust.

21 Q Right, okay. So the insurance recoveries went to the
22 trust for the PI claimant and the ERC credits all went to
23 the non-PI trust under the old plan, right?

24 A Under the old plan that's correct.

25 Q And I fully appreciate, Mr. Perry, the Debtors is not

1 advocating for this second amended plan or it's Disclosure
2 Statement any longer.

3 But at the time that this was filed, the Debtor
4 supported that allocation, right?

5 A At the time it was a joint plan, both the Debtor and
6 the committee supported the allocation, correct.

7 Q Why, Mr. Perry, would the Debtor consistent with its
8 fiduciary duties are that only the non-PI claimants would
9 get the ERC money?

10 A Well the answer to that question I would need to
11 reference the liquidation analysis connected to the original
12 plan. If you'd like to do that, I can walk you through it.

13 Q How -- just before we do that, how would that inform
14 the answer to that question?

15 A Because it has calculations on what estimated
16 recoveries were for each prospective class.

17 Q Okay. Well before we take that exercise, let me ask
18 you this. Aren't all general unsecured creditors of the
19 estate entitled to share in access?

20 A Depending on the absolute priority of the Chapter 11
21 process, unsecured creditors would share any proceeds below
22 a certain amount. Because then other claimants have been
23 fast forward.

24 Q And is there for any reason why the ERC asset is
25 different is a different type of asset than what you just

1 described?

2 A No, we -- the Debtor and the committee started with a
3 full amount available for distribution to creditors and the
4 calculations for Class IV and Class V under the previous
5 plan were meant to show up, you know, fairly similar
6 recovery for both parties.

7 Q So if I ask you this question, why are the ERC assets
8 being excluded from certain of the creditors under the old
9 plan, namely the PI claimants, could you answer that
10 question without referencing the liquidation analysis?

11 A Sure.

12 Q Okay, what's your answer?

13 A Because there are other assets that are allocated only
14 to the PI trust that aren't allocated to the liquidation
15 trust. It's just math. You said what are estimated
16 amounts, assets. How do we effectively allocate those --
17 the Class IV and Class V to receive a similar recovery such
18 that neither class is disadvantage according, you know,
19 consistent with the other.

20 Q Okay. And that's your understanding why the Debtor was
21 comfortable with the allocation of the ERC credits in the
22 old plan?

23 A You know, it was a fair and equitable approach is what
24 it was.

25 Q And is that -- is that the focus of the Debtor making

1 sure there's a fair and equitable distribution of assets to
2 all creditors?

3 A In value maximizing, yes.

4 Q Well let me ask you this, is the Debtor's -- I'm just
5 trying to understand where the Debtor is coming from in
6 terms of how assets that are pooled will ultimately be dealt
7 with among creditors.

8 Is the Debtor focused on maximizing the value of all
9 assets and then allowing for the UCC, the TCC other
10 interested parties to negotiate from there how they will be
11 allocated? Is that the Debtor's approach?

12 A Yes, that's -- my hope is, Mr. Moxley, we finish this
13 hearing and we get right to work on that exact point.

14 Q Is the Debtor essentially agnostic as to how the assets
15 are allocated? The ideas is to maximize their value and
16 then we'll leave it to the committees and other interested
17 parties to work on allocation?

18 A The Debtor needs to have a role in that process.

19 Q Is it your view that the Debtor should be an advocate
20 for equitable pre-minimum for all creditors?

21 A Creditors is going to be one of the parties that will
22 propose a plan that likely we'll need to testify on the fact
23 that the plan is fair and equitable and value maximizing.
24 And as the Debtor and my role, I intend to ensure that a
25 Plan that I put forth would, in fact, accomplish that.

1 I think any allocation or how the actual proceeds would
2 be distributed to creditors and how it would flow through
3 the actual plan that we've yet to pull together, I think
4 would be absolutely in the best interest of the Debtor to be
5 part of that.

6 Q What I'd like to understand, Mr. Perry, is why the
7 Debtor was comfortable before with having ERC credits --
8 which are really, as you testified, fill out the form,
9 certain this money will come in just a matter of time.
10 Versus the insurance recoveries which are subject to the
11 more elongated process that we discussed.

12 Why was the Debtor comfortable with that allocation of
13 insurance going to PI's and the ERC which are more certain
14 going to the non-PI trust?

15 MR. KAUFMAN: Objection, Your Honor. This
16 question has been asked and answered a couple of times
17 already.

18 THE COURT: I agree. Sustained.

19 (Pause in the proceeding.)

20 MR. MOXLEY: Your Honor, I have just a hand full
21 of topics left. It may still take -- I believe I told you
22 at 11:30 I thought approximately an hour. I think I
23 probably have another 20 minutes or so.

24 THE COURT: Keep going.

25 MR. MOXLEY: Can we keep going? Okay, very good.

1 Thank you, Judge.

2 BY MR. MOXLEY:

3 Q You testified, Mr. Perry -- you testified Mr. Perry on
4 direct examination about the 10 year settlement history
5 reflected in Debtor's Exhibit 26. Do you recall that?

6 A I do.

7 Q Okay, let's take a look at that if we could. Debtor's
8 Exhibit 26 is in your binder. And I will tell you where it
9 is in just one second.

10 (Pause in the proceeding.)

11 Q It is at Tab 9.

12 (Pause in the proceeding.)

13 A Okay, let's see Tab 9 here appears to be an order on
14 the automatic stay. Am I looking at something wrong, Tab 9?

15 THE COURT: I think he's talking about his binder,
16 not the black binder.

17 THE WITNESS: Oh, okay. There are a few binders
18 here. All right. So let's see Tab 9.

19 MR. MOXLEY: Thank you, Judge.

20 (Pause in the proceeding.)

21 THE WITNESS: Okay, I'm here.

22 BY MR. MOXLEY:

23 Q Okay. So Debtor's Exhibit 26 is essentially, I believe
24 you testified a summary that reflects that to whom it's
25 predecessor, Horizon, over the last 10 years have resolved

1 claims asserted by claimants as represented in the table set
2 forth, correct?

3 A Correct.

4 Q And so those tables reflect in the left column, that
5 over the last 10 years claims asserted by 121 pro se
6 claimants involved a monetary payment for that pro se
7 claimant, correct?

8 A That's correct.

9 Q And the total amount of money paid to those 121 pro se
10 claimants -- according to this summary exhibit -- was
11 \$828,636, correct?

12 A Total paid by the Debtor.

13 Q Oh, paid by the Debtor, yes sir.

14 A Yes, correct.

15 Q Mr. Perry, would you agree with me that given this
16 history any notion that pro se claimants can only get paid
17 if the bankruptcy settlement is approved, would be factually
18 inaccurate, right?

19 A Well, this information shows that one in 20 received a
20 payment with an average payment of 351 across all those
21 claims. So, in that scenario, there is process by which one
22 in 20 pro se claimants received about \$350.

23 Q And the Debtor's Exhibit 26 -- I appreciate that. In
24 Debtor's Exhibit 26 reflects that over \$64 million has been
25 paid to represented tort claimants over the last 10 years,

1 right?

2 A Correct.

3 Q That reflects that over 40 percent of those represented
4 claimants were resolved with a payment, right?

5 A That is correct.

6 Q Given that history, would you agree with me that the
7 notion that represented claimants -- those represented by
8 lawyers -- can only get paid if a bankruptcy settlement is
9 approved, is also factually inaccurate, right?

10 (Pause in the proceeding.)

11 A That condition again, one more time.

12 Q So given that more than 40 percent of represented
13 claimants in the last 10 years settled for a monetary
14 payment and the aggregate amount of that money paid to them
15 was over \$64 million. The notation that represented court
16 claimants here could only recover in the bankruptcy case,
17 that's factually inaccurate.

18 They could recover -- they have recovered outside of
19 bankruptcy previously, correct?

20 A I don't think I've ever testified that there hasn't
21 been payments made outside of bankruptcy. So I'll put that
22 out there. This Exhibit does show that folks have been paid
23 outside of bankruptcy.

24 Q Thank you.

25 A What this doesn't show and supposed what I failed to

1 include, is the date in which the occurrence occurred on
2 these claims. And the length of time it took between an
3 occurrence of an event and the time in which it was paid.

4 For example, the pro se column of those 200 or 2,358
5 claims, those are only claims that have been closed in the
6 last the last 10 years.

7 Meaning claims that have been brought to finally. The
8 actual incurrence on those claims date all the way back to
9 almost 2000, 2001, 2002. So, there are claims that were
10 paid, you know, between 2014 and 2024, for example. But the
11 incident occurred sometime much earlier than that. Almost
12 10, 15 years.

13 Pro se is one of the or I'm sorry, on of the
14 represented cases the incident occurred in 1995. I think
15 you asked me a second ago if the insurance process takes
16 time. What I'll tell you even the time in which the Debtor
17 would make payments has taken a considerable amount of time
18 based on what I've seen in this analysis.

19 I think we've shared those with TCC. So that's not
20 reflected in here, but this only represents payments made
21 over the last 10 years or the final case was last 10 years.

22 Q Understood, thank you, sir. Mr. Perry, none of us,
23 including you know as we sit here today which of the
24 settling parties will contribute to the settlement payments
25 provided in Section 4 of the Settlement Agreement?

1 A We negotiated with settlement parties, plural, and we
2 expect payment to be made by the settlement parties.

3 Q The question was different than that. So just listen
4 to my question if you could sir.

5 My question is, none of us, including you, know which
6 one or more of the settling parties will actually make the
7 payment provided for in Section IV, correct?

8 A As I sit here today, that is correct.

9 Q And as the Debtor's CRO, what diligence have you done
10 into whether any of the parties who would be obligated to
11 make those payments, if the settlement is approved and the
12 Plan is confirmed, whether they have the ability to actually
13 make those settlement payments called for in Section IV?

14 A Well those would have been discussions that would have
15 been had at mediation as it relates to the payments being
16 made and the motivation for making those payments. I.e.,
17 they received the releases and there's been nothing provided
18 to me that would suggest that the payments won't be made.

19 Q Okay. So in -- my question is about what diligence
20 you've done. So your testimony is the diligence that you've
21 done was all done in the course of the mediation with
22 respect to the settling parties and their abilities to make
23 settlement payment?

24 A Well ability to make the settlement payments is a
25 little bit different.

1 Q Please answer my question, though, sir.

2 A Okay, so repeat your question because you're throwing -
3 - I'm sorry.

4 Q That's okay. Let me ask a new question. My question
5 is outside of mediation, -- let me ask it this way. Outside
6 of mediation, have you under taken any efforts and diligence
7 efforts to determine whether or not any of settling parties
8 have the ability to make the settlement payments set forth
9 in section four?

10 A Not outside of mediation, no.

11 Q Okay. Do you have any assurance that the entities that
12 would be obligated to make the settlement payments, if those
13 conditions arise, won't immediately file for bankruptcy and
14 then seek to claw back the settlement payments of the
15 creditors?

16 A I don't know the answer to that.

17 Q And if you don't know the answer to that, then that
18 means I think by definition, that you don't have such an
19 insurance, right?

20 A Based on mediation, based on as we sit here today. My
21 understanding and belief is that the settlement parties will
22 make the payment when the time comes the payment needs to be
23 made. I have not assessed or even discussed whether or not
24 there could be the hypothetical event after that, that would
25 result in a potential claw back.

1 Q Okay. Mr. Perry, you don't know what the value -- and
2 I'm purposely, sir, using value. I know that's a term for
3 you -- a term of art for you.

4 You don't know what the value of each of the companies
5 obligated to make those settlement payments is, right?

6 A I do not.

7 Q And under -- and just so the record is clear, what I
8 was saying there with respect to value, I know that you as a
9 restructuring professional, a financial professional, you
10 ascribe meaning to them term value, correct?

11 A I do.

12 Q Okay. And can you just very briefly explain what your
13 understanding of value is?

14 A Sure. Value to me -- at least in the context of this
15 engagement -- would be a process by which an amount would be
16 ascribed based on a certain set of methodologies that would
17 be call it understood in practice by, you know, folks that
18 specialize in valuation.

19 Q Right. And so you haven't undertaken any of those
20 methodologies to determine a valuation of any of the
21 settling parties who may be obligated if all the conditions
22 are met, to make the settlement payments under Section IV of
23 the settlement agreement, right?

24 A Correct.

25 Q On direct examination you were asked about the

1 documents that the Debtor reviewed as part of its
2 investigation. And specifically, I think, Mr. Kaufman asked
3 if you had reviewed financial documents. Do you recall
4 that?

5 A I do.

6 Q And in your answer you testified that -- and I'm
7 quoting you now -- you know let me show it to you. I don't
8 want any misunderstanding.

9 A Okay.

10 Q So I'm looking at the day two transcript. And it's at
11 Page 83.

12 (Pause in the proceeding.)

13 Q And at line -- beginning at line 12, Mr. Kaufman asked
14 you, "Let's talk about the reviews on the reasonableness of
15 the settlement based on your review of the -- let me back
16 up. What sorts of documents did you and the Debtor review
17 as part of the investigation? Did you review the financial
18 documents?"

19 And your answer was, "I think some of this is included
20 in the Disclosure Statement so let me touch under my work.
21 Let me touch under my words." And I ask that you skip with
22 me to the second to the next paragraph.

23 A Sure.

24 Q You said, "We asked for literally everything and we
25 gathered as much data as we possibly could across, like I

1 mentioned, financial, legal, organizational, you know the
2 communication amongst individuals." Do you see that?

3 A I do.

4 Q And I'm not showing you that, Mr. Perry, just for the
5 record is clear and the Judge is -- I'm not showing you that
6 to impeach anything sir. I wanted to ask you some questions
7 about that. And I wanted you to have the benefit of your
8 testimony in front of you when I did so.

9 So, Mr. Perry when you testified about asking for
10 literally everything, you didn't get financial statements
11 from YesCare after February of 2023, did you?

12 A That is correct. We received financial statements up
13 to the date of the filing, correct.

14 Q Okay. So -- but you asked for literally everything.
15 So I'm sure if they -- I'm sure you wanted financial
16 statements after February 2023, they just weren't produced,
17 correct?

18 A Correct.

19 Q Let me ask you this. What happens if the Debtor
20 prevails, confirmation order is entered and whatever amount
21 of time we are down the road, you won all the appeals and
22 there's now final non-appealable order in the Debtor's
23 hands.

24 At that time, --

25 A No, I'm sorry. I thought that you were done.

1 Q At that time, the settling parties then don't make the
2 settlement payment. What happens then?

3 A Under that hypothetical, the releases aren't provided
4 and the Debtor has the ability to pursue litigation.

5 Q And at that time when -- if that scenario were to play
6 out, the settling parties would have enjoyed whatever amount
7 of time it is that elapsed from not having to defend or deal
8 with litigation or make any settlement payments, correct?

9 A I don't know if that's an enjoinment, but I do know
10 that they certainly would have time between, you know, call
11 it today and at what point in time they would make the
12 payments.

13 Q So to avoid the risk of that scenario, have you
14 demanded that the settling parties put the settlement
15 payment in escrow now or at confirmation or at some point
16 before you get to the final non-appealable order?

17 A The settlement that we see today is protected or was at
18 least was negotiated under mediation. So I can't speak to
19 whether or not there were negotiations on that point during
20 the mediation process.

21 But what resulted in the mediation that was effectively
22 run by Mr. Sanchee (phonetic) is what you see in the paper.

23 Q And so if we don't see escrow mechanism in the paper,
24 that's not part of the deal, right?

25 A That's correct.

1 Q Let's switch gears for a moment if we could. You're
2 aware that FTI was asked to analyze the divisional merger,
3 right?

4 A I was.

5 Q And FTI opined on the divisional merger noting that it
6 had made a certain assumptions and caveats to announce but
7 it had an opinion, right?

8 A Correct, the fairness.

9 Q Right. And Mr. Perry, you received a letter from FTI's
10 counsel in March of last year that took issue with your
11 characterization of FTI's opinion that you had provided in a
12 file declaration in this case, right?

13 A I assume that's not -- I don't know if that letter is
14 any way privileged. I don't think so. I did receive a
15 letter from FTI's counsel, yes.

16 Q It's actually an exhibit. So let me show you that
17 exhibit. It's Tab 8 in your binder, it's TCC's Exhibit 329.

18 A Okay.

19 (Pause in the proceeding.)

20 Q What is in an exhibit at 329 is a declaration from
21 Bradley Hend (phonetic) which is -- who is at FTI and that
22 declaration attaches the letter. I'll point you to that.

23 It's at -- if you go to -- it's going to come up on
24 your screen too. If you go to the very end of the document
25 sir, and then flip back a couple of pages. You'll see

1 Exhibit 4 to that declaration is a letter from Reed Smith
2 dated March 17th, 2023. Do you see that document, sir?

3 A I do.

4 Q Okay. And this a copy of the letter that you received
5 from FTI's counsel, right?

6 A Yes.

7 Q And if we look at Page 2 of the letter. Actually, you
8 know, it's funny. I think labeled Pages 2 and 3, Page 2
9 oddly enough. So I'm looking at Page 3 at the top.

10 A Okay.

11 Q I just noticed that. You see the second paragraph from
12 the bottom that begins, "As you are also aware."

13 (Pause in the proceeding.)

14 A I do.

15 Q Okay and so FTI's counsel wrote to you "As you are also
16 aware the opinion specifically set forth the factual
17 information provided by Horizon upon which FTI relied in
18 rendering it's opinion and noted that FTI was relying on the
19 factual accuracy of the information provided accordingly.

20 "The statement in the declaration that FIT 'conducted
21 wide scale due diligence' is misleading and over states the
22 scope of FTI's assignment." Do you see that?

23 A I do.

24 Q And the next paragraph they ask that you "refrain from
25 making any further misleading and incomplete or inaccurate

1 statements regarding the role of FTI and the services and
2 advice rendered by FTI." Do you see that/

3 A I do.

4 Q What steps, if any, Mr. Perry, did you take to correct
5 your declaration after you received this letter?

6 (Pause in the proceeding.)

7 A I have to confer with counsel fully to recall, but if I
8 remember correctly, we believed revised language in
9 subsequent filings related to FTI's work.

10 Q Okay, so if we looked at the Rule 9019 Motion -- let's
11 do that now. It's at Tab 3 in your binder.

12 (Pause in the proceeding.)

13 Q And at Tab 3, sir, if you could look at Paragraph 34.
14 Which is at Page 15 of the filing.

15 (Pause in the proceeding.)

16 A Okay.

17 Q Do you see at Page 34, in the middle of that paragraph,
18 there's a sentence that says, "the Debtor and the UCC
19 further believe?"

20 A I do.

21 Q And that sentence continues, "Debtor and the UCC
22 further believe that the financial advisory firm engaged to
23 provide fairness on transactions reached fairness
24 conclusions by relying on inaccurate information." Do you
25 see that?

1 A I do.

2 Q So is your testimony that the step that you took after
3 receiving the March letter from Reed Smith, was to
4 essentially include that sentence in the 9019 Motion?

5 A No.

6 Q Okay, what else did you do in response to the Reed
7 Smith letter?

8 A Well the Reed Smith letter took offense to the fact
9 that we used the words "conducted wide scale diligence."

10 Q Right.

11 A That's what they took offense to. So we took in
12 further pleadings and subsequent pleadings we were careful
13 not to state their role as conducting wide scale due
14 diligence. And I had my own view on that and why I used
15 those words. But we chose carefully because they say in
16 this letter -- I'm not -- you know, to stop misstating what
17 our role was in the work that we did.

18 Which was, in our words, conducted wide scale due
19 diligence. Those words were not in the 9019 Motion.

20 Q I see, okay. Let's look at -- changing the tab in your
21 binder. Let's look at Tab 7, please.

22 (Pause in the proceeding.)

23 A Okay.

24 Q This is TCC Exhibit 229. And my understanding -- and
25 Mr. Kaufman will correct me if I'm wrong -- is that the

1 Debtor stipulates that 229 may be admitted into evidence.

2 But I'm going to ask you a few questions now, sir. If
3 you look at Exhibit 229, which is at Tab 7 in your binder,
4 this is the Debtor's response to a letter from nine United
5 States Senators asking for information about the provisional
6 merger in this bankruptcy case, right?

7 A Yes, that's what this appears to be.

8 Q And this letter is from -- you're familiar with this
9 letter, right?

10 A I am looking for the date. November 15th, correct.
11 This letter was prepared back in November.

12 Q Okay and the letter is from Gray Reed, Debtor's
13 counsel, to these senators that are identified on Page 1 of
14 the letter, correct?

15 A That's correct.

16 Q You were the CRO of the Debtor when this letter was
17 sent, right?

18 A Correct.

19 Q And at the time this letter was sent, the Debtor had no
20 other employees beside ourself, correct?

21 A I don't necessarily consider myself an employee. But -
22 -

23 Q Fair enough, let me rephrase it. There were no
24 employees of the Debtor at the time this letter was sent,
25 right?

1 A Correct.

2 Q Okay. So to the extent that Gray Reed had client
3 authorization to send this letter, it must have come from
4 you, right?

5 A We conferred as a team of advisors. The Debtor, the
6 counsel and myself we, quite frankly, had to discuss you
7 know, whether or not we were a, going to respond; b, in what
8 manner and what context would be.

9 Q Did Mr. Lefkowitz review this letter before it was
10 sent?

11 A I'm not aware whether he did or didn't.

12 Q Do you know if anyone other than yourself and the Gray
13 Reed firm reviewed the letter before it was sent?

14 A My colleague, Mr. Rosoano (phonetic) might have
15 reviewed it as well. That would probably the extent of my
16 understanding.

17 Q Okay. Did you authorize -- just as a matter of fact.
18 Did you authorize this letter to be sent to these nine
19 United States Senators?

20 A It was discussed as a team. I don't know whether or
21 not I authorized the sending of the letter or it was just
22 part of process to prepare the letter.

23 Q Okay.

24 THE COURT: I'm not sure I understand the answer.
25 Did you authorize it or not?

1 THE WITNESS: I had no problem with sending it, so
2 I think --

3 THE COURT: Not what I asked.

4 THE WITNESS: -- I would have been an
5 authorization.

6 THE COURT: That's not what I asked. I just want
7 to know did you authorize this or not? Like did you say.

8 THE WITNESS: I was okay with sending this letter.
9 Yes.

10 THE COURT: Maybe we're just not using the same
11 words. I'm using the word authorize, you're using the word
12 okay with sending. What's the --

13 THE WITNESS: I'll explain, Your Honor.

14 THE COURT: No, no. I just want you to say yes or
15 no. Did you authorize this or not? In other words, you're
16 the CRO did you authorize someone sending this letter? Yes
17 or no?

18 THE WITNESS: Yes, I authorized it. Yes.

19 THE COURT: That's all I needed to know. Thank
20 you.

21 BY MR. MOXLEY:

22 Q And Mr. Perry, you would not authorize a letter being
23 sent to the United State Senate to United States Senators
24 that contained materially false information, would you?

25 A That would not have been my intent.

1 THE COURT: Did you read it before it was sent?

2 THE WITNESS: I did.

3 THE COURT: Okay.

4 BY MR. MOXLEY:

5 Q Let's look at Page 14 of the letter.

6 A Okay.

7 Q And you see Mr. Perry -- and I know you're familiar
8 with the letter. Do you see the format of the letter was
9 essentially to set forth the United States Senators
10 questions and then to provide a response to that question
11 directly underneath that question, correct?

12 A Correct.

13 Q That was the structure of the letter, right?

14 A Correct.

15 Q Okay and so if you look at Page 14 of the letter,
16 there's a response to the Senator's question number eight.
17 And you see question number eight from Senators was, "What
18 is the total value of to whom's current assets? Please
19 include a full accounting of any funding agreement, lump sum
20 payment, or other revenue stream provided to Tehum following
21 the divisional merger process." Do you see that question?

22 A I do.

23 Q Okay. And you see the answer set forth to that
24 question was, "The only real assets the Debtor has are
25 potential causes of action against third parties." Do you

1 see that?

2 A I do.

3 Q The Debtor told these United States Senators the truth
4 in this letter, right?

5 A At the time, that's correct.

6 Q And the truth is the only real assets the Debtor has
7 are it's estate causes of action, right?

8 A Well and that's what the words on the page say, but
9 they also say the Debtor also potentially has so called
10 Chapter 5 causes of action. Because it's variety of third
11 parties for pre-petition transfers.

12 So I think the intent of this was to explain to the
13 Senators that potential causes of action have real value and
14 that there was a settlement of those causes of action.

15 Q Well, let's not just take the letter's word for it.
16 Let's look at what you explained to Judge Lopez on March
17 5th. Turn with me in your transcript from day two of the
18 hearing to Page 39.

19 A Okay.

20 (Pause in the proceeding.)

21 Q And if you look at --

22 A I'm here.

23 Q Did you go to Page 39?

24 THE COURT: No, can you give me a second to get
25 there?

1 MR. MOXLEY: Yes, Judge.

2 THE COURT: What page are you on?

3 MR. MOXLEY: I'm on -- I'm in Tab C, Your Honor,
4 day two transcript, Page 39.

5 THE COURT: Oh transcript. Sorry.

6 MR. MOXLEY: Yes, the Perry transcript.

7 THE COURT: Binder 1 of 1?

8 MR. MOXLEY: Yes.

9 THE COURT: Okay.

10 MR. MOXLEY: That was a mistake on the --

11 THE COURT: Oh, oh, C. Got it. Got it. What
12 page?

13 MR. MOXLEY: Page 39, Judge.

14 THE COURT: Okay. Thank you.

15 (Pause in the proceeding.)

16 BY MR. MOXLEY:

17 Q Yes. And Mr. Perry at Page 39 of the March 5th hearing
18 transcript, beginning at line 4 you were asked by
19 Mr. Kaufman "Let's turn to the Debtor-in-Possession of
20 financing motion filed in this case. Can you briefly
21 explain to the Court what the sources of revenue were to the
22 Debtor when the case was filed."

23 And your answer was, "Well in terms of A, you know,
24 finance and accounting prospective, there was no revenue.
25 There was no operating revenue to the Debtor."

1 Question, "And why was that?"

2 Answer, "Well, when the company -- I don't want to say
3 company when Horizon completed their provisional merger in
4 May, there were no operating contracts allocated to the
5 Debtor and therefore there was no operating revenue that was
6 received by the Debtor."

7 And then the next question from Mr. Kaufman was, "And
8 you mentioned the funding agreement a few minutes ago. What
9 amounts were available to the Debtor under the funding
10 agreement when the bankruptcy case was filed in February of
11 2023."

12 And your answer was, "Well, from where I sit today,
13 there was nothing remaining."

14 That's what you testified to on March 5th, correct?

15 A I did.

16 Q Was that testimony accurate?

17 A It was.

18 Q Statement in the letter to the United States Senators
19 was also accurate, correct?

20 A It was accurate in the words that it uses. The only
21 real assets. What the language fails to mention are other
22 potential assets available to the Debtor.

23 Q You just failed to mention that to the United States
24 Senators?

25 A No, if you look at Page 8, it talks about the best

1 interest test. It talks about the liquidation analysis.
2 And it says the liquidation analysis is annex to the
3 Disclosure Statement in schedule 1. So I don't know that
4 it's clear enough in this letter. I would definitely admit
5 to that.

6 But we directed the Senators to the liquidation
7 analysis. And the liquidation analysis would have included
8 all of the other assets even in addition to the causes of
9 action.

10 Q Let me just make sure I understand your testimony,
11 Mr. Perry. Your testimony is that when you set forth the
12 question number 8 to these United States Senators where they
13 asked you what's the total value of to whom's current
14 assets. And the first sentence of that answer was the only
15 real assets the Debtor has is are potential causes of action
16 against third parties.

17 Your testimony today is that you expected those
18 senators to turn back to an earlier page in the letter to
19 find out there was a best interest test and all the things
20 you just said. Is that your testimony?

21 A I can't testify to what Senators would or wouldn't do.
22 But we reference specifically in this response the plan, the
23 Disclosure Statement, the liquidation analysis.

24 We reference it. Our point in responding to this
25 letter was to be fully transparent with these Senators as it

1 relates to the process that has taken place and potential
2 recovery to creditors.

3 The choice of words in this specific section, did not
4 intend to otherwise mislead or to suggest that there weren't
5 other assets available to the creditors as well. I think
6 the intent was just to say right that there are material.
7 The really only assets are potential causes of action
8 against third parties.

9 Q So let's say Senator Durban was particularly interested
10 in the answer to question number 8. And if you turn to the
11 answer to that, you read that first sentence and it said the
12 only real assets that the Debtor has is potential causes of
13 action against third parties. You would forgive him for
14 concluding his analysis of that question there and having
15 the understanding that the only real assets the Debtor has
16 are causes are action, right?

17 THE COURT: You don't have to answer that.

18 MR. KAUFMAN: Object needs speculation about what
19 Senator Durban would --

20 MR. MOXLEY: I'll withdraw the question.

21 BY MR. MOXLEY:

22 Q I can show you the petition of you need it, Mr. Perry,
23 but Mr. Lefkowitz signed the resolution attached to the
24 petition authorizing the filing of the bankruptcy case,
25 right?

1 A Let's go to the petition.

2 Q Let's do that. Okay, so that's Debtor Exhibit 3 which
3 is Tab 16 of my binder.

4 (Pause in the proceeding.)

5 Q And if you turn to the very -- let's do this the right
6 way. Sir, are you at Tab 16?

7 A I am.

8 Q You see that this is the petition?

9 A Correct.

10 Q The petition attaches the resolution authorizing the
11 filing of the petition, correct.

12 A This is the certificate of resolution which names me as
13 the CRO. But the actual petition -- the actual petition
14 that you're asking about it was signed by me.

15 Q The resolution -- the resolution that's attached to the
16 petition was signed by Mr. Lefkowitz on the last page.

17 A Correct, the resolution attached to the petition, yes.

18 Q Yes. Okay. And Mr. Lefkowitz also signed the
19 settlement agreement that it sought to be approved in this
20 hearing on behalf of YesCare Corp, CHS Texas, Inc.,
21 Faragrove (phonetic) LLC, Faragrove 1018 LLC, M2 Hold co,
22 LLC and Geneva Consulting LLC, correct?

23 A That's correct as I recall.

24 Q You know what let's just make sure we're clear on this.
25 Let's look at Tab 3 of the binder.

1 (Pause in the proceeding.)

2 A I'm here.

3 Q And if you turn to the -- Tab 3, you'll agree with me,
4 this is TCC's Exhibit 125. It's the joint motion for
5 approval of the settlement agreement, correct?

6 A Correct.

7 Q And the settlement agreement itself is attached to that
8 motion, right?

9 A It should be. Yes, correct.

10 Q Okay. And if you turn to the very last page of the
11 document, Page 47 of 47. And that's on your screen now, as
12 well. You see that Mr. Lefkowitz signed on behalf of those
13 entities that I previously listed?

14 A That is correct.

15 Q And the Debtor, by this settlement agreement, is now
16 agreeing to release all of what it considers to be estate
17 claims against Mr. Lefkowitz and the parties that he signed
18 on behalf of, correct?

19 A Correct.

20 Q And Mr. Lefkowitz is the person who signed the
21 resolution that was attached to the petition, correct?

22 A Correct.

23 Q Mr. Perry, you understand the personal injury and
24 wrongful death claim that's in the case are real people,
25 right?

1 A Absolutely.

2 Q Did you review the joinder that was filed by Antoinette
3 Windhurst?

4 A I scanned a number of joiners both in favor and in
5 opposition. I didn't memorize them.

6 Q Okay before we turn to Ms. Windhurst's joinder let me
7 ask you just one quick question back on the ERC's that I
8 neglected to ask before.

9 Just to get the Debtor's opinion of what is or what
10 isn't fair and equitable would the Debtor have viewed the
11 last plan as equitable if it knew at the time that the ERC's
12 were worth not 9.1 million, but worth 25 or \$26 million?

13 MR. KAUFMAN: Objection, this calls for
14 speculation.

15 MR. MOXLEY: I'm asking, Your Honor, he's the
16 Debtor's CRO. I'm asking --

17 THE COURT: Yeah I agree. Overruled.

18 THE WITNESS: The allocation process under the old
19 plan was based on the amounts we -- at that time -- were
20 aware distributable to the estate.

21 If I knew now what I knew then, I believe the
22 allocation process for the calculations to allocate would
23 have been slightly different just simply by the result of
24 math.

25 Meaning higher numerator, meaning more assets to

1 bring in to the estate would have potentially modified the
2 allocation.

3 BY MR. MOXLEY:

4 Q Right. So you may not have been comfortable with that
5 allocation if you had known the ERCs were actually worth
6 more?

7 A It would just change the input for the calculation.

8 Q And the inputs may have changed to the effect that more
9 assets may have been put in the PI trust, right?

10 A Well that would have been simply one variable. There
11 could be hypotheticals of, you know, dozens variable in any
12 of those. For sure it would have changed the allocation,
13 yes.

14 Q Okay. So let's look in our binder at Tab 13. And
15 this, for the record, is marked TCC Exhibit 51. It was a
16 joinder that was filed in this case at docket number 1283
17 back in January.

18 Do you have TCC exhibits? The one in front of you,
19 sir.

20 MR. KAUFMAN: Just so the Record is clear, this is
21 not in evidence, TCC 51.

22 MR. MOXLEY: I don't believe it is. It was filed
23 filed in the case.

24 THE WITNESS: I'm here.

25 BY MR. MOXLEY:

1 Q Have you review this before, sir?

2 A This was filed in January. I believe I scanned it.

3 Yes.

4 Q Okay. Are you aware that Mrs. Windhurst's husband, who
5 was serving a sentence for possession of a firearm in
6 violation of a his parole conditions, died allegedly because
7 of Horizon's misconduct?

8 A Well I'm aware of what it states in the joinder. And I
9 believe there is a paragraph that explains his condition.
10 And I believe, if I'm correct, that it states the nature of
11 the claim, which I believe would constitute what you said
12 yes.

13 Q Okay. Did you, Mr. Perry, ever ask a holder of a
14 wrongful death claim in this case whether they think the
15 settlement provides enough money for the death of their
16 family member?

17 A I have not engaged with an individual tort claimant,
18 no.

19 THE COURT: Mr. Perry, if you can just get a
20 little closer to the mic. I want to make sure that we're
21 picking you up.

22 THE WITNESS: Yeah, I was wondering which mic over
23 here was working.

24 THE COURT: Well, that's the one. Thank you.

25 THE WITNESS: Oh, that's perfect.

1 BY MR. MOXLEY:

2 Q Does it surprise you, Mr. Perry, to know that Mrs.
3 Windhurst doesn't think that this is such a fantastic deal?

4 A I guess nothing would surprise me. I would like to,
5 you know, believe that the settlement that's in front of us
6 today and the process that we would hopefully negotiate to
7 bring proceeds to creditors would absolutely be in their
8 benefit.

9 Q You understand that by this joinder that Mrs. Windhurst
10 is taking the position in this case that she is joining the
11 motion to dismiss this bankruptcy case?

12 A That's my understanding by this joinder, yes.

13 Q Do you also understand that Mrs. Windhurst is not alone
14 in joining TCC's motion to dismiss, is she?

15 A Well Tcc has it's members. There are I think multiple
16 other joinders, if I'm not mistaken to the TCC. So that
17 would constitute --

18 Q Right, there are multiple other tort claimants who have
19 filed joinders in support of TCC's motion to dismiss,
20 correct?

21 A Correct.

22 Q Have you taken their views, those who have filed
23 joinders, in support of the Motion to Dismiss, into account?

24 A We negotiated with the unsecured creditors committee
25 specifically. And bringing forth this settlement in my mind

1 at least for the Debtors business judgment is a value
2 maximizing proposition. And I believe is in the best
3 interest of the creditors.

4 So, you know, through negotiating with the UCC, that's
5 my ability to say that we have, in fact, taken account of
6 creditors views in this case.

7 Q Okay.

8 MR. MOXLEY: Your Honor, may I step away from the
9 podium for one moment?

10 THE COURT: Of course.

11 (Pause in the proceeding.)

12 BY MR. MOXLEY:

13 Q Mr. Perry, the UCC is the committee that wanted 100
14 percent of the ERC payments to go to the non-PI trust in the
15 prior plan, correct?

16 A The UCC was part of the calculations for that, yes.

17 Q And they supported that allocation, correct?

18 A I believe so, yeah.

19 Q Thank you.

20 MR. MOXLEY: Your Honor, that you Mr. Perry. Your
21 Honor, the TCC has no further questions for Mr. Perry at
22 this time. We'll pass the witness.

23 THE COURT: Thank you.

24 MR. KAUFMAN: Can we take a short break, Your
25 Honor.

1 THE COURT: Well I'm just going to do housekeeping
2 to try figure out maybe it makes.

3 MR. KAUFMAN: I would definitely love a break. I
4 was going to see if anyone else was going to ask Cross
5 before we discuss Redirect.

6 THE COURT: Okay. Well is there anyone else in
7 the courtroom that has questions for this witness? If you
8 do, I just want to get a sense of timing more than anything
9 else?

10 MR. KAUFMAN: Yeah, Redirect, I think will be very
11 short, five to 10 minutes.

12 THE COURT: Okay. From a timing perspective,
13 anyone else?

14 MR. NGUYEN: (Indiscernible).

15 THE COURT: Okay, thank you. All right let's go.

16 MR. KAUFMAN: Oh, I was going to ask for -- I need
17 a break.

18 THE WITNESS: I need a break.

19 THE COURT: No, you wanted to go, Mr. Kaufman.
20 You told me. No. I'm here. Let's go.

21 THE WITNESS: Oh my goodness. It better be quick.
22 I'm bouncing in my seat, too.

23 MR. KAUFMAN: Your Honor, can we -- just as an
24 administrative matter have Ms. Carson have sharing
25 privileges.

1 THE COURT: Yeah.

2 (Pause in the proceeding.)

3 REDIRECT EXAMINATION OF RUSSELL PERRY

4 BY MR. KAUFMAN:

5 Q Mr. Perry, on cross-examination, Mr. Moxley asked you
6 about finality of the order, do you recall that?

7 A I do.

8 Q And he estimated that appeals could take years. Do you
9 recall that?

10 A I recall he referenced years.

11 Q Who ultimately controls whether the TCC appeals?

12 A Well in this situation I only can assume that example
13 was because the TCC would appeal based on discussions.

14 Q And I think you testified that if this settlement is
15 approved, you would hope that the TCC engages with the
16 Debtor and the UCC to come to a consensual resolution?

17 A Absolutely.

18 Q Could you turn in the Debtor's UCC exhibit book to
19 Volume 2? Look at Exhibit 36.

20 And as you're turning to that I'll ask you the premise
21 questions. On cross Mr. Moxley asked you about FTI sending
22 you a letter asking you or commenting about your
23 characterization of FTI's work. Do you recall that line of
24 question?

25 A I do.

1 Q Looking at Exhibit 36, do you understand that FTI is
2 supporting this settlement?

3 A I do.

4 Q Ms. Carson is going to pull up the transcript from the
5 day two from your cross-examination on day two of the trial.
6 Give her a minute.

7 (Pause in the proceeding.)

8 MR. KAUFMAN: And for the record we're
9 referencing --

10 THE COURT: Are you using go to meeting or are you
11 using the hard.

12 MS. CARSON: I'm actually in both. So which ever
13 one.

14 THE COURT: I just made you the presenter. Tell
15 me if that works. If not, I will --

16 MR. MOXLEY: Your Honor, I'm just not quite clear
17 why we're going back to the witness' is this impeachment?
18 Is he impeaching Mr. Perry?

19 MR. KAUFMAN: No, I'm just because it's been two
20 and half weeks since this question was asked so I just want
21 to refresh everyone's recollection.

22 THE COURT: Well that's not the purpose of
23 redirect. You can redirect, but I'm refreshed. It's up to
24 you.

25 MR. KAUFMAN: Okay.

1 BY MR. KAUFMAN:

2 Q Do you recall two and half weeks ago when Mr. Moxley
3 first started doing your cross-examination, he asked you a
4 question to the effect of wouldn't it be nice if the Debtor
5 had done an analysis of whether success or liabilities were
6 worth \$100 million. Do you recall that question?

7 A There was a lot of questions on successful liability,
8 but I vaguely remember a question about value.

9 Q Did the Debtor do an assessment of successor liability
10 and alter ego theory as part of its due diligence?

11 A Yes.

12 Q And did the UCC -- do you understand that the UCC did
13 it's own analysis?

14 A I do.

15 Q And do you understand that the settlement parties had a
16 view about the merits of success or liability and alter ego
17 theories?

18 A Yes.

19 Q And ultimately a settlement was reached and that's the
20 product of the settlement before the Court, right?

21 A Correct.

22 MR. KAUFMAN: Your Honor, if I could have just a
23 moment.

24 THE COURT: Of course.

25 (Pause in the proceeding.)

1 MR. KAUFMAN: Your Honor, I'll pass the witness.

2 THE COURT: Any further questions?

3 MR. MOXLEY: I think that

4 THE COURT: Okay, thank you very much for your
5 time Mr. Perry. How much time do we need before we start
6 back up again?

7 How much time to the parties need? Can we come
8 back at 1:45? Okay, let's come back at 1:45. Thank you.

9 (Recess taken from 1:04 p.m. to 1:48 p.m.)

10 THE COURT: Okay. We are back on the Record in
11 Tehum. Let's call in the next witness.

12 MS. HAYWARD: Your Honor, before we begin, if I
13 may?

14 THE COURT: Yes.

15 MS. HAYWARD: Your Honor raised some points this
16 morning that caused my mind to at least start churning. The
17 point of the settlement agreement is obviously that --

18 THE COURT: Why don't you check with -- are we
19 okay? That was my bad joke for Mr. Kaufman to make sure
20 that we could --

21 MS. HAYWARD: Your Honor, he's going to hurry me
22 up too.

23 THE COURT: Yeah, I'm sorry. Go ahead.

24 MR. KAUFMAN: Just so the Record's clear,
25 Mr. Kaufman has been yelled at by a number of people off the

1 Record.

2 THE COURT: Okay. I'm sorry.

3 MS. HAYWARD: So, Your Honor, lawyers tend to
4 complicate deals.

5 THE COURT: Uh-huh.

6 MS. HAYWARD: And there's the old adage, right,
7 that lawyers --

8 THE COURT: I'm sorry. Go ahead.

9 MS. HAYWARD: -- mess up deals. I've spoke with
10 my clients --

11 THE COURT: Yes.

12 MS. HAYWARD: -- the settling parties. And we do
13 not need a settlement to be effective that, you know,
14 probably was a relic from the previous version of the
15 settlement agreement. So my clients are willing to amend
16 the settlement agreement such that payment will be made
17 within 90 days of a final order approving a 9019 in this
18 case.

19 And so hopefully, that alleviates some of this
20 complication that I think is unnecessary as far as whether a
21 plan gets confirmed or not. So with that said, you know,
22 obviously, once there is a final order approving a 9019
23 agreement, my clients will fund the settlement in full
24 within 90 days.

25 THE COURT: Okay. Let's see.

1 Counsel, if you have -- you're standing up. I'm
2 just turning to you if you have any --

3 MR. GOODMAN: You know, it's a constantly-moving
4 target, Your Honor. I guess the way I hear that questioned,
5 it does raise in my mind a question which is, you know, what
6 happens if the Court were to enter that order, it'd be
7 subject to appeal. Are they saying that they will fund
8 into, you know, an escrow or pay the full amount
9 notwithstanding the appeal, or would the appeal of the 9019
10 then mean that the money isn't paid.

11 If the answer is that if the 9019 is appealed, I
12 think we're back almost at the same position, right, because
13 again, they're going to be waiting for that entire process
14 to run its course. And this is a huge difference if you
15 think about it, because remember the original Rule 9019, the
16 original settlement, right, everything cued off of plan
17 effective date.

18 THE COURT: Uh-huh.

19 MR. GOODMAN: So, they were putting themselves, if
20 you think about it, they were putting themselves in the
21 exact position that, you know, the Debtor in Antelope found
22 itself in, right, where the Court approved the settlement,
23 they went effective, they paid the money, right.

24 They took all of the risk regarding an appeal, you
25 know, taking place. It ultimately didn't go well for them

1 because the Court did vacate the confirmation order, and
2 they were in that position, right.

3 It's really a question of time, right, in terms of
4 triggering a date. So, everything that I've just heard as a
5 practical matter may actually be completely meaningless.
6 That's my concern.

7 THE COURT: I'm more in the I just need to know --
8 in other words, the chairs have got to stop at some point so
9 I know exactly what I'm being asked to approve one way or
10 the other. So I don't -- I appreciate the statement and the
11 update, and it's something certainly for me to consider.

12 MS. HAYWARD: Yes, Your Honor.

13 THE COURT: And if the parties want to continue,
14 then let's continue.

15 MR. GOODMAN: Thank you.

16 THE COURT: Thank you.

17 MS. HAYWARD: Thank you, Your Honor.

18 THE COURT: All right.

19 MR. BROOKNER: Good afternoon.

20 THE COURT: Mr. Brookner, good afternoon.

21 MR. BROOKNER: Good afternoon, Your Honor. Jason
22 Brookner for the Debtors. Just I wasn't sure was Mr. Perry
23 dismissed as a witness? Is he done?

24 THE COURT: I believe.

25 MR. BROOKNER: I thought you said he was done, but

1 I wanted to just confirm.

2 MR. MOXLEY: We have no further questions for him.

3 THE COURT: Okay. Perfect.

4 MR. BROOKNER: Okay.

5 THE COURT: Yeah, no, no. My understanding is
6 that he was dismissed as a witness.

7 MR. BROOKNER: Okay. I just wanted to make sure.
8 Thank you. With that, the Debtors would call Isaac
9 Lefkowitz.

10 THE COURT: Okay.

11 MR. BROOKNER: I'm sorry, the Debtor singular.

12 THE COURT: Good afternoon, sir. Can you please
13 raise your right hand?

14 (Witness sworn.)

15 THE WITNESS: Yes.

16 THE COURT: Okay. Thank you. I'll let the Record
17 reflect that the witness has been properly sworn in.

18 Just a couple of housekeeping matters.

19 Mr. Lefkowitz, if you can make sure that mic is
20 close to you and that it picks up your voice. Yes, sir.

21 Another question is in terms of binders for
22 Mr. Lefkowitz, there are some binders there. Are those the
23 ones that he's -- people will be referring to? I just want
24 to make sure before we get started on that.

25 MR. BROOKNER: On my examination, they will be the

1 black binders to his left.

2 THE COURT: Okay. Can we just --

3 MR. BROOKNER: I can -- you want me to -- I can
4 move them.

5 THE COURT: Yeah. Just put them to the side.
6 Just it makes it a little easier.

7 And in terms of presenter role, all that good
8 stuff, --

9 MR. BROOKNER: I do not expect to have anything up
10 on the screen.

11 THE COURT: Okay. If anything changes, will you
12 please let me know?

13 MR. BROOKNER: Of course, Your Honor.

14 THE COURT: Thank you.

15 MR. BROOKNER: Thank you.

16 THE COURT: Counsel, you may proceed.

17 MR. BROOKNER: Thank you, Your Honor.

18 DIRECT EXAMINATION OF ISAAC LEFKOWITZ

19 BY MR. BROOKNER:

20 Q What is your name, please?

21 A Isaac Lefkowitz.

22 Q And Mr. Lefkowitz, did you hold a position with the
23 Debtor at the time it filed for Chapter 11 in February of
24 2023?

25 A Yes.

1 Q What was that position?

2 A Director.

3 Q Were you the sole director?

4 A Correct.

5 Q Do you still hold that position?

6 A Yes.

7 Q As part of the filing, did the Debtor through its sole
8 director approve certain resolutions, corporate resolutions?

9 A Yes.

10 Q All right. And as part of those resolutions, did the
11 Debtor appoint Russell Perry of Ankura Consulting as the
12 chief restructuring officer?

13 A Yes.

14 Q And specifically, was Mr. Perry vested with a variety
15 of powers and decision-making authority?

16 A Correct.

17 MS. MEYERS: Objection. Leading.

18 THE COURT: Well, it's background, so I'm okay
19 with it. Thank you.

20 BY MR. BROOKNER:

21 Q I'd like, Mr. Lefkowitz, I'd like to direct you in the
22 book in Volume 1 to Tab No. 3, Exhibit 3.

23 A Got it.

24 Q Are you familiar with that document? Have you seen it
25 before?

1 A Yes.

2 Q Okay. Looking at the top stamp, the top page stamp
3 where it says 1 of 8, 2 of 8, et cetera, --

4 A Okay.

5 Q -- please turn to Page 6 of 8.

6 THE COURT: Which exhibit? I'm sorry.

7 MR. BROOKNER: Exhibit 3, the Debtor's Exhibit 3,
8 Your Honor.

9 THE COURT: Thank you.

10 THE WITNESS: Yes.

11 BY MR. BROOKNER:

12 Q Okay. Are these the resolutions that were adopted as
13 part of the bankruptcy filing?

14 A Correct.

15 Q All right. I'd like you to take a look on Page 6, the
16 next-to-the-last resolved paragraph, and would you please
17 read that out loud?

18 A The next to what?

19 Q The next-to-last paragraph that says resolved on the
20 page. It starts with "Resolved that the CRO shall have."

21 A "Resolved that the CRO shall have the sole decision-
22 making authority for all restructuring matters, any matter
23 where the sole director indemnified below has or may have a
24 conflict of interest, and for such other matters as the sole
25 director may otherwise delegate to the CRO."

1 Q Why was that resolution particularly adopted?

2 A So there shouldn't be any confusion of who has the sole
3 decision making.

4 Q But why was that a question? Why was that -- why did
5 you think there would be a question about the decision
6 making?

7 A I was the sole director. I'm also an insider, and I
8 wanted to make the world clear that the CRO has the full
9 authority by himself.

10 Q So that there wasn't any potential conflict of
11 interest?

12 A Correct.

13 Q Now since the time, Mr. Lefkowitz, that the Chapter 11
14 case was commenced, have you tried to impose your will on
15 either Mr. Perry or Debtor's counsel in any way?

16 A No.

17 Q Have you demanded that the CRO or Debtor's counsel
18 either take or refrain from taking specific actions?

19 A No.

20 MS. MEYERS: Objection. Leading.

21 THE COURT: Overruled.

22 BY MR. BROOKNER:

23 Q Have you prevented in any way or attempted to prevent
24 the CRO or the Debtor's counsel from investigating potential
25 causes of action against the released parties in the

1 settlement agreement?

2 A No.

3 Q Have you tried to fire the CRO?

4 A No.

5 Q Have you attempted to replace the CRO?

6 A No.

7 Q Now if you recall, how many different mediations have
8 taken place in this case?

9 A Two sets -- actually, three sets.

10 Q Did you attend all of those sets of mediation?

11 A Two out of three.

12 Q Did you attend as the Debtor's representative?

13 A Settlement parties.

14 Q So that was my next question. So settlement parties,
15 you were all of -- let me withdraw that.

16 You attended in the capacity as the representative for
17 the settlement parties; is that correct?

18 A Correct.

19 Q Okay. Now I'd like you, Mr. Lefkowitz, in the same
20 book that you're in, flip back to Tab No. 2.

21 A Got it.

22 Q Are you familiar with this document generally?

23 A Yes.

24 Q What is it?

25 A A settlement agreement.

1 Q Now I'd like to direct your attention to the
2 introductory paragraph, the very first paragraph that
3 defines a bunch of people.

4 A Okay.

5 Q You see where it defines the M2 parties?

6 A Yes.

7 Q Are those the parties for whom you were the
8 representative at both mediations, at the mediations?

9 A Correct.

10 Q Let's talk about the first mediation for a minute. Do
11 you remember when that occurred around?

12 A November.

13 Q No, that's the second. The first one --

14 A Oh.

15 Q -- if I told you it was August, --

16 A Correct. In August.

17 Q August 23?

18 A Yeah.

19 Q Do you remember generally who attended that mediation?

20 A Yes.

21 Q Who attended?

22 A It was the Debtor, Gray Reed, Debtor's counsel, a team
23 of Ankura, the UCC, attorneys for UCC, the FA for the UCC,
24 the YesCare folks, the attorney representing the YesCare,
25 and obviously, the mediator, Judge Jones.

1 Q And was there a human representative from the Committee
2 also in attendance?

3 A I believe so.

4 Q Now at the time YesCare -- well, as we sit here today,
5 who represents YesCare and CHS?

6 A Ms. Melissa Hayward.

7 Q Now before Ms. Hayward was engaged by YesCare and CHS,
8 they had different counsel, right?

9 A Correct.

10 Q And it was that counsel who appeared at the first
11 mediation?

12 A Correct.

13 Q And at the time, did either you or anyone else at CHS
14 and YesCare have any ideas or knowledge about the alleged
15 intimate relationship that existed between counsel and
16 another former judge?

17 A Still don't have that knowledge today.

18 Q Now following the first mediation, and I think you
19 answered the question earlier, YesCare and CHS hired new
20 counsel, right?

21 A Correct.

22 Q And that's Ms. Hayward. Now after the first mediation,
23 did the M2 parties as defined in the agreement agree to go
24 back to another mediation?

25 A Correct.

1 Q Why?

2 A Because I participated in several hearings here in
3 Judge Lopez's courtroom, and we've heard from the Court the
4 unsatisfactory of the terms and conditions of the
5 settlement, and we said we're ready to go back to a second
6 try at the apple.

7 Q And at the second -- do you remember when the second
8 mediation took place on or around?

9 A End of the year.

10 Q In December, like mid-to-late December, --

11 A Correct.

12 Q -- 2023? At the second mediation, who attended for the
13 M2 parties; do you remember?

14 A It was the YesCare folks, it was M2, it was the Cigma
15 team.

16 Q Did Ms. Hayward attend?

17 A I believe so, yeah.

18 Q And did M2 have its own independent counsel attend?

19 A Yes.

20 Q Mr. Gluck, right?

21 A Correct. And his partners.

22 Q And do you remember did the Debtor attend that
23 mediation?

24 A Yes.

25 Q Who attended for the Debtor, if you remember?

1 A Mr. Perry.

2 Q Did Gray Reed come?

3 A Yes.

4 Q Did Mr. Perry have other colleagues who also attended?

5 A Correct.

6 Q And what about the UCC; do you remember who attended
7 from the UCC?

8 A These folks at the table here -- Mr. Goodman.

9 Q No, that's the TCC.

10 A Oh, UCC.

11 Q The UCC. Yeah. Who came from the UCC?

12 A Nick, Zach -- sorry for calling you in the first name
13 but I don't remember if their FA was there or not. Yeah, I
14 believe so. She was there as well.

15 Q Uh-huh.

16 A And there were other folks virtual.

17 Q Did that -- so the UCC had its individual members or
18 one or more on the telephone?

19 A Correct.

20 Q Now let's talk about the TCC, the folks at this table.
21 Did any of them attend that second mediation?

22 A Yes, they did.

23 Q And do you remember who came for the TCC?

24 A It was the three attorneys. I think it was led by
25 Mr. Goodman.

1 Q Mr. Goodman. Was Mr. Cicero sitting in the back, was
2 he there?

3 A Yes.

4 Q And Mr. Zimmerman, who's sitting at the table right
5 here?

6 A Yes.

7 Q Okay. Where was the second mediation?

8 A In Norton Fulbright's office in New York.

9 Q And who mediated that mediation?

10 A Judge Sontchi.

11 Q Now obviously, because we're here today, we reached a
12 settlement at the second mediation, right?

13 A Correct.

14 Q And if you compare the second mediated settlement to
15 the first, does the second mediated settlement have more
16 consideration coming to the estate or less consideration
17 coming to the estate?

18 A More.

19 Q Did you push the Debtor's counsel or chief
20 restructuring officer at the mediation to agree to anything?

21 A No.

22 Q Did you try to impose your will at the mediation on
23 either Debtor's counsel or the CRO?

24 A No.

25 Q Were the negotiations in your opinion hard fought?

1 MS. MEYERS: Objection, Your Honor. We're getting
2 into the substance of the mediation. So we've already been
3 --

4 THE COURT: Well, if --

5 MS. MEYERS: -- asking questions about what was
6 done at the mediation, and now they're asking him questions
7 about it.

8 THE COURT: There may have been some doors opened
9 and maybe you get through them. I'll allow it. Continue.

10 MR. BROOKNER: All right.

11 BY MR. BROOKNER:

12 Q Were the negotiations hard-fought and were the settling
13 parties pushed hard?

14 A Very hard.

15 Q Now would you characterize the mediations as easy?

16 MS. MEYERS: Objection. Leading.

17 THE COURT: Sustained.

18 BY MR. BROOKNER:

19 Q How would you characterize the mediations?

20 A Very tough.

21 Q Do you remember how long the first mediation went?

22 A Three days.

23 Q How about the second one?

24 A One day.

25 Q Without getting into substance, at the second

1 mediation, did you talk to the TCC's representative who
2 attended?

3 A Yes, at length.

4 Q Did you attempt to get them on board with the
5 settlement?

6 A Absolutely.

7 Q Did they get on board?

8 A No. They weren't interested in settling. They didn't
9 even give me a number that they're interested in settling.

10 Q Now in this case, since it's been filed, do you
11 remember, do you know how many times the UCC on this side
12 through Mr. Hemingway and Mr. Zluticky have taken your
13 deposition?

14 A At least four times.

15 Q Did they also question you at the 341 meeting of
16 creditors?

17 A Three times.

18 Q That was my next question. You testified three times
19 at the 341 meeting?

20 A Total of seven depositions.

21 Q Now you're aware that the UCC served up a bunch of
22 discovery in the case?

23 A Yes.

24 Q How would you characterize that discovery?

25 A Brutal.

1 Q Extensive?

2 A Over a half a million documents.

3 Q Time consuming?

4 A Yes.

5 Q Half a million documents. Now did the UCC object to
6 the original DIP financing that was sought in the case from
7 M2?

8 A Yes.

9 Q And as a result of that, did M2 get everything it
10 originally asked for as part of the original request?

11 A No.

12 MS. MEYERS: Objection. Leading.

13 THE COURT: Sustained.

14 BY MR. BROOKNER:

15 Q Did there come a time when M2 made some concessions in
16 connection with the DIP financing?

17 MS. MEYERS: Objection. Leading.

18 THE COURT: Overruled. We can get through it.

19 THE WITNESS: Yes, it did.

20 BY MR. BROOKNER:

21 Q And do you know off the top of your head, do you
22 remember what some of those concessions were?

23 A Dealing with third-party releases.

24 Q How about the challenge period; were there extensions?

25 A Extending the challenge period.

1 Q What about a lead on avoidance actions; was that
2 covered?

3 A Yes.

4 Q And at the end of the day, was there a hearing, or was
5 it resolved consensually?

6 A Resolved consensually.

7 Q Well, actually, there was a hearing, wasn't there?

8 A Yes.

9 Q All right. Now are you aware of the fact that the TCC
10 has objected to entry of the next interim DIP order?

11 A Yes.

12 Q As we sit here today, are the M2 parties ready,
13 willing, and able to fund the fifth interim DIP order
14 following approval by the Court?

15 A I believe M2 already partially funded.

16 Q Tell me about that. What did M2 partially fund
17 already?

18 A M2 funded \$2 million towards that DIP order that's
19 still pending.

20 Q And that's sitting in escrow, isn't it?

21 A Correct.

22 Q Pending entry of the order?

23 A Correct.

24 Q Now I want to look a little more closely at Exhibit 2,
25 which is the settlement. Do you know -- and this is not a

1 memory contest; you can turn the pages and take a minute and
2 read -- do you know what the settlement requires of the M2
3 parties?

4 A Yes.

5 Q What does it require?

6 A To basically forgive the funding that they funded over
7 the funding agreement to the tune of \$24 million, to forgive
8 the total DIP financing to the tune of \$15 million, and to
9 fund an additional \$40 million.

10 Q And I want to direct your attention in the settlement
11 agreement. You can turn to Page 2, Paragraph No. 4. You
12 see how there's a variety of Subsections under number 4?

13 A Correct.

14 Q Are those the obligations you just discussed in your
15 testimony?

16 A Correct.

17 Q Let me direct your attention to Paragraph 6, which is
18 on the next page. What does that paragraph provide for?

19 A Release of claims.

20 Q Okay. So but that covers a few things, right?

21 A Yes.

22 Q Okay. You referenced earlier some DIP advances.

23 A Correct.

24 Q Are those covered by this?

25 A Yes.

1 Q And you also mentioned something about advances under
2 the funding agreement. Is that covered by this?

3 A Correct.

4 Q Now there's an entity called Geneva. Are you familiar
5 with that entity?

6 A Yes.

7 Q And if you flip back to the first page, the very first
8 paragraph, --

9 A Yeah.

10 Q -- are the Geneva parties included in the definition of
11 M2 parties?

12 A Yes.

13 Q And do you believe that Geneva is waiving its claims
14 against the estate pursuant to this Paragraph 6?

15 A Correct.

16 Q I'd like to direct your attention in the other binder
17 if you will to Tab No. 43.

18 A Okay.

19 Q Are you familiar with -- well, can you identify this
20 document?

21 A It's a proof of claim by Geneva.

22 Q And did you testify as a 30(b)(6) witness for Geneva in
23 this case or as Geneva's 30(b)(6) witness?

24 A I believe so.

25 Q Take a second. Look at the proof of claim.

1 A Yeah.

2 Q Do you have firsthand knowledge of the basis of this
3 proof of claim?

4 A Yes.

5 Q And if you look at box number 7 on Page No. 2, what is
6 the amount listed for the proof of claim?

7 A \$315,032.97.

8 Q And as we just discussed, Geneva's going to be waiving
9 this as part of the settlement, right?

10 A Correct.

11 MR. BROOKNER: Your Honor, move for the admission
12 of Exhibit 43 for the purposes of not for the truth of the
13 matter, the validity of the claim, but for the fact that
14 there's a validly-filed proof of claim in the amount of
15 315,032.97.

16 THE COURT: Any objection?

17 MS. MEYERS: No objection.

18 THE COURT: Okay. It's admitted for that purpose.

19 (Exhibit 43 received in evidence.)

20 MR. JIMENEZ: Your Honor, if I may?

21 THE COURT: Yeah.

22 MR. JIMENEZ: Respectfully, I was going to ask

23 if --

24 THE COURT: Oh.

25 MR. JIMENEZ: -- the documents that are being

1 admitted, if they could be placed on the screen because not
2 everyone here in the courtroom have the binders, and I think
3 we also have people on the call that are not able to see
4 what documents are being referred to in the interrogation.

5 THE COURT: I'm going to let them conduct their
6 examination. But it's proof of claim 43 is -- I should say
7 -- not proof of claim 43. Document 43.

8 MR. BROOKNER: It's document number --

9 THE COURT: 43.

10 MR. BROOKNER: -- 1410 -- 1410-43.

11 THE COURT: Yeah. Yeah. I got it. Sometimes,
12 you know, if you can put it on the screen, great. If not,
13 conduct your examination. But I'm being sensitive to the --
14 I'm happy people are on, but I need to see it. So --

15 MR. BROOKNER: If you want, we can have Ms. Carson
16 as a --

17 THE COURT: Ms. Carson, if you want to put stuff
18 on, to the extent that you can, but I got it. There's some
19 stuff that's filed under seal and I don't want to -- you've
20 got kind of pick and choose which ones.

21 MR. BROOKNER: We're not. I only have one more to
22 hit, and then we'll be done.

23 THE COURT: Okay. I think we can proceed. It's
24 just a proof of claim.

25 MR. BROOKNER: And the next one just for counsel

1 is another proof of claim. And I can show you the book and
2 apologies. Okay.

3 BY MR. BROOKNER:

4 Q Mr. Lefkowitz, let's talk about M2 Loan Co. Are you a
5 director of M2 Loan Co?

6 A Yes, I am.

7 Q Now prior to the divisional merger, did M2 Loan Co make
8 a secured loan or was M2 Loan Co a secured lender to the
9 Debtor?

10 A Yes.

11 Q Do you remember how much that was for about?

12 A 100 million.

13 Q And did M2 Loan Co believe at the time of the
14 bankruptcy filing that that was a valid and enforceable loan
15 obligation against the Debtor?

16 MS. MEYERS: Objection. Leading.

17 THE COURT: Overruled.

18 THE WITNESS: Yes.

19 BY MR. BROOKNER:

20 Q As we sit here -- well, now there was a divisional
21 merger in May of '22, right?

22 A Correct.

23 Q What happened to the M2 Loan Co obligation in the
24 divisional merger; do you remember?

25 A Yes.

1 Q What happened?

2 A It was moved over to CHS TX.

3 Q It was allocated to CHS TX?

4 A I don't know the difference between moving and
5 allocation, but allocated, correct.

6 Q As we sit here today, does M2 Loan Co believe that that
7 obligation remains a valid and enforceable obligation
8 against CHS TX?

9 A Absolutely.

10 Q Okay. I'd like you to go back to the book for a
11 second, and flip to the immediately-prior tab, which is
12 Tab number 42, and see if you could just please identify
13 that document.

14 A Yes.

15 Q What is it?

16 A It's an M2 Loan Co claim.

17 Q And if you look at -- it's number 7, so see attachment.
18 If you look at the attachment, which is -- look at the --
19 oh, by the way, this is document number 1410-42, 1410-42.
20 If you flip to Page 6 of 54, Page No. 3 on the bottom, do
21 you see that?

22 A Yeah.

23 Q Do you see there's an approximate amount that M2
24 contends is owing to it?

25 A Yes.

1 Q On the third line. What is that amount?

2 A \$24,032,965.

3 Q And do you have firsthand knowledge of these amounts in
4 this proof of claim?

5 A Yes.

6 Q And again, to be clear, if the settlement is approved
7 and becomes effective, is M2 Loan Co waiving the amounts on
8 this proof of claim?

9 A Waiving and voiding.

10 MR. BROOKNER: Your Honor, move for the admission
11 of Exhibit 42 to the extent that it's a timely-filed proof
12 of claim in the amount of at least 24,032,965.

13 THE COURT: Any objection?

14 MS. MEYERS: No objection.

15 THE COURT: It's admitted for that purpose.

16 (Exhibit 42 received in evidence.)

17 BY MR. BROOKNER:

18 Q Mr. Lefkowitz, if the settlement is not approved, do
19 you have an understanding as to what happens?

20 A Yes.

21 Q What happens?

22 A All hell breaks loose, back to litigation.

23 Q And do you believe that the UCC will seek standing to
24 assert those claims against the settlement parties?

25 MS. MEYERS: Objection. Calls for speculation.

1 THE COURT: He can answer if he has personal
2 knowledge.

3 THE WITNESS: Yes.

4 BY MR. BROOKNER:

5 Q Yes, you have personal knowledge, or, yes, you think
6 that's what will happen?

7 A Yes, I have personal knowledge that that's what's going
8 to happen.

9 Q Okay. And were that to happen, how would the
10 settlement parties respond?

11 A We would vigorously defend it.

12 Q Do you know by the same token, if the settlement is
13 approved, what would happen if the M2 parties nonetheless
14 fail to comply with their obligations? Do you know what
15 happens then?

16 A Back to square one.

17 Q No releases?

18 A Correct.

19 Q Crazy litigation?

20 A Correct.

21 Q All hell breaks loose?

22 A Yeah.

23 Q Now let's go back. I know I'm flipping around and I
24 apologize. Let's go back to Exhibit No. 2, Paragraph 7. If
25 you'd take a minute, just take a look at that.

1 A Yeah.

2 Q Does Paragraph 7 contemplate releases by other parties
3 who are waiving claims and causes of action against the
4 estate?

5 A Other than listed here?

6 Q No, in addition to the M2 parties.

7 A Whatever they're listed in the -- in Paragraph 7.
8 Correct.

9 Q And there are people listed in Paragraph 7 over and
10 above the M2 parties as they're defined in the front of the
11 document?

12 A Yes.

13 Q Now before the last hearing, and I think you heard
14 reference to it earlier on Mr. Perry's cross-examination,
15 you know that there was an amended form or proposed order
16 filed.

17 A Correct.

18 Q And do you know what the purpose of filing that amended
19 form of order was?

20 A To clear up some confusing factors by the released
21 parties.

22 Q About who is releasing who and what?

23 A Correct.

24 Q Now do you believe -- do you have any reason to believe
25 that if approved by Judge Lopez, that the settlement would

1 preclude any individual creditors with a tort creditor's
2 contract or otherwise from asserting individualized, direct
3 claims against any third parties?

4 A The courthouse is open to anyone that wants to sue.

5 Q Now going back to this paragraph settlement, the
6 Paragraph 7 in the settlement, these releases, is this a
7 material term of the agreement for the settlement parties?

8 A Absolutely.

9 Q Would the settling parties be willing to settle on the
10 terms in the settlement agreement without Paragraph 7?

11 A Not at all.

12 Q Now before you and I started our examination, you saw
13 that Ms. Hayward came up and made an announcement to the
14 Court, right?

15 A Yes.

16 Q And at this point, just to be clear, the settlement
17 parties have moved off of the requirement for there to be a
18 non-appealable confirmation order, plan confirmation order,
19 right?

20 A Correct.

21 Q And now instead, the settlement parties will put in the
22 \$40 million payment once there's a final, non-appealable
23 order approving just the settlement; is that right?

24 A The 9019 motion.

25 MS. MEYERS: Objection. Leading.

1 THE COURT: Sustained.

2 BY MR. BROOKNER:

3 Q Do you have an understanding now since the plan
4 confirmation order concept has gone away when the settling
5 parties will infuse the \$40 million called for under the
6 settlement?

7 A Yes, I've instructed Ms. Hayward not to condition the
8 plan to the settlement.

9 Q Right. So now it's just once there's a final
10 settlement order, the settlement monies will come in, in the
11 manner that Ms. Hayward described.

12 A Correct.

13 MR. BROOKNER: Pass the witness, Your Honor.

14 THE COURT: Thank you. Anyone have questions who
15 supports the relief requested?

16 MR. ZLUTICKY: Thank you, Your Honor.

17 CROSS-EXAMINATION OF ISAAC LEFKOWITZ

18 BY MR. ZLUTICKY:

19 Q Mr. Lefkowitz, my name is Nick Zluticky. I represent
20 the Official Committee of Unsecured Creditors. We've met a
21 few times. I just have a few questions for you.

22 I've taken your deposition a few times in this case; is
23 that right?

24 A Correct.

25 Q We've attended a couple of mediations with one another?

1 A Yes.

2 Q So earlier, Mr. Brookner was asking you about M2 Loan
3 Co and you're a director of M2 Loan Co; is that right?

4 A Correct.

5 Q And you understand that the Committee contends that
6 there's been money transferred to M2 Loan Co by the Debtor
7 that the Committee believes should be returned to the
8 Debtor?

9 A Yes.

10 Q And you understand the Committee's reason for that
11 position is because the Committee believes those transfers
12 were fraudulent transfers?

13 A The Committee's view, but yes.

14 Q And does M2 Loan Co agree with the Committee that those
15 transfers made were fraudulent transfers?

16 A Absolutely not.

17 Q And you understand that -- you were asked earlier about
18 Geneva Consulting. You're a director of Geneva Consulting;
19 is that right?

20 A Correct.

21 Q And you understand the Committee's position is there
22 was money transferred from the Debtor to Geneva Consulting
23 that should be returned to the Debtor; is that right?

24 A Yes.

25 Q And you understand the Committee's reason for that

1 position is that the Committee believes those transfers were
2 fraudulent transfers?

3 A I don't understand it, but that's their claim.

4 Q Does Geneva agree with the Committee's position that
5 those transfers were fraudulent transfers?

6 A Absolutely not.

7 Q Earlier, you were asked about a loan that M2 Loan Co
8 made to the Debtor prior to the divisional merger; do you
9 recall that?

10 A Yes.

11 Q And you said that loan was approximately \$100 million.

12 A At that time. Today, it's about 120.

13 Q And that is a loan that you'd testified was allocated
14 or moved to CHS TX as part of the divisional merger?

15 A Correct.

16 Q You understand the Committee's position is that that
17 loan that Corizon owed to M2 Loan Co was not a valid debt,
18 right?

19 A I hadn't seen any documents to that. But yeah, it
20 could be that claim.

21 Q Does M2 Loan Co agree that that loan is not a valid
22 debt?

23 A No, not at all.

24 Q And earlier, we mentioned the divisional merger, and
25 that's the merger by which assets and liabilities were

1 allocated to CHS TX and then to Tecum Care services the
2 Debtor; is that right?

3 A Correct.

4 Q And you understand the Committee's position is the
5 divisional merger left the Debtor Tehum with less than
6 reasonably-equivalent value in exchange for what it
7 transferred?

8 A That's the claim that the UCC's making, but it's not
9 so.

10 Q Do you have a position at Perigrove 1018 LLC?

11 A Yes.

12 Q And what is that position?

13 A A director.

14 Q Does Perigrove 1018 agree with the Committee's position
15 on the divisional merger?

16 A Absolutely not.

17 Q You understand that if we do not settle the estate's
18 claims against the settlement parties, that the Committee or
19 the Debtor or both are going to pursue claims and causes of
20 actions against the settling parties?

21 A I believe so.

22 Q This was your statement of all hell breaking loose.

23 A Right.

24 Q Okay. And those parties include Perigrove 1018,
25 YesCare, M2, and Geneva?

1 A Right.

2 Q And you understand that the Committee could also seek
3 to pursue among other things successor of liability claims
4 against YesCare?

5 A I don't know how, but they could.

6 Q And do you know whether YesCare, M2, Geneva, and
7 Perigrove would defend those claims?

8 A Oh, sure.

9 Q And would they?

10 A Yes.

11 MR. ZLUTICKY: Your Honor, I have no other
12 questions. I'll pass the witness.

13 THE COURT: Thank you. Anyone else have any
14 questions for this witness who supports the relief
15 requested? Okay. Let's turn to cross-examination.

16 MS. MEYERS: Apologies. We have binders of the
17 exhibits and then the transcripts --

18 THE COURT: All right.

19 MS. MEYERS: -- may be there too.

20 THE COURT: Thank you. Do we need presenter role
21 or shifting of the monitor?

22 MS. MEYERS: Yes, please.

23 THE COURT: You've got it.

24 CROSS-EXAMINATION OF ISAAC LEFKOWITZ

25 BY MS. MEYERS:

1 Q Good afternoon, Mr. Lefkowitz. Jessica Meyers on
2 behalf of the TCC. It's nice to see you again. We met at
3 your deposition on February 8th of 2024.

4 Do you remember that?

5 A Yes.

6 Q Okay. And I may be referring to some of your testimony
7 from your deposition so it's included in the white binder
8 that we just gave you. And there's also some exhibits in
9 there, and I'll call those out by tab number. Okay?

10 A Okay.

11 Q So you understand that the Debtor and UCC have moved
12 for approval of a settlement pursuant to Rule 9019, right?

13 A Correct.

14 Q And to make things easier, I'm going to refer to that
15 as the 9019 motion, okay?

16 A Okay.

17 Q And I'll refer to the settlement or the settlement
18 agreement, when I refer to those, I'm referring to the
19 settlement that's the subject of the 9019 motion, right.

20 So let's turn to TCC Exhibit 125, which is in Tab 5 of
21 our binder.

22 THE COURT: Your new binder. Counsel, you said
23 Tab 5?

24 MS. MEYERS: Yes.

25 THE COURT: Thank you.

1 Can Mr. Lefkowitz put the other binders away for
2 now?

3 MS. MEYERS: Yeah.

4 THE COURT: Okay.

5 MS. MEYERS: We will not be referring to those.

6 THE COURT: Great.

7 THE WITNESS: That's good, right? Exhibit what?

8 BY MS. MEYERS:

9 Q Tab 5, please. It's TCC Exhibit 120.

10 A Okay.

11 Q Now you've seen this document before, right?

12 A Yes.

13 Q Okay. And if you see the numbers at the top of the
14 page, could you please turn to Page 37 out of 47?

15 A Yes.

16 Q Do you recognize this as the settlement agreement?

17 A Correct.

18 Q All right. And if you could turn to 47 out of 47, do
19 you see your signature on that page?

20 A Yes.

21 Q And it says you signed the agreement as an authorized
22 representative of the parties listed on that page, correct?

23 A Correct.

24 Q And you participated in the negotiation of the
25 settlement on behalf of these parties; is that right?

1 A Yes.

2 Q And for the record, those parties are: YesCare Corp;
3 CHS TX, Inc.; Geneva Consulting, LLC; Perigrove 1018 LLC;
4 Perigrove LLC; M2 Hold Co, LLC; and Pharmacore, LLC,
5 correct?

6 A Correct.

7 Q Let's start with the YesCare Corp. You're a director
8 of YesCare; is that correct?

9 A Yes.

10 Q And do you hold a position at CHS TX?

11 A Probably only as a director.

12 Q You believe you're a director or CHS TX?

13 A Correct.

14 Q And that's how you became an authorized signer for CHS?

15 A Correct.

16 Q And CHS TX is a direct subsidiary of YesCare; is that
17 correct?

18 A Correct.

19 Q What about Geneva Consulting? You don't currently hold
20 an official position at Geneva; is that right?

21 A I think I testified that I am a director at Geneva.

22 Q You're currently a director at Geneva.

23 A I believe so.

24 Q Okay. And I believe you testified that Mr. Solomon
25 Shapiro authorized you to sign on behalf of Geneva; is

1 that --

2 A Correct.

3 Q And what's Mr. Shapiro's position at Geneva?

4 A I think he's the general counsel there.

5 Q Mr. Shapiro's also in-house counsel at Perigrove LLC;
6 is that right?

7 A General counsel.

8 Q General counsel is his position?

9 A Correct.

10 Q And you're also a director of Perigrove LLC; is that
11 correct?

12 A No, I'm not.

13 Q You're not currently a director of Perigrove LLC?

14 A I was then.

15 Q You were at this time --

16 A Correct.

17 Q -- but you're not currently.

18 A Ct

19 Q And you're a director of Perigrove 1018 LLC, correct?

20 A Correct.

21 Q And you still hold that position?

22 A Correct.

23 Q You're also a director of M2 Hold Co; is that right?

24 A Correct.

25 Q And you're the sole director of M2 Hold Co?

1 A No.

2 Q There's another director of M2 Hold Co?

3 A Yes.

4 Q And who is that?

5 A Oh, I'm sorry. I confused between Hold Co and Loan Co.

6 Hold Co, I'm the sole. Loan Co, no.

7 Q And what's the relationship between M2 Hold Co and M2

8 Loan Co?

9 A I believe M2 Hold Co is the parent to M2 Loan Co.

10 Q And finally, you're also a director of Pharmacore, LLC?

11 A Correct.

12 Q Okay. Let's go back to the first page of the

13 settlement agreement, which is on Page 37 out of 47. You

14 see that there's a number of parties listed that are defined

15 collectively as M2 parties. Do you see that?

16 A Correct.

17 Q And again for the record, this is YesCare Corp,

18 including CHS TX; M2 Loan Co, LLC; M2 Hold Co, LLC;

19 Perigrove 1018 LLC; Perigrove LLC; Pharmacore, LLC; and

20 Geneva Consulting, LLC. Do you see that?

21 A Correct.

22 Q So is it fair to say you signed the settlement

23 agreement on behalf of --

24 A All those.

25 Q Except for M2 Loan Co, correct?

1 A Correct.

2 Q Okay. But you are a director of M2 Loan Co?

3 A Correct.

4 Q And you testified as a representative of M2 Loan Co in
5 this case, correct?

6 A Correct.

7 Q In addition to the M2 parties, the Debtor is a party of
8 the settlement agreement.

9 A Yes.

10 Q And you're the Debtor's sole director?

11 A Of what? Of the Debtor?

12 Q Yes.

13 A Correct.

14 Q And you are the one who caused Tehum to file for
15 bankruptcy; is that right?

16 A Correct.

17 Q And you engaged --

18 A I didn't cause it; I filed it, but go ahead.

19 Q And you engaged Tehum's bankruptcy counsel Gray Reed,
20 right?

21 A Correct.

22 Q Now let's take a look at Paragraph 4 of this agreement,
23 which is on the next page.

24 A Yeah.

25 Q This provision's entitled settlement payments; do you

1 see that?

2 A Yes.

3 Q And it says here the M2 parties -- you see that the M2
4 parties -- it says here, "The M2 parties shall make or cause
5 to be made the following advances in releases." Do you see
6 that?

7 A Yes.

8 Q Does that mean it's essentially up to you to release
9 the settlement payments?

10 A No.

11 Q Aren't you the sole -- you're the sole director of M2
12 Hold Co, for example, right?

13 A This is not M2 Hold Co. This is M2 Loan Co.

14 Q This says M2 parties.

15 A But this refers to the DIP payments, which is M2 Loan
16 Co.

17 Q So the settlement agreement says, "The M2 parties shall
18 make or cause to be made the following advances." Do you
19 see that?

20 A Yes.

21 Q And so M2 Hold Co is one of the M2 parties; isn't that
22 right?

23 A Yes.

24 Q Okay. And you're the sole director of M2 Hold Co,
25 right?

1 A Yes.

2 Q Okay. So isn't it really, if you withhold your -- if
3 you don't cause M2 Hold Co to make a payment, isn't that
4 holding up the payment?

5 A No.

6 Q So who's making the payment?

7 A Other parties can make payment.

8 Q Do you know which ones will be making this payment?

9 A There's a list of all parties, so any one of the
10 parties can make the payment.

11 Q At this time, has it been determined which of the M2
12 parties will be making the settlement payment?

13 A No.

14 Q You're a director of all of the M2 parties; isn't that
15 right?

16 A Yes.

17 Q Except for I think you said you're no longer a director
18 of Perigrove LLC; is that right?

19 A Correct.

20 Q If you're not a director of Perigrove LLC, who from the
21 settling parties authorized the revision to the settlement
22 today?

23 A I think I testified that I -- oh the revision of
24 today's settlement?

25 Q On behalf of Perigrove LLC.

1 A Counsel conferred with clients.

2 Q And who at Perigrove LLC would have made that
3 authorization?

4 A It could be Zalman Shapiro, the general counsel. I
5 don't know.

6 Q Okay. You see that there's a \$40 million payment
7 contemplated in Subsection (e), Paragraph 4?

8 A Yes.

9 Q Where is the \$40 million going to come from?

10 A From the settlement parties.

11 Q From which ones?

12 A Hasn't been allocated yet.

13 Q Is there an escrow fund with \$40 million sitting in it
14 right now?

15 A Escrow fund? Not that I know of.

16 Q As of today, do any of the M2 parties have \$40 million
17 on hand?

18 A I believe so.

19 Q Which one has \$40 million on hand?

20 A I don't have their bank statements in front of me, but
21 they do.

22 Q How do you know that?

23 A I'm involved in these companies.

24 Q Okay. So you sitting here today, collectively, you
25 believe that the M2 parties have \$40 million on hand?

1 A You settle it today; we can write you a check today.

2 Q None of the \$40 million dollars is going to come from a
3 party other than the M2 loan parties; is that right?

4 A I didn't say that.

5 Q Okay. Is that a possibility?

6 A Possibilities, we can discuss possibilities, of course.

7 Q Is it contemplated that any of the \$40 million dollars
8 settlement payment, is it contemplated that that would come
9 from any party other than the M2 Loan --

10 A No.

11 Q -- the M2 parties? No. Okay. Let's move on to
12 Paragraph 7. That starts on Page 40.

13 A Page 40?

14 Q On Page 40 of 47, looking at the top.

15 A Oh, okay.

16 Q Paragraph 7. Do you see the list of parties starting
17 with Subsection (a) and the M2 parties that are defined
18 collectively as the released parties? It goes on to
19 Page 41.

20 A Correct.

21 Q And these are parties that are receiving releases from
22 creditor claims under the settlement; --

23 A Correct.

24 Q -- is that right? Okay. You're personally receiving a
25 release, right?

1 A Me too?

2 Q Yes, you're listed under Subsection (m); do you see
3 that?

4 A Correct.

5 Q And your release under the settlement agreement is not
6 mutual, is it?

7 A No.

8 Q Right? You're not releasing any claims you might have
9 against a creditor of Tehum.

10 MR. BROOKNER: Objection, Your Honor. This was a
11 -- there was a misstatement earlier, and I didn't say
12 anything. The document says nothing about releases to and
13 from creditors. The document relates to releases to and
14 from the estate. And so, this is a particularly -- this is
15 a precise issue that needs to be properly addressed.

16 Counsel is conflating what the document and the
17 amended form of order say.

18 THE COURT: Why don't you just object, and then --

19 MR. BROOKNER: Oh.

20 THE COURT: -- take it up on redirect?

21 MR. BROOKNER: That's fine.

22 THE COURT: Okay. Thank you.

23 BY MS. MEYERS:

24 Q To be clear if, for example, you had a claim against an
25 unsecured creditor of Tehum, that claim's not being

1 released, right?

2 A I personally filed a claim?

3 Q If -- excuse me. If you had a claim, let's say, for
4 defamation against --

5 A You're asking a hypothetical?

6 Q I'm saying if you had a claim against a member --

7 A When you say you, you mean me personally?

8 Q Personally, you as a released party.

9 A I haven't filed a claim.

10 Q I understand. I'm saying if you had a claim against a
11 member of the UCC, that claim's not being released under
12 this settlement agreement, right?

13 A No.

14 Q So if this settlement agreement is approved, you could
15 -- I'm not saying you would -- but you could sue a member of
16 the UCC, right?

17 A Sue on what?

18 Q For any claim that you might have existing at this
19 time.

20 A There's a flag hanging out there. You know, anyone can
21 sue anyone. I don't follow your line of questioning. If I
22 can sue the creditors?

23 Q Nothing in this agreement --

24 A Precludes me --

25 Q -- releases claims that you might have against a

1 creditor, for instance.

2 A Right. This is not a mutual release.

3 Q Okay. Now based on the terms of the settlement
4 agreement, you're not identified as one of the parties
5 responsible for the settlement payment, right?

6 A There's no one identified. The settlement parties.

7 Q I'm sorry. Can you repeat that?

8 A No one is individually identified; it's a group of
9 parties.

10 Q Right. The M2 parties are identified as being
11 responsible for the settlement payment.

12 A Correct.

13 Q And you're not one of the M2 parties?

14 A No.

15 Q Okay. So based on the settlement agreement, you're not
16 personally obligated to pay any amount of a settlement
17 payment, right?

18 A We will participate if we have to.

19 Q Right. You testified at your deposition that you would
20 contribute to the settlement payment to get a release; is
21 that right?

22 A Correct.

23 Q Okay. You said you'd contribute \$10?

24 A Minimum.

25 Q Well, at the time, you said -- at your deposition, you

1 said you'd contribute \$10, right?

2 A I said -- I meant to say that for consideration, you
3 need to pay \$10. If it's missing \$10 in the settlement,
4 I'll contribute it, but if it's missing 10 million, I'll
5 contribute too.

6 Q So is \$10 all you can afford to contribute?

7 A I just said if it's missing 10 million, I will
8 contribute 10 million as well.

9 Q Do you personally have the ability to contribute the
10 full 40 million?

11 MS. HAYWARD: Objection, Your Honor. Relevance to
12 whether or not Mr. Lefkowitz can loan.

13 THE COURT: Overruled. You can answer.

14 THE WITNESS: If need be.

15 BY MS. MEYERS:

16 Q If need be, you could contribute the entire \$40
17 million?

18 A Correct.

19 Q Could you contribute more than that?

20 A We're talking about a settlement. I've contributed
21 more.

22 Q Well, if there was a new settlement, could you
23 contribute more than \$40 million dollars to it?

24 MS. HAYWARD: Objection, Your Honor. This is --

25 THE COURT: I'll sustain that objection.

1 BY MS. MEYERS:

2 Q I'd like to direct your attention to Subsection (u) in
3 Paragraph 7. You see that it provides for each entity
4 listed in A through T, each of their respective current and
5 former officers, directors, employees, managers, attorneys,
6 professional advisers, and agents; and then it excludes a
7 couple of individuals.

8 Do you see that those individuals are defined as
9 released parties -- the attorneys, directors, officers?

10 A Yes.

11 Q Okay. So the M2 parties are listed in Subsection (a)
12 as a released party, right?

13 A Right.

14 Q And so according to Subsection (u), the current and
15 former directors, officers, employees, managers, attorneys,
16 professional advisers, and agents of each of the M2 parties
17 is also getting a release; is that right?

18 A Correct.

19 Q Okay. And you're a current or former director of most
20 of the M2 parties, right?

21 A Okay.

22 Q M2 -- excuse me. Strike that. YesCare Corp is one of
23 the M2 parties, right?

24 A Yes.

25 Q And you're a director of YesCare Corp?

1 A Yes.

2 Q All right. You're not the only director of YesCare
3 Corp though, are you?

4 A No.

5 Q How many directors are there?

6 A Many.

7 Q Do you know approximately how many?

8 A Probably a dozen officers and directors.

9 Q Do you know who those individuals are?

10 A Some, yeah.

11 Q And who are they?

12 A They're listed here.

13 Q Where are they listed?

14 A Jeffrey Scott King, Jeffrey Sholey, Ladele.

15 Q Those are all directors of YesCare?

16 A Correct.

17 Q Is that all of the directors of YesCare Corp to your
18 knowledge?

19 A I wouldn't know today if it's all or it has been
20 changed.

21 Q Have you ever attended board meetings with your fellow
22 directors of YesCare Corp?

23 A Yes.

24 Q Okay. But you don't remember who those people are?

25 A They keep changing. They keep moving.

1 Q When was the last time you attended a board meeting?

2 A December.

3 Q Who was on the board as of December -- I assume you
4 mean 2023?

5 A Correct.

6 Q Who was on the board in December of 2023?

7 A I don't recall all their names down in, you know, back
8 then, but that's why we kept it broad, general -- officers
9 and directors, whoever they are.

10 Q Okay. So sitting here today, you can't tell us each
11 director of YesCare Corp who's getting released, right?

12 A There is in detail, and then there's in general.

13 Q Where could I look to get a list of the current and
14 former directors of YesCare?

15 A I'm sure in the books, in the minutes of YesCare.

16 Q To your knowledge, has that been produced to the TCC?

17 A I don't know what has been produced to the TCC. We've
18 produced everything to the Debtor.

19 Q Who's the beneficial owner of YesCare Corp?

20 A I don't know.

21 Q You don't know who the beneficial owner is?

22 A Correct.

23 Q Okay. I think we've already established you're a
24 director of multiple entities, right?

25 A Yes.

1 Q So you understand that directors owe a fiduciary duty
2 to the beneficial owners, right?

3 MS. HAYWARD: Objection. Calls for legal
4 conclusion.

5 THE COURT: Can you repeat the question, Counsel?

6 MS. MEYERS: I said, do you understand that as a
7 director, you owe a fiduciary duty to the owners of the
8 company.

9 THE COURT: I think he can answer that question.
10 Overruled.

11 THE WITNESS: But I still don't know who the
12 owners are.

13 BY MS. MEYERS:

14 Q So you just don't know who's --

15 A I think we went through this line of questioning in
16 seven depositions. And then finally, you asked me if I'm an
17 owner, and I said I'm not.

18 THE COURT: Mr. Lefkowitz, unfortunately, I wasn't
19 at any of the depositions. So she gets to ask all the
20 questions, and you get to answer them. So answer --

21 THE WITNESS: Okay.

22 THE COURT: -- ask your next question.

23 BY MS. MEYERS:

24 Q So you don't -- your testimony is that you don't know
25 to whom you owe your fiduciary duty as a director of YesCare

1 Corp?

2 A I feel fiduciary duty to the company, but I don't know
3 who the shareholders of the company are.

4 Q YesCare Corp isn't a public company, is it?

5 A No.

6 Q It's privately held?

7 A Correct.

8 Q Is it closely held?

9 A I don't know.

10 Q You don't know?

11 A No.

12 Q Perigrove LLC is also one of the M2 parties; is that
13 right?

14 A Yes.

15 Q And you're a director -- you were a director of
16 Perigrove LLC?

17 A Correct.

18 Q Who appointed you to be a director of Perigrove LLC?

19 A I don't recall. It was many years ago.

20 Q How many years ago was it?

21 A Probably seven or eight years ago.

22 Q Do you know whether Perigrove LLC has any other
23 directors?

24 A It does.

25 Q Do you know who they are?

1 A I'm no longer a director in Perigrove.

2 Q Who were the other directors when you were a director
3 of Perigrove LLC?

4 A I interacted with general counsel.

5 Q Is the general -- are you referring to Mr. Shapiro?

6 A Correct.

7 Q Was he a director of Perigrove LLC?

8 A I believe so.

9 Q Are you aware that there were any other, other than
10 yourself and Mr. Shapiro, are you aware of any other
11 directors of Perigrove LLC?

12 A No.

13 Q You don't know of any others?

14 A Correct.

15 Q So you've never attended a board meeting with any other
16 directors?

17 A Correct.

18 Q Is Michael Flax a director of Perigrove LLC?

19 A No.

20 Q How do you know that if you don't know they are?

21 A I know who Michael Flax is, and he has no relationship
22 to the company.

23 Q So there are people that you know have a relationship
24 to the company that might be a director; is that what you're
25 saying?

1 A You just asked me about Michael Flax, and I know
2 Michael Flax has nothing to do with our company.

3 Q So you don't know if there are other directors of
4 Perigrove LLC who are getting a release under this
5 settlement?

6 A Are you talking about these names listed here?

7 Q Well, I'm talking about that Perigrove LLC is an M2
8 party, correct?

9 A Right.

10 Q And the officers and directors and managers and agents
11 are all getting --

12 A Releases.

13 Q -- releases. So --

14 A And they're not listed in the agreement --

15 Q Right. So --

16 A -- just in case they were left out. Correct.

17 Q Right. So we don't know who those people are --

18 A Correct.

19 Q -- with respect to Perigrove LLC?

20 A Or any of the entities.

21 Q Okay. Can you turn to Tab 6 in your binder? And this
22 is TCC Exhibit 291. If you turn to the second page, do you
23 recognize this is a page from Perigrove LLC's website?

24 THE COURT: Which exhibit --

25 MR. BROOKNER: Objection.

1 THE COURT: -- are you referring to, Counsel?

2 MS. MEYERS: It is TCC Exhibit 291, and it's on
3 Tab 6.

4 THE COURT: Oh, I'm in Tab 6. I saw it. Okay. I
5 think there's an objection.

6 MR. BROOKNER: Yes. Objection.

7 THE COURT: What's the objection?

8 MR. BROOKNER: It's hearsay and until the document
9 comes into evidence, we can't really ask questions about it.

10 MS. MEYERS: Your Honor, I've literally just put
11 the document and asked him if he recognized it so --

12 THE COURT: Yeah. I think she's allowed to get a
13 little foundation in there to see if she can --

14 MR. BROOKNER: Okay. I'll --

15 THE COURT: Okay.

16 MR. BROOKNER: -- come back.

17 MS. HAYWARD: Your Honor, I'm just saying that the
18 document is on the screen and it has not yet been admitted,
19 so it shouldn't be shown to --

20 THE COURT: I think she's just showing it to the
21 witness to see if -- to authenticate. We haven't gotten to
22 admission yet. I think if the document, they're allowed to
23 authenticate.

24 MS. MEYERS: Yeah. I believe it's from the
25 website. I don't believe it's a confidential document.

1 MS. HAYWARD: Your Honor, I just wasn't sure if it
2 was being shown to Webex and everybody before it had been
3 admitted.

4 THE COURT: Okay. Why don't we just proceed on
5 the binders. You can take it down for now.

6 BY MS. MEYERS:

7 Q Mr. Lefkowitz, do you recognize this as a page from
8 Perigrove LLC's website?

9 A I think this question was asked at the deposition as
10 well, and I think I remember testifying that I hadn't seen
11 the website, and I know nothing about this document.

12 Q Do the people on this page work for Perigrove LLC to
13 your knowledge?

14 A Today, used to?

15 Q Today.

16 A I don't know. I'm not in Perigrove today.

17 Q Do you know if David Gefner is the founder and
18 principal of Perigrove LLC?

19 A I don't have direct knowledge of that.

20 Q You don't know one way or another whether David Gefner
21 is the founder and principal of --

22 A Correct.

23 Q -- Perigrove LLC? So you don't -- you can't -- sitting
24 here today, you can't recognize any of these people as
25 someone at the entity that you were formerly a director of?

1 A I didn't say that.

2 Q Okay. Which one of these --

3 A You asked me if I recognized the people. I recognize
4 the people. You asked me if I know if he was the founder; I
5 said no, I don't.

6 Q Understood. Are you aware that any of these
7 individuals are still affiliated with Perigrove LLC?

8 A I don't know.

9 Q Do you know whether any of these individuals are
10 directors of Perigrove LLC?

11 A Today, I don't know.

12 Q Do you know whether they ever have been in the past?

13 A No.

14 Q You don't know whether any of these individuals have
15 ever been a director of Perigrove LLC?

16 A Correct.

17 Q Do you know whether any of these individuals are an
18 officer of Perigrove LLC?

19 A I don't know.

20 Q You don't know.

21 A No.

22 Q Not currently or previously.

23 A Correct.

24 Q So, but it's possible that some of these people are
25 getting a release under the settlement agreement, right?

1 A Possibly.

2 Q You just don't know?

3 A Correct.

4 Q You know what I'm referring to when I say DNO
5 insurance?

6 A Yes.

7 Q Do you know, when you were a director of Perigrove LLC,
8 did they have DNO insurance?

9 A Don't know.

10 Q Do you know who the beneficial owner of Perigrove LLC
11 is?

12 A No.

13 Q Do you have an ownership interest in Perigrove LLC?

14 A No.

15 Q Do you know of any person who does have an ownership
16 interest in Perigrove LLC?

17 A No.

18 THE COURT: Mr. Lefkowitz, you may have mentioned
19 this. When did you stop becoming affiliated with Perigrove
20 LLC?

21 I apologize if you already asked the question. I
22 was just going through my notes.

23 THE WITNESS: January of this year.

24 THE COURT: Thank you. That does lead me to
25 another question. When was this document signed, do you

1 recall? Was it --

2 THE WITNESS: Which --

3 THE COURT: The -- I'm sorry. I should've been a
4 little bit more precise. The settlement agreement was filed
5 on the docket on January 16th. When did -- do you recall --

6 THE WITNESS: Recall right after the settlement.

7 I dis-associated myself --

8 THE COURT: Okay.

9 THE WITNESS: -- from the company.

10 THE COURT: Thank you.

11 BY MS. MEYERS:

12 Q Mr. Lefkowitz, did you just say you ceased to be a
13 director of Perigrove LLC in January 2024?

14 A I still held a VP position, but I was no longer a
15 director.

16 Q Okay. Can you turn to Tab 2, which is the confidential
17 portion of your deposition transcript?

18 A Yeah.

19 Q And do you see that this is dated February 8, 2024?

20 A Okay.

21 Q And then can you turn to Page 220?

22 A 220?

23 Q Yeah. Excuse me. Yes, 220.

24 A Okay.

25 Q Do you see at line 8 someone asked, "Are you a director

1 of Perigrove LLC?" Answer, "I am."

2 A Okay.

3 Q That's testimony you gave on February 8, 2024?

4 A Right.

5 Q So is that accurate? Were you still a director of
6 Perigrove LLC at the time?

7 A I held the position of VP, the position, but not as a
8 director. So if this needs to be corrected, yes.

9 Q Okay. So that was inaccurate testimony that you
10 provided?

11 A Obviously.

12 Q Perigrove 1018 is also an M2 party, right?

13 A Correct.

14 Q And you're a director of that entity?

15 A Yes.

16 Q Does Perigrove 1018 have any other directors?

17 A Not that I'm aware of.

18 Q You've never interacted with someone who held
19 themselves out as a director?

20 A Correct.

21 Q And does Perigrove 1018 have any officers?

22 A I'm sure it does.

23 Q Do you know who they are?

24 A No.

25 Q Does Perigrove 1018 have any employees?

1 A I don't know.

2 Q Does Perigrove 1018 have any DNO insurance?

3 A I don't know.

4 Q Who would know that, if not you?

5 A General counsel, principals.

6 Q Who's the general counsel of -- well, excuse me.

7 Strike that. Who's the general counsel of Perigrove 1018?

8 A Mr. Shapiro.

9 Q So Mr. Shapiro's getting a release under this
10 settlement agreement; is that right?

11 A If he falls under the category.

12 Q But whether there's any other directors or officers of
13 Perigrove 1018, you don't know whether there's any other
14 that are getting released under the settlement?

15 A Correct.

16 Q You have a 5 percent ownership interest in Perigrove
17 1018?

18 A Correct.

19 Q Do you hold that position indirectly or through an
20 entity?

21 A Through an entity.

22 Q And what's the name of that entity?

23 MS. HAYWARD: Objection. Relevance, Your Honor.

24 THE COURT: What's the relevance, Counsel?

25 MS. MEYERS: Your Honor, this is a potential

1 source. This is an individual that's getting released that
2 could potentially be -- have an alter ego claim against them
3 that's being released under this agreement.

4 THE COURT: Which individual? I'm sorry. I was
5 going through the -- I have the settlement agreement open
6 right now.

7 MS. MEYERS: Mr. Lefkowitz holds his ownership
8 interest in Perigrove 1018 --

9 THE COURT: Uh-huh.

10 MS. MEYERS: -- through an entity, not
11 individually.

12 THE COURT: Right.

13 MS. MEYERS: So the entity is --

14 THE COURT: I'm sorry. I apologize. Can you
15 repeat the question? I know how the entity --

16 MS. MEYERS: I said what's the name of the entity.

17 THE COURT: Ah. Overruled.

18 THE WITNESS: Company called Godfried (phonetic)
19 Wire Company.

20 BY MS. MEYERS:

21 Q Does that entity hold any other interests other than
22 your interest in Perigrove 1018?

23 MS. HAYWARD: Objection. Your Honor, again, I
24 don't think that this is proper.

25 THE COURT: Yeah. I'm with you on that now. I

1 think we got the name of the entity. So I'll sustain the
2 objection.

3 MS. MEYERS: Thank you, Your Honor.

4 BY MS. MEYERS:

5 Q Do you know who owns the remaining 95 percent of
6 Perigrove 1018?

7 A No.

8 Q Do you know whether Perigrove LLC is a beneficial
9 owner?

10 A I don't know who the owners are.

11 Q Okay. So we've talked about the parties that are
12 receiving a release under Paragraph 7, and those were
13 defined as the released parties, right?

14 A Correct.

15 Q What's your understanding of the claims that are being
16 released against the released parties?

17 A The claims.

18 Q What are they being released from?

19 A Any claims.

20 Q Any and all claims?

21 A Correct.

22 Q And just to make sure I'm understanding, is it any and
23 all claims of the Debtor and its creditors?

24 A Whoever the other party they're handing the money over
25 to.

1 Q So an incarcerated individual who has a personal injury
2 claim against the Debtor, that person's claims are being
3 settled by the settlement agreement, right?

4 MS. HAYWARD: Objection, Your Honor. This is --

5 THE COURT: He can answer the question if he
6 understands that's the case or not. You-all can --
7 overruled.

8 THE WITNESS: I don't know what difference does it
9 make if he's incarcerated or not.

10 BY MS. MEYERS:

11 Q I'm using that as an example. Do you understand
12 whether that person's claim is being released under the
13 settlement agreement or not?

14 A Whoever has a claim.

15 Q Anyone who has a claim against the Debtor?

16 A Whoever has a claim and is listed in the agreement,
17 there's a release.

18 Q And any of those individuals would be barred from
19 pursuing claims against a released party; is that your
20 understanding?

21 A Whoever receives the funds, correct.

22 Q And a released party includes YesCare, right?

23 A We listed them. M2 parties.

24 Q The idea is that the settlement payment is going to buy
25 peace for the all the released parties; is that fair?

1 A I don't know what buy peace means.

2 Q Well, let's turn to your transcript. This is again the
3 confidential transcript. So it's Tab 2, and let's turn to
4 Page 177.

5 Directing your attention to line 11. Question, "If the
6 settlement is approved, what happens to the claims that are
7 pending against Corizon Health and the various tort
8 victims?" There was a number of objections. "I think we
9 discussed it before. Money is going to buy peace." Do you
10 see that?

11 A Yeah, line 20.

12 Q Yes. So buying peace is your goal here, correct?

13 A Okay.

14 Q That's what you testified on February 8th, right?

15 A Things changed since then, but okay.

16 Q What's changed?

17 A Brown Rudnick submitted the \$3 million legal bill. You
18 don't think it changed?

19 Q Is that the only thing that's changed?

20 A Magnificent.

21 Q So in your view, is the settlement paying buying
22 finality of any distinct claims against the released parties
23 that might exist at the time of the settlement?

24 A Correct.

25 Q And the M2 parties are responsible for making that

1 settlement payment, right?

2 A Parties, correct.

3 Q Yes. Let's go back to Tab 5 in the settlement
4 agreement, which begins on Page 37. And then I'm going to
5 have you turn to Paragraph 9 of the settlement, which is on
6 Page 41 of 47.

7 A Okay.

8 Q And before we get into the substance, you're aware that
9 on March 5th, the Debtor and the UCC filed a revised
10 proposed order for the 9019 motion?

11 A Correct.

12 Q And you're aware that that order included revised
13 language for this Paragraph 9?

14 A Correct.

15 Q Let's take -- so, before we turn to this, let's take a
16 look at page, or excuse me, document ECF 1432, which is at
17 Tab 7 of your binder.

18 A Yeah.

19 Q All right. And this is the new proposed order; do you
20 recognize that?

21 A Yeah.

22 Q Now I understand that there's been some changes
23 announced today, but I want to understand how this new
24 proposed order came about first.

25 So when is the first time that you learned of the plan

1 to submit a revised proposed order?

2 A I wouldn't be able to identify a date.

3 Q Fair to say it was between March 1st and March 5th?

4 A I wouldn't be able to identify it. There's a lot going
5 on in my life.

6 Q I understand. Was it before you were deposed?

7 A No, I think it was after I was deposed.

8 Q Was it after the hearing in this case started on March
9 1st?

10 A I believe so.

11 Q Did you request that the Debtor and UCC submit a
12 revised proposed order?

13 A No.

14 Q Did any of the M2 parties request that?

15 A I don't think so.

16 Q Do you understand how it came to be that a revised
17 proposed order was submitted?

18 A No.

19 Q What's the first time you saw a draft of this document?

20 A On PACER.

21 Q So you didn't see it before it was filed?

22 A Correct.

23 Q You see on the front page here, it says that Exhibit B
24 is a redlined draft of Paragraph 6 of 9 of the settlement
25 agreement. Do you see that?

1 A One second. I lost you. Where?

2 Q On the very front page of this notice of revised
3 proposed order.

4 A Take me back.

5 Q It's on the very first page. Do you see it says,
6 "Please take further notice that attached to this notice is
7 Exhibit B," -- oh, excuse me -- "notice as Exhibit B is a
8 redline of Paragraphs 6 and 9 of the settlement agreement."
9 Do you see that?

10 A Okay.

11 Q Let's turn to Exhibit B, which begins on Page 11 of 13.
12 And then let's turn to Page 12 because that's --

13 A I lost you.

14 Q -- where the redlines are.

15 A I lost you. Which tab?

16 Q We are in Tab 7.

17 A Okay. Page?

18 Q And we are on Page 12 of 13.

19 THE COURT: 12 of 18? Or --

20 THE WITNESS: 12 of 13, Judge.

21 BY MS. MEYERS:

22 Q And it's on your screen as well, Mr. Lefkowitz. Now --

23 THE COURT: Oh, sorry. I'm just catching my own
24 place here.

25 MS. MEYERS: It's okay.

1 THE COURT: I apologize.

2 MS. MEYERS: It's Tab 7.

3 THE COURT: Yeah, I'm --

4 MS. MEYERS: And --

5 THE COURT: -- with you.

6 MS. MEYERS: And -- okay.

7 THE COURT: I'm with you.

8 MS. MEYERS: Okay. Great.

9 BY MS. MEYERS:

10 Q Now before we get into this, do you understand how to
11 decipher a redline?

12 A Yes, but I had nothing to do with this redline.

13 Q I understand. So 9(a) starts out "The effectiveness of
14 this agreement is conditioned upon the entry of an order of
15 the Court in form and substance acceptable to the M2 parties
16 approving this agreement pursuant to Rule 9019." Do you see
17 that?

18 A Yes.

19 Q So does this mean that the agreement is not effective
20 unless there is an order approving the settlement agreement
21 in a form and substance acceptable to you?

22 A I don't know what this redline means.

23 Q Do you understand --

24 A You know what I mean? You know what I know is what was
25 announced in court today. I have no idea about this

1 document. I've never seen this redline before so --

2 Q Well, Mr. Lefkowitz, this is the first line of the
3 current settlement agreement, and this has not been changed.

4 So this is the first line --

5 A Let's go to the settlement agreement. Why are you
6 taking me to a redline?

7 Q Well, because -- yes. Let's go to the settlement.
8 Let's turn to Paragraph 9. Okay. Are you there?

9 A No. Where?

10 Q We are back in Tab 5, and at Paragraph 9, which is on
11 Page 41 of 47.

12 A 41 of 47. Yeah.

13 Q Okay. Do you see that at the beginning of 9(a), the
14 language reads "The effectiveness of this agreement is
15 conditioned upon the entry of an order of the Court in form
16 and substance acceptable to the M2 parties approving the
17 agreement pursuant to Rule 9019 of the Federal Rules of
18 Bankruptcy Procedure." Do you see that language?

19 A Yes.

20 Q Okay. Does this mean that the agreement is not
21 effective unless there is an order that is acceptable to
22 you?

23 A We proposed a change today.

24 Q I am asking about this language in the old agreement.

25 A History.

1 Q Well, until there is something on file that shows what
2 the language is going to be, I'm going to ask you about the
3 language that's in --

4 A Sure.

5 Q -- the current agreement and in the proposed order
6 that's on file with the court, okay?

7 So I'm asking you this language that says, "The
8 effectiveness of this agreement is conditioned upon the
9 entry of an order of the Court in form and substance
10 acceptable to the M2 parties approving the agreement
11 pursuant to Rule 9019 of the Federal Rules of Bankruptcy
12 Procedure," I'm asking is -- does that mean that the order
13 needs to be acceptable to you?

14 A To all parties.

15 Q You are a director of all of the M2 parties except for
16 one or two; is that correct?

17 A So, I'm not the sole decision authority.

18 Q Well, I think you --

19 A I'm a director, but I still have to report in some of
20 these.

21 Q Well, you're the only director of M2 Hold Co; isn't
22 that right?

23 A Yeah. But M2 Hold Co is only one entity here.

24 Q Right. But if it's not acceptable to M2 Hold Co, it's
25 not acceptable to the M2 parties; isn't that right?

1 A Yeah, but the other M2 parties can accept it.

2 Q Doesn't this require that it needs to be in a form and
3 substance acceptable to all the M2 parties?

4 A But that doesn't mean it has to be unanimous.

5 Q Your understanding is that if YesCare thinks that the
6 order's okay and M2 Hold Co and M2 Loan Co don't think the
7 order's okay, that this agreement would still become
8 effective?

9 A I don't think YesCare will go into a contentious with
10 their lender, but if Geneva says no and YesCare says yes,
11 YesCare will, you know, whoever writes the check.

12 Q Okay. And we don't know who that is right now?

13 A No.

14 Q Okay. So we don't know who the order needs to be
15 acceptable to?

16 A To all parties.

17 Q Okay. Right. And you are --

18 A But it doesn't have to be a unanimous consent.

19 Q Okay. And is that explained in this agreement?

20 A It can get clarified in the certain order.

21 Q Right. Is it your understanding that this language is
22 going to change based off of what your counsel just
23 represented?

24 A Correct.

25 Q Would it be acceptable if an order approving the 9019

1 settlement in some way limited the releases set forth in
2 Paragraph 7?

3 A Absolutely not.

4 Q Right. It wouldn't be acceptable if any of the
5 creditors could still pursue claims against the released
6 parties; is that right?

7 A Correct.

8 Q Would the M2 parties still pay the settlement amount if
9 that was the case?

10 A No.

11 Q Will you fund the \$40 million dollars if there's a risk
12 that a court could vacate the settlement order on appeal?

13 A You've got to clarify this hypothetical question.

14 Q If this Court approves the --

15 A The settlement.

16 Q -- the settlement agreement as it currently stands with
17 the new clarification, would you pay the money if that order
18 could be vacated by an appellate court?

19 A I think Ms. Hayward said that we're going to pay upon a
20 final order.

21 Q And that's a final order approving the settlement, not
22 confirming a bankruptcy --

23 A Correct.

24 Q So just to be clear, you wouldn't cause the funds to be
25 released until all the appeals are exhausted with respect to

1 the order approving the 9019?

2 A Most certainly.

3 Q You would pay the settlement funds before the appeals
4 have been exhausted with respect to the order approving the
5 settlement?

6 A Now let's be very clear. We're buying -- you said
7 before that I testified that I'm buying peace. You deliver
8 peace; we deliver your \$40 million dollars.

9 Q I understand. Do you consider there to be peace if an
10 order could be overturned on appeal?

11 A The 9019 motion?

12 Q Yes.

13 A No.

14 Q Right. So until the appeals have been exhausted with
15 respect to the order, a hypothetical order approving the
16 settlement, you would not release the funds until those
17 appeals have been exhausted?

18 A Or if you're smart enough, you don't appeal.

19 Q Right. So the reason you wouldn't fund until the
20 appeals have been exhausted is because there is a risk that
21 you pay the money and then don't get the release, right?

22 A Exactly.

23 Q So if there isn't a final order granting you a complete
24 release, there's no funding, right?

25 A I think that's the shopping cart, right?

1 Q We could turn back to Page 7, or excuse me, Tab 7, and
2 turn to Exhibit B, which is on Page 12, and this is the
3 redline. And I understand that you don't have anything to
4 do with this redline, but what I want to ask you is this
5 latter part here where it says, "The effectiveness of the
6 agreement is also conditioned on the entry of a final order
7 of the Court that is not the subject of appeal confirming
8 the Chapter 11 Plan," you understand that that language is
9 going to change in the future?

10 A Yes.

11 Q Mr. Lefkowitz, I think you told me at your deposition
12 that you had an informal law education; is that right?

13 A Okay.

14 Q Did you not tell -- is that incorrect?

15 A Yes.

16 Q Have you read the TCC's opposition to the Rule 9019
17 motion?

18 A No.

19 Q are you familiar with the Antelope case from the Fifth
20 Circuit?

21 A No.

22 Q You have no understanding of what happened in that
23 case?

24 A I didn't look into it.

25 Q Do you have any understanding -- strike that. You

1 referenced a shopping cart, I believe, right? What's your
2 understanding of the claims in that shopping cart?

3 A So let's first do the cast of characters. Who's
4 pushing the cart, who's checking out the cart.

5 Q That's not my question, Mr. Lefkowitz.

6 A But I'll answer you the way I want to answer it.

7 THE COURT: No, you won't. You'll answer --

8 THE WITNESS: I'm sorry, Judge.

9 THE COURT: -- the question. I'm sorry. You just
10 get to answer the questions, and your lawyer gets to ask you
11 questions. That's just the way it works.

12 THE WITNESS: Okay. Sorry.

13 THE COURT: So, Counsel --

14 No worries.

15 BY MS. MEYERS:

16 Q So my question is what is your understanding of the
17 claims that are in the shopping cart, basically the claims
18 that are being released under the settlement agreement?

19 A All sorts of claims.

20 Q Can you be more specific?

21 A Whatever claims possible.

22 Q Are any wrongful death claims against YesCare asserted
23 on a successor liability theory in the shopping cart?

24 A I wouldn't know.

25 Q So you don't know if the settlement agreement is

1 approved, you have no idea whether an individual with a
2 wrongful death claim against Tehum could then pursue that
3 claim against YesCare in the U.S. court system?

4 A Depending if YesCare is liable.

5 Q So it's your understanding that some of those types of
6 claims may not be released under the settlement agreement?

7 A Could be.

8 Q Do you know one way or the other?

9 A You have to identify the claim for me to give you the
10 proper answer.

11 Q So the claim that I'm talking about is a claim for
12 wrongful death that is a claim --

13 A That happened when?

14 Q -- a claim arising from conduct by Corizon Health pre-
15 divisive merger, --

16 A Right.

17 Q -- a claim for wrongful death that a court claimant
18 would then assert against YesCare on a --

19 A How?

20 Q -- theory of successor liability.

21 A That would be released.

22 Q So your understanding is that if the settlement is
23 approved, that wrongful death claimant could not sue
24 YesCare, right?

25 A Correct.

1 Q Mr. Lefkowitz, are you aware that Mr. Barton, a
2 representative of the UCC, testified at this hearing earlier
3 this month?

4 A Not aware.

5 Q So you're not aware that he testified he believes a new
6 Chapter 11 plan would be opposed in this case?

7 A I didn't listen to his testimony.

8 Q Is it your understanding that the Debtor and the --
9 excuse me. Strike that. Is it your understanding that the
10 Debtor and UCC could propose a plan that does not include
11 the releases set forth in Paragraph 7 of the settlement
12 agreement?

13 A But today, based on today's modification, it doesn't
14 matter.

15 Q Why doesn't it matter?

16 A How does it matter to the released parties?

17 Q So you're not -- so, in your view, the -- you would
18 have a final, unappealable order confirming --

19 A The settlement.

20 Q -- the settlement, and those releases could not be
21 revisited when there was a Chapter 11 plan?

22 A Final is final. Against the released parties.

23 Q So your understanding is that the Debtor and UCC could
24 not propose a plan that does not include the releases in
25 Paragraph 7 assuming there is a final, non-appealable order

1 of the settlement agreement?

2 A I'm not following you.

3 Q Okay.

4 A The way I understand it, --

5 Q I --

6 A -- the plan and the confirmation has to do with the
7 division of the funds. Settlement is between the settling
8 parties and the release.

9 Q Okay. My question is: If the Court approves the
10 settlement, --

11 A Correct.

12 Q -- the 9019 motion, and all the appeals are exhausted,
13 so there's a final unappealable order --

14 A Correct.

15 Q -- approving the settlement --

16 A Correct.

17 Q -- is it your understanding that the Debtor and UCC
18 could not propose a plan that did not align with that
19 settlement?

20 A Why is that?

21 Q So they could propose a plan that has nothing that's
22 required in the settlement agreement?

23 A Settlement is over and done with. It's final. You
24 guys can file a plan and do whatever you wish. Divide the
25 money up.

1 Q Okay. Let's take a step back and talk about Corizon
2 Health, Inc., right?

3 A Sure.

4 Q Pre-divisive merger. Perigrove 1018 became the
5 beneficial owner of Corizon Health, Inc. in December 2021;
6 is that right?

7 A Correct.

8 Q And Perigrove 1018 acquired Corizon's direct and
9 indirect parent companies in that transaction, right?

10 A Correct.

11 Q And at the time of this acquisition, you were a
12 director of Perigrove 1018?

13 A Correct.

14 Q Who authorized that acquisition on behalf of Perigrove
15 1018?

16 A Who authorized the acquisition of Corizon?

17 Q On behalf of Perigrove 1018.

18 A I was the last ultimate decision on it.

19 Q And you negotiated that acquisition; is that correct?

20 A Correct.

21 Q Corizon Health was acquired by Perigrove 1018 from the
22 Flax Group; is that right?

23 A No, the parent companies.

24 Q What parent companies are you referring to?

25 A M2 Hold Co.

1 Q You acquired M2 Hold Co; isn't that right?

2 A Again, you asked me before Corizon. Corizon's
3 grandfather was acquired.

4 Q Okay. So who did Perigrove 1018 acquire --

5 A From?

6 Q -- acquire M2 Hold Co from, I guess, is the question.

7 A From the Flax Group.

8 Q From the Flax Group. And that's because at that time,
9 the Flax Group owned Corizon Health, right?

10 A They owned M2 Hold Co.

11 Q Okay. Do you remember I asked you this question at
12 your deposition?

13 A Which one? Which question?

14 Q Whether Corizon Health was owned by the Flax Group
15 prior to the acquisition.

16 A I don't remember. I'm sure it was in that line of
17 questioning.

18 Q Can we turn to Tab 1, which is also your deposition
19 transcript from February 8th, and turn to Page 32. And
20 directing your attention to line 14, do you see, question,
21 "Corizon Health used to be owned by the Flax Group,
22 correct?"

23 A Yeah.

24 Q Witness, "I'm not aware of it."

25 A Yeah.

1 Q Question, "You're not aware that Corizon Health used to
2 be owned by the Flax Group, correct?"

3 A Right.

4 Q "You never had any interactions with the Flax Group?
5 No." Was that accurate testimony?

6 A I never spoke to Michael Flax or the Flax. I only
7 dealt with their general counsel.

8 Q And that's someone employed by the Flax Group?

9 A Representative.

10 Q And you do understand that Corizon Health was
11 beneficially owned by the Flax Group before Perigrove 1018?

12 A You're playing with the word beneficial. I said the
13 grandfather was, which was M2 Hold Co.

14 Q I understand the distinction. Thank you. Before
15 Perigrove 1018 acquired Corizon Health and its parent
16 companies, was there an investigation into Corizon's
17 business?

18 A Investigation or due diligence?

19 Q Due diligence.

20 A Yes.

21 Q And fair to say that at that time, you had a basic
22 understanding of Corizon's assets and liabilities?

23 A Correct.

24 Q And Corizon had a fair amount of liabilities, right?

25 A And fair amount of assets.

1 Q When Perigrove 1018 acquired beneficial interest in
2 Corizon Health, Corizon wasn't making any money; is that
3 right?

4 A Correct.

5 Q The business wasn't doing well.

6 A It was under duress.

7 Q And that's in part due to the tort liability, right?

8 A No.

9 Q What was it a result of?

10 A Loss of contracts.

11 Q Anything else?

12 A That was the main downfall.

13 Q The loss of contracts?

14 A Yeah.

15 Q What about -- how would you -- strike that. Having an
16 excessive amount of tort liability is going to cause duress
17 to a company; would you agree with that?

18 A I don't know what excessive is, but the main reason
19 that they were under duress is they went from 1.3 billion to
20 200 million.

21 Q And do you have an understanding of why that was?

22 A COVID.

23 Q COVID. And what about COVID caused that?

24 A Short on staffing.

25 Q Do you have an understanding as to why Corizon was

1 losing contracts?

2 A Short on staffing.

3 Q So because they could not provide the services that
4 they had contracted to provide, people were dropping them;
5 is that your understanding?

6 A That's the way you articulate it, but it was the lack
7 of confidence of to staff it up according to staffing
8 matrix.

9 Q How do you know that that was the issue?

10 A Due diligence.

11 Q And it's your testimony that the mounting professional
12 liability claims had nothing to do with why Corizon was in
13 distress?

14 A Absolutely not.

15 Q Absolutely not, that's not your testimony, or that had
16 nothing to do with it?

17 A I said it had -- I said absolutely that was not the
18 causing factor.

19 Q I believe you testified that when Perigrove 1018
20 acquired beneficial interest in Corizon, the plan was to
21 turn the business around; is that right?

22 A Correct.

23 Q And you believed that you could turn Corizon's business
24 around, right?

25 A Absolutely.

1 Q And did that plan involve dealing with Corizon's tort
2 liabilities?

3 A That too.

4 Q But the tort debt liability wasn't the cause of the
5 distress?

6 A Correct.

7 Q That plan involved settling certain tort claims; is
8 that right?

9 A It's part of the business.

10 Q And paying some of those claims out, right?

11 A We did.

12 Q And litigating some of those tort claims, right?

13 A We did.

14 Q I'm going to show you Debtor's Exhibit 26, which is in
15 Tab 8 of your binder.

16 MS. MEYERS: And for the record, this is
17 confidential so if you could not put it up. Do we have an
18 objection to having it on the screen?

19 MR. BROOKNER: I don't know. She's checking.

20 MS. MEYERS: Okay.

21 MS. HAYWARD: Your Honor, when it's on the screen,
22 is it available on Webex as well or not?

23 THE COURT: My understanding is no, but why don't
24 we just keep it really simple and not do it?

25 MS. MEYERS: All right. Thank you, Your Honor.

1 MR. BROOKNER: What page are we on?

2 MS. MEYERS: I am on Debtor's Exhibit 26, and it's
3 in Tab 8 of the binder --

4 MR. BROOKNER: Oh, okay.

5 MS. MEYERS: -- we provided to you.

6 MR. BROOKNER: I'm sorry. Sorry to interrupt.

7 MS. MEYERS: That's okay.

8 BY MS. MEYERS:

9 Q Mr. Lefkowitz, have you ever seen this document before?

10 A No.

11 Q Okay. Do you see that it says Corizon -- excuse me --
12 Tehum Care Services Ten-Year Historical Closed Claims
13 Payment History?

14 A yeah.

15 Q And are you -- I understand you haven't seen this
16 document, but if you could turn to the second page. Do you
17 see at the bottom it says, "This is a summary of voluminous
18 data produced on December 28, 2023 at" --

19 A Yeah.

20 Q Yeah. So do you have any reason to doubt the accuracy
21 of the --

22 A No.

23 Q -- information in here? Okay. Now before we move on
24 to the actual data, Tehum has only existed since mid-2022
25 after the divisive merger, at least under that name,

1 correct?

2 A Correct.

3 Q And before that, it was Corizon Health, right?

4 A Correct.

5 Q And Corizon Health existed before Perigrove 1018
6 acquired it in December of 2021, right?

7 A Correct.

8 Q So this claims history goes back ten years. Do you see
9 that?

10 A I think there's a history of 40 years.

11 Q Okay. So you understand that most of these claims were
12 settled before the bankruptcy filing; is that fair?

13 A Yes.

14 Q Let's look at the pro se cases first. You see that
15 there are out of 2,358 claims, only 121 resulted in payment?

16 A Yes.

17 MR. BROOKNER: Your Honor, objection.

18 THE COURT: Basis?

19 MR. BROOKNER: Mr. Lefkowitz has testified he's
20 never seen this document. He's unfamiliar with it. So I
21 guess if counsel just wants him to read what the document
22 says, that's fine, but he has no personal knowledge of this
23 document.

24 THE COURT: Counsel, what's your response?

25 MS. MEYERS: I --

1 THE COURT: For what purpose is it offered?

2 MS. MEYERS: So Mr. Lefkowitz has testified that
3 he's generally familiar with the business when they acquired
4 it and I'm asking -- I'm going to ask him if he's aware of
5 this information which is summarized in a document produced
6 by the Debtor.

7 THE COURT: What's your response to that?

8 MR. BROOKNER: He just testified he's never seen
9 this document and has no knowledge.

10 THE COURT: He doesn't have personal knowledge.
11 I'm not sure how helpful it would be, but if you want to ask
12 him general questions, I think that's fair.

13 MS. MEYERS: Thank you, Your Honor.

14 BY MS. MEYERS:

15 Q So first of all, Mr. Lefkowitz, are you aware that
16 there were pro se claims against Corizon Health?

17 A Yes.

18 Q And do you understand that at least some of those
19 claims were paid?

20 A I paid them myself.

21 Q You paid some of them yourself. Now it says on this
22 chart that approximately 5 percent of the claims were paid.
23 Do you see that?

24 A Correct.

25 Q Is that consistent with your understanding of the

1 Debtor's claim payments?

2 A So it's not just the Debtor; it's the entire industry.

3 A pro se claimant is anyone that goes into the library and
4 writes on the back of an envelope with his handwriting,
5 files a claim, and the District Court accepts it.

6 And it takes about \$5,000 to defend it, so we write a
7 \$2,500 check, and they accept it. We make 2,500; they make
8 2,500, and that's what you see on this document -- \$5,000.

9 Q Okay. So my question was a little bit different. Is
10 the statistic here that about approximately 5 percent of pro
11 se claims got paid out; is that consistent with your
12 understanding of the Debtor, how the Debtor was paying out
13 pro se claims?

14 A Yeah. The rest got dismissed.

15 Q And you say that this chart indicates that over
16 \$800,000 were paid in connection with pro se claims. Do you
17 see that?

18 A Correct.

19 Q Is that also consistent with your understanding of the
20 Debtor's payment to pro se claimants?

21 A And the industry.

22 Q So fair to say that it's your understanding that
23 Corizon, now Tehum, did pay some pro se claims?

24 A Correct.

25 Q It just wasn't very much.

1 A What's that?

2 Q It just wasn't -- only 5 percent.

3 A Five percent of what?

4 Q Strike that. It's your understanding that Corizon, now
5 Tehum, did pay some pro se claimants for their claims.

6 A Yes.

7 Q And it's your understanding that it just was not very
8 many that were paid out?

9 A They either get dismissed or they get paid.

10 Q Let's take a look at the representative cases.

11 A Right.

12 Q Do you see that it says out of 859, 37 -- or excuse me;
13 strike that -- 376 resulted in payment?

14 A Correct.

15 Q Is that consistent with your recollection of how
16 Corizon was paying out representative claims?

17 A Correct.

18 Q So over 43 percent?

19 A By the way, this is not just tort claims.

20 Q Okay. What other claims are included in here to your
21 understanding?

22 A Workman's comp.

23 Q Okay. And do you see that this shows that 64.5 million
24 was paid out in connection with representative claims?

25 A Yes.

1 Q Do you have any reason to doubt the accuracy of that
2 number?

3 A No.

4 Q That sounds about right to you?

5 A No, I don't doubt it.

6 Q So my question, Mr. Lefkowitz, is how was Corizon
7 Health going to make money when it had to deal with -- it
8 was paying out so much?

9 A So much of what?

10 Q It was paying so much to creditors on their various
11 claims against the entity.

12 A I don't get it. It's part of the business. You pay
13 for medical supplies, you pay for staffing, and you settle
14 claims. So what is the question?

15 Q My question is you said that Corizon was losing
16 contracts, correct?

17 A Right.

18 Q And so it was losing revenue; is that fair?

19 A Correct.

20 Q Okay. So how was it going to make money if it was
21 paying out \$64 million to claimants over a ten-year period?

22 A You build up the revenue.

23 Q You build up the revenue.

24 A Correct.

25 Q It's not about reducing the tort liability?

1 A Not at all.

2 Q Mr. Lefkowitz, I'm going to have you turn to Tab 10,
3 which TCC Exhibit 342.

4 A Yes.

5 MS. MEYERS: And this is also a confidential
6 document so let's not put it up. But -- and I believe
7 Debtor's counsel will correct me if I'm wrong -- I believe
8 that this is in evidence on stipulation of the parties.

9 BY MS. MEYERS:

10 Q Do you recognize this document, Mr. Lefkowitz?

11 A Yes.

12 Q This reflects communications between you and Scott King
13 on March 15, 2022, right?

14 A Scott King? Where does it say Scott King here?

15 Q If you go down, it says on March 15, 2022, at 9 --

16 A Wait, wait, wait. We're not on the same tab.

17 Q Are you in Tab 10?

18 A No, I'm in Tab 11. Sorry.

19 Q So -- no, that's okay. So, do you --

20 A Okay.

21 Q -- recognize this document, Mr. Lefkowitz?

22 A I don't, but I can read it.

23 Q Do you see that this is an email chain between you and
24 Scott King on March 15, 2022?

25 A Okay.

1 Q And who is Scott King?

2 A General counsel of Corizon.

3 Q Is he still the general counsel of Corizon or of Tehum?

4 A No.

5 Q Is he general counsel of CHS TX?

6 A I believe so.

7 Q And you're communicating on a Corizon Health email
8 address; do you see that?

9 A Correct.

10 Q Okay. When did you get that email address?

11 A I don't know.

12 Q Did you hold a position at Corizon Health at this time?

13 A Yes.

14 Q And what was that position?

15 A Director.

16 Q You were a director. Do you see that Mr. King writes
17 to you that the next installment payment of 166,667 in Brian
18 Perry's settlement is due today?

19 A Yes.

20 Q Okay. It says this is the drug overdose/wrongful death
21 case out of Oregon, and the current payment due represents
22 the seventh out of 12 monthly installments. Do you see
23 that?

24 A Correct.

25 Q So the settlement here is a settlement to a personal

1 injury claimant of Corizon Health; is that right?

2 A Correct.

3 Q And that creditor is named Brian Perry it looks like.

4 A Correct.

5 Q So this is a claim that Corizon Health settled; is that
6 right?

7 A Correct.

8 Q And as of March 15, 2022, only part of that settlement
9 had been paid out; is that your understanding?

10 A Seemed like some -- you know, it was running on some
11 terms. Seventh payment, seven out of 12.

12 Q So do you see that Mr. King then writes "I think we
13 should pay this next installment and then after the
14 divisional merger, negotiate down the remaining amount due"?

15 A Okay.

16 Q Did I read that correctly?

17 A Yeah.

18 Q Okay. Do you understand what Mr. King is referring to
19 when he says divisional merger?

20 A No. I mean, I can imagine what it means, but --

21 Q What do you --

22 A -- I don't know what this email says. Negotiating
23 down.

24 Q I'm asking you if you understand what Mr. King is
25 referring to when he says divisional merger.

1 A A reference date.

2 Q What do you understand he's referring to when he says
3 divisional merger?

4 A This is in March. I think we -- there was a divisional
5 merger right after. So, you know, the liabilities were
6 shifting between the two companies and who had to pick up on
7 the liability.

8 Q Okay. So he's referring to Corizon Health's divisional
9 merger that happened in May of 2022, right?

10 A Correct.

11 Q Okay. And so, that divisional merger was at least
12 contemplated in March of 2022, right?

13 A Could be.

14 Q Do you know whether it was contemplated at that time?

15 A I don't have the dates here now, no.

16 Q Were you involved in the planning of the divisional
17 merger at all?

18 A Yes.

19 Q Okay. And when did you begin planning that process?

20 A Right around that time, but I don't know if it was
21 March 15 or 16.

22 Q Understood. Do you understand why Mr. King is
23 suggesting negotiating down the remaining amount due under a
24 settlement after the divisional merger has occurred?

25 A It happens all the time.

1 Q And why does that happen all the time?

2 A That settlements get negotiated.

3 Q Why would the -- it would be easier to negotiate a
4 settlement amount down after a divisional merger?

5 A Had nothing to do with it.

6 Q So he just --

7 A There's re-trading of settlements all the time.

8 Q Okay. So he's mentioning the divisional merger here,
9 but that has nothing to do with it?

10 A I don't think so.

11 Q In your view, would Corizon be in a better position to
12 negotiate down a settlement payment after the divisive
13 merger?

14 A No.

15 Q Do you see at the bottom that Mr. King says, "Let us
16 know if we have approval to proceed with the payment"?

17 A Correct.

18 Q Do you see that? And you respond, "Okay," right?

19 A Right.

20 Q Why is Mr. King seeking your approval to make this
21 payment?

22 A To fund it.

23 Q I'm sorry?

24 A To fund it.

25 Q To fund it. Why is your approval necessary to fund it?

1 A Because I funded settlements to the tune of \$30
2 million.

3 Q Where did you fund -- where did the money come from to
4 fund that settlement?

5 A From our outside companies.

6 Q And what companies are you referring to when you say
7 that?

8 A Some of the M2 parties.

9 Q So I believe your testimony was that the divisive
10 merger had nothing to do with being able to negotiate down
11 the settlement. So what would be a basis for Corizon to
12 request a lower settlement amount paid out?

13 A It happens all the time. You make -- it seems like
14 this was a settlement of 12 times, 166, you base 7. You're
15 at the final stretch. You go back to the ambulance chaser,
16 and you negotiate a settlement. Take some less, take it
17 now. Happens all the time.

18 Q But just to be clear, this was a settlement that was
19 already finalized, right? I mean, you're making --

20 A Yeah, yeah. Even after final settlements, you still go
21 back and negotiate and say you can't pay, but maybe you take
22 something less and re-finalize it.

23 Q So --

24 A There's re-trading of settlement all the time in tort
25 cases.

1 Q Okay. So what about the settlement agreement that's
2 the subject of the 9019 motion?

3 A I'm talking tort cases; I'm not talking 9019.

4 Q Right. So --

5 A You're not going to get this release if you don't get
6 the \$40 million dollars for laying cash.

7 Q Could you turn back to Tab 9, please, which is TCC
8 Exhibit 352? This is also confidential.

9 A Uh-huh.

10 Q Do you recognize this document, Mr. Lefkowitz?

11 A No.

12 Q Do you see that you're on this email as a recipient?

13 A Okay.

14 Q And this is a February 25, 2022 email from Scott King

15 --

16 A Okay.

17 Q -- to you and Jeff Sholey; is that right?

18 A Okay.

19 Q And who is Jeff Sholey?

20 A He was the CFO at Corizon.

21 Q And you were a director at this time as well?

22 A Correct.

23 Q Do you see where in the subject line, it says, "FYI, J
24 & J TX divisional merger news"?

25 A Okay.

1 MR. BROOKNER: Objection, Your Honor. The
2 document's not in evidence. There are issues with it. It's
3 hearsay. If she wants to try to put it in and talk about
4 it, she can. Otherwise, it's inappropriate just to be
5 talking about the document until the proper foundation is
6 laid.

7 THE COURT: Agree.

8 MS. MEYERS: Your Honor, I'm happy to move the
9 document into evidence. I was going to lay a bit more
10 foundation about it.

11 THE COURT: Yeah. I'll let you try to lay more
12 foundation.

13 BY MS. MEYERS:

14 Q Do you have any reason to doubt that you received this
15 email?

16 A Yes.

17 Q Why?

18 A It's a news link. I don't open any news link emails.

19 Q You understand it was sent to your email address
20 though, right?

21 A It goes straight into spam.

22 MS. MEYERS: Your Honor, I would move this into
23 evidence not for the truth of the matter asserted, but as to
24 Mr. Lefkowitz's state of mind. He is the one who caused
25 Tehum to file for bankruptcy, and his motives in filing the

1 bankruptcy are at issue, especially on the TCC's motion to
2 dismiss.

3 And so whether he is knowledgeable about other
4 bankruptcies that are similar to Tehum's prior to his filing
5 is relevant.

6 THE COURT: Mr. Brookner, your response?

7 MR. BROOKNER: There's no foundation. It's
8 hearsay. He said he never saw the document.

9 THE COURT: Yeah. I'm going to sustain the
10 objection. I don't know if it goes to his state of mind if
11 he says he never saw it. I don't know if this went into
12 spam or not, but that's what he's saying. So if that's the
13 case, then --

14 MS. MEYERS: May I just ask a couple more
15 foundational questions?

16 THE COURT: I think that's fair.

17 MS. MEYERS: Okay.

18 BY MS. MEYERS:

19 Q So Mr. Lefkowitz, can you say definitively that you
20 never read this email sitting here today?

21 A I don't recall this email, but the minute I see it's a
22 news link, I have a policy. I instruct all news links to go
23 into spam.

24 Q Mr. Lefkowitz though, this is an email from Scott King.

25 A To?

1 Q No, it's from Scott King.

2 A To?

3 Q To you and Mr. Sholey.

4 A So if it's addressed to me and it has a news link, it
5 doesn't come to me.

6 Q So based off of the subject line, it doesn't indicate
7 that it's a news link. Do you see that? It says, "FYI."

8 A It has a news link in the body of the email. A major
9 blow to plaintiff's. Judge keeps bankruptcy -- bankruptcy
10 news it says, news link. So I can tell you with certainty I
11 never saw this document.

12 Q You can testify with certainty that you never read this
13 document?

14 A Correct.

15 Q Do you typically not read emails you receive from Scott
16 King?

17 A I do.

18 Q You do typically not read emails from Scott King?

19 A No, I do read emails, but I don't read just link news.

20 Q So if he's sending you news that's relevant to your
21 business, you don't read it?

22 A Don't read it. I don't read news at all, by the way.

23 Q Okay. Mr. Lefkowitz, who came up with the idea of
24 doing a divisional merger?

25 A It was the former CEO.

1 Q And who is that, is that Mr. -- excuse me. Strike
2 that. Who is that?

3 A Ms. Ishwell (phonetic).

4 Q It was his idea?

5 A Her.

6 Q Oh, excuse me. Her. When did you first become
7 familiar with the concept of the Texas two-step?

8 A Right around that time.

9 Q Had you followed any of the Johnson & Johnson
10 bankruptcy proceedings?

11 A No.

12 Q When did you first reach the conclusion that Corizon
13 should undergo a Texas divisional merger?

14 A In consultation with White & Case.

15 Q And do you have an understanding as to why Corizon's
16 former CEO wanted to do a divisional merger?

17 A I don't recall the exact circumstances. I do recall
18 that we wanted to divide the business into two line of
19 businesses.

20 Q And what two lines of business was that?

21 A Between prison and jails.

22 Q What business purpose did that serve?

23 A One company should serve prisons; another company
24 should serve -- the Debtors should be in charge of serving
25 jails.

1 Q And is that how the divisional merger was actually
2 structured?

3 A That was the idea, but never got materialized.

4 Q Okay. So that's not how assets were distributed
5 between CHS TX and --

6 A I said line of business. I'm not saying assets or
7 liabilities.

8 Q How do you -- how would you split up those two lines of
9 business in a divisional merger?

10 A No, it's got nothing to do with the divisional merger.
11 It's about which line of business to go after.

12 Q So the idea was that you were no longer going to be
13 pursuing one of those lines of business?

14 A No, the idea was that YesCare was going to pursue line
15 business A, and the Debtor back then, Tehum, is going to
16 pursue line business of B.

17 Q Okay. And what's A and what's B?

18 A Prisons and jails.

19 Q Prisons is A, which is now --

20 A Or prison could be B. Prisons and jails.

21 Q You don't know which was which?

22 A It doesn't matter. That was just an example. Now
23 let's forget about A and B. YesCare was going to go after
24 prisons, and Tehum was going to go after jails.

25 Q And I think you said that's not how the divisional

1 merger ended up working out; is that right?

2 A No, because ultimately, Tehum had to file for
3 bankruptcy.

4 Q Before you completed the divisional merger, how did you
5 think that it would help the two businesses that you
6 described?

7 A It's two different line of revenue and expenses.

8 Q And how would those businesses be aided by being
9 separate is my question.

10 A It's two different administrative expenses, two
11 different insurance policies, two different workman comp,
12 two different financial arrangement, two different staffing
13 matrix, two different marketing. It's two different line of
14 business.

15 Q I understand it's two different lines of business, but
16 how does it help one of those lines of business to be
17 separated from the other is my question.

18 A Because if you're focused in what you're doing, you
19 succeed. If you do it all, you don't succeed.

20 Q What's the tangible benefit that you thought the
21 divisional merger would yield for the correctional health
22 services business that Corizon had at that time?

23 A To be able -- well, it was besides, you know, getting
24 additional contracts, additional staffing, and to be able to
25 insure the company.

1 Q To be able to insure the company.

2 A Insurance, correct.

3 Q So was there, at the time, was there an issue insuring
4 Corizon Health?

5 A The entire industry was suffering from it.

6 Q Well, I'm asking about Corizon Health specifically.

7 Was Corizon having difficulty getting insurance?

8 A Getting new insurance.

9 Q And why was that?

10 A Because no insurance company wants to take on based on,
11 you know, a company that's under duress.

12 Q And your testimony is that that duress was a result of

13 --

14 A Drop of contracts.

15 Q And it has nothing to do with the tort liabilities?

16 A Correct. I'm talking insurance, other insurance.

17 Q Okay.

18 A Not just tort insurance.

19 Q But Corizon did have tort liability insurance, correct?

20 A Correct.

21 Q Okay. And was that --

22 A And by the way, the case that was mentioned today, you
23 know which case I'm talking about, the Arizona case?

24 Wrongful death that your colleague was mentioning is fully
25 insured. Talking about being transparent with the Court.

1 100 percent insured. There's not even a legitimate creditor
2 here, the one that filed the joinder.

3 Q Was Corizon having difficulty obtaining tort liability
4 insurance at the time of the divisive merger?

5 A Entire industry had it.

6 Q I'm asking about Corizon.

7 A Yes.

8 Q Mr. Lefkowitz, you're an experienced business person,
9 right?

10 A If you say so.

11 Q Would you agree with that?

12 A Experienced in what?

13 Q In running a business.

14 A Depending which business. I know nothing about the
15 restaurant business.

16 Q Are you experienced in running a correctional
17 healthcare business?

18 A Healthcare.

19 Q Healthcare. And you wouldn't take a course that you
20 thought would cost the business more money, right?

21 A Say it again.

22 Q You wouldn't undertake a transaction that you thought
23 would cost the business more money, right?

24 A You know, sometimes you take on costing more money for
25 a long vision, a long future.

1 Q Right. But the goal of that would ultimately be to
2 improve revenue down the road, right?

3 A Correct.

4 Q A little money now to make more money later, right?

5 A Correct.

6 Q So wouldn't a transaction that reduced the costs of a
7 business also be an appealing transaction?

8 A In general, yeah, of course.

9 Q So wouldn't it have been appealing to Corizon Health to
10 undergo a transaction that would reduce its tort liability
11 obligations?

12 A But it didn't.

13 Q It didn't.

14 A No. We broke up the tort liabilities. YesCare took on
15 a lot of tort liabilities in the divisional merger, much
16 more than was left behind. All the existing contract tort
17 liabilities went over to YesCare.

18 Q But if there was a mechanism to resolve tort claims at
19 a discount, you would take it, right?

20 A Hypothetically?

21 Q Yeah.

22 A Every day.

23 Q Right. Because that would benefit the company, right?

24 A Yes.

25 Q Now Mr. Lefkowitz, I think you just said you're

1 familiar with the law firm White & Case, right?

2 A Correct.

3 Q And are you aware that that firm represented Johnson &
4 Johnson?

5 A No.

6 Q When did you first come into contact with White & Case?

7 A Right at the time of the divisional merger.

8 Q And so that was in approximately May of 2022; is that
9 your testimony?

10 A Right around that time.

11 Q And so, the first time you came into contact with White
12 & Case was for the entities involved in this settlement
13 agreement; is that fair?

14 A Correct.

15 Q Can we turn to your transcript behind Tab 2, at Page 49
16 -- excuse me, Page 59.

17 THE COURT: Counsel, before we go, I may have to
18 let kind of the AC folks know how late we're going to go
19 today.

20 MS. MEYERS: I'm --

21 THE COURT: Just a --

22 MS. MEYERS: -- very happy to take a break, Your
23 Honor.

24 THE COURT: Okay. Why don't we just -- and maybe
25 we can just talk. How much longer do you think you have?

1 This is not -- this is just more me just so I can kind of do
2 the admin stuff on the back end. All right.

3 MR. GOODMAN: Eric Goodman of Brown Rudnick,
4 counsel for the TCC. We were really hoping to get three
5 witnesses today.

6 THE COURT: Yeah.

7 MR. GOODMAN: I think we're on track to do that.

8 THE COURT: Uh-huh.

9 MR. GOODMAN: One thing I am not entirely clear
10 about is how late we can go this evening.

11 THE COURT: That's what I'm trying to -- that's
12 where I'm looking. I'm trying to get a sense of timing and
13 that I think will certainly be helpful.

14 MR. GOODMAN: I think the goal was to complete
15 three today, three tomorrow or three on Wednesday, --

16 THE COURT: Uh-huh.

17 MR. GOODMAN: -- 3, 6, and then we're done. I'm
18 hoping closing can be done efficiently. I think we're
19 probably no more than 20 minutes on that. So that's sort of
20 our hope and objective today.

21 THE COURT: Uh-huh.

22 MR. GOODMAN: If we have a ten-minute break, I
23 think we might be able to come back with a better sense of
24 time as to when.

25 THE COURT: Can you just let my courtroom deputy

1 know in terms of just your time estimate, just so I can
2 coordinate on the back end and be AC and coverage and all
3 that stuff? But just the goal would be to finish with
4 Mr. Lefkowitz today and then --

5 MR. GOODMAN: Mr. Griffiths.

6 THE COURT: -- Mr. Griffiths is back here.

7 MR. GOODMAN: I think he's going to be --

8 THE COURT: Do you have a sense of how long
9 Griffiths will go?

10 MR. GOODMAN: I think at most two hours all in.

11 THE COURT: Two hours all in on Griffiths?

12 MR. GOODMAN: Yes.

13 THE COURT: Okay. All right. That's helpful.
14 Thank you.

15 Mr. Lefkowitz, if you need to take a break, let's
16 do this. Take about a ten-minute break. And then I would
17 just remind you that you're still under oath and not to
18 speak to anyone about your testimony.

19 THE CLERK: Please rise.

20 (Recess taken from 3:57 p.m. to 4:17 p.m.)

21 THE COURT: Okay. Back on the Record in Tehum.
22 It is my understanding that we're talking potentially 7:30,
23 8:00 o'clock tonight to try to get it done. Okay, let's do
24 it.

25 Okay, Mr. Lefkowitz, I remind you that you're

1 still under oath.

2 Counsel, you may proceed.

3 MS. MEYERS: Thank you, Your Honor.

4 CROSS-EXAMINATION (CONT'D)

5 BY MS. MEYERS:

6 Q Mr. Lefkowitz, before we took a break we were talking
7 about White & Case; do you remember that?

8 A Yes.

9 Q Okay. And I apologize to ask again but when did you
10 first come into contact with White & Case?

11 A Don't recall the exact date.

12 Q Do you have --

13 A It was prior to the divisional merger.

14 Q It was prior to the divisional merger. And was -- and
15 that was in connection with the divisional merger that you
16 first came into contact --

17 A Correct.

18 Q -- with White & Case. Can you please turn to Tab 2 in
19 your binder and turn to Page 59? And I'm directing your
20 testimony to line one where it says, when did you first come
21 into contact --

22 A One second. Fifty-nine is blank here.

23 Q It's under -- it's Tab 2. I believe you're in Tab 1.

24 Okay. And do you see where it says, when did you first come
25 into contact with White & Case, answer --

1 A Which line?

2 Q Line one.

3 A Yeah.

4 Q When did you first come into contact with White & Case?

5 Answer, early 2022 or early '22.

6 A Okay.

7 Q And was that contact in connection with Corizon? No,
8 not that it matters. It had nothing to do with any of the
9 entities at issues in this bankruptcy case. Answer, I first
10 started with White when I -- I first started with White &
11 Case, correct.

12 A Okay.

13 Q And then do you see below at line 11, when did you
14 first come into contact with White & Case in connection with
15 any of the entities involved in this bankruptcy case?
16 Sometime mid-2022. So is it correct that you had worked
17 with White & Case before you worked with them in connection
18 with Corizon?

19 A No.

20 Q That's not correct.

21 A No. The reference to Corizon was in mid-'22. And I
22 was in contact with a lawyer that worked at White & Case,
23 not White & Case engaged in early '22.

24 Q Okay. And so the first time that you spoke to White &
25 Case in connection with the Corizon entities was in mid-

1 2022.

2 A Correct.

3 Q Now, White & Case represented M2 LoanCo; is that right?

4 A As well.

5 Q You say as well, as well as what?

6 A I think they represented YesCare.

7 Q Did you select White & Case to represent M2 LoanCo?

8 A No.

9 Q Who selected White & Case?

10 A Mr. Rubenstein.

11 Q That's the other director of M2 LoanCo.

12 A Correct.

13 Q Was it M2 LoanCo that undertook the divisional merger
14 on behalf of Corizon?

15 A No.

16 Q Can you turn to Tab 4 in your binder, please?

17 A Yeah.

18 Q And turn to Page 17 of this transcript. And do you see
19 starting on line 17, --

20 A Yeah.

21 Q -- you're speaking with the U.S. Trustee; do you see
22 that?

23 A Yeah.

24 Q And you say in the second sentence, M2 LoanCo undertook
25 to fund the divisional merger on behalf of the Debtor

1 without expecting to get it paid back.

2 A That's the funding agreement.

3 Q Okay. So they funded it but they did not undertake the
4 divisional merger; that's your testimony.

5 A Correct.

6 Q And you said White & Case also represented YesCare.

7 A Correct.

8 Q And did you select White & Case to represent YesCare?

9 A No.

10 Q Okay. Who did that?

11 A Former CEO.

12 Q For the record, what's that individual's name?

13 A Ms. Tirschwell.

14 Q Did White & Case ever represent Perigrove 1018?

15 A No.

16 Q What about Perigrove, LLC?

17 A No, not to my knowledge.

18 Q Okay. And what about premerger Corizon Health?

19 A I believe White & Case did do some work for Corizon
20 pre.

21 Q Okay. Let's turn to Tab 11 in your binder, which is
22 TCC Exhibit 115.

23 MS. MEYERS: And, for the record, this is marked
24 as confidential.

25 THE COURT: Which tab, counsel?

1 MS. MEYERS: It's Tab 11.

2 THE COURT: Oh, thank you.

3 MS. MEYERS: TCC 115.

4 BY MS. MEYERS:

5 Q Mr. Lefkowitz, do you remember I showed you this
6 document at your deposition?

7 A Okay.

8 Q Do you recognize this document?

9 A From the deposition.

10 Q Do you recognize it from before the deposition?

11 A Vaguely. I mean, I know the accountant.

12 Q You do.

13 A Yeah.

14 Q Okay. Can we turn to Page 58 of the confidential
15 transcript, which is behind Tab 2? And actually I
16 apologize. We're going to have to go back to Page 54.

17 A Fifty-four in which tab?

18 Q In the same tab. It's just --

19 A This one.

20 Q Let me start over. Okay, your testimony is that you
21 are familiar with the contents of this --

22 A Correct.

23 Q -- TCC 115.

24 A I mean, reading it I can tell you what it is.

25 Q I understand. But had you seen it before I showed it

1 to you at your deposition?

2 A I don't recall now.

3 Q You don't recall. Do you recall telling me at your
4 deposition that you didn't recognize that document?

5 A No.

6 Q Okay. So let's turn to page 54 of your confidential
7 transcript, which is behind Tab 2.

8 A Fifty-four.

9 Q And I'm just going back to this page to show you that
10 at line six, Exhibit 5 was marked, and that's TCC
11 Exhibit 115. And then on Page 58 of that same transcript,
12 at line 18:

13 "QUESTION: Mr. Lefkowitz, do you recognize this
14 document?

15 "ANSWER: No.

16 "QUESTION: You've never seen this document
17 before.

18 "ANSWER: I don't recognize it."

19 A Right.

20 Q Was that accurate at that time?

21 A Still accurate.

22 Q It's still accurate. So how are you familiar with the
23 contents of --

24 A I just read it.

25 Q -- that document? You just read it just now.

1 A I can tell you each word what it means.

2 Q Let's turn back to TCC Exhibit 115, which again is
3 behind Tab 11.

4 A Okay.

5 (Pause in the proceedings.)

6 Q Directing your attention just to the first page, do you
7 see that at the top right corner it says White & Case and
8 Corizon Health?

9 A Yes.

10 Q And then this presentation is titled, "Project Orange
11 Presentation to the Board of Directors," right?

12 A Right.

13 Q And it's dated May 1st, 2022.

14 A Correct.

15 Q Were you on the board of directors of Corizon Health at
16 -- as of May 1st, 2022?

17 A I was a director of M2 HoldCo, not of Corizon.

18 Q Okay. Earlier you said you were a director of Corizon
19 Health as of March, 2022. Did that change between March and
20 May.

21 A Corizon Health.

22 Q Corizon Health.

23 A I was never a director of the subsidiaries. I was
24 always a director of the upper grandfather. I think that's
25 what I testify.

1 Q I believe earlier when I asked you about the emails
2 with your Corizon Health email address, didn't you testify
3 that you were a director of Corizon Health, Inc. in March of
4 2022?

5 A You didn't -- you know, you didn't ask inc. You asked
6 Corizon. Corizon was a brand under the grandfather.

7 Q Okay. So what position did you hold, if any, at
8 Corizon Health, Inc. as of May 1st, 2022?

9 A I don't think I held any position in inc.

10 Q Okay. So why did you have a Corizon Health email
11 address?

12 A Okay, so let's do this one more time. So Corizon, when
13 I went into Corizon, there were 5,000 employees with 5,000
14 email addresses. You mean to say all 5,000 people that had
15 a email address of Corizon was a director of Corizon?

16 Q That's not my question, Mr. Lefkowitz.

17 A So I was a director of the grandfather company that we
18 acquired from Flex Group. And one of the brands was
19 Corizon, and that's why I got a Corizon email address.

20 Q Okay.

21 A But Corizon Health, Inc., a subsidiary, I don't believe
22 I was a director of that corporation called Corizon Health,
23 Inc.

24 Q Okay. So you were not a member of the board of
25 directors of Corizon Health, Inc. as of May 1st, 2022.

1 A I don't believe so.

2 MS. MEYERS: Okay. Thank you for clarifying.

3 Q And just so I understand your testimony is that you had
4 a Corizon health email address because of a position you
5 held at one of the M2 entities.

6 A Perigrove 1018 entity.

7 Q Okay. So other than when I showed you this document at
8 your deposition, --

9 A Right.

10 Q -- you said you've never seen this before.

11 A Correct, before the deposition.

12 Q Do you understand what Project Orange refers to?

13 A I guess the divisional merger. I didn't pick the name.

14 Q Do you recall the planning process for the divisional
15 merger?

16 A It was Ms. Tirschwell's project.

17 Q Were you involved at all in that process?

18 A I was more notified and updated but I wasn't involved,
19 no.

20 Q Okay. So how often would you get updates?

21 A I don't know.

22 Q Did you make any approvals in connection with the
23 planning of the divisional merger?

24 A Planning, no, but ultimately of the execution.

25 Q And what parts of the execution?

1 A M2 was going to fund \$15 million.

2 Q Did White & Case ever give you updates?

3 A I believe so.

4 Q Okay. Can we turn to Page 6 of this document, please,
5 which is marked Debtor 29986?

6 A Okay.

7 Q Do you see the first bullet point says, as the board
8 has previously discussed, the dire financial situation of
9 Corizon Health, Inc., the company, has rendered it unable to
10 satisfy its secured debt obligations, let alone its
11 unsecured debt, which includes an increasing number of
12 professional liability claims; do you see that?

13 A Yeah.

14 Q Is that an accurate statement of the state of Corizon
15 Health business in May of 2022?

16 A Some of it.

17 Q What part is not accurate?

18 A The let alone.

19 Q I'm sorry?

20 A Let alone. I never saw this document before. You're
21 asking me now to read the document and give you an opinion
22 on it. I would never write the word "let alone."

23 Q I understand. But I'm asking is the factual
24 information set forth in this document accurate to your
25 knowledge, based off of your involvement in Corizon Health?

1 A No. As I'm reading the second paragraph it's not
2 accurate. It's a hundred million, not 90 million.

3 Q Well I was asking you about the first paragraph. So is
4 the information set forth in that first paragraph on this
5 page accurate to your knowledge?

6 A Like I said, I don't think so.

7 Q And you said because of the word let alone or the
8 phrase let alone. Is there anything else that's inaccurate
9 in that paragraph?

10 A Yeah. I don't believe that it had to do with the
11 unsecured creditors or the increasing number professional
12 liabilities. I still don't believe it today, I didn't
13 believe it then. I know exactly what the professional
14 liabilities are.

15 Q And how do you know exactly what the professional
16 liabilities are?

17 A Because I have a team of 12 lawyers monitoring it on a
18 daily basis.

19 Q Okay. And wasn't the -- weren't those lawyers White &
20 Case at this point?

21 A No.

22 Q Okay. So you're doubting what White & Case put in this
23 presentation.

24 A I'm not doubting. I don't know what they did. I don't
25 know who they presented it. And I don't know if this was

1 just a general discussion. But I can tell you that it was
2 not the professional liability claims that led to the
3 divisional merger.

4 Q Okay. Do you see in the second sub-bullet under that
5 paragraph we just looked at it says the company and/or its
6 subsidiaries are named as defendants in more than 600
7 pending professional liability lawsuits? The actuarial
8 estimate of the company's total exposure on account of
9 pending and threatened professional liability claims is
10 approximately 88 million; do you see that?

11 A Yes.

12 Q is that an accurate statement of Corizon Health's
13 exposure to professional liability claims as of May, 2022?

14 A Absolutely not.

15 Q So that's another inaccuracy in this document that
16 White & Case --

17 A Definitely not 88 million.

18 Q Okay. Is it more or less than that?

19 A Far less.

20 Q It's far less.

21 A Correct.

22 Q And what's your basis to say that?

23 A Again, there's a team of 12 attorneys that monitor
24 every single case as it comes, as it gets filed, as it gets
25 settled, as it gets litigated. And we have that matrix. I

1 had it then, I had it throughout the course, and I have it
2 today.

3 Q Has that been produced to the TCC?

4 A I'm sure it did.

5 Q Okay.

6 THE WITNESS: Oh, by the way, I was in the meeting
7 with Mr. Goodman at Norton's office and I pulled in the --

8 MS. MEYERS: Mr. Lefkowitz, I'm going to stop you --

9 THE WITNESS: I'm going to --

10 MS. MEYERS: I don't want you to get into --

11 THE WITNESS: No, no, you asked me a question
12 whether it was produced. And I called in the Sigma team and
13 I told Mr. Goodman, here's the Sigma team, they're ready to
14 produce anything and everything on that matrix. Are you
15 interested in looking at the claim matrix. And his response
16 was, we'll let you know. And he never did.

17 So anything that was produced was produced to the
18 Debtor, it was produced to the UCC, it was produced to the
19 U.S. Trustee. Mr. Goodman was not interested in those
20 numbers.

21 MS. MEYERS: Your Honor, I'd move to strike that
22 as invading the mediation privilege.

23 THE COURT: Well, you asked the question, he
24 answered it. I'm going to allow it.

25 MS. MEYERS: Okay. I appreciate that.

1 MR. BROOKNER: Your Honor, I'm sorry to interrupt.
2 But can Mr. Lefkowitz pull back from the mic just a little
3 bit? Because it's really -- it might impact the recording
4 and the transcript.

5 THE COURT: I'll let the courtroom deputy make the
6 calls on those things. But I appreciate the assistance.

7 BY MS. MEYERS:

8 Q So if it was not the professional liability claims that
9 were impacting Corizon Health's business, shouldn't they be
10 paid in full by the company?

11 A Every claim should be paid in full as much as they
12 deserve to be paid. There's a lot of fictitious claims.

13 Q And who decides if it's fictitious, Mr. Lefkowitz?

14 A You have two members on your committee that are not
15 even creditors. They haven't even filed a claim.

16 Q Mr. Lefkowitz, --

17 A Yes.

18 Q -- I'm -- you're not answering my question.

19 A Right.

20 Q My question is who decides whether a claim is
21 fictitious or not?

22 A From the Debtor's side?

23 Q No, in the U.S. tort system.

24 A You take a look at the claim, look at the sheet of 2500
25 claims that we dismissed 1500 claims of fictitious claim.

1 You don't believe that every tort claim that's filed is a
2 real claim. Some are real, some get paid, some get
3 litigated, some get settled, and some get dismissed for not
4 being real.

5 There are two members on your committee that are not
6 real.

7 Q So going back to the subparagraph here, what about this
8 subparagraph is inaccurate?

9 A The 88 million.

10 Q Any other part of that?

11 A Six hundred and pending professional liability cases.
12 Most of it is pro se cases at the value of 2500 a case.
13 That's not the reason why there's a divisional merger. This
14 is fluff here.

15 Q So White & Case that was retained by M2 LoanCo was
16 providing fluff to the Corizon Health board of directors.

17 A I don't know what they did. I've never seen this
18 document before the deposition.

19 Q If you look to the second major bullet point, it says,
20 the company's deteriorating financial condition and its
21 exposure to professional liability litigation have
22 negatively impacted -- affected its ability to retain
23 existing contracts as well as win new business. Competitors
24 with stronger balance sheets have gained a distinct
25 advantage. Is that an accurate statement of the state of

1 Corizon Health in May of 2022?

2 A Absolutely not. Competitors have far more greater tort
3 exposure than Corizon has.

4 Q Okay. So this is White & Case again putting inaccurate
5 information or presentation to the Corizon Health --

6 A I don't know what this PowerPoint is.

7 Q Let's turn to the tenth page, which is Debtor 2990.

8 A Yes.

9 Q Do you see that this is entitled proposed transaction?

10 A Correct.

11 Q And is this -- does this accurately set forth the
12 basics of the Corizon Health divisional merger?

13 A Absolutely not.

14 Q So it's inaccurate that there were two entities
15 created, NewCo and RemainCo?

16 A No, that is accurate.

17 Q Okay. And NewCo is CHS Texas, correct?

18 A He's talking about an Aesop (phonetic) structure here,
19 never existed.

20 Q Was RemainCo Corizon now Tehum?

21 A Correct.

22 Q Do you see that it says YesCare is identified as a
23 newly formed entity?

24 A Correct.

25 Q Do you recall that YesCare was already formed in May of

1 2022?

2 A And what's the date of this document?

3 Q This document is dated May 1st, 2022.

4 A That's not called newly.

5 Q I'm saying is it your understanding that YesCare was
6 already formed as of May 1st, 2022?

7 A I don't know when it was formed.

8 Q So, Mr. Lefkowitz, you've disagreed with a lot of the
9 information provided in this presentation. In your own
10 words, what was the purpose of the divisive merger?

11 A To divide two lines of business.

12 Q Okay. And that's the jails and the prisons.

13 A Correct.

14 Q Are you aware that White & Case has filed a proof of
15 claim in this bankruptcy case?

16 A Not aware.

17 Q Turn to Tab 18.

18 A I think White & Case was paid in full.

19 Q Let's turn to Tab 18.

20 A Yeah.

21 Q You see that this is a proof of claim from the Tehum
22 bankruptcy?

23 A Yes.

24 Q And do you see under part one the creditor's identified
25 as White & Case.

1 A Correct.

2 Q Okay. And on Page 2, Question 7, do you see that the
3 amount listed is five hundred and ninety-nine thousand --

4 A Correct.

5 Q -- and 93 dollars?

6 A Expect a paid in full receipt.

7 THE COURT: Hold on.

8 MR. PATTERSON: Don't mean to interrupt, Judge,
9 but if she could refer to the exhibit numbers. Not all of
10 us -- we don't have enough notebooks for everyone. And I'm
11 sure that people listening don't know, but I have no idea
12 what exhibit, for example, tab -- the tabs don't refer to
13 the Exhibit List that's been provided so --

14 THE COURT: Counsel, to the extent you can.

15 MS. MEYERS: This does not have an exhibit number,
16 Your Honor.

17 THE COURT: This does not have an exhibit number,
18 got it. So this is just the -- is it fair to say it's --
19 I'm looking at proof of claim number 620?

20 MS. MEYERS: Proof of claim number 620, yes.

21 THE COURT: Filed in this case by White & Case.

22 MS. MEYERS: Yes.

23 THE COURT: Okay. But to the extent you -- there
24 is an exhibit number, if someone can just say it out loud, --

25 MS. MEYERS: Of course.

1 THE COURT: -- I very much appreciate it. Thank
2 you.

3 MS. MEYERS: Yes, that's -- you're welcome.

4 BY MS. MEYERS:

5 Q Okay. So if we turn -- so does this refresh your
6 recollection that White & Case was not paid in full?

7 A I know White & Case is paid in full. Expect a payment
8 receipt paid in full by White & Case. So there's another
9 \$600,000 less in the claim roster.

10 Q If you could turn to the third page, you see that this
11 was executed on August 14th, 2023.

12 A Correct.

13 Q So as of that date White & Case had not been paid in
14 full; is that right?

15 A White & Case is paid in full. White & Case is not owed
16 one dime from this Debtor. White & Case filed a claim by
17 error. White & Case will not collect any money from the
18 creditors' pool of money.

19 Q So you're saying that this is an erroneous proof of
20 claim.

21 A Correct.

22 Q So as of August 14th, 2023, it's your testimony that
23 White & Case had been paid in full.

24 A Correct.

25 Q When was White & Case paid in full?

1 A I don't know when. But I can tell you with certainty
2 that White & Case is not owed any money by this Debtor.

3 Q Was it paid in full after the --

4 A I don't know if it --

5 Q -- filed for bankruptcy?

6 A -- after or before. I can just tell you that White &
7 Case is not owed any money.

8 Q So you don't know whether White & Case was paid in full
9 before --

10 A Before or after.

11 Q -- or after.

12 A Correct.

13 Q Okay. And you don't know whether White & Case was in
14 fact -- but your testimony is that White & Case was paid in
15 full as of August 14th, 2023, when this --

16 A I don't know if --

17 Q -- proof of claim --

18 A -- it was 14, 15, or 13. White & Case is not a
19 creditor in this case.

20 Q I understand that but, Mr. Lefkowitz, I'm trying to --

21 A I know, but you're trying to narrow down a date and I
22 don't have the date. I'm just telling you White & Case is
23 not owed any money.

24 MS. MEYERS: Mr. Lefkowitz, I want you to answer
25 my question, please.

1 THE WITNESS: Sure.

2 BY MS. MEYERS:

3 Q My --

4 THE WITNESS: Ask the question.

5 Q -- question is, is that can you say for certain that as
6 of August 14th, 2023 White & Case had been paid in full?

7 A No, I cannot say for certain a date. All I can --
8 you're zeroing on a creditor that claims \$600,000 is owed to
9 them.

10 And I'm telling you they're not owed. They're paid in
11 full, and they will not collect any money. They will not
12 ask for any money. If you pay them, they'll send you the
13 money back because they're paid in full.

14 Q Okay. So is it possible that White & Case filed this
15 proof of claim on August 14th, 2023, having not been paid in
16 full, and they have since been paid in full?

17 A I don't know. I don't manage the claims register. I
18 do know there's a lot of fictitious claims.

19 Q And you think --

20 A One of them that's an erroneous claim is the White &
21 Case claim.

22 Q Okay. You seem to know that they're paid in full. How
23 do you know that?

24 A I know that.

25 Q How?

1 A Because I keep communicating with them in other
2 matters.

3 Q Okay. And who paid White & Case in full?

4 A I don't know whose -- whether they were paid by the
5 Debtor or they paid by the sister companies or the settling
6 parties or they just wipe the bill off and paid in full. I
7 don't know the exact circumstances. But I had a
8 conversation with them and I asked them whether the Debtor
9 owes them money, and they said no.

10 Q When did you have that conversation?

11 A Few months ago.

12 Q So after this bankruptcy case was filed.

13 A Yes.

14 Q And after they filed this proof of claim.

15 A Yes.

16 Q We could turn to the thirteenth page of the document.

17 And I apologize, the page numbers start over and over again.

18 A Which tab?

19 Q This is in the same tab, the -- still the White & Case.

20 It's the page that starts with what looks like a White &
21 Case invoice to Corizon Health, Inc.

22 A What's the page number?

23 THE COURT: Oh, which -- you're looking at --
24 you're still looking at the proof of claim at Tab 18.

25 MS. MEYERS: Yes.

1 THE COURT: After the proof of claim after the
2 addendum, it looks like an attachment to the addendum.

3 MS. MEYERS: Yes, that's correct, Your Honor.

4 THE COURT: Okay.

5 MR. BROOKNER: Objection, Your Honor.

6 THE COURT: Just making sure that -- yes,
7 Mr. Brookner.

8 MR. BROOKNER: Yeah, we have to do something with
9 this document. It's not in evidence to my knowledge. We
10 got to move it in or stop talking about it, I think.

11 THE COURT: Counsel.

12 MS. MEYERS: Your Honor, I'm just asking the
13 witness questions about this and whether -- and I'm planning
14 to try to refresh his recollection on something he already
15 testified to.

16 THE COURT: Why don't you ask him and then see if
17 we can get there?

18 MS. MEYERS: Okay.

19 THE COURT: But it's cross-examination, right? I
20 don't -- so I don't know if we -- I think sometimes you get
21 to cross people with docs. But --

22 MS. MEYERS: Yes.

23 THE COURT: No, go ahead.

24 MS. MEYERS: I agree, Your Honor. Thank you.

25 THE COURT: Go ahead.

1 BY MS. MEYERS:

2 Q Okay, Mr. Lefkowitz, do you see an invoice from White &
3 Case to Corizon Health? I believe it's actually the second
4 page that's dated -- it says invoice date May 6th, 2022?

5 A Yes.

6 Q Okay. And then if you flip to the next page, do you
7 see that there are a list of redacted timekeeper --

8 A Yes.

9 Q -- descriptions? Do you see that the date of the first
10 timekeeper entry is January 25th, 2022?

11 A Yes.

12 Q Does that refresh your recollection that White & Case
13 was involved earlier than mid-2022 --

14 A No.

15 Q -- in connection with Corizon? No, it doesn't.

16 A Haven't seen this invoices before.

17 Q So how do you know that they've been paid in full if
18 you've never seen their invoices?

19 A I told you. I spoke to White & Case couple of months
20 ago, and they say they're not owed money by this Debtor,
21 they're paid in full. It's not clear?

22 MS. MEYERS: Very clear, thank you.

23 BY MS. MEYERS:

24 Q White & Case is getting released under the settlement
25 agreement; isn't that right?

1 A What has that got to do with their invoices?

2 Q I'm -- can you answer my question?

3 A If they're in the settlement agreement as the list of
4 parties, yes.

5 Q Yes. So the section -- Subsection (u) in Paragraph 7
6 lists attorneys of the released parties as --

7 A Okay.

8 Q -- also released parties, right?

9 A Okay.

10 Q And you said they were M2 LoanCo's attorneys, right?

11 A And YesCare's attorneys.

12 Q Okay. So let's talk about Corizon Health after the
13 divisive merger.

14 A Okay.

15 Q When was Corizon renamed as Tehum?

16 A Sometimes thereafter.

17 Q Do you have an approximation of how long after the
18 divisive merger it was renamed?

19 A No.

20 Q Before --

21 A There's an official filing.

22 Q It was before they filed for bankruptcy, though, right?

23 A I believe so.

24 Q After the divisional merger, Tehum had no operating
25 business; is that right?

1 A They were planning to operate.

2 Q How were they planning to operate?

3 A They were going to develop a jail healthcare business.

4 Q Okay. But at the -- after the divisive merger, Tehum
5 had no active contracts, right?

6 A Correct.

7 Q Okay. And it had no employees, right?

8 A Correct.

9 Q And it had no supplies.

10 A Supplies you buy on demand.

11 Q Okay. So they didn't have any at that time.

12 A No healthcare provider has supplies. They buy them on
13 demand.

14 Q It just had -- at that time it just had liabilities
15 associated with expired contracts; is that right?

16 A With huge amount of knowledge how to go after the
17 business.

18 Q And after the divisional merger, you were Tehum's sole
19 director, right?

20 A Correct.

21 Q And that's still true today.

22 A Correct.

23 Q So -- and is it still true that there's no employees of
24 Tehum today?

25 A No, because they filed for bankruptcy.

1 Q Okay. So aren't you essentially the Debtor,
2 Mr. Lefkowitz?

3 A And there's a CRO.

4 Q Okay. And Mr. Perry was appointed the day of the
5 bankruptcy filing; is that right?

6 A Correct.

7 Q So I believe at your deposition I asked you if you were
8 aware of any efforts to bring in new business to Tehum, and
9 you said, no; is that still accurate?

10 A At what point?

11 Q After the divisive merger.

12 A No, I don't -- no, I disagree with that.

13 Q Okay. What efforts did you make after the divisive
14 merger to bring in new business?

15 A There was a plan to jumpstart a new company.

16 Q I understand there was a plan. What active steps did
17 you take to execute that plan?

18 A Interviewed appropriate people to run it.

19 Q Who'd you interview?

20 A Doctors, physicians, nurses.

21 Q How many did you interview?

22 A Remember, but it was an active plan.

23 (Pause in the proceedings.)

24 Q But you would agree absent execution of that plan there
25 was no going concern business, right?

1 A There was a going concern. It had 40 years of knowhow,
2 it had assets, it had liabilities, and it had a plan how to
3 go into a new business of servicing the jails until it got
4 forced into bankruptcy.

5 (Pause in the proceedings.)

6 Q Mr. Lefkowitz, could you turn to page -- to, excuse me,
7 Tab 4 and go to Page 64 and 65 of that transcript?

8 THE COURT: Is that the -- what is that? Is
9 that --

10 MS. MEYERS: This is a transcript from the
11 June 13th, 341 Meeting.

12 THE COURT: Docket 911.

13 MS. MEYERS: 911-3, yes, Your Honor.

14 THE COURT: Okay. Is this the -- is this admitted
15 into evidence or this just --

16 MS. MEYERS: This is not admitted into evidence, --

17 THE COURT: Okay.

18 MS. MEYERS: -- Your Honor.

19 BY MS. MEYERS:

20 Q Mr. Lefkowitz, could you look at your statement
21 beginning on Page 64, line 24?

22 A Yeah.

23 Q Corizon merged with Corizon Health. They then merged
24 with CHS Texas, and then they divided. So Corizon does not
25 have operations but it has liabilities and it has certain

1 claims of assets; do you see that?

2 A Yes.

3 Q Is that accurate?

4 A Yes. Operations means new contract.

5 Q And has that ever changed?

6 A Didn't get a chance.

7 Q Have you sought -- have you on behalf of Corizon -- or,
8 excuse me, now Tehum, have you sought any new contracts?

9 A Contract is through an RFP. It's a municipal process.
10 It's a very long process.

11 Q Have you sought any?

12 A You can't. If you're in bankruptcy, you can't. It's
13 -- you're dead on arrival.

14 Q I understand. I'm saying between the divisive merger
15 and the time that Tehum filed for bankruptcy, did you seek
16 out any new contracts?

17 A That's not the way you do it. You first build your
18 staffing.

19 Q Mr. Lefkowitz, I'm asking did you do that?

20 A Yeah, we started planning a new business.

21 Q No, I'm asking did you seek any new contracts between
22 when Tehum filed for bankruptcy -- or, excuse me, --

23 A I don't know --

24 Q -- between the divisive merger --

25 A I don't know what seeking new contracts is. I can

1 teach you the nature of how you get a contract but it's not
2 about seeking a contract. There is a calendar.

3 Every six months, every nine months counties and cities
4 put out for request for proposals. It's -- you can seek all
5 you want, you're not going to get it. But in order to get
6 it, you have to have the right structure.

7 Q And that's --

8 A And from the divisional merger until the bankruptcy
9 that was in the planning. And it got knocked out of its
10 feet.

11 Q And you were running that entire process.

12 A Correct.

13 Q And it never got past interviewing certain staff
14 members; is that right?

15 A It passed what?

16 Q You said that to effectuate this plan --

17 A Right.

18 Q -- you interviewed doctors and nurses.

19 A Right, potential staffing.

20 Q Did you hire any of them?

21 A You don't hire until you get a contract.

22 Q Okay. And so what contracts were you planning to go
23 after?

24 A Jails and counties.

25 Q Okay. Did you identify any specific ones?

1 A Yes.

2 Q Which ones?

3 A We were actively involved in the State of Georgia to
4 take over 14 jails.

5 Q Okay. Tehum was.

6 A Yes.

7 Q Okay. And that's after the divisive merger and before
8 the bankruptcy.

9 A Correct.

10 Q Okay. And how much would that contract have been
11 worth?

12 A About 75 million.

13 Q And what stage in that process did you get to?

14 A Attorney negotiations.

15 Q Are you familiar with an entity called CHS Alabama?

16 A Yes.

17 Q All right. Who owns that entity?

18 A CHS Texas.

19 Q Okay. And when was CHS Alabama formed?

20 A Don't know the exact date.

21 Q Do you know whether it was prior to the divisional
22 merger?

23 A I don't believe so.

24 Q So it was after.

25 A I don't know. Public filing.

1 Q Did CHS Alabama bid on any contracts?

2 A Yes.

3 Q And what contracts were those?

4 A State of Alabama.

5 Q Was CHS Alabama ever a subsidiary of Corizon Health,
6 Inc.?

7 A No.

8 Q It was only a subsidiary of CHS Texas.

9 A Correct.

10 Q So that would mean it was formed after the division
11 merger.

12 A I don't know what it means. But if you're asking me if
13 it was from Corizon, no.

14 Q Are you -- is CHS Alabama a subsidiary of YesCare?

15 A I don't believe so.

16 Q Is it an indirect subsidiary of YesCare?

17 A I don't know.

18 Q Well isn't CHS Texas a subsidiary of YesCare?

19 A Yes.

20 Q Okay. And is -- and isn't CHS Alabama a subsidiary of
21 CHS Texas?

22 A I don't know the definition of an indirect subsidiary.

23 Q You didn't answer my question. Is CHS --

24 A No, you asked me if it's an indirect subsidiary. I
25 said I don't know.

1 Q My most recent question, --

2 A No.

3 Q -- Mr. Lefkowitz, was, is CHS Alabama a subsidiary of
4 CHS Texas?

5 A I don't know.

6 Q And you said that CHS Alabama bid on a contract with
7 the State of Alabama; is that right?

8 A Correct.

9 Q And did it get that contract?

10 A I believe so.

11 Q And when did that happen?

12 A Sometimes in '23.

13 Q So after Tehum filed for bankruptcy.

14 A Correct.

15 Q Were any employees of -- or officers of former Corizon
16 Health involved in CHS Alabama's efforts to secure that
17 contract?

18 A The entire correctional industry in the United States
19 is a former Corizon employee.

20 Q Okay. So the answer's yes?

21 A At some point, you know, it's 40 years of employment.
22 If you're on the correctional industry, then you must have
23 worked for Corizon at one point.

24 Q Why would Corizon Health personnel help CHS Alabama
25 secure a contract with the State of Alabama when CHS Alabama

1 was not owned by Corizon?

2 A I think you just made an incorrect statement.

3 Q How is it incorrect?

4 A I don't believe Corizon Health helped CHS Alabama.

5 Q Well, certain -- you said certain employees of CHS
6 helped.

7 A That's not what you asked. You asked if -- you asked
8 me before if the employees of CHS Alabama are former Corizon
9 employees. And my answer was the entire correctional
10 industry are former Corizon employees.

11 So how does -- then you followed up with question, why
12 would Corizon employees help. They're not Corizon
13 employees.

14 Q So my question was did any employees of Corizon Health,
15 were any of them involved in CHS Alabama's efforts to secure
16 the contract with the State of Alabama?

17 A I don't think so.

18 Q You don't think so.

19 A No.

20 Q When did CHS Alabama start preparing materials to
21 obtain the Alabama contract?

22 A I don't know.

23 Q Do you know whether it was prior to the divisional
24 merger?

25 A Divisional merger was in '22.

1 Q Yes.

2 A I don't believe so.

3 (Pause in the proceedings.)

4 Q Has Tehum ever had the resources available to pay out
5 its creditors in full?

6 A I believe so.

7 Q When was that?

8 A Still has today.

9 Q Tehum has the -- enough resources to pay all
10 creditors --

11 A Absolutely.

12 Q -- in full. So why file for bankruptcy?

13 A Because there was a receivership motion by a hospital
14 in Missouri. That's what forced it in.

15 Q I thought that the only assets of Tehum were claims
16 against other entities.

17 A You heard this morning from Mr. Perry there is 30
18 million in ERC credits.

19 Q Okay. So is St. Luke's going to be paid in full; is
20 that your testimony?

21 A St. Luke's is not owed one dime. It is the most
22 fictitious claim in the entire claim roster. That claim is
23 originated from 2014, a \$31 million claim. You believe
24 there's a hospital in the entire country that gives \$30
25 million credit to a commercial client or does it get cut off

1 after 300,000?

2 They just took a billable rate, if you know what
3 billable rates in a hospital, and converted it to an invoice
4 and created a claim.

5 If they get paid on this \$30 million claim, it's far
6 more than what they're going to get in the Idaho courts.
7 They're not owed a dime. Corizon paid every single bill to
8 St. Luke's in full.

9 Q Mr. Lefkowitz, you understand that in the U.S. tort
10 system, you don't get to decide whether a claim is
11 fictitious or not, right?

12 A You were asking about St. Luke's.

13 Q I'm asking --

14 A St. Luke's is not a court.

15 Q I'm asking a different question, Mr. Lefkowitz.

16 A Right.

17 Q I'm asking you do you understand that in the U.S. tort
18 system, you personally do not get to decide whether a claim
19 is fictitious or not?

20 A One second. So the way I settled at least \$40 million
21 in tort claims in this company is I met with the plaintiff's
22 attorney, let's call him an ambulance chaser, and we went
23 through the legitimacy of his claim.

24 And businessman to businessman I proved to them that
25 it's not a legitimate claim, and there is no cause here, and

1 you will not get paid. So it's just about chasing the
2 litigation. That is on the represented cases.

3 The pro se cases, 90 percent of the pro se cases,
4 attorneys declined to take them on. So they settle.

5 So when you say that I don't get to decide, I don't
6 decide. It's a negotiationment (sic) of settlement. Same
7 thing what the insurance company does.

8 Q Mr. Lefkowitz, you said that you were personally
9 involved with efforts to obtain new business for Tehum; is
10 that correct?

11 A Exactly.

12 Q Okay. Can we turn to the second -- Tab 2, which --

13 A Yes.

14 Q -- is your confidential transcript --

15 A Yes.

16 Q -- from your February 8th, 2024 deposition? And turn
17 to Page 85.

18 And then if you go down to the very bottom, do you see
19 I asked a question that will turn onto the next page? After
20 the divisional merger, are you aware of Tehum ever having an
21 active contract? Answer: I am not aware.

22 A Correct.

23 Q Are you aware of any contracts that it sought out?

24 Answer: No.

25 A Correct. It's still correct.

1 Q So what was the Georgia contract that you were just
2 talking about?

3 A Talking about acquisition of a company that has 14
4 contracts.

5 Q So you don't consider that seeking out new contracts
6 you -- it's an acquisition.

7 A Correct.

8 Q And you didn't tell me about that when I asked you?

9 A You didn't ask me. You asked me about contracts.

10 Q So you don't think that acquiring a company that has
11 contracts that would then be operated by Tehum is seeking
12 out new contracts.

13 A Exactly.

14 Q Mr. Lefkowitz, you understand that some of Tehum's
15 creditors are families who lost loved ones, right?

16 A Yes.

17 Q Okay. And you understand that some of Tehum's
18 creditors are people that were seriously injured as well,
19 right?

20 A Some.

21 Q Okay. And you don't really -- but you don't care that
22 whether these people are fairly compensated, do you?

23 A You're wrong.

24 Q Okay. Let's go to your transcript.

25 MS. MEYERS: Actually, can you pull up the video?

1 This is confidential transcript Page 184-12 through 185-1.

2 THE WITNESS: Which tab?

3 MS. MEYERS: That is in Tab 2.

4 THE WITNESS: Which page?

5 MS. MEYERS: 184, line 12; 185, line 1.

6 THE COURT: If anybody's going to pull up a video,
7 let me just tell you to stop. We can read stuff into the
8 transcript. I don't need to --

9 MS. MEYERS: Okay.

10 THE COURT: -- hear it.

11 MS. MEYERS: Thank you, Your Honor.

12 MR. BROOKNER: Your Honor, I've let this go on for
13 quite a while. I do -- I'm not sure if it's an objection or
14 a comment. But this deposition behind Tab 2 was not
15 Mr. Lefkowitz in his capacity as a Tehum representative or
16 otherwise. He was a 30(b)(6) representative for M2 LoanCo
17 in this deposition.

18 MS. MEYERS: That's not accurate, Your Honor.

19 This is the confidential portion of Mr. Lefkowitz's
20 deposition in his individual capacity --

21 MR. BROOKNER: Is that --

22 MS. MEYERS: -- that I took on April 8th, yes.

23 MR. BROOKNER: Oh, I'm sorry, his individual,
24 correct, his individual capacity, not his capacity as a
25 representative of the Debtor or the Debtor's 30(b)(6) or

1 anything of the sort.

2 THE WITNESS: Exactly.

3 THE COURT: Okay. Let's continue.

4 MS. MEYERS: All right.

5 BY MS. MEYERS:

6 Q On Page 84, line 12, --

7 A Yes.

8 Q -- I asked you, are you aware that there was a proposed
9 plan in connection with Tehum's bankruptcy?

10 "ANSWER: I am aware, yeah.

11 "QUESTION: Okay. And do you have any
12 understanding of who that plan proposed to
13 distribute assets among creditors?

14 "ANSWER: I personally don't care.

15 "QUESTION: You don't care personally?"

16 Yeah, absolutely not.

17 "QUESTION: Okay. So you don't care if someone is
18 overcompensated or under -- if someone is
19 undercompensated.

20 "ANSWER: Me, personally?

21 "QUESTION: Yeah.

22 "ANSWER: I care about my wife and kids."

23 Is that your testimony?

24 A Yeah. But you need to be transparent for the Court. I
25 was at the deposition wearing several hats, corporate hats

1 and personal hats. And you asked me, you personally, Isaac
2 Lefkowitz, do you personally care how money gets
3 distributed. I said, no, personally I don't care. Do you
4 personally care if someone gets overcompensated or
5 undercompensated? And again I answered, personally, no.

6 What does it got to do with personally? As far as the
7 Debtor, yes. As far as the settlement parties, yes.
8 Personally, I don't care today either.

9 Q You've said many times you think a lot of the claims
10 against Tehum are fictitious, right?

11 A I still believe so.

12 Q Okay. You think that inmates are writing illegitimate
13 claims on the back of napkins or envelopes.

14 A Not only inmates, even people who are no longer
15 inmates.

16 Q Okay. And the United States of America tort system
17 accepts those claims.

18 A No. The United States adopted a tort act because of
19 the -- because they were clogging the system. So the reason
20 tort act trying to filter out what's legitimate and what's
21 not legitimate.

22 Q Can we turn to this is in the first tab, transcript
23 Page 46, line 19?

24 A Forty-six.

25 MS. HAYWARD: Your Honor, I just for the record

1 want to object that this is sort of improper impeachment.

2 THE COURT: Yeah. I -- you've been asking a lot
3 of questions. I'm not really sure it's been inconsistent
4 with what he's been saying. I think the last one didn't
5 seem too inconsistent with what he's been saying if -- I'm
6 just going to look at these a little closer.

7 But we'll -- what page are you going to? Let's
8 see if this one --

9 MS. MEYERS: I'll move on, Your Honor.

10 THE COURT: Okay.

11 BY MS. MEYERS:

12 Q How does an inmate who has died write a false claim on
13 the back of a napkin, Mr. Lefkowitz?

14 A Because if a inmate commits suicide because he had a
15 mental illness or he overdoses because he smuggled drugs
16 into prison, how is that Corizon's Health liability, other
17 than just being a named caretaker of hardworking people that
18 wake up 5:00 o'clock in the morning to provide care to these
19 people?

20 Q I'm asking you how does a -- someone who has died write
21 a false claim and submit it in this bankruptcy?

22 A Oh, an estate, the estate files the false claim.

23 Q Okay. So the family members.

24 A Or the ambulance chaser, me and crosses of the world.

25 Q So you think that these claims -- a lot of these claims

1 are fictitious because the claimant is a criminal; is that
2 your testimony?

3 A No. It's got nothing to do with a criminal. It's the
4 entire healthcare system in the entire country suffering,
5 hospitals, nursing homes, long-term care. Everybody suffers
6 from the same. Person dies, everyone's fooled. Some are
7 legitimate. There are malpractice. People are human, they
8 make mistakes. Doctors make mistakes, nurses make mistakes.
9 But there is no deprived indifference.

10 Q But your testimony here today is that a lot of these
11 claims are fictitious, right?

12 A I know from the 600 claims, I can go and check you off
13 each claim which is a legitimate claim or not. And being a
14 director of the Debtor, I'll do so when it comes to the
15 settlement. I mean when it comes to distribution.

16 Q Okay. So your testimony is that you get to decide
17 whether a claim --

18 A I'm get to decide.

19 Q -- is legitimate or --

20 A I get to tell you who is real and who is not real. For
21 instance, the Rikers case that keeps on being brought up
22 here is a fake case, doesn't exist.

23 Q Do you think that the Bankruptcy Court should bar
24 Tehum's creditors from the U.S. tort system?

25 A Absolutely not.

1 Q Well you said you would only pay the settlement amount
2 if there was finality for these claims; wasn't that your
3 testimony?

4 A No.

5 Q That wasn't your testimony.

6 A Against the claims against the M2 parties; your
7 successor liability claims, your alter ego claims, these
8 type of claims.

9 Q Okay. So you think that creditors who have successor
10 liability claims against the released parties should be
11 barred from using the U.S. tort system, right?

12 A If it's released, it's released.

13 Q Right. So, right, in order for you to get finality, --

14 A We pay.

15 Q -- you need to --

16 A We pay, you take a distribution and you're released.

17 Q Right. In order to get finality, those tort claimants
18 can't go to the U.S. tort system, right?

19 A Not if they get paid. You can't have the cake and eat
20 it, too.

21 Q For you to get the finality you want, certain creditors
22 need to be essentially silenced from using the U.S. tort
23 system, right?

24 A No, they don't need to be silenced. They take the
25 payment and they go home. And they'll get more than what

1 they get in litigation. The pro se claimants are going to
2 get more, according to the settlement plan, than they would
3 have gotten any time, anywhere.

4 Q You know that for sure.

5 A Yes, positive.

6 Q Have you ever represented tort victims in a --

7 A I been --

8 Q -- litigation?

9 A -- involved in tort victim litigations all day long,
10 every day of my life.

11 Q You've represented tort victims --

12 A No, I paid them.

13 Q -- in a litigation. Do you believe that for YesCare to
14 increase its profits, these tort victims need to be barred
15 from the tort system?

16 A Absolutely not.

17 Q So why are we in this bankruptcy case, Mr. Lefkowitz?

18 A Because there was a hospital in Missouri that wanted
19 install a receiver and to stop everything in its tracks.
20 You forgot that we paid out close to \$40 million prior to
21 bankruptcy, after the divisional merger. Those are real
22 money, 40 million bucks.

23 Q Tehum filed for bankruptcy on February 13th, 2023; is
24 that right?

25 A Correct.

1 Q And I think we've already gone over, that was your
2 decision to file for bankruptcy --

3 A Ultimately, correct.

4 Q -- on behalf of -- And you retained Mr. Perry of Ankura
5 to be Tehum's chief restructuring officer, right?

6 A Correct.

7 Q Why did you select Mr. Perry?

8 A First, we looked at another firm and we realize they
9 don't have the expertise.

10 And then we looked at the Ankura firm that had an in-
11 depth knowhow of how the healthcare system works, so we
12 hired Ankura. It wasn't Mr. Perry particular. It was
13 Ankura.

14 Q What was the other firm that you looked into?

15 A The Getzler firm.

16 Q So you said earlier that the Debtor can pay all claims
17 in full.

18 A Legitimate claims.

19 Q All legitimate claims.

20 A Correct.

21 Q And those are claims that you deem to be legitimate.

22 A That we, not me personally.

23 Q We being who?

24 A All the attorneys involved in the PLI.

25 Q Okay. And who are those attorneys?

1 A The Sigma team.

2 Q Okay. Anyone else that you're including in that group,
3 other than you and the Sigma team?

4 A No.

5 Q So is the Debtor in financial distress right now?

6 A I don't think so.

7 Q So your testimony is the only reason the Debtor's in
8 bankruptcy is because of the receivership.

9 A Correct. Now, obviously the claims are in the billions
10 of dollars. But those are telephone numbers.

11 Q You said Ms. Tirschwell was the CEO of Corizon Health.

12 A Correct.

13 Q Is she still the CEO?

14 A No.

15 Q When did she leave?

16 A Sometimes in '23.

17 Q Did you ever communicate with her about the divisional
18 merger?

19 A She was updating me, yes.

20 Q Did she ever express to you that she thought it was a
21 good idea?

22 A I don't recall the exact expression.

23 Q Why did she leave?

24 A Oh, she got into disgruntle argument with one of the
25 clients.

1 Q And when was that?

2 A Sometimes in '23.

3 Q Will she get a -- strike that.

4 Will Ms. Tirschwell get a release under the settlement?

5 A I believe so.

6 Q You think she did a good job as CEO?

7 A No.

8 Q Why not?

9 MS. HAYWARD: Objection, Your Honor. At this
10 point it seems that we've gone a little bit afield and
11 become a little cumulative. I'm not sure how this line of
12 questioning goes to either settlement or the motion to
13 dismiss.

14 THE COURT: Counsel, what's your response?

15 MS. MEYERS: I'm done with this line of
16 questioning, Your Honor, --

17 THE COURT: Okay.

18 MS. MEYERS: -- so I -- if he would answer the
19 question pending, I have no further questions on that.

20 THE COURT: Actually can you repeat the question
21 so I can make sure?

22 MS. MEYERS: I said why don't you think that
23 Ms. Tirschwell did a good job?

24 BY MS. MEYERS:

25 A If she did a good job, she would still be CEO.

1 Q Okay. You said a moment ago that you referenced
2 ambulance chasers.

3 A Yeah. It's a phrase in the industry.

4 Q I understand --

5 A The only reason why I'm saying that phrase is because I
6 heard in previous hearings the cry that inmates,
7 incarcerated people don't have access to being represented.
8 And that's absolutely false.

9 As soon as there's an incident, they trip over each
10 other, the PLI attorneys, to chase these clients. It's when
11 they decide that there is no merits to the case, that's when
12 they go pro se.

13 Q Do you know who Ian Cross is?

14 A Oh, yeah.

15 Q Would you call him an ambulance chaser?

16 A I'm calling him a crook.

17 Q He's counsel for William Kelly; do you know that?

18 A Right.

19 Q Okay. And you're -- are you aware that Sigma has
20 estimated that claim to be a high risk for the Debtor?

21 A Yes.

22 Q Okay. With a value between 750,000 and almost two
23 million, right?

24 A Correct.

25 Q Okay. Is that fictitious?

1 A The two million is fictitious.

2 Q Is the 750,000 fictitious?

3 A It's high but we were ready to pay more than that.

4 Q Okay. So Mr. Kelly's is not one of the claims you
5 claim to be fictitious.

6 A No. Mr. Cross is. He's not looking out for his
7 client's interest. He's looking out for his contingency
8 fee.

9 Q You understand that Mr. Kelly has an active successor
10 liability claim against CHS Texas, right?

11 A I don't follow that case but it's okay.

12 Q Is that fictitious?

13 A Sure it is.

14 Q Why?

15 A Because there is no successor liability.

16 Q And how do you know that?

17 A Because I know the division of assets and liabilities.

18 Q Are you a lawyer?

19 A Do you need to be a lawyer to know the liability of the
20 -- of success?

21 Q Well I'm asking do you understand the elements that
22 need to be met to establish successor liability.

23 A Yes.

24 Q You do.

25 A Yes.

1 MS. HAYWARD: Your Honor, at this point I am going
2 to object under 403 to the extent that she asked this
3 witness about merits of litigation that has not been filed,
4 that is subject to being settled in this case.

5 I do not believe this is the appropriate place to
6 conduct a trial, per se, or ask this witness questions
7 which, you know, would be at issue in litigation later on if
8 it were brought.

9 THE COURT: Counsel.

10 MS. MEYERS: Your Honor, Mr. Lefkowitz has said
11 multiple times that he thinks these claims are fictitious,
12 that the amounts are too high. And I'm simply trying to
13 understand why he thinks that.

14 THE COURT: I'll let you ask a question or two
15 more. But I get -- I think he's been very clear about why
16 he thinks they're fictitious. And I think we're starting to
17 get to the asked and answered phase of this.

18 THE WITNESS: But, Judge, I want to correct. I
19 didn't say that all claims are fictitious.

20 THE COURT: I never said you did, and I apologize
21 if I communicated that.

22 BY MS. MEYERS:

23 Q Tehum's bankruptcy isn't the first time you caused an
24 entity to file for bankruptcy, is it, Mr. Lefkowitz?

25 MS. HAYWARD: Objection, relevance.

1 MS. MEYERS: Your Honor, the TCC's motion calls
2 into question whether this bankruptcy was filed in bad
3 faith. And if the individual who authorized this
4 bankruptcy, Mr. Lefkowitz, has used this tactic before, if
5 this is his modus operandi for dealing with undesirable
6 litigation, that's relevant to assessing his state of mind
7 when he filed this bankruptcy case.

8 MR. BROOKNER: The Debtor objects to this line of
9 questioning as well, Your Honor. You already told us you're
10 not interested in hearing about bad faith, that this case is
11 nine months old. You're either going to approve the
12 settlement or you're going to dismiss the case. Good faith,
13 bad faith is not relevant at this point in the proceedings.

14 THE COURT: I personally don't find it relevant,
15 counsel. But I -- if you want to establish a point, but I
16 don't want you going down a long road.

17 I think -- why don't you just ask another question
18 for me, for my purposes?

19 MS. MEYERS: I understand, Your Honor. I can move
20 on.

21 BY MS. MEYERS:

22 Q Mr. Lefkowitz, am I correct that you don't like how the
23 American tort system handles the types of claims that are
24 pending against Tehum?

25 A Absolutely wrong.

1 Q Didn't you say that the American tort system accepts
2 illegitimate claims written by inmates on the back of
3 napkins?

4 MS. HAYWARD: Objection again, Your Honor,
5 relevance, and asked and answered. And this (indiscernible)
6 cumulative.

7 THE COURT: No. I think you can answer this one.
8 Overruled.

9 BY MS. MEYERS:

10 A No. I said it's very simple to file a claim being an
11 inmate without being vetted by counsel. In our case itself,
12 in the Debtor case, the Court accepts letters from inmates.

13 Q In this bankruptcy case.

14 A Yes.

15 Q I'm asking about the tort system --

16 A Same thing happens in the District Court. Anyone with
17 a pencil and an envelope can file a case. But when you get
18 injured in a car accident, you can't do that.

19 Q You understand, though, that it's the function of the
20 U.S. Court system to decide whether a claim is legitimate or
21 not, right?

22 A I have no qualm about it.

23 Q Right. It's not up to you --

24 A Correct.

25 Q -- whether it's legitimate. A court will decide.

1 A Correct.

2 Q Okay.

3 A But we can defend it.

4 Q Of course.

5 A Vigorously.

6 Q And I would expect you to do so. But do --

7 A We're also defending employees that are being sued
8 which now the company's being sued out of courtesy of being
9 our employees. Your clients in the committee are suing
10 former nurses where Corizon is not a defendant, and we're
11 defending it.

12 Q Do you think that you have more control over dealing
13 with illegitimate claims in a bankruptcy process?

14 A Absolutely not.

15 Q Well, isn't the Debtor settling personal injury claims
16 or alter ego claims against these released parties?

17 A All claims, creditors' claims, workman comps claims, --

18 Q So --

19 A -- all claims. You're just part of the pool.

20 Q To your understanding would Tehum be able to settle
21 personal injury claims against YesCare asserted on a
22 successor liability theory if they weren't in bankruptcy?

23 A I didn't follow that line.

24 Q You don't know.

25 A I didn't follow that line of question.

1 Q Your -- here, let me ask it a different way. In your
2 view, does the Debtor's bankruptcy estate own the wrongful
3 death claims against YesCare that would be asserted by a
4 Tehum creditor on a successor liability theory?

5 A The estate owns all claims.

6 Q The estate owns those claims.

7 A Of course.

8 Q Okay. So it can settle those claims under this 9019
9 settlement, right?

10 A Correct.

11 Q Okay. And if the Debtor's estate did not own those
12 claims, you couldn't settle them in this release.

13 A They don't own it, they own -- they can only settle if
14 they own it.

15 Q So what's your understanding of how the Debtor can
16 settle a successor liability claim against YesCare?

17 A YesCare is just a party and part of the M2 parties as a
18 participant in the settlement. You want us to participate
19 in the settlement. We're asking for a release in return.
20 It's a simple business transaction.

21 Q Okay. So it's your understanding that at this point in
22 time the Debtor owns and controls wrongful death claims
23 against YesCare or CHS Texas that are on a successor
24 liability or alter ego theory.

25 A I didn't say that. I said the Debtor owns all claims.

1 You start listing them as individual claims. They own all
2 claims.

3 Q Well, they don't own direct claims that a creditor
4 might have against YesCare, right?

5 A No.

6 Q Okay. But they own a claim that a creditor has against
7 the Debtor and could assert against YesCare on a successor --

8 A Exactly.

9 Q -- liability theory. Okay.

10 A Which, by the way, is an impossible. How could you own
11 -- how could you have a claim against YesCare when YesCare
12 wasn't born when the claim existed, other than successor
13 liability?

14 Q When did the Debtor become the owner of a wrongful
15 death claim against YesCare asserted on a successor
16 liability theory, for instance?

17 A I don't know. That's a legal conclusion.

18 Q You don't know the answer to that.

19 A No.

20 Q Did it own those claims before it filed for bankruptcy?

21 A Not a bankruptcy lawyer.

22 Q But if the settlement is approved, is it your
23 understanding that any tort creditor with a successor
24 liability claim against, for instance, YesCare or you, would
25 be barred from pursuing their claims in the tort system?

1 A You keep saying tort. To me, it doesn't make a
2 difference if it's tort, secured, unsecured, UCC, United
3 States Trustee, U.S. government, doesn't matter. It's a
4 global settlement.

5 Q So you understand that the Debtor is settling all of
6 these derivative claims.

7 A Exactly.

8 Q And would you agree that having this control over the
9 wrongful death claims on a successor liability theory was a
10 reason for the bankruptcy filing?

11 A No.

12 Q But you did want to use the bankruptcy process to
13 discharge those liabilities against the released parties,
14 right?

15 A Let's start out again. Let's be very clear. It was
16 litigation the State of Missouri on the eve of a state judge
17 appointing a trustee in all the companies. And that's when
18 we picked to file for bankruptcy, to stay that matter.
19 Everything else came along with it under the Bankruptcy
20 Code. But it wasn't designed for tort.

21 Q Okay. But --

22 A In fact, I would have wished that tort I can settle
23 outside bankruptcy.

24 Q You -- can you repeat that?

25 A I would have wished if I would have had the capability

1 of settling tort claims outside of bankruptcy because I
2 believe that some of the tort claimants are going to pull
3 out money from this pool far more than they would have
4 pulled out in a commercial settlement.

5 Q So why not allow the tort claimants to not take a part
6 of the settlement and go after you in the tort system?

7 A I don't -- I'm not a bankruptcy law legislator. This
8 is -- we're in bankruptcy, we settling in bankruptcy, it's a
9 global settlement, it's a global release. We're not going
10 to rewrite the Code.

11 Q But if you wanted to --

12 A It would have been my wish list before we got pushed
13 into bankruptcy.

14 Q So would you amend the settlement agreement to provide
15 that creditors can --

16 A No.

17 Q -- opt-out? No? Why not?

18 A It was mediated. This is how we settled it.

19 Q Would you have lost the ability to settle these claims
20 if a receiver had been appointed?

21 A I don't think so. But it would have created a lot of
22 chaos in the 5,000 employees. We funded this week the
23 hundred and eighteenth payroll, close to a billion dollars
24 in payroll, to 5,000 nurses to take home a paycheck.

25 Q When you say "we," who are you talking about?

1 A YesCare.

2 Q YesCare.

3 A To M2 LoanCo. If a receiver would have come in, 5,000
4 employees would have been on the unemployment line.

5 Q But you understand that through this settlement
6 agreement, if it's approved, it will discharge the
7 liabilities of creditors against the released parties.

8 A Yes. Everybody goes home.

9 Q Okay. And just to be clear, other than the Debtor, the
10 released parties are not Debtors, are not the Debtor in this
11 case, right?

12 A Called the M2 settlement parties.

13 Q Right. They're -- none of the -- well, excuse me.
14 Most of the M2 parties are not in bankruptcy, correct?

15 A I don't think any of them are.

16 Q So unless the non-Debtor release parties get a
17 discharge of their tort liability, then there's not a
18 payment of \$40 million; is that right?

19 MR. BROOKNER: Your Honor, objection. This is --
20 the document speaks for itself. This has been asked and
21 answered about ten times already.

22 THE COURT: I don't know if it's been ten but I do
23 believe it's been asked and answered. I'm -- so I'll
24 sustain the objection.

25 BY MS. MEYERS:

1 Q Let's talk about the DIP loan, Mr. Lefkowitz. M2

2 LoanCo is the DIP lender, that's right?

3 A Correct.

4 Q And I think you've said you're one of the two directors

5 of M2 LoanCo.

6 A Yes.

7 Q Other than the settlement we discussed earlier, is the

8 DIP lender -- or is the DIP loan the Debtor's only source of

9 cash in this case?

10 A No.

11 Q What's its other source of cash?

12 A Mr. Perry testified.

13 Q What's your understanding of the other source of cash?

14 A Insurance proceeds, ERC credits, clawbacks.

15 Q Are you aware of any other sources, other than the ones

16 you just mentioned?

17 A Mr. Perry -- I learned this morning, which I didn't

18 know, there's still receivables coming in.

19 Q The DIP loan provides the Debtor with a source of funds

20 to pay the professionals in this case; is that correct?

21 A Professionals, insurance, counting, FA's.

22 Q And there is a budget for the DIP loan, right?

23 A Correct.

24 Q Does that budget need to be approved by anyone?

25 A Yes.

1 Q Who?

2 A By M2.

3 Q Okay. And who at M2 would approve that?

4 A Between me and Mr. Rubenstein.

5 Q There's no one else, it would be you or Mr. Rubenstein.

6 A Correct.

7 Q Have you approved any DIP budgets in this case?

8 A Yes. Until the last one where Brown Rudnick refused to
9 give us a number.

10 Q Does M2 LoanCo need to approve the DIP budget before
11 any funds are advanced to the Debtor?

12 A No. Before we agree to the terms of the loan and then
13 Ankura gives M2 weekly reports.

14 Q Has M2 LoanCo approved a budget that includes fees for
15 the Debtor's professionals?

16 A Yes.

17 Q And has M2 Loan Co made funds available to pay the
18 Debtor's professionals in this case?

19 A Yes, to the tune of ten or \$11 million now.

20 Q So M2 LoanCo has advanced what'd you say, \$2 million --

21 A Eleven.

22 Q -- to the Debtor's -- I'm sorry?

23 A To the tune of 11 million.

24 Q Eleven million dollars.

25 A Two ones.

1 Q Okay. So M2 LoanCo has advanced \$11 million to pay the
2 Debtor's professionals.

3 A Correct.

4 Q And when was that?

5 A Over the last year or so.

6 Q Has M2 LoanCo approved a budget that includes fees for
7 the UCC's professionals?

8 A Yes.

9 Q Okay. And has M2 LoanCo made funds available to pay
10 the UCC's professionals?

11 A Correct.

12 Q And how much has M2 LoanCo advanced for the UCC's
13 professionals?

14 A I don't know that number but it was in the \$11 million
15 that went out of M2's coffers into the Debtor's account.

16 Q Okay. So your testimony is that M2 LoanCo has funded
17 \$11 million --

18 A Date.

19 Q -- to date to pay both the Debtor's professionals and
20 the UCC's professionals.

21 A All the professionals.

22 Q Where does M2 LoanCo get the money to advance to the
23 Debtor under the DIP facility?

24 MS. HAYWARD: Objection, relevance.

25 MR. BROOKNER: Objection, relevance.

1 THE COURT: Counsel, what's your response?

2 MS. MEYERS: Your Honor, I want to understand if
3 it's coming from a different party. That's relevant
4 particularly given that M2 LoanCo is supposed to be funding
5 part of the settlement.

6 MS. HAYWARD: If they borrow it from a bank, if
7 they -- I mean, what difference does it make where the money
8 comes from, as long as the money is coming in and funding?
9 And 11 million has been funded.

10 THE COURT: No, I disagree. I think we get to
11 know -- I don't know -- I just need to know if it's coming
12 from a source outside of M2 LoanCo or whether M2 LoanCo has
13 the funds to lend. I think that's a fair question so I'll
14 let you ask that.

15 BY MS. MEYERS:

16 Q Do you need me to repeat the question?

17 A No. I can answer you. So M2 LoanCo funded \$15 million
18 in funding agreement. M2 LoanCo funded \$24 million over the
19 funding agreement. M2 LoanCo funded \$11 million to date.
20 They undertook to fund another \$5 million to -- or \$4
21 million, to the tune of total of \$15 million. So obviously
22 M2 LoanCo has funds to fund.

23 THE WITNESS: And I also want to notify the Court,
24 Your Honor, we were a DIP lender in one of your other cases
25 here in this court as well.

1 THE COURT: Okay.

2 BY MS. MEYERS:

3 Q Mr. Lefkowitz, that didn't ask -- answer my question.

4 I understand --

5 A You're asking where M2 LoanCo has funds.

6 Q I'm asking where -- you mentioned that they funded a
7 large number of money. Where did that money come from?

8 A From the company, M2 LoanCo.

9 Q It came from M2 LoanCo.

10 A Correct.

11 Q It didn't come from any other source that provided the
12 money to M2 LoanCo.

13 A Obviously they don't have a printing press in their
14 basement, you know. It's a company that makes money.

15 Q So did it come from M2 LoanCo's bank account?

16 A Yes.

17 Q Are you aware that as of January 31st, 2024 the
18 Debtor's professionals stated that they're owed over \$4
19 million?

20 A Not aware.

21 Q Let's take a look at Tab 21 in TCC -- which is TCC
22 Exhibit 161.

23 A Tab 21.

24 Q Yes, Tab 21.

25 A Yeah.

1 Q And do you see that this is the Debtor's response to
2 interrogatories that were served by the TCC?

3 A Okay.

4 Q And do you have any reason to doubt the representations
5 of Debtor's counsel in this document?

6 A No.

7 Q See that it says that Gray Reed's owed over \$2.5
8 million?

9 A Okay. I don't follow their invoices.

10 Q See that it says that Ankura's owed \$1.4 million?

11 A Okay.

12 Q And --

13 A But it doesn't say that they have \$2 million sitting in
14 the escrow account.

15 Q Explain what you mean by that.

16 A There's presently \$2 million in the Debtor's escrow
17 account waiting to be released to professionals.

18 Q Two million, 2.5 million, you said.

19 A I don't know the exact number but it's north of two
20 million.

21 Q Okay. And that would cover Gray Reed's outstanding
22 fees, right?

23 A I don't know what it's covered. I'm not managing the
24 checking account. It's Ankura that does it.

25 Q Okay. And Baker Hostettler it says is owed \$23,000,

1 see that?

2 A Okay.

3 Q And it says KCC Consulting is owed \$169,000; do you see
4 that?

5 A Okay.

6 Q So fair to say these fees haven't been paid as of
7 January 1st, --

8 A I don't know.

9 Q -- 2024.

10 A I don't pay fees.

11 Q But you don't have any reason to doubt what the Debtor
12 says, the Debtor's --

13 A I don't --

14 Q -- counsel says.

15 A I don't get involved in paying fees. All I'm getting
16 involved is funding to make sure that fees are getting paid.
17 There's \$2 million in the account, another \$3 million on its
18 way.

19 Q Are you aware that as of February 2nd, 2024, the UCC's
20 counsel are owed approximately \$600,000?

21 A No, I'm not aware.

22 Q Let's take a look at Tab 19, which is TCC Exhibit 133.

23 A Okay.

24 Q And do you see that this is the UCC's counsel -- or,
25 excuse me, the UCC response to interrogatories served by the

1 TCC?

2 THE COURT: I got to tell you, counsel, I get what
3 you're doing. But if he says he doesn't know, then putting
4 a document in there that shows what the number is I don't
5 think -- I'm not sure for what purpose you're using it.

6 MS. MEYERS: Move on, Your Honor.

7 THE COURT: Okay.

8 MS. MEYERS: That's fine.

9 THE COURT: Thank you.

10 BY MS. MEYERS:

11 Q You would agree that the Debtor and TCC's professionals
12 have incurred fees since February 2nd, 2024, right?

13 A I don't know.

14 Q You don't know.

15 A This was supposed to be settled by February. This was
16 supposed to be long gone and paid.

17 Q Right. But the Debtor's and UCC counsel, for instance,
18 attended your deposition on February 8th, right?

19 A Okay.

20 Q Do you remember that?

21 A Yes.

22 Q Okay. And you're aware that they've been attending
23 this hearing before the Court, right?

24 A Yes.

25 Q Do you know how much the Debtor's professionals are

1 currently owed today?

2 A All I know is that they burned \$11 million to date in
3 one year. I don't know who's owed what. I don't run the
4 accounting.

5 Q Okay. So I assume it's the same answer for the UCC's
6 professionals.

7 A Exactly.

8 Q Okay. Does the DIP budget make funds available to pay
9 the Debtor and UCC's professionals without restriction?

10 A Correct.

11 Q That's correct.

12 A Without restriction.

13 Q Let's take a look at TCC Exhibit 2, which is Tab 17.
14 Do you recognize this as the motion for entry of the fifth
15 interim DIP order?

16 A Okay.

17 Q Seventeen.

18 A Yes.

19 Q And to your knowledge has the fifth interim DIP order
20 been entered?

21 A No.

22 Q Let's turn to the proposed order which starts on
23 Page 10 of 16.

24 A 10, I don't have Page 10.

25 Q If you look at the top of the document, do you --

1 A Oh, --

2 Q -- see where it says --

3 A -- I'm sorry.

4 Q -- where it says Page 10 of 16?

5 A Okay, got it.

6 Q Okay. Are you familiar with this proposed order?

7 A Not necessarily, but the contents of.

8 Q You're familiar with the contents.

9 A Right.

10 Q Okay. And did you contribute to the contents in any
11 way?

12 A From the M2 side, yeah.

13 Q Okay. So on behalf of M2, did you request certain
14 terms be included in this proposed order?

15 A I don't know if I needed to request but I was involved.

16 Q Let's turn to Paragraph 2 of the proposed order, which
17 starts on Page 11. Do you see that this sets out conditions
18 for access to the DIP facility and cash collateral?

19 A Correct.

20 Q Okay. And one of those conditions is that the Court
21 enter an order granting the 9019 motion; do you see that?

22 A Correct.

23 Q Okay. So if the Court denies the 9019 motion, will M2
24 LoanCo advance any funds to pay the Debtor's professionals?

25 A No.

1 Q And what about the UCC professionals?

2 A M2 would not continue funding.

3 Q Okay.

4 A Unless you can increase the collateral.

5 Q Why does the proposed order condition DIP funds on the
6 approval of the 9019 motion?

7 A Because of the settlement. They're being asked to
8 forgive \$15 million.

9 Q So --

10 A They're getting something in return.

11 Q Right. So if that settlement's not approved, M2 --

12 A M2 does not forgive and M2 forecloses on its
13 collateral.

14 Q Right. So there's no more --

15 A There's no --

16 Q -- available under the DIP facility at that point.

17 A And there's no more assets available to the Debtor and
18 creditors either.

19 Q And that's a condition that M2 LoanCo demanded.

20 A In the first order.

21 Q What -- so if the Court denies the 9019 motion, Gray
22 Reed won't get paid their outstanding fees; is that right?

23 A No one will get paid there because no one will fund it.
24 Money doesn't grow on trees.

25 Q Okay. So Ankura, Mr. Perry, they won't get paid

1 either.

2 A Maybe they can utilize it from the estate. But the
3 first \$11 million is going to come back to M2 under the
4 secured loan.

5 Q Okay. So if the Court denies the 9019 motion, there is
6 no more available under the DIP facility to pay any of the
7 professionals.

8 A Correct, unless you come up with new arrangements.

9 Q Is there any side agreement by which the professionals
10 could get paid if the 9019 motion is denied?

11 A I don't know of any side agreements.

12 Q So you understand that Mr. Perry's paid out of the
13 Debtor's estate, correct?

14 A Yes.

15 Q Okay. And --

16 A Not Mr. Perry, it's Ankura.

17 MS. MEYERS: Yes, excuse me, thank you.

18 THE WITNESS: Okay.

19 MS. MEYERS: Ankura gets paid out of the Debtor's
20 estate.

21 BY MS. MEYERS:

22 Q And the Debtor needs money from M2 LoanCo to pay Ankura
23 in full; isn't that right?

24 A Or they can get it from someone else. There's other
25 DIP lenders around.

1 Q Were there any other DIP lenders that came forward when
2 the DIP facility was initially put in place?

3 A No.

4 Q So according to this proposed order, the Debtor can
5 only get money from M2 LoanCo if the Court approves the --
6 grants the 9019 motion, right?

7 A This particular order.

8 Q Yes, this particular order.

9 A Correct.

10 Q So the money from M2 LoanCo under the DIP facility is
11 conditioned on the approval of the settlement that provides
12 for the releases set forth therein, right?

13 MS. HAYWARD: Objection, asked and answered.

14 THE COURT: Sustained.

15 (Pause in the proceedings.)

16 BY MS. MEYERS:

17 Q Does the DIP financing structure make it such that the
18 Debtor's professionals have to secure the releases in the
19 settlement agreement in order to get paid?

20 A I don't think so.

21 Q Well how is that not the case?

22 A M2 is funding a Debtor in possession. M2 has limited
23 collateral. And M2 is ready to fund only for the purpose
24 that a settlement gets approved. The settlement doesn't get
25 approved, let them go find another DIP lender and let them

1 do the proceeds which whatever they wish, as long as the
2 first \$11 million gets paid under the first four orders.
3 Seems Mr. Perry has over \$30 million in assets.

4 Q Right. But the way this is set up with this order
5 conditioning DIP funding on an order granting the 9019
6 motion, doesn't that mean that if the Debtor's professionals
7 cannot get the settlement approved that includes the
8 releases for the released parties, that they are not going
9 to get paid?

10 A I'm not certain they're not going to get paid. There's
11 other monies. They're claiming \$4 million in bills.
12 There's over \$30 million in what's coming in. I don't know
13 what you --

14 Q They get paid under the M2 LoanCo DIP facility, right?

15 A Does it matter where they're getting paid from?

16 Q I'm asking if the Debtor's professionals cannot get an
17 order granting the settlement that includes the releases,
18 they are not going to get paid from funds under the M2 --

19 A I don't think --

20 Q -- LoanCo DIP facility.

21 A -- so. I don't think so. You're making a conclusion
22 that's not true. M2 LoanCo is ready to fund another five
23 million in DIP financing, provided that there is a 9019
24 motion approved.

25 Q Right.

1 A Should the 9019 motion not get approved, that doesn't
2 mean that the professionals will not get paid. There's
3 money in the estate. They're going to get paid.

4 Q They're not going to get paid from M2 LoanCo, though,
5 right?

6 A I don't know who they're going to get paid from. But
7 M2 Loan is not funding. You want to get paid from M2
8 LoanCo, come up with additional collateral, we'll fund you
9 or we'll fund the Debtor and we'll pay.

10 Q Mr. Lefkowitz, my question's very simple.

11 A It's not so simple because you keep asking the same
12 question. I keep giving you a very clear businesslike
13 answer.

14 M2 LoanCo not only is ready to fund, already has
15 funded. We wired \$2 million. It's sitting in escrow
16 account. There's another \$3 million earmarked to be wired
17 to the Debtor so they can pay their professional fees.

18 Q That's if the 9019 motion is granted.

19 A If the 1990 motion is granted, then those DIP loans,
20 because it's in the same order, will get funded.

21 If the 1990 motion does not get, the DIP loan doesn't
22 get approved either. If the DIP loan doesn't get approved,
23 then they're -- Mr. Gray Reed and Mr. Ankura, there is 400
24 DIP lenders in the country, go find yourself another DIP
25 lender.

1 Q Thank you. Mr. Lefkowitz, could you look at
2 Paragraph 5 of the proposed order?

3 THE COURT: Which tab are we on?

4 MS. MEYERS: This is still in Tab 17.

5 THE COURT: Thank you.

6 MS. MEYERS: It's page -- Paragraph 5 of the
7 proposed --

8 THE COURT: Which --

9 MS. MEYERS: -- order starts on Page 12 of 16.

10 THE COURT: We're looking at the original proposed
11 order or the -- I'm just trying to think about which --

12 MS. MEYERS: This is the proposed order for the
13 fifth interim DIP order.

14 THE COURT: For the DIP.

15 MS. MEYERS: Yes.

16 THE COURT: Got it. Thank you.

17 MS. MEYERS: You're welcome.

18 BY MS. MEYERS:

19 A Okay.

20 Q Okay. And then directing your attention to subpart
21 "B," says that two million will be advanced on February
22 20th, provided that the DIP lender's obligation to fund the
23 February advance shall not become due until either the
24 Bankruptcy Court has entered an order approving the 9019
25 motion or the TCC has agreed in writing not to object to the

1 Court's approval of the 9019 motion; do you see that?

2 A Obviously Paragraph B is going to have to get, you
3 know, modified because February 20th is history.

4 Q Right. And you understand that the TCC does not -- has
5 objected to the 9019 motion, right?

6 A Obviously.

7 Q Right. And you're aware that they've actually moved to
8 dismiss this case, right?

9 A Yes.

10 Q Okay. So is that a problem for this case,
11 Mr. Lefkowitz, in your view?

12 A I think it's a problem for everyone.

13 Q Why is that?

14 A Because basically you're just pushing everybody back
15 into litigation, everything's going to get destroyed.

16 Q I think we discussed earlier -- you know what, strike
17 that.

18 Mr. Lefkowitz, can you please turn to Tab 14, which is
19 TCC Exhibit 120?

20 A Yes.

21 Q You're at Tab 14, TCC Exhibit 120, Mr. Lefkowitz?

22 A Yes.

23 Q Okay. Do you recognize this document as a letter from
24 various U.S. senators --

25 A Yes.

1 Q -- to you and Mr. Sholey?

2 A Yes.

3 Q And this is a letter directed to you in your capacity
4 as the sole director of Tehum, right?

5 A Yes.

6 Q At your deposition you said you've never seen this
7 document before; do --

8 A Correct.

9 Q -- you remember that? Okay. And I think you said you
10 couldn't care less about this document, right?

11 A Well now I do.

12 Q Now you do; why is that?

13 A Because you leaked information -- at the deposition,
14 you leaked information to the press.

15 Q I did?

16 A Yes. Your -- I or your team. Your questioning -- your
17 line of questioning was reported in the press while I was
18 sitting at a deposition.

19 So if you're asking me what this is, this is a hit
20 piece. They don't know what they wrote here. This is all
21 copy, paste from blogs. None of this makes any sense.

22 Q Are you calling into the -- into question the
23 authenticity of a letter from the U.S. Senate?

24 A I didn't say authenticity. I said copy, paste.

25 Q You see this letter's dated October 24th, 2023, right?

1 A Correct.

2 Q Okay. So that's months before your deposition, right?

3 A But you know there's another letter, right, the other
4 letter, the exhibit that you showed Mr. Perry? It's not the
5 same letter.

6 Q Okay. You had never seen this document before as of
7 your deposition, right?

8 A Correct.

9 Q Okay. And in fact I think you refused to read it at
10 your deposition. Have you --

11 A Exactly.

12 Q -- read it since then?

13 A No. It's a political piece.

14 Q So you authorized Tehum to file for bankruptcy, right?

15 A Correct.

16 Q But you don't care that nine U.S. senators wrote a
17 letter to you stating that they believe that the --

18 MS. HAYWARD: Objection, hearsay --

19 Q -- bankruptcy was --

20 MS. HAYWARD: -- as to what the letter says or
21 what the senators state within the letter.

22 THE COURT: When --

23 MS. MEYERS: I'm asking for his personal knowledge
24 about this.

25 THE COURT: Yeah, I don't think she actually asked

1 the question. Counsel, why don't you just let her finish
2 the question?

3 BY MS. MEYERS:

4 Q I'm asking you --

5 A Yes.

6 Q -- if you don't care that nine U.S. senators --

7 A Are questioning --

8 Q -- question -- have questioned whether --

9 A The Texas Two-Step law and the bankruptcy law, correct.

10 MS. MEYERS: Mr. Lefkowitz, please let me ask --

11 THE WITNESS: Sure.

12 MS. MEYERS: -- my question.

13 THE WITNESS: Go right ahead.

14 MS. MEYERS: Thank you.

15 BY MS. MEYERS:

16 Q I'm asking is it your testimony that you don't care
17 whether nine U.S. senators believe that Tehum's bankruptcy
18 was undertaken "to manipulate bankruptcy law with the aim of
19 skirting accountability for harms that incarcerated
20 individuals have endured under Corizon's care?"

21 MR. BROOKNER: Objection, that's hearsay, quoting
22 a document not in evidence, etcetera.

23 MS. MEYERS: Your Honor, I'm not offering it for --

24 THE COURT: Well, --

25 MS. MEYERS: -- the truth of matter --

1 MR. BROOKNER: It doesn't matter. She's --

2 THE COURT: Yeah, but --

3 MR. BROOKNER: I'm sorry, Your Honor.

4 THE COURT: Hold on a second, folks.

5 MR. BROOKNER: I'm sorry.

6 THE COURT: But you didn't point him to something
7 in here to -- he says he's never seen the document, now
8 you're quoting from a document that he's never seen.

9 I think we at least have to kind of -- presuming
10 that what you're quoting is actually in the document -- and
11 it very well may be. But I think you can ask him a general
12 question. I just -- I have no idea if -- like --

13 MS. MEYERS: Let me --

14 THE COURT: -- where to take the question.

15 MS. MEYERS: Let me back up a little bit.

16 MS. HAYWARD: Your Honor, also I raise a relevance
17 objection.

18 THE WITNESS: I think it's outrageous that you're
19 putting on the record this questioning. You're feeding the
20 press on the screen. You're giving tidbits to the press.
21 That's what you're doing. It's got nothing to do with the
22 settlement --

23 THE COURT: Hold on a second, folks.

24 THE WITNESS: It's got nothing --

25 THE COURT: Yeah, I know --

1 THE WITNESS: Sorry.

2 THE COURT: -- we -- I'm going to let you finish
3 your questioning. How much longer do you have, counsel?

4 MS. MEYERS: I would say no more than ten, 15
5 minutes, Your Honor.

6 THE COURT: Okay. Let's just get through it.
7 Let's go. And then we'll take a break.

8 BY MS. MEYERS:

9 Q Mr. Lefkowitz, you acknowledge that this --

10 THE COURT: Hold on a second, folks. I just want
11 questions asked, questions answered.

12 THE WITNESS: Sorry.

13 THE COURT: No, it's completely fine. It's late
14 in the day. We're a little hot, still hot outside in Texas.
15 And the -- it starts to get you in the windows here.

16 So why don't you just take another ten minutes and
17 then we'll take our break. Thank you.

18 BY MS. MEYERS:

19 Q But this is a document that was sent to you, right?

20 A Okay.

21 Q It says that here.

22 A Could say it but I didn't receive it.

23 Q Okay. Are you aware that Tehum's bankruptcy counsel
24 responded to this letter?

25 A I heard about it. I didn't read the Tehum's response.

1 Q Okay. So this letter did make it to Tehum; that fair?

2 A I don't know.

3 Q Well how could Tehum's counsel have responded to a
4 letter that they never received?

5 A Through a phone call. How do I know? You're asking me
6 if I have direct knowledge if Tehum's counsel received it.
7 Sitting here today, I swear I don't know if Tehum's counsel
8 received it.

9 Q Okay.

10 THE COURT: Just to be clear, Mr. Lefkowitz,
11 you've never -- you never -- your testimony is that you
12 never received a copy of this letter.

13 THE WITNESS: Correct.

14 THE COURT: Okay.

15 BY MS. MEYERS:

16 Q You're aware of this letter now, though, right?

17 A Yes. It was -- it's on the screen. It was on the
18 screen in the morning.

19 Q But you haven't taken a look at it since your
20 deposition.

21 A Right.

22 Q Well let's look at Tab 15, which is TCC Exhibit 16 --
23 116, excuse me.

24 A Right.

25 Q So I showed you this document at your deposition as

1 well, right?

2 A Right.

3 Q Okay. And this is Tehum's --

4 A Response.

5 Q -- response to the letter that we just looked at.

6 A Correct.

7 THE COURT: I'm sorry, I just have quick question.
8 So there was a letter written by nine U.S. senators, and
9 your testimony is you've never seen this letter before it
10 was written, before your deposition.

11 THE WITNESS: Even before the deposition, correct.

12 THE COURT: Okay. Thank you.

13 MS. MEYERS: Okay.

14 BY MS. MEYERS:

15 Q So and you said you've never seen this document before
16 either, right?

17 A Correct.

18 Q So as the sole director of Tehum, you don't know how
19 this response to a letter from nine senators was prepared.

20 A I heard this morning that Mr. Perry and Mr. Gray Reed.
21 They didn't involve me in this response.

22 MS. MEYERS: Your Honor, I would move in TCC
23 Exhibit 116 into evidence.

24 THE COURT: Objection --

25 MS. MEYERS: It's a statement of a party opponent.

1 It's the Debtor's --

2 MR. BROOKNER: I think it's already in, Your
3 Honor.

4 THE COURT: Oh.

5 MS. MEYERS: Is it? Okay.

6 MR. BROOKNER: Yeah.

7 THE COURT: To the extent it it's not, it is now.

8 (TCC Exhibit 116 was received in evidence.)

9 (Pause in the proceedings.)

10 BY MS. MEYERS:

11 Q Let's turn to Tab 16, if you could, in TCC Exhibit 121.

12 A Okay.

13 MS. MEYERS: It's Tab 16, TCC Exhibit 121. So
14 this is not in evidence.

15 Q So have you seen this document before, --

16 A No.

17 Q -- Mr. Lefkowitz? Okay.

18 A Be up to me, I wouldn't respond to any of these
19 documents.

20 Q I'm sorry?

21 A I said would be up to me, I would not -- I wouldn't
22 spend any legal money to respond to these documents.

23 Q And why is that?

24 A Because it's all political pieces. It's got nothing to
25 do with reality.

1 Q But does it concern you that nine U.S. senators have
2 taken an interest in what's going on in this bankruptcy
3 case?

4 A That's what they're in Washington for. Let them do
5 legislation, let them undo laws, let them change, let them
6 change the Bankruptcy Code, let them change the Texas Two-
7 Step. But we have done nothing wrong.

8 Q I understand that that's your position. I'm asking you
9 as the sole director of Tehum does it concern you that U.S.
10 senators have taken an interest in this bankruptcy process?

11 A No, because they've written letters to every competitor
12 of ours. They've -- they're anti-correctional healthcare.
13 So it's known it's a political piece in Washington that
14 states and federal government should take back healthcare.
15 It's got nothing to do with me or it got nothing to do with
16 the 5,000 employees of YesCare.

17 MS. MEYERS: If I could just step away one second,
18 Your Honor.

19 THE COURT: Sure.

20 MS. MEYERS: I have no further questions, Your
21 Honor.

22 THE COURT: Okay, thank you.

23 Does anyone else have any questions for this
24 witness?

25 (No audible response.)

1 Any Redirect?

2 MR. BROOKNER: Nothing from the Debtor, Your
3 Honor.

4 THE COURT: Okay, thank you.

5 Mr. Lefkowitz, thank you very much for your time.

6 THE WITNESS: Thank you.

7 (Witness steps down.)

8 THE COURT: Yes.

9 MS. HAYWARD: I think we were just standing for
10 the Court, Your Honor.

11 THE COURT: Oh, no. I was just --

12 (Laughter)

13 THE COURT: -- going to -- just giving to the
14 witness --

15 MS. HAYWARD: We expected a break maybe. I --

16 THE COURT: Just trying to --

17 MR. BROOKNER: (Indiscernible), Your Honor.

18 THE COURT: Just in terms of housekeeping, in
19 terms of the next witness, are we going to get done in time
20 or --

21 MR. SPEAKER: Yeah, we're going to get there, Your
22 Honor, we will.

23 THE COURT: All right. I'm going to give you all
24 a hard 8:00 o'clock to do that.

25 MR. SPEAKER: We will --

1 THE COURT: Let's take five minutes and then we'll
2 come back. Thank you.

3 THE CLERK: All rise.

4 (Recess taken from 6:03 p.m. to 6:17 p.m.)

5 THE COURT: Be seated. Okay. Back on the Record
6 in Tehum. But before we -- oh, go ahead, counsel.

7 MR. MOXLEY: No, please, Your Honor. I'm sorry.

8 THE COURT: No, I was just going to ask, it sounds
9 like we're going now to --

10 MR. MOXLEY: Mr. Griffiths.

11 THE COURT: -- this is one of your witnesses,
12 right?

13 MR. MOXLEY: Yes, that's right, Your Honor.

14 THE COURT: So I just want to know if movants have
15 rested at this point, or whether we're going -- or whether
16 we're still going out of order. I just kind of --

17 MR. MOXLEY: I think we're --

18 THE COURT: -- want to make sure that I understood
19 kind of what we were doing.

20 MR. MOXLEY: Still going out of order, Your Honor.

21 THE COURT: Just so we're all on the same page.

22 MR. ZLUTICKY: Your Honor, we are going out of
23 order, so on --

24 THE COURT: Perfect.

25 MR. ZLUTICKY: -- Wednesday, we'll pick up David

1 Barton, who's the UCC representative who the Court heard
2 testimony --

3 THE COURT: Oh, yes.

4 MR. ZLUTICKY: -- I think, the first day. And
5 then we'll have Matt Dundon, of Dundon Financial, also.

6 THE COURT: Oh, perfect, okay, thank you. Just
7 wanted to make sure that -- that's what I wanted to make
8 sure the record was clear about.

9 MR. ZLUTICKY: Yes, Your Honor.

10 THE COURT: Okay. All right.

11 MR. MOXLEY: Your Honor, Cameron Moxley for TCC.
12 As Your Honor just referenced on the Record, we are taking
13 the witnesses out of order, no particular party's rested
14 just yet. We would call to the stand now, Scott Griffiths.

15 THE COURT: Okay. Mr. Griffiths, come on up.

16 MR. MOXLEY: And Your Honor, as Mr. Griffiths' is
17 taking his seat, I'll just note that I have provided to the
18 Court, I believe you have it, and at the bench now, Your
19 Honor, a copy of the binder. There's one for Mr. Griffiths
20 at the witness stand. And copies have been distributed
21 around the courtroom as well.

22 MR. MOXLEY: Okay. Thank you. Okay.

23 THE COURT: Mr. Griffiths, can you please raise
24 your right hand?

25 (Witness sworn.)

1 THE COURT: Okay. And let the Record reflect that
2 the witness has been properly sworn in. Counsel, you may
3 proceed.

4 MR. MOXLEY: Thank you, Judge.

5 DIRECT EXAMINATION OF SCOTT GRIFFITHS

6 BY MR. MOXLEY:

7 Q Good afternoon, Mr. Griffiths.

8 A Good afternoon.

9 Q Sir, in questioning today, we may make some reference
10 to the official Committee of Tort Claimants. May you and I
11 understand each other if we use the phrase TCC, to refer to
12 the official Committee of Tort Claimants?

13 A Sure.

14 Q Okay. Mr. Griffiths, approximately when was the TCC
15 appointed?

16 A The TCC was appointed, I believe, November 20, 2023.

17 Q And Mr. Griffiths, what is your connection to the TCC?

18 A I'm an attorney. I represent a member of the TCC,
19 Nathan Alvarez.

20 Q And is Mr. Alvarez in the courtroom today, sir?

21 A Nathan Alvarez couldn't make it today. He was here on
22 day one of trial, of this hearing. But he's not here today.
23 He had a transmission problem. He was on his way in and he
24 had transmission issues.

25 Q Thank you. I hope everything's okay with Mr. Alvarez'

1 vehicle. Have you been deposed in connection with this
2 case, sir?

3 A I was deposed.

4 Q In what capacity were you deposed?

5 A The TCC's 30(b)(6).

6 Q And does the TCC hold meetings?

7 A They do.

8 Q How often?

9 A Weekly.

10 Q And do you typically attend those meetings?

11 A Typically I attend them, yes. I think I've missed one.

12 Q Okay. After the TCC was appointed, Mr. Griffiths, what
13 initial steps did it take?

14 A It engaged the counsel, Brown Rudnick. Michael
15 Zimmerman engaged Michael Atkinson and Provence, and then
16 began investigation as to claims.

17 Q Okay.

18 A Causes of action.

19 Q You mentioned the TCC engaged Provence and Mr. Atkinson
20 as an advisor. Has he prepared a declaration or report in
21 connection with this case?

22 A He did.

23 Q Okay. And when was Mr. Atkinson's report completed?

24 A I believe it was February 23, 2024.

25 Q And when in time, Mr. Griffiths, were you deposed as

1 the TCC's Rule 30(b)(6) designee?

2 A About two weeks before. I think it was February 12,
3 2024.

4 Q At the time of your deposition, was the TCC's
5 investigation still ongoing?

6 A It was.

7 Q What was the TCC investigating?

8 A Just potential causes of action in this case.

9 Q Did the TCC identify any potential causes of action?

10 A We did. We identified four causes of action that are
11 kind of mentioned in the 9019 motion, and then three
12 additional causes of action.

13 Q Tell the Court what additional three causes of action
14 TCC's investigation identified?

15 A There were causes of action identified for missed
16 business opportunities, or misappropriated business
17 opportunities. And then the alter ego and successor
18 liability claims.

19 Q Okay. You mentioned, Mr. Griffiths, that the first
20 four are addressed in the Rule 9019 motion. Let's just look
21 for efficiency sake quickly at that motion. That's Tab 2 of
22 the binder you have there in front of you, sir. If you look
23 at Tab 2, you'll find what's marked as TCC Exhibit 125. You
24 see this is the Rule 9019 motion itself?

25 A Yes.

1 Q Okay. And if you look at Paragraph 27, of that motion,
2 which is on page, just for the record, 12 of the document?

3 A Page 12, yeah.

4 Q Are you there, sir?

5 A Yeah.

6 Q And you see the list of A through D, as part of
7 Paragraph 27 there. Are those the four that you had in
8 mind?

9 A Those are the four, yes.

10 Q Okay. With respect to the first three of those on the
11 list, the potential avoidance actions related to the
12 transfers to M-2, Geneva, and that benefitted Pharmacore
13 (phonetic) and Peregrow (phonetic).

14 Do the TCC's views as to those causes of action
15 generally align with the Debtors and UCC's views on those
16 causes of action as they are outlined in the Rule 9019
17 motion?

18 A Generally, yes, they do.

19 Q Okay. Does the TCC agree that those transfers that
20 would be the subject of those causes of action total
21 approximately \$30.5 million, as set forth in the transaction
22 tables for those causes of action in the Rule 9019 motion?

23 A Yes.

24 Q And what are the TCC's views on the likelihood of
25 success on the merits of the avoidance actions concerning

1 those transfers involving M-2, Geneva, and Peregrow,
2 Pharmacore?

3 A The likelihood of success is high. There's not really
4 any defenses to it. They're standard, they seem to be
5 standard claw back provisions that are done in bankruptcy
6 cases, especially considering the timing of these transfers
7 and the filing of the petition.

8 Q And what are the TCC's views, Mr. Griffiths, on the
9 amount of a judgment that could be obtained on these causes
10 of action?

11 A I believe there'd be a full amount, the 30.5 million.

12 Q Okay. Let's talk a little bit now about that fourth
13 set of causes of action, those arising out of divisional
14 merger. Those are addressed by the Debtor and the UCC at
15 Paragraph 34 of the Rule 9019 motion, right?

16 A Yes.

17 Q Okay. Was the TCC able to determine the value of the
18 assets ultimately transferred to YesCare as part of the
19 divisional merger?

20 A No.

21 Q Is the value of assets ultimately transferred to
22 YesCare as part of the divisional merger something that you
23 think is knowable?

24 A I think it's knowable, yes.

25 Q How would you go about finding out that information?

1 A Well, we had Mr. Atkinson and the Provence firm look at
2 that, and they came back and said there really isn't any way
3 to know given the information that was given to them.

4 Q Okay. So your understanding of Mr. Atkinson's
5 conclusion is that he wasn't able to value the assets
6 ultimately transferred to YesCare, is that right?

7 A That's what he says in his report, yes.

8 Q Okay. What does that -- strike that. And what's your
9 understanding about why that is that Mr. Atkinson wasn't
10 able to reach a conclusion?

11 A Just I think if I remember right, the information
12 wasn't provided, not enough was given to them, to him to be
13 able to make a determination through his investigation.

14 Q Okay. And what does the lack of information with
15 respect to the value of the assets ultimately transferred to
16 YesCare, what does that lack of information tell you about
17 the -- strike that.

18 What does the lack of information with respect to the
19 value of the assets ultimately transferred to YesCare mean
20 with respect to the TCC's views on the value of the causes
21 of action arising from the divisional merger?

22 A Well, I mean we don't know the value. There's no way
23 to know what the value of that is right now.

24 Q Okay. But looking at Paragraph 34 of the Rule 9019
25 motion, those causes of action arising from the divisional

1 merger, those are part of what's being settled under the
2 Rule 9019 motion if the settlement agreement is approved,
3 correct?

4 A That's my understanding, yes.

5 Q Okay. And that's even though that no value is
6 particularly ascribed to them by the Debtor or by the TCC,
7 right?

8 A Correct.

9 Q Okay. And how -- so those causes of action arising
10 from the divisional merger if the settlement agreement is
11 approved would be released, is that right?

12 A They would be released, and really nothing given in
13 consideration for those. To my understanding, nothing would
14 be given in consideration for those.

15 Q What's your and the TCC's views on the likelihood of
16 success on the merits of the causes of action arising from
17 the divisional merger?

18 A Well, we, like before, think that's a very high --
19 excuse me. This chair.

20 Q The chair?

21 A Yeah, sorry. We think it's a very high likelihood of
22 success. There's really like a clear intent to defraud --
23 in the TCC's mind, a clear intent to defraud the estate here
24 because all the assets have been moved from the Debtor away,
25 and not only the assets but like contracts and business.

1 Q You think that the Texas Business Organizations Code
2 creates any barrier to bringing causes of action arising out
3 of the divisional merger?

4 A I do not think --

5 MR. PATTERSON: I'm going to object, Your Honor.
6 I don't think he's here as an expert. That's an opinion,
7 that's a legal opinion regarding that.

8 MR. MOXLEY: Your Honor, as Your Honor knows, the
9 motion itself sets forth a view with respect to whether or
10 not those claims are likely to succeed, or whether the
11 theories they're based on are novel or not. And as Your
12 Honor I know knows, both Mr. Barton and Mr. Perry have also
13 testified on that.

14 Mr. Barton's not an expert witness. He was
15 permitted on behalf of the UCC to testify with respect to
16 his views with respect to the Texas Business Organizations
17 Code being a barrier. And we would like for the TCC to be
18 able to have its witness testify as to the TCC's views with
19 respect to that code provision.

20 MR. PATTERSON: That doesn't change who this
21 witness is.

22 THE COURT: Yeah.

23 MR. PATTERSON: They may not have objected to it,
24 but he's not an expert.

25 THE COURT: I think that's right. Sustained.

1 MR. MOXLEY: Let me show you paragraph -- strike
2 that.

3 What are the TCC's views on the value of the
4 causes of action arising from the divisional merger?

5 MR. PATTERSON: Same objection, Your Honor, that's
6 opinion testimony and valuation, and he's not here as an
7 expert.

8 MR. MOXLEY: I'm not asking him for an expert
9 valuation, Your Honor. The other --

10 THE COURT: How are you using the term value?
11 Just in terms of just how you're defining it. That's more
12 where I'm going.

13 MR. MOXLEY: Okay. We're trying to understand,
14 sir, whether or not -- we're trying to be able to have
15 Mr. Griffiths provide his views with respect to whether or
16 not the claims arising from the divisional merger have
17 value. So understand whether he thinks they have value.

18 The Debtor and the UCC in their motion and their
19 witnesses have testified with respect to their views with
20 respect to those causes of action likely have any value,
21 whether they're novel, whether they should be discounted.

22 THE COURT: Yeah, I know. I'm going to allow just
23 whether he thinks they have value, and then we'll see where
24 this goes in terms of further questions. So you can answer
25 the question.

1 BY MR. MOXLEY:

2 Q So I'm going to rephrase that question, Mr. Griffiths.
3 Do you think that the causes of action arising from the
4 divisional merger that the TCC investigated have any value?

5 A I do, yes.

6 MR. MOXLEY: What's that view based on?

7 MR. PATTERSON: Objection, well, I'm sorry.

8 THE COURT: Go ahead. What's that view based on?

9 MR. GRIFFITHS: The view's just based on --

10 THE COURT: The question?

11 MR. GRIFFITHS: -- the idea that the material, the
12 avoidance action that we're talking about, my understanding
13 of the avoidance action is that it's the business entity or
14 the business assets of the Debtor have been moved to either
15 CJIS Texas (phonetic) or YesCare, and they didn't get
16 anything in return. But we don't know what that number is.
17 We just know that it has value.

18 BY MR. MOXLEY:

19 Q Mr. Griffiths, are the TCC's views about the settlement
20 informed by the Texas Divisional Merger statute?

21 A I guess maybe repeat that, or restate it?

22 Q Yes. Are the TCC's views about the settlement informed
23 by the Texas Divisional Merger statute?

24 A I guess to an extent, the Texas Divisional, or the
25 Texas Business Code that I've seen just simply says that the

1 creditors' rights won't be abridged, right.

2 Q Does the TCC think that any discount should be given to
3 the avoidance claims based on the Texas statute?

4 A No.

5 MS. ENGLAND: Objection, Your Honor, we're back to
6 the same legal conclusions that expert testimony about the
7 impact --

8 THE COURT: I'm not sure he testified about the
9 impact. He's just wondering whether there ought to be a
10 discount, right, in terms of --

11 MR. MOXLEY: That's right.

12 THE COURT: -- the settlement. Now I think this
13 is going towards the settlement, not the merits of the
14 settlement as opposed to kind of what he thinks the right
15 number should be, and in an expert capacity so I'll let you.
16 Overruled. He can answer the question.

17 MR. GRIFFITHS: Can you reask?

18 BY MR. MOXLEY:

19 Q I'll reask it, Mr. Griffiths. Does the TCC think that
20 any discount should be given to the avoidance claims based
21 on the Texas statute?

22 A No.

23 Q And why is that, sir?

24 A The Texas statute is pretty straightforward about being
25 -- rights, creditors won't be abridged.

1 Q Is there a particular provision of the Texas statute
2 that you have in mind in that last answer?

3 A I think it's --

4 THE COURT: Now you're getting into the --

5 MR. MOXLEY: Okay. I'll --

6 THE COURT: Quoting statute land, and so go ahead.

7 MR. MOXLEY: -- move on, Your Honor. Thank you.

8 BY MR. MOXLEY:

9 Q So you mentioned, Mr. Griffiths, that there were seven
10 claims or causes of action TCC identified, the first four of
11 which were covered by the Rule 9019 motion. And you
12 identified three additional ones in your testimony a few
13 moments ago. Do you recall that?

14 A Yes.

15 Q What was the next cause of action that TCC identified
16 in its investigation?

17 A The misappropriation of business opportunity.

18 Q Explain what you mean by that?

19 A Well, my understanding is that in -- prior to or at the
20 time of the divisional merger, Corizon or Tehum employees,
21 officers, agents created multiple companies and entities
22 that would be able to compete with or answer to RFP. And I
23 think I heard Mr. Lefkowitz discuss that as well.

24 But different entities were able to start using
25 Corizon's knowledge or the fact that they've been out

1 25 years, or 30 years, you know, hold themselves out as
2 experienced in the health care field for corrections. And
3 so they were able to start submitting for RFP's and get
4 contracts.

5 Q Approximately how many such entities did the TCC's
6 investigation reveal were created?

7 A I think I saw in Mr. Atkinson's report 25 plus, but I
8 don't think we know the number.

9 MR. PATTERSON: Object, Your Honor, that's
10 hearsay. It's reading from a report. Hearsay -- it's not
11 here.

12 MR. MOXLEY: Your Honor --

13 MR. PATTERSON: His knowledge is reading someone
14 else's --

15 THE COURT: Hold on a second. I've got the
16 objection. What's the response?

17 MR. MOXLEY: Your Honor, the response is, this
18 witness from the TCC is describing the investigation and
19 what was found in the investigation. He is an attorney.

20 THE COURT: It's not offered for the truth of the
21 matter. It's just background in terms of what he did for
22 the investigation.

23 MR. MOXLEY: Background and what the investigation
24 revealed.

25 THE COURT: Overruled. He can answer.

1 BY MR. MOXLEY:

2 Q And I believe that you did answer. But let me just ask
3 the question again so the record is clean. Approximately
4 how many of those entities were created that the TCC's
5 investigation found?

6 A My understanding is 25 plus.

7 MR. MOXLEY: Is one of those opportunities a
8 contract with the Alabama prison system?

9 MR. PATTERSON: We'd have the same objection, Your
10 Honor. The basis of the question lends itself to this is
11 true. If he's testifying he knows this to be a fact, we
12 don't have a basis for that other than the report.

13 The way you described it was, this is what they
14 found out or was reported to the committee. He's now
15 testifying that it is, in fact, the truth. I don't know, he
16 hasn't testified to the basis of that other than reading it
17 in a report --

18 MR. MOXLEY: Your Honor, may I be heard?

19 THE COURT: Uh-huh.

20 MR. MOXLEY: Your Honor, it is the same objection,
21 and Your Honor's ruling from the last objection should apply
22 here as well. This is a factual question about what the
23 TCC's investigation uncovered. The TCC is a committee. It
24 has to speak through someone.

25 Mr. Griffiths has testified that he has attended

1 all but one of the committee's weekly meetings. He's
2 familiar with the investigation and what was found in it.
3 And I think he has knowledge of that, and he should be able
4 to testify as to what --

5 THE COURT: Right.

6 MR. MOXLEY: -- the investigation revealed.

7 THE COURT: And I'm taking his testimony for what
8 it's worth, for what his understanding is and not
9 necessarily that there are actually 25 entities formed. I
10 mean I don't have knowledge of that, but I can take it that
11 they -- so I'll allow for that purpose, as to his
12 understanding based on this investigation.

13 MR. MOXLEY: Thank you, Judge.

14 BY MR. MOXLEY:

15 Q So Mr. Griffiths, let me ask my question again. Is one
16 of those opportunities a contract with the Alabama prison
17 system?

18 A That's my understanding, yes.

19 Q What's your understanding of the amount of that
20 contract? How much is it worth?

21 A I believe it's -- what I've heard is a billion dollars.

22 Q Okay. What are the TCC's views regarding the value of
23 the business opportunities that were misappropriated?

24 A Well, it starts at a billion.

25 MR. PATTERSON: I'm going to object, Your Honor.

1 Now valuation --

2 THE COURT: Yeah, I'll sustain that one.

3 BY MR. MOXLEY:

4 Q Mr. Griffiths, what's your understanding of whether or
5 not the misappropriated business opportunities have value?

6 A Well, I believe, and my understanding is that they do
7 have value, and there are probably other contracts as well.
8 We don't know.

9 MR. PATTERSON: I'll object to the last part of
10 his speculation, Your Honor, speculating that --

11 THE COURT: Overruled.

12 MR. MOXLEY: Oh, I'm sorry. You can answer the
13 question, Mr. Griffiths.

14 THE COURT: I think he already did.

15 MR. MOXLEY: Oh, sorry, I apologize. I was
16 waiting for the answer. Apologize.

17 BY MR. MOXLEY:

18 Q And what was your answer, Mr. Griffiths?

19 A Well, I'll just say that we know that it has value, and
20 we believe there are more contracts.

21 Q Okay. And does the TCC have a view regarding the
22 likelihood of success on the merits of the misappropriation
23 of business opportunities causes of action?

24 A Well, we believe that we'd be successful with that as
25 well. We think that there's a clear attempt to defraud the

1 creditors here. I think that the trail would show that
2 there'd be these opportunities have been lost and contracts
3 have been given to entities that have been formed.

4 Q Does the TCC's views regarding the value of the claims
5 from misappropriation of business opportunities inform the
6 TCC's view of the proposed settlement?

7 A I'm sorry, what?

8 Q Do the TCC's views regarding the value of the claims
9 for misappropriation of business opportunities inform the
10 TCC's view of the proposed settlement?

11 A Well, I'm sorry. I guess I'm just missing your
12 question.

13 Q Sure. Does the fact that the TCC believes there is
14 value to those claims?

15 A Okay.

16 Q Strike that. Do you have an understanding of whether
17 or not those claims would be released by the settlement
18 agreement?

19 A My understanding is that those claims would be released
20 by the settlement agreement.

21 MR. PATTERSON: Objection as to relevance, Your
22 Honor. As best evidence, we have a document. What he
23 believes doesn't matter.

24 THE COURT: Overruled.

25 MR. PATTERSON: We have a proposed agreement.

1 THE COURT: It's his understanding. I think
2 that's fair. Overruled.

3 BY MR. MOXLEY:

4 Q Go ahead, Mr. Griffiths.

5 A Repeat the question, please?

6 Q Sure. The question, Mr. Griffiths, is -- let me do it
7 a slightly different way if I could. It's okay. Let me
8 just do it a slightly different way. What is the TCC's
9 understanding of what effect on the misappropriation of
10 business opportunities claims, the settlement agreement
11 would have? How would the settlement agreement affect those
12 claims?

13 A The settlement agreement would dismiss those, or
14 release those claims.

15 Q Okay. And are those claims, to your knowledge, to the
16 TCC's knowledge, are they addressed explicitly in the
17 Rule 9019 motion?

18 A No.

19 Q And does the fact that those claims would be released,
20 and that they're not addressed by the Rule 9019 motion but
21 they would be released, does that inform the TCC's view of
22 whether or not this is a good settlement?

23 A Well, the TCC -- yeah, the TCC does not believe that
24 it's a good settlement when business opportunities have been
25 lost and directors and agents and officers of Corizon have

1 created competing companies and have lost business for
2 Corizon for those other companies.

3 Q Okay. Are the claims from misappropriation of business
4 opportunities in the shopping cart or grocery cart as we've
5 been using that analogy in this case?

6 A That analogy, yes.

7 Q Yeah.

8 A Yes, it is.

9 Q Okay. And does the settlement appear to take the value
10 of those claims into consideration?

11 A It doesn't put a value to them so it doesn't really
12 take them into consideration.

13 Q Okay. So they're in the grocery cart, but they're not
14 valued, is that right?

15 A Yes.

16 Q Okay. And you mentioned there was a sixth claim or
17 cause of action that the TCC identified with respect to
18 successor liability, is that right?

19 A Successor liability, yes.

20 Q Can you just explain what that is?

21 A Successor liability would be continuing -- or it's a
22 way to recover from entities that continue on the business
23 of a tortfeasor. So in this particular case, if Corizon has
24 creditors or they're a tortfeasor, and there's a way to
25 recover, you can recover against Corizon or Tehum, the

1 Debtor. And then their successor liability would allow
2 continuing companies to be used for recovery as well.

3 Q And are the underlying claims you have in mind with
4 respect to these successor liability theories of recovery,
5 are the underlying claims the personal injury and wrongful
6 death claims against the Debtor?

7 A Personal injury --

8 MR. PATTERSON: Your Honor, leading the witness.

9 THE COURT: Sustained.

10 BY MR. MOXLEY:

11 Q What are the underlying claims on which the successor
12 liability theory of recovery would be asserted?

13 A Sure, personal injury, wrongful death, section 1983,
14 14th Amendment, Eighth Amendment, cruel and unusual
15 punishment.

16 Q What's the harm alleged?

17 A Wrongful death, personal injury, the 14th Amendment,
18 Eighth Amendment, cruel and unusual punishment, those types
19 of claims.

20 Q And who suffered those damages?

21 A Either inmates, or if in the case the inmate's passed
22 away, their families.

23 Q Did the Debtor suffer any damages on the personal
24 injury or wrongful death or section 1983 claims?

25 A No.

1 Q And who would the defendants on those successor
2 liability theories of recovery be?

3 A My understanding it would be YesCare, maybe CHS Texas
4 at this point, and I don't know, based on what I heard
5 Mr. Lefkowitz talk about, CHS Alabama as well.

6 Q Why those entities?

7 A Because they've continued on the business, and hold
8 themselves out as Corizon.

9 Q And you mentioned, Mr. Griffiths, that you represent
10 Mr. Alvarez?

11 A I do.

12 Q He's a member of the TCC?

13 A He is.

14 Q Would you describe for the Court the nature of
15 Mr. Alvarez' injury?

16 A Sure. And for the Court to know, I am an ambulance
17 chasing inmate representing attorney, right, and that was
18 kind of talked about. But the nature of his injuries is he
19 was in prison, and when he was in prison, he broke his tibia
20 and fibula which are the two bones that go down just above
21 your ankle.

22 And when he broke those, it took him 30 days to get to
23 see a doctor, a surgeon. But the surgeon that they sent him
24 to -- I'm sorry, let me take that back. The second day
25 after his injury, they took him to the hospital, and the

1 hospital gave him a CT scan and told him that he needed
2 surgery. Corizon made a decision to pull him away and
3 return him to the prison. Thirty days later, they took him
4 to an arm surgeon, someone who deals with the wrists and
5 elbows.

6 MR. PATTERSON: Your Honor, I hate to interrupt.
7 This is all hearsay.

8 MR. MOXLEY: Your Honor --

9 MR. PATTERSON: This is not relevant.

10 MR. MOXLEY: -- I'd like to ask the witness have
11 an opportunity to answer the question. I asked him to
12 describe the --

13 THE COURT: I'm going to overrule it. I do -- I
14 find it relevant. I'm not sure -- I think is that that's
15 what his client's alleging happened. So overruled.

16 BY MR. MOXLEY:

17 Q Go ahead, Mr. Griffiths.

18 A All right. So on day two, he got an MRI, or sorry, a
19 CT scan that showed his bone was broken and the doctors at
20 the hospital, Yuma Regional Medical Center told him that he
21 needed to have surgery. Corizon had him returned to the
22 prison.

23 At day 30, they sent him to a surgeon, Dr. Runyon
24 (phonetic), also that works next to the Yuma Regional
25 Medical Center, and Dr. Runyon only works on wrists and

1 elbows. And Dr. Runyon said, hey, you probably need
2 surgery, you need to go back and get this looked at.

3 They took him to the hospital twice for more MRI's, or
4 CT scans and imaging. He saw Dr. McClure who's a surgeon at
5 Yuma Regional Medical Center, and she also recommended
6 surgery. And at day 101, after his broke his leg, Corizon
7 had him sent to see Dr. Ahlmed (phonetic), also at the Yuma
8 Regional Medical Center.

9 And Dr. Ahlmed said, hey, you need surgery but if
10 you're not going to get it, let's give you physical therapy.
11 Now along the way, he didn't get a cast or a boot. He only
12 got an Ace bandage and a crutch, and then sometimes along
13 the way, he got a wheelchair.

14 Q What is the outlook for Mr. Alvarez with respect to
15 these injuries?

16 A He still hasn't had any surgery. He finished his
17 physical therapy in July, 2019, and was discharged in the
18 beginning of August. He didn't have the surgery and he
19 still has a broken leg today, or his leg's been healed but
20 his leg's healed kind of cattywampus so he -- I joke with
21 him but as I say, he walks like a pirate, because his one
22 foot that walks forward and the other one walks off to the
23 side.

24 Q Was Mr. Alvarez injured prior to the divisional merger?

25 A He was. It was February, 2019.

1 Q You're Mr. Alvarez' attorney, correct?

2 A That's correct.

3 Q Could Mr. Alvarez seek to recover damages for his
4 injuries against YesCare and CHS Texas on a successor
5 liability theory of recovery?

6 A He could.

7 Q What does the Debtor in the settlement agreement
8 proposing to do with Mr. Alvarez' cause of action against
9 YesCare on a successor liability theory of recovery?

10 A If the settlement goes through, then his case is going
11 to be settled as part of that settlement.

12 Q Would that claim be released?

13 A It would be released.

14 Q Does Mr. Alvarez know that?

15 A He does know that.

16 Q Does Mr. Alvarez want the Debtor to release his claim
17 against YesCare under successor liability theory of
18 recovery?

19 A Yes, without waiving the attorney client privilege, he
20 wants to continue his litigation against Corizon or Tehum
21 and everybody else.

22 Q To you knowledge, is there any document in the record
23 in this case that attributes a dollar figure estimate to
24 Mr. Alvarez' injury?

25 A I've seen for a brief moment a document in this case

1 that had a value ascribed to his case, yes.

2 Q What was that value ascribed?

3 A 400,000 to \$749,000.

4 Q Do you know whether under the proposed settlement
5 Mr. Alvarez would recover something in the range that you
6 just mentioned?

7 A I wouldn't think that he would. I don't know because
8 there's no numbers that have been formally put down, and we
9 don't know how much would go to any of the tort claimants at
10 all, or in the tort claimant pool. So but I have, you know,
11 just a pretty good idea that he wouldn't get anything close
12 to 400,000, to 749,000.

13 Q Does the TCC know what the aggregate value is of the
14 wrongful death and personal injury causes of action that
15 could be asserted against YesCare and its relevant
16 affiliates, or subsidiaries on a successor liability theory
17 of recovery?

18 A My understanding is no. I mean the TCC doesn't have
19 any understanding about --

20 (Pause in the proceedings.)

21 THE COURT: It's just one of those days, folks.

22 (Pause in the proceedings.)

23 THE COURT: Why don't we -- I don't know how long
24 this is going to last. I apologize. But it's going to be
25 loud. Well, I'm going to step off. Maybe I can try to

1 figure out how long this is going to last. I'll step off.

2 Why don't you -- you can step down, and we'll figure out --

3 how much longer do you think you have?

4 MR. MOXLEY: Not much longer, Your Honor.

5 THE COURT: What does that mean?

6 MR. MOXLEY: Oh, I would guess 15 minutes --

7 THE COURT: All right. Let's --

8 MR. MOXLEY: -- or less.

9 THE COURT: Well, we're going -- let's keep going
10 until this starts.

11 MR. MOXLEY: Okay. Thank you, Judge.

12 BY MR. MOXLEY:

13 Q So I think right before the announcement started,
14 Mr. Griffiths, you were testifying with respect to the TCC
15 not knowing what the aggregate value of the wrongful death
16 and personal injury causes of action are worth in this case,
17 right?

18 A That is correct.

19 Q Okay. Is that something that you wanted Mr. Atkinson
20 to consider?

21 A Yes.

22 Q Okay. Has the TCC been able to formulate a view on the
23 aggregate value of the causes of action against YesCare and
24 CHS Texas on a successor liability theory of recovery?

25 A It has not.

1 Q And why is that?

2 A Because we relied on Mr. Atkinson for that and he
3 wasn't given enough information to make those
4 determinations.

5 Q Those are -- the successor liability claims, just going
6 back to our analogy, they're in the shopping cart but we
7 don't have a value for them, correct?

8 A That's correct.

9 Q Okay. And the final claim or cause of action that you
10 identified, or that the TCC identified in the course of its
11 investigation, I believe your reference was alter ego
12 liability, is that right?

13 A That's correct.

14 Q What's that?

15 A Alter ego theory of recovery is again, if a tortfeasor
16 has -- if there's a judgment on tortfeasor, you can pursue,
17 go after an alter ego. And the alter ego is someone who's
18 controlled, or has -- is either control or calling the shots
19 for other companies. In this case, Corizon.

20 So I think I heard Mr. Lefkowitz talk this morning or
21 this afternoon about, you know, he was a director of Corizon
22 and multiple other entities that are all involved in this.
23 So I would consider him an alter ego.

24 Q And what's the harm alleged with respect to an alter
25 ego theory of recovery?

1 A It would be the same claims. It'd be personal injury,
2 wrongful death, section 1983, 14th Amendment, Eighth
3 Amendment, cruel and unusual punishment, etcetera.

4 Q And how suffered the damages?

5 A Again the inmates or their families.

6 Q Did the Debtor suffer any damages?

7 A No.

8 Q And you mentioned Mr. Lefkowitz would be a potential
9 defendant in an alter ego -- on an alter ego theory of
10 recovery basis. Why him again?

11 A Because he was in control of those entities at the time
12 of the divisional merger.

13 Q And what's your understanding of the Debtor's position
14 on what happens to causes of action or theories of recovery
15 based on alter ego under this settlement agreement?

16 A That they would be released or settled.

17 MR. MOXLEY: If this case is dismissed,
18 Mr. Griffiths, could Mr. Alvarez seek to recover damages for
19 his injuries from, for example, Mr. Lefkowitz, on a alter
20 ego theory of liability?

21 MR. PATTERSON: Objection, Your Honor. This calls
22 for speculation, calls for a legal conclusion.

23 MR. MOXLEY: Your Honor, he is Mr. Alvarez'
24 attorney.

25 THE COURT: I know but I'm still sustaining.

1 MR. MOXLEY: Okay. Thank you, Judge.

2 BY MR. MOXLEY:

3 Q Let me ask you this, Mr. Griffiths. If this bankruptcy
4 case is dismissed, with respect to Mr. Alvarez' litigation -
5 -

6 A Yes.

7 Q -- what will be his next steps?

8 A The next steps -- if this bankruptcy is dismissed,
9 assuming that all of the -- if there's any appeals, if
10 there's anything else that happens and any other delays,
11 we'll resume litigation in the District Court in Arizona.

12 We'll name -- also I think file either a Rule 15 motion
13 or some other motion to name successor entities and also
14 alter ego theories.

15 Q And has the TCC been able to formulate a view with
16 respect to the value of the wrongful death and personal
17 injury claims in the aggregate that could be brought on an
18 alter ego theory of recovery?

19 A No.

20 Q And why is that?

21 A For the same reasons as before. The information wasn't
22 provided to our financial advisor.

23 Q But those too are in the shopping cart, right, the
24 alter ego claims?

25 A That's correct.

1 Q Even though we don't know what they're valued at?

2 A That is correct.

3 Q Mr. Griffiths, you attended the mediation in December,
4 correct?

5 A I did.

6 Q Okay. Were you in the courtroom when Mr. Lefkowitz was
7 testifying today?

8 A I was in the courtroom, yes.

9 Q Did you hear Mr. Lefkowitz reference being willing to,
10 or offering, I'm not sure what the testimony exactly was,
11 data to the TCC? Do you recall that testimony?

12 A I did not see any -- I do recall the testimony. I
13 didn't recall seeing anything like that at all.

14 Q Okay. To your knowledge, did the TCC receive any such
15 data from Mr. Lefkowitz?

16 A To my knowledge, no.

17 Q And you heard Mr. Lefkowitz discuss pro se cases and
18 how those cases in his view are typically ones where lawyers
19 have refused to bring them. Do you recall that testimony?

20 A I remember calling and talking about pro se and things
21 quite a bit, yeah.

22 Q And I believe you told the Court a few moments ago that
23 part of your work is to represent prisoners in connection
24 with prison rights type cases, is that right?

25 A That's correct. I've been doing it for 12 years.

1 Q Do you have any personal knowledge of the pro se
2 petition process?

3 A I know a little bit about it. Pro se, he kind of
4 described it as being they could write a complaint or write
5 a letter on the back of an envelope and send it to the
6 District Court, and it'll be in -- you know, it's a case.
7 That's not necessarily always true.

8 28 USC 1915 creates a system where the District Court
9 judges will take a pro se filing when they haven't paid a
10 filing fee. So it's more like a pro se forma pauperis. I
11 don't even know how to pronounce it.

12 MS. ENGLAND: Your Honor, we're now getting into
13 expert testimony of the process.

14 THE COURT: I agree.

15 MR. MOXLEY: Your Honor, may I just be heard on
16 that briefly, Your Honor?

17 THE COURT: No.

18 MR. MOXLEY: Okay. Thank you, Judge.

19 BY MR. MOXLEY:

20 Q Okay. Are you aware of Corizon's pre-bankruptcy
21 settlement history?

22 A I'm familiar with it, yes.

23 Q Okay. Have you seen Debtor's Exhibit 26 before, the
24 document that gives the 10-year history?

25 A I did, yeah.

1 MR. MOXLEY: Okay. Outside of bankruptcy, are you
2 aware that some pro se claimants were able to settle their
3 claims?

4 MR. PATTERSON: Objection, Your Honor, leading the
5 witness.

6 THE COURT: Can you repeat that question?

7 MR. MOXLEY: Yes, Your Honor. I'll rephrase it,
8 Judge.

9 THE COURT: Okay.

10 BY MR. MOXLEY:

11 Q You testified before that you had -- you're familiar
12 with the pre-bankruptcy settlement history?

13 A Yes.

14 Q Okay. What's your understanding of that?

15 A That Corizon settles cases pre-bankruptcy. I've been
16 part of those.

17 Q You personally have some experience --

18 A Yeah. I've represented inmates for the last 12 years.

19 Q Okay. What do you take away, Mr. Griffiths, from your
20 personal experience in settling some of those cases and in
21 the work that you do, what do you take away from the fact
22 that some pro se claimants have been able to settle claims
23 with Corizon?

24 A That there are serious claims that need to be settled,
25 and I think Mr. Lefkowitz even kind of touched a little bit

1 on that today, that there are cases that they settle.

2 Q Do you know if all prisoners injured by Corizon have
3 filed proofs of claim in this bankruptcy case?

4 A I don't know if that's the case.

5 Q Do you think that it's likely to be the case?

6 A I think it's --

7 MR. PATTERSON: Objection, Your Honor, that's
8 speculation.

9 THE COURT: Sustained.

10 BY MR. MOXLEY:

11 Q Is the TCC concerned about victims who may have missed
12 the bar date?

13 A The TCC is very concerned about that, yes.

14 Q What's your understanding as to how much would be
15 available to pay toward claims if the settlement is
16 approved?

17 A Well, I don't have any basis for knowing a number. I
18 would think that the number would be \$8-10 million, but I
19 don't know because in the settlement agreement, most recent
20 discussions, there hasn't been a percentage allocated to the
21 tort claimant. So there's way to know what the numbers
22 would be.

23 Q Does the range that you just referenced, does that come
24 from somewhere?

25 A Well, the first version, the first settlement agreement

1 that was proposed had, I think -- it was eight, or eight and
2 a half million dollars --

3 THE COURT: Hold on.

4 (Pause in the proceedings.)

5 THE COURT: Let's keep pushing.

6 MR. MOXLEY: Okay.

7 BY MR. MOXLEY:

8 Q I think you testified, Mr. Griffiths, that you were
9 testifying about where the range that you testified about
10 came from?

11 A Yeah, I think there was like some number in the
12 original settlement agreement that was earmarked for the
13 tort claimants, and I think that was eight to eight and a
14 half million dollars.

15 Q And that amount would be for all the tort claimants,
16 right?

17 A For all tort claimants, and my understanding is
18 administration fees of the trust but I don't know that to be
19 true.

20 Q Okay. You've heard some testimony -- were you here on
21 the first day of the hearing?

22 A I was.

23 Q Did you hear Mr. Barton testify?

24 A I did hear him testify, yes.

25 Q Did you hear his testimony with respect to whether or

1 not he thought the settlement was in the best interest of
2 creditors?

3 A Yes.

4 Q Okay. And do you have a view as to whether or not this
5 settlement is in the best interest of creditors?

6 A Excuse me, yes.

7 Q What's that view?

8 A I do have a view, and the view is it's not in the best
9 interest of creditors. Excuse me. It's not in the best
10 interest of creditors for a lot of reasons, but I mean, we
11 don't know any of the numbers that would be, you know, given
12 to pro se inmates, or to any tort claimant at all. There's
13 no way to know.

14 There was a lot of talk on that first day as well. It
15 wasn't necessarily testimony but there was talk about
16 putting money in people's pockets but no one will put a
17 number to it. So there's no way to know that this
18 settlement actually has any benefit to people at all.

19 Q Now you appreciate, Mr. Griffiths, that the settlement
20 agreement doesn't actually prescribe any particular
21 allocation between tort claimants and commercial creditors,
22 correct?

23 A That's right.

24 Q Okay. So we don't really know yet what will be
25 ascribed to the tort claimants, right?

1 A That's right.

2 Q Okay. When you attended that -- switch gears for a
3 quick second. Mr. Griffiths, you had mentioned about
4 attending the December mediation. In your view, did the
5 Debtor and UCC mediate in good faith?

6 A In my view, no. I mean that was -- I attended
7 telephonically to it but I didn't see that there was good
8 interaction or much to be done, much interaction between the
9 TCC and UCC or the Debtor. So from my perspective, no, it
10 didn't seem that it was.

11 Q Do you believe this settlement agreement that is sought
12 to be approved was negotiated in good faith?

13 A I don't think so, no.

14 Q And why is that?

15 A I don't think it was negotiated in good faith because
16 it totally skips out on the avoidance actions for the
17 divisional merger itself, didn't take into -- with the
18 contracts that left, right, that misappropriated business
19 opportunities. Really no assessment of the other claims for
20 successor liability and alter ego at all.

21 Q Mr. Griffiths, do you think that the personal injury
22 and wrongful death claimants would be better off in the
23 event of dismissal?

24 A Absolutely. I feel that way very strongly because I
25 think that they'll be able to -- the inmates and the cases

1 that already in process will be able to resume. And if it's
2 dismissed, then we'll have Tehum as a defendant.

3 We'll name them and then be able to make our motions
4 for successor liability and alter ego, and then we'll be
5 able to continue with the claims that we have.

6 Q Do you have -- what concerns do you have if this
7 settlement were approved?

8 A If the settlement's approved then I'm afraid of a
9 couple things. One, that it's going to take years to
10 appeal, right. It's going to take multiple levels of
11 appeals. And people don't get younger, right, they get
12 older.

13 People that are sick, they die, right. So I think
14 people that have claims, legitimate, may not ever get to see
15 anything from it if it's approved.

16 THE COURT: Isn't that the same concern of
17 somebody who went through trial process? Aren't there
18 appeals that can be taken in your case as well, right? It
19 cuts both ways on that point, doesn't it?

20 MR. GRIFFITHS: It does, Your Honor, but to maybe
21 bring Mr. Lefkowitz back in here. There's a lot of
22 negotiations that happened, renegotiations that happened.
23 Settlements have happened so --

24 THE COURT: But that's what he's saying on this
25 side, right?

1 MR. GRIFFITHS: And from my perspective, Your
2 Honor, I would tell you that if this was dismissed and
3 litigation resumes, then you get back to having serious
4 conversations about the merit of the case, and opportunity
5 to be able to settle the case.

6 THE COURT: I was just talking about the timing
7 aspect, right. You're saying people don't get any younger.
8 I suspect, I think both sides are presuming that it's going
9 to take years, and I don't really know what to do with that.
10 I'm just putting it out there. Go ahead.

11 MR. MOXLEY: Thank you, Judge.

12 MR. GRIFFITHS: And then I mean I think I --

13 THE COURT: He gets to ask a question. Go ahead,
14 please. I'm sorry.

15 MR. MOXLEY: Well -- and Your Honor, I appreciate
16 that.

17 BY MR. MOXLEY:

18 Q In case, Mr. Griffiths, did you have something more
19 responsive to the Judge's question that you wanted to say?

20 A Well, I don't that it was -- regarding the timing of
21 it, right, I think there's already -- it's already been held
22 up long enough, right, and so if this matter is dismissed,
23 it gets reverted back to the courts.

24 It doesn't go into a black hole of litigation because
25 I've heard Mr. Buckner (phonetic) say, it's already set,

1 right. The way I look at this, all of our cases have been
2 stayed, right, because of the automatic stay, and been held
3 for a year now while this has been going on, right.

4 And then my other concern, just to finish with your
5 question, my other concern is this is repeated, right. This
6 situation gets repeated. Not only does -- if the bankruptcy
7 -- if it's not dismissed, then all of the private prison
8 entities, medical providers can continue this process of
9 running until they get large litigation risks, right.

10 They get judgments piling up against them, and then
11 they can just go into bankruptcy. And then we heard
12 Mr. Lefkowitz talk about how he renegotiates. In this case,
13 you can use bankruptcy to renegotiate, right.

14 He's forcing bankruptcy, and his example, the \$160,000
15 settlement that he had where he's making monthly payments,
16 that stops, right. At least that's my impression of what he
17 said is it stops. And so he's able to renegotiate those
18 things that he negotiated in good faith, using the
19 bankruptcy. So I think it's kind of a tool, and I think
20 that this particular population is captive, right. They're
21 prisoners, can't really go anywhere, can't really do
22 anything about choosing other providers or calling for their
23 own --

24 MS. ENGLAND: Your Honor, narrative.

25 THE COURT: No. I'm going to allow him to answer

1 the question.

2 MR. GRIFFITHS: I mean they just don't get a
3 choice. I'll close up. But they don't get a choice in
4 their care. They are reliant on this system, and there's
5 not even competition in the Arizona prisons or any other
6 prisons. There's not like Corizon and Senterian
7 (phonetic) and Wexford. There's only one provider. And so
8 if that provider doesn't provide care, they don't have a
9 choice. And so they're forced into all of this.

10 (Pause in the proceedings.)

11 MR. MOXLEY: Thank you, Mr. Griffiths, for your
12 time. Your Honor, I have no more questions at this time.

13 THE COURT: Okay. I don't know when our floor is
14 coming, but let's keep pushing.

15 MS. ENGLAND: Seems like (indiscernible).

16 THE COURT: I apologize if anyone's listening as
17 to what is going on, why we keep pausing. There's actually
18 a fire alarm test going on in the building at this time, and
19 so we're -- we will likely pause at some point, and I will
20 let everyone know, or folks will likely hear when it's our
21 time. But let's proceed.

22 MS. ENGLAND: Good afternoon, Your Honor.

23 THE COURT: But it is a test, right. Let's just
24 be clear.

25 MS. ENGLAND: I guess it's evening at this point,

1 Your Honor. But good evening, my name is London England on
2 behalf of the Debtors.

3 CROSS-EXAMINATION

4 BY MS. ENGLAND:

5 Q And Mr. Griffiths, it's good to see you again, and I'm
6 sure also nice to do this on a countdown clock. So the last
7 time I saw you was February 12th, of this year, for your
8 deposition. Is that right?

9 A That's correct.

10 Q And at the deposition --

11 A I'm sorry. I did see you the first day of trial.

12 Q You're right which candidly I don't remember what day
13 that was at this point. But a couple weeks ago?

14 A Yeah.

15 Q At your February 12th deposition, you weren't
16 testifying in your individual capacity. You made clear that
17 you were testifying on behalf of the TCC as a whole, is that
18 right?

19 A That's correct.

20 Q And that committee was formed November 20, 2023?

21 A Yes.

22 Q And at the time, you hadn't missed a meeting yet?

23 A That's correct.

24 Q You told me at that time that you prepared to represent
25 the TCC and felt prepared to testify that day, is that fair?

1 A To the extent that I could, yes, yeah, absolutely.

2 Q Now one of the things that we heard today was that on
3 February 12th, your investigation was still ongoing, is that
4 fair?

5 A Yes.

6 Q So we heard a lot today about some conclusions, and I'm
7 going to try to in the interest of time walk through those
8 quickly. But first, on February 12th, we talked about who
9 the TCC believes it represents. And you told me that it was
10 specifically for the benefit of inmates or families of
11 inmates, is that right?

12 A Well, tort claimants and that's -- my understanding is
13 inmates and families of inmates.

14 Q And you specifically thought that tort claimants like
15 employment torts were not part of your committee's
16 representation, is that right?

17 A I remember a little bit about that. I don't remember
18 the exact words that I testified to, yeah.

19 Q So you agree that at least on February 20th, you did
20 not think that you were representing anyone bringing an
21 employment tort against the Debtor, is that fair?

22 A I don't recall what I believed then. The Tort Claimant
23 Committee that I focus on and that I'm working with and the
24 population I work with is inmates and inmate families.

25 Q But specifically in addition to representing the TCC as

1 a whole, you actually represent two creditors in this case,
2 is that right?

3 A Yes.

4 Q Now Mr. Alvarez is a member of the TCC?

5 A Yes.

6 Q And you also represent Mr. Robinson, right?

7 A That's correct.

8 Q And both of those claimants have medical malpractice
9 claims, is that right?

10 A Give me just a moment. I believe Mr. Alvarez has a
11 medical malpractice, 1983, and I think that Mr. Robinson is
12 just a 1983. I'm just making sure that I'm clear with you
13 on those.

14 Q Okay. And both of them are either currently or
15 formerly incarcerated individuals, is that a fair
16 characterization?

17 A Yes, one is not and one is.

18 Q And I think one of the things that you clarified at the
19 close of your direct testimony was that if this case was
20 dismissed, one of the things that you had planned to do in
21 the future is amend the causes of action that you filed on
22 their behalf, in their current litigation, to add successor
23 liability claims. Is that fair?

24 A That's fair.

25 Q So before this bankruptcy case was filed, neither

1 Mr. Alvarez, nor Mr. Robinson had asserted any successor
2 liability claims, is that fair?

3 A That's fair. If I can just clarify though, they didn't
4 have really knowledge of it until the notice of bankruptcy
5 is filed in the case. So a successor liability claim, they
6 had no knowledge of the divisional merger. They wouldn't
7 have been able to do that.

8 Q It's your testimony that neither Mr. Alvarez nor
9 Mr. Robinson was capable of bringing claims against -- for
10 successor liability under your representation prior to this
11 bankruptcy?

12 A They weren't informed about the divisive merger.
13 Corizon, Tehum did not comply with the rules that require
14 noticing in the real parties in interest. And so we had no
15 idea that there was another company, there was anything else
16 happening in this case until the notice of bankruptcy was
17 filed.

18 Then I picked up the phone and called the attorneys and
19 of course, they just read me the filing. They just said
20 filed. But that's when we found out. So the successor
21 liability and alter ego theories number one, couldn't have
22 been because we had the parties already named, litigation
23 was already going on.

24 And then also we had taken a little bit of factual
25 background here, right. The investigation had to go on to

1 find out just how bad some of the events were, and in my
2 words, the bad events, right. All of the events leading up
3 to the successor liability, all the background to discuss --
4 excuse me.

5 Successor liability and alter ego claims, things that
6 we've talked about, those have been developed in this
7 bankruptcy case. So until that point, they didn't have the
8 ability to make those claims or those causes of action.

9 Q And to be clear, part of the reason is that you sued
10 the Debtor because the Debtor was the one who provided the
11 medical care to both Mr. Alvarez and Mr. Robinson, is that
12 right?

13 A The care, or lack thereof, yes.

14 Q Now you also mentioned that you had attended mediation
15 with Judge Sontchi, in New York, virtually, and that was
16 done December 14th, is that right?

17 A That sounds right, yeah. I don't remember the date.

18 Q And that's the settlement that we're here today for the
19 Court to decide whether or not to approve, arose out of that
20 mediation, is that right?

21 A A version of the settlement that we're here to talk
22 about today arose there. I believe it's been modified
23 slightly and some redlines were done from what was proposed
24 on December 14th. I think that's my understanding.

25 Q Now you took the position last time we spoke that the

1 TCC would file an objection until there's certainty about
2 the amount of the settlement funds that will be directed to
3 the TCC members, is that right?

4 A I believe so. I don't remember. I'm sure you could
5 point me to some deposition.

6 Q So regardless of the amount of money that the
7 settlement includes, until the TCC knows exactly how much of
8 the allocation would be given to its members, the TCC plans
9 to object, is that fair?

10 A I don't know. I believe that --

11 MR. MOXLEY: Objection.

12 MR. GRIFFITHS: I leave that for the --

13 MR. MOXLEY: -- Your Honor. I think that goes
14 into attorney client privilege as well. I'm not sure he can
15 speculate as to what the TCC will do under certain
16 hypothetical scenarios.

17 THE COURT: He can answer if he knows without
18 revealing attorney client privilege.

19 MR. GRIFFITHS: Yeah, I won't reveal any attorney
20 client privilege. I don't know that would come up for the
21 TCC to decide. I'm not a TCC member. I just attend the
22 meetings and listen.

23 BY MS. ENGLAND:

24 Q Okay. You also have taken the position that the TCC
25 doesn't know what the appropriate amount of money to settle

1 the estate causes of action for, is that right?

2 A That's correct.

3 MS. ENGLAND: And when we spoke before, you didn't
4 know whether or not the TCC had undertaken any analysis of
5 Fifth Circuit law, for example, to determine whether or not
6 successor liability is an estate cause of action, is that
7 right?

8 MR. MOXLEY: Objection, Your Honor. Mr. Griffiths
9 wasn't allowed to speak with respect to his understanding of
10 the law in response to my questions. I'm not sure how he
11 can now speak to questions about his understanding of the
12 law in response to Ms. England's --

13 THE COURT: I don't think they were asking his
14 understanding of the law. I think they were just asking if
15 he had considered it. I think that's a different question.

16 MS. ENGLAND: Had an analysis been done at all?

17 THE COURT: Yeah. And so I'll overrule the
18 objection.

19 MR. GRIFFITHS: At the time that we spoke before,
20 no.

21 BY MS. ENGLAND:

22 Q And in fact, you told me that the TCC was exclusively
23 relying on counsel and experts for any valuation of whether
24 or not -- excuse me, any consideration of whether or not
25 successor liability claims were property of the estate, is

1 that right?

2 A Yes.

3 Q You also took the position that you didn't know what
4 type -- at the time, you didn't know what type of causes of
5 action would even be appropriate for the estate to release,
6 and that was on February 12, 2024, is that fair?

7 A At the time, yes.

8 Q No, February 12, 2024, was almost a month after the TCC
9 filed its motion to dismiss, is that right?

10 A I don't know the date that the motion to -- I don't
11 recall the date the motion to dismiss was filed.

12 Q Sure. If I told you the motion to dismiss was filed on
13 January 16, 2024, would it be fair to say that you and I
14 spoke a month after that?

15 A About a month, yeah.

16 MS. ENGLAND: And at the time that the motion to
17 dismiss was filed, I asked you whether or not the TCC made
18 sure that the facts included in that motion was true. Do
19 you recall that?

20 MR. MOXLEY: Objection, Your Honor, improper
21 impeachment. Ask the question then we can go --

22 THE COURT: Yeah, I'll sustain that.

23 BY MS. ENGLAND:

24 Q It's true, Mr. Griffiths, that the TCC relied
25 exclusively on counsel and experts to make sure that the

1 facts alleged in the motion to dismiss is true, isn't that
2 right?

3 A Yeah, I don't know how else -- I mean the TCC is a
4 committee of tort claimants. Yes, they rely on counsel and
5 they rely on experts to do that, yes.

6 Q And the last time we spoke, we discussed -- I think you
7 called them a document dump, but is it fair to say that you
8 recall discussing the hundreds of thousands of documents
9 that have been produced in this case?

10 A Yes.

11 Q And in February 16 -- or excuse me, February 12, 2024,
12 you knew that you had access to those documents but you
13 hadn't reviewed them, is that fair?

14 A Correct. And I think the number that I learned about
15 later was about 600,000 pages of documents that were given
16 to us a week before the second mediation. And if you want a
17 little more on that, that's four full pallets of paper, copy
18 paper in boxes.

19 Q So it's fair to say that the Debtors produced a lot of
20 information that the TCC could rely on in forming its
21 opinions before it filed the motion to dismiss?

22 A Sure.

23 Q But regardless, the TCC had unanimously decided to file
24 the motion to dismiss right away after it was formed, is
25 that right?

1 A The TCC members discussed and wanted to do whatever
2 they could to continue with their cases, and an option that
3 we discussed, or that was discussed on the meetings was a
4 motion to dismiss, and they did not until January 16, 2024.
5 So they wanted to but they did not.

6 Q But you're aware that your counsel began billing for
7 drafting the motion to dismiss a full week before you
8 attended mediation with Judge Sontchi, is that right?

9 A I don't know that. I'm sorry.

10 Q Have you reviewed the fee statements that your counsel
11 has provided?

12 A I've seen them but I haven't reviewed them line item
13 wise, no.

14 Q Did the TCC authorize their counsel to begin drafting a
15 motion to dismiss before even attending mediation with the
16 Debtor and the UCC in this case?

17 A I don't recall if they did.

18 Q When we spoke before, I don't believe that you had read
19 the divisional merger documents. Have you read the
20 divisional merger documents?

21 A What are the divisional merger documents? I'm sorry.

22 Q Have you read the divisional merger agreement in this
23 case?

24 A No.

25 MS. ENGLAND: At the time testifying on behalf of

1 the TCC, the TCC didn't know whether there were personal
2 injury claims including claimants in the bankruptcy case
3 whose causes of action had been allocated as CHS Texas, is
4 that right?

5 MR. MOXLEY: Objection, Your Honor, once again,
6 improper impeachment, going to the transfer before even
7 asked the question here.

8 THE COURT: Yeah. Why don't you lay a little more
9 foundation.

10 BY MS. ENGLAND:

11 Q You're aware that as part of the divisional merger,
12 certain assets or liabilities were allocated to CHS Texas?

13 A Yes, generally, yes.

14 Q But sitting here today, do you know whether or not any
15 of the people who filed proofs of claim in this case have
16 causes of action that were allocated to CHS Texas?

17 A Sitting here today, I don't know that answer.

18 Q Now on February 12th, is it fair to say that you didn't
19 know how many of the claims on the docket were filed by tort
20 claimants?

21 A On February 12th, that is correct.

22 Q Sitting here today, have you changed your opinion?

23 A That I don't know the number that was --

24 Q Do you know how many of the claims that were filed in
25 this case were filed by tort claimants?

1 A I don't know the exact number. I could estimate but it
2 would be a complete estimation so --

3 Q And do you know how many of the claims that were filed
4 in this case were filed by pro se individuals?

5 A The answer to that is no.

6 Q Now I understand that the TCC's goal is for this case
7 to be dismissed, is that right?

8 A Currently, yes, that's the goal.

9 Q If this case was dismissed, everyone would just resume
10 litigation in whatever form that they had originally filed
11 their lawsuit, is that fair?

12 A That's fair.

13 Q There would be no regionalized or multi-district method
14 for consolidating party claims?

15 A I wouldn't know that. I don't know. I am not aware of
16 anything like that at all, right. And I want to go back to
17 your prior question --

18 THE COURT: You don't get to do that. Now you're
19 being a lawyer. You just get to answer a question.

20 MR. GRIFFITHS: Ask your question again then,
21 please?

22 MS. ENGLAND: Unfortunately that's several and I
23 wouldn't know where to go back to. But at the last time we
24 spoke, we also talked about the Disclosure Statement. And
25 you didn't know one way or the other whether the valuation

1 of the Debtor or its assets in the Disclosure Statement was
2 correct. Do you, sitting here today, know whether or not
3 the value in the Disclosure Statement is correct?

4 MR. MOXLEY: Objection, Your Honor. I don't think
5 the question is compound, but it does once again refer to
6 the transcript before we've asked the question. I would
7 just request --

8 THE COURT: No, overruled.

9 MR. GRIFFITHS: Can you repeat the question? I'm
10 sorry.

11 BY MS. ENGLAND:

12 Q Sure. There's a valuation of the Debtor and its assets
13 in the Disclosure Statement. Do you know whether or not the
14 value is correct?

15 A No.

16 THE COURT: Counsel, but I get your point that if
17 one refers to a February 12th transcript and then asks a new
18 question, then perhaps you've got to be careful with that.
19 You can ask the question like that, but if you start
20 referring to something else, then you probably need to get
21 to the transcript.

22 MS. ENGLAND: Understood, Your Honor.

23 THE COURT: But I get the point.

24 BY MS. ENGLAND:

25 Q If this case was dismissed today, you don't know how

1 much money the Debtor has, right?

2 A No.

3 Q If this case was dismissed today, you don't know how
4 much money any individual tort claimant would receive in
5 litigation?

6 A That answer's no. I do know that there'd be some
7 money. I heard Mr. Lefkowitz say there's a lot of money
8 today so there's a lot of money.

9 Q Well, one of the pool's of money that you're aware of
10 is also that some of the tort claimants may be entitled to
11 insurance proceeds, is that right?

12 A Well, maybe, yes. I don't know anything about that.

13 Q You don't know anything about whether or not there is
14 insurance available for tort claimants in this case?

15 A I'm not aware, no.

16 Q Mr. Griffiths, are you aware that your clients, at
17 docket 915 both filed objections regarding the Lone Star
18 Arizona settlement because they believe their entitled to
19 money under their Lone Star policies?

20 A No, I don't know.

21 MS. ENGLAND: Your Honor, I'll pass the witness.

22 THE COURT: Thank you.

23 CROSS-EXAMINATION

24 BY MR. HEMENWAY:

25 Q I was going to say good afternoon, but I guess it's

1 good evening now.

2 A That's right.

3 Q I'm Zach Hemenway, for the UCC. We met last month at
4 your deposition. Good to see you again.

5 A Yeah, good to see you again as well.

6 Q Now Mr. Griffiths, you're not a bankruptcy
7 practitioner, are you?

8 A No.

9 Q And you've never been involved with a committee?

10 A No.

11 Q Your practice as you alluded to, I think you said
12 you've spent the last 12 years representing inmates?

13 A Chasing ambulances, yes.

14 Q Personal injury claims, things like that?

15 A Yes.

16 MR. HEMENWAY: Mr. Griffiths, there's not a
17 difference between a breach of fiduciary duty claim and a
18 claim for misappropriation of business opportunity, is
19 there?

20 MR. MOXLEY: Objection, Your Honor, calls for a
21 legal conclusion.

22 MR. HEMENWAY: He testified about the claims
23 earlier, Your Honor. I'm asking his understanding.

24 MR. MOXLEY: And there were an awful lot of
25 objections, Judge.

1 THE COURT: Yeah, he can testify to his
2 understanding.

3 MR. GRIFFITHS: I think that they'd be distinct
4 claims but I'd have to look into a little bit more. I
5 didn't pull Westlaw up here to --

6 BY MR. HEMENWAY:

7 Q How would they be distinct?

8 A Well, I think that the fiduciary duties don't have to
9 just be limited to the opportunities for business alone.
10 Fiduciary duties can be in terms of like how you people
11 treat in your workplace as well so I think there could be
12 distinctions in how you raise those claims.

13 Q Do you believe that a claim for misappropriation of
14 business opportunity is a subset of the category of breach
15 of fiduciary duty?

16 A Could be, yeah.

17 Q And you were here when Mr. Barton testified on the
18 second day of trial, weren't you?

19 A I was here. I attended telephonically. I was back in
20 Phoenix though.

21 Q So you recall that Mr. Barton testified that the UCC
22 investigated claims relating to breach of fiduciary duty?

23 A I don't recall him -- I will tell you that I was back
24 at work so I was listening and getting interruptions too.

25 Q Understood. Not a memory test today. When you were

1 talking about that claim, you mentioned, I believe, it was
2 25 plus entities that you believe were formed in connection
3 with that claim?

4 A Correct.

5 Q You don't know if any of those entities was actually
6 awarded a contract though, do you?

7 A My understanding is that it was CHS Alabama.

8 Q You believe CHS Alabama was awarded a contract?

9 A Yes.

10 Q And what's that based on?

11 A Well, I've read that in the Atkinson report.

12 Q And sticking with that claim, the TCC filed an
13 objection to the settlement motion, correct?

14 A Correct.

15 Q It filed a motion to dismiss?

16 A Yes.

17 Q Do either of those even mention misappropriation of
18 business opportunity?

19 A I don't know off the top of my head, no.

20 Q The TCC's position, I believe you testified about
21 successor liability earlier, and is it correct, though, the
22 TCC's position is that each of the creditors could
23 successfully bring a claim based on successor liability?

24 A I think they'd have a chance to do that.

25 Q And is that based on the Kelly Michigan case?

1 A Yes.

2 Q If I could have you turn to the -- actually, is it your
3 understanding that the Kelly case allowed a party to pursue
4 successor liability against YesCare?

5 A Not against YesCare. I think it was CHS Texas in the
6 Kelly case.

7 Q Okay. And if I could have you turn to -- it's Tab 5 in
8 your binder. It's TCC Exhibit 300. And it is that Kelly
9 case.

10 A Okay.

11 Q Are you with me?

12 A I have it here, yeah.

13 MR. HEMENWAY: Now --

14 MR. MOXLEY: Your Honor, just one second. I think
15 I have this, sorry.

16 MS. ENGLAND: It's your binder.

17 MR. MOXLEY: Oh, it's my binder.

18 MR. HEMENWAY: Yeah.

19 MR. MOXLEY: Okay. I apologize, Your Honor.

20 BY MR. HEMENWAY:

21 Q Drafting off opposing counsel here. You testified
22 earlier about your understanding of Texas law, and I'm not
23 asking you to opine as a legal expert. I want to know your
24 understanding.

25 I believe you said your understanding as the TCC's

1 representative is that the Texas Divisional Merger statute
2 allows a party to pursue successor liability, is that
3 correct?

4 A It does in the sense that it doesn't abridge -- the
5 Texas code doesn't abridge creditors rights.

6 Q Okay. Could you turn to Page 25, in that Kelly
7 opinion. And I'm going to read from Page 25. It says under
8 the Texas Business Organizations Code, a single business
9 organization may undergo a merger which it divides into two
10 or more new entities. Do you understand that to describe a
11 divisional merger?

12 A Sure.

13 Q It says the predivision corporation may allocate its
14 assets and liabilities freely among the new entities and
15 each new entity, at least as a matter of Texas law, is
16 liable only for the liabilities assigned to it under the
17 plan of merger?

18 A Okay.

19 Q Is that consistent with your understanding of Texas
20 law?

21 A Well, I don't really -- my limited understanding of
22 Texas law, sure. It aligns with that.

23 Q That aligns with your understanding that --

24 A My limited understanding --

25 Q Okay.

1 A -- of Texas law.

2 Q You mentioned earlier that the TCC doesn't have a view
3 as to the value of the claims, the proofs of claim in this
4 case, is that correct?

5 A It doesn't have like an idea of the value of them?

6 Q Ms. England asked if the TCC has a view of the value,
7 of the aggregate value of the -- well, actually, I
8 apologize, I believe it was your counsel. Asked if the TCC
9 has a view of the aggregate value of the proofs of claim in
10 this case, and I believe you said that they do not, is that
11 right?

12 A That's correct.

13 MR. MOXLEY: Objection, Your Honor. It misstates
14 the testimony.

15 THE COURT: I'll sustain that.

16 MR. HEMENWAY: I'll just ask the question.

17 BY MR. HEMENWAY:

18 Q Does the TCC have a view of the aggregate value of the
19 proofs of claim in this case?

20 A I don't know what it is.

21 Q You don't know if the TCC has one, or you don't know
22 what it is?

23 A I don't know what it is. The TCC, the committee, the
24 six members of the committee, I don't know if they have a
25 value, a known value of that either.

1 Q I'm asking about the TCC as an entity here that's
2 trying to oppose the settlement.

3 A Right.

4 Q Does the TCC have a view of the value of the proofs of
5 claim?

6 A Well, okay, an exact number, they don't have an exact
7 number. I don't have an exact number. We know the number
8 is very high.

9 Q You know the number's very high?

10 A Yeah.

11 Q And what's that based on?

12 A A couple of the proofs of claim that they have seen in

13 --

14 Q So the face value of the proofs of claim?

15 A Yeah.

16 Q You talked a little bit earlier about the mediation
17 that occurred with Global Mediation in December. I believe
18 you testified that the UCC and Debtor didn't negotiate in
19 good faith in that mediation. You didn't attend that
20 mediation in person, did you, Mr. Griffiths?

21 A I did not.

22 Q In fact, both the UCC and Debtor met with the TCC
23 without you present, didn't they?

24 A Without me physically present, sure, of course.

25 Q You were virtually present for all the meetings?

1 A Hold on. You're asking about the meetings, or at the
2 mediation?

3 Q For all discussion with the TCC's counsel?

4 A At the mediation, yeah, I was online all day.

5 Q Okay. And you understand, sir, that everyone involved
6 in those negotiations has a fiduciary duty under the
7 bankruptcy code?

8 A Yes.

9 Q And you obviously weren't present for any negotiations
10 that occurred -- that weren't in the room that you were in
11 attendance virtually?

12 A That's correct.

13 Q Okay. Mr. Griffiths, the TCC has two separate law
14 firms representing it, correct?

15 A Correct.

16 Q And you, I believe, told us that the TCC engaged Barry
17 Rudell to be its local counsel in Arizona, is that right?

18 A Mike Zimmerman, Barry Rudell, yes.

19 Q And your other counsel is Brown Rudnick?

20 A That's correct.

21 Q And the TCC hired them because they're experienced with
22 the Texas Two Step, is that right?

23 A That's correct.

24 Q And that experience is filing motions to dismiss
25 bankruptcy filings in Texas Two Step cases?

1 A Among others.

2 MR. MOXLEY: Objection, Your Honor, argumentative.

3 THE COURT: Overruled. It's been a long day.

4 MR. GRIFFITHS: Among other things, yes.

5 BY MR. HEMENWAY:

6 Q Did the TCC review Brown Rudnick's employment
7 application filed in this case?

8 A Yes.

9 Q What about Provence?

10 A I believe that they did. I know that the TCC approved
11 the hiring of all of these firms.

12 Q Has the TCC reviewed Brown Rudnick's fee statements?

13 A Yes.

14 Q How about Barry Rudell's?

15 A Yes.

16 Q And has the TCC signed off on those statements?

17 A Yes.

18 Q So from that review and sign off, I assume you're aware
19 that the TCC's attorneys have billed around \$2 million for
20 their first three months of work in this case?

21 A That sounds right.

22 Q And you understand that doesn't include this month, or
23 any of this trial?

24 A Uh-huh.

25 Q You understand that the money to pay those fees comes

1 out of estate assets, is that right?

2 A That's my understanding.

3 MR. MOXLEY: Objection, Your Honor, I know he's
4 answered the question but this calls for a legal conclusion.

5 THE COURT: Just his understanding as to -- he's
6 the representative of TCC.

7 MR. HEMENWAY: I mean, Your Honor has talked about
8 --

9 THE COURT: He can understand how you get paid so
10 --

11 MR. HEMENWAY: Yeah, Your Honor asked -- or
12 counsel asked the UCC's witness about money that would be
13 available to creditors and that's what I'm asking this
14 witness about.

15 BY MR. HEMENWAY:

16 Q Do you understand that any recovery the estate gets for
17 creditors gets reduced by those fees?

18 A Yes.

19 Q We talked about Arizona insurance earlier, and I guess
20 you said that you weren't aware of anything regarding
21 Arizona insurance, is that right?

22 A I'm not familiar with -- excuse me. I'm familiar with
23 the idea that there's discussion around whether Arizona
24 policies, there are Arizona policies. I don't know what
25 policies may or may not be in effect. So I'm not really

1 speaking to that. And I really don't know anything about
2 other states insurance.

3 Q You said you reviewed the amended Disclosure Statement
4 that was filed in this case, is that right?

5 A Awhile back, yes.

6 Q Did you review the portions of that relating to
7 insurance coverage?

8 A I don't recall that.

9 Q Okay. Let's take a look at Exhibit 18, and that is the
10 second amended Disclosure Statement at schedule two.

11 THE COURT: Which binder are we looking at?

12 MR. HEMENWAY: Do we have that, in this one? It
13 should be in tab --

14 MS. ENGLAND: Our binder, the black binder.

15 THE COURT: Yeah.

16 MR. HEMENWAY: Well, yeah, the black binder.

17 MR. GRIFFITHS: Volume one, or two?

18 MR. HEMENWAY: Volume one, Exhibit 18.

19 THE COURT: You said 18?

20 MR. HEMENWAY: And I'm looking for 1410, the
21 appendix two. Actually, we'll come back to that,

22 Mr. Griffiths. I apologize. Page 72, going back to my --

23 MR. GRIFFITHS: The little numbers at the top?

24 MR. HEMENWAY: Yeah, Page 72. It has been a long
25 day, Your Honor. Appreciate your patience.

1 THE COURT: No, take your time.

2 MR. HEMENWAY: All right.

3 BY MR. HEMENWAY:

4 Q So I want to focus on the first five lines there, on
5 Page 72. You see those rows with the little cross next to
6 them?

7 A I do see the rows with the cross on them, yeah.

8 Q And you see down below, the notes, those are LSA
9 Arizona policies?

10 A Okay. I see what it says.

11 Q Now you were sitting in the back of the courtroom and
12 heard Mr. Perry earlier talk about some of these columns.
13 Do you recall what Mr. Perry said about what a self-insured
14 retention is?

15 A I know briefly what a self-insured retention is but not
16 from anything that he said today.

17 Q You've heard that compared to a deductible?

18 A I did hear him make that --

19 Q An amount that has to be met for an insurance company
20 to pay out on a claim?

21 A Right.

22 Q And those numbers in that column for those five
23 policies, they're all either zero, or up to 50,000, is that
24 right?

25 A In which column?

1 Q The outstanding self-insured retention?

2 A Can you ask your -- I see the column.

3 Q I said those are either zero, or a number up to 50,000,
4 is that right?

5 A For the Arizona --

6 Q Or the first five rows there?

7 A First five, yes.

8 Q And the number next to that, the aggregate unpaid
9 limits, you heard Mr. Perry explain that's money available
10 under the policy that hasn't been paid out, is that right?

11 A I don't recall him -- I remember him talking today
12 about it. I wasn't looking at this document at that time.

13 Q You understand the concept of insurance policy limits?

14 A Policy limits, yes.

15 Q And you understand that to be money available that
16 hasn't been paid out?

17 A Okay. Yeah.

18 Q So if we go down that column, you see it's 3-5 million
19 for each year except one year where it's 400,000. And I'll
20 represent to you those numbers for the five years add up to
21 about \$18 million.

22 A Okay.

23 Q So would you agree with me that there are insurance
24 proceeds available to you and Arizona tort claimants based
25 on that table?

1 A Based on this table, yes.

2 Q And that includes the tort claimants that make up the
3 majority of the TCC?

4 A I don't know. I mean --

5 Q You don't know who makes up the TCC?

6 A I know several of them are Arizona based but I don't
7 think all of them are. I don't know.

8 Q Okay. But there are six members so would you agree
9 several could be --

10 A Yeah.

11 Q -- the majority? Would you consider \$18 million to be
12 valuable to creditors in this case?

13 A It would -- yes. I would consider it to have value.

14 Q All right. Let's turn to -- this would be TCC
15 Exhibit 178. So it's going to be your white binder. It
16 would have 178 in it.

17 A Do you know which tab it is in the white binder?

18 MR. HEMENWAY: You know what, let's just -- we'll
19 just move on. This could be 130.

20 MR. MOXLEY: I don't know that he has a copy of
21 that.

22 MR. HEMENWAY: Yeah, I'll lend you my copy, how
23 about that. So this is -- permission to approach the
24 witness, Your Honor?

25 THE COURT: Yes, of course.

1 BY MR. HEMENWAY:

2 Q So Exhibit 178, are you familiar with that document?

3 A Very, very high level --

4 Q Sure. And you understand that's the TCC's motion to
5 dismiss filed in this case?

6 A Yes.

7 Q Okay. If you go to Paragraph 74, you see that?

8 A Paragraph 70?

9 Q Paragraph 74? You see in Paragraph 74 where it says
10 the Debtors rights to insurance policies have little to no
11 value?

12 A Paragraph 74? Okay.

13 Q Is the TCC referring to these Arizona policies here?

14 A Possibly.

15 Q So would you agree with me that whoever wrote this has
16 a different concept of valuable than you and other creditors
17 may?

18 A Sure.

19 Q You told Ms. England that the TCC doesn't know how many
20 proofs of claim were filed by pro se claimants, is that
21 right?

22 A Yeah, if I'm speaking for the TCC, I don't know the
23 answer to that question.

24 Q And knowing that answer could impact the TCC's analysis
25 because pro se claimants will often settle claims for less,

1 right?

2 A Sure.

3 Q In fact, they often will settle for nothing, or next to
4 nothing, is that right?

5 A I don't think they'd settle for nothing, but yes, next
6 to nothing. It just depends.

7 MR. HEMENWAY: And we've seen from documents and
8 testimony that the Debtor believes there are approximately
9 100 proofs of claim filed by pro se claimants. Do you have
10 reason to disagree with that number?

11 MR. MOXLEY: Objection, Your Honor, that question
12 is vague. He's seen documents and testimony.

13 THE COURT: I'll sustain that objection.

14 MR. HEMENWAY: Okay.

15 BY MR. HEMENWAY:

16 Q Mr. Perry's testimony which you were present for
17 outlined an analysis of claims in this case?

18 A Okay.

19 Q And I believe he said around 100 claims. Does that
20 sound right to you?

21 A I don't recall his testimony so I don't know.

22 Q Would you expect that a lot of the pro se claims would
23 be inflated numbers? Higher numbers than the value of the
24 claim?

25 A I don't know. What do you mean by that? I'm not

1 trying to be difficult.

2 Q Are pro se claims typically seeking higher numbers than
3 the value of the claim?

4 A In the proof of claim?

5 Q In the proof of claim, or in what they file with the
6 court?

7 A You're asking if they're seeking higher numbers, higher
8 -- I don't know what you mean?

9 Q An inflated number, a number that is significantly
10 higher than what the value of the claim would be if it was
11 decided by a court?

12 A I don't know that I could -- well, decided by jury,
13 probably in most of those cases. But I don't know that I
14 have any information to answer your question.

15 Q Okay. I'd like to go to your deposition testimony.
16 And let's go to Page 170. Do you have that copy of your
17 deposition there? It should be in your white binder.

18 A Yeah, I got to close this other one.

19 Q I apologize. Take your time. So are you with me on
20 Page 170?

21 A Yes.

22 Q So Ms. England asked you if -- referenced something
23 earlier, but she said so you mentioned in your experience,
24 typically a pro se incarcerated person when they're filing a
25 claim or a lawsuit, there's going to be a lot of zeroes at

1 the end of that claim. She said is that fair.

2 Your answer was yeah, I think I said six zeroes because
3 they all want a million bucks. So when you said that you
4 don't have information to know if pro se claims are
5 typically inflated, you were saying something different than
6 what you're saying there?

7 A Yeah. What you were saying is whether they'd be
8 inflated versus what they would get in court. I corrected
9 you and said what a jury might give them. And then this
10 question that Ms. England asked is about the proofs of claim
11 if I recall right. I'm not looking at my whole deposition
12 testimony. So those are three different valuations.

13 Q Understood. Now you've never filed a proof of claim,
14 have you, Mr. Griffiths?

15 A The answer is no.

16 Q In fact, you --

17 A I don't know that I have.

18 Q -- engage counsel to file proofs of claim on behalf of
19 your clients in this case?

20 A Yes, that's correct.

21 Q So you don't have any reason to think that a proof of
22 claim would be any different than a lawsuit, do you?

23 A I'm sorry, what?

24 Q You don't have any reason to think the amount someone
25 seeks in a proof of claim would be any different than what

1 you're referring to in a lawsuit, do you?

2 A In a lawsuit, I typically don't make a demand for a
3 specific amount of money, but the proof of claim, in my
4 understanding, requires that.

5 Q I understand. I think it was pro se claimants. Do you
6 believe that pro se claimants are good at litigating?

7 A The answer is some are good at litigating and some are
8 not good at litigating.

9 Q And that's not what you told me last month, is it?

10 A I don't recall what I told you last month.

11 Q Okay. Let's go to your --

12 A Sorry.

13 Q -- deposition testimony.

14 A That's fine.

15 Q We're going to go ahead and pull that up. If you could
16 turn to Page 95, and it's 95 and 96. So Ms. London was
17 asking you some questions about the TCC's position, and she
18 said about the TCC's position as to what pro se litigants
19 might do in this case. And she asked how is that different
20 from their typical right to litigate against Corizon in
21 federal District Court.

22 A I'm sorry, where are you at so I can just follow along.

23 Q I'm starting at 95, 20.

24 A 95, thank you.

25 Q And your counsel objected, and you said I don't think

1 it's any different. My candid opinion is that pro se
2 litigants, people who are usually in prison, pro se
3 litigants, aren't very good at litigating, right, and so
4 they already have a tough time with the basic set of courts.

5 MR. MOXLEY: Your Honor, objection. I would just
6 ask if we could ask that if we could reask this question
7 with the entirety of the question. There's a lead in here
8 that --

9 MR. HEMENWAY: That's fine.

10 MR. MOXLEY: -- makes it --

11 MR. HEMENWAY: I'm trying to work with the time I
12 have, but I'm happy to read the full question.

13 MR. MOXLEY: Ask him to read the full question.

14 MR. HEMENWAY: Do you want me to repeat, or are
15 you --

16 MR. MOXLEY: You need say it the first time.

17 MR. HEMENWAY: All right. So the full question is
18 how -- the reason I'm asking is I'm trying to understand how
19 this would be different so the TCC takes the position that
20 the opt in and opt out provision would be difficult for an
21 incarcerated individuals to navigate.

22 How is that different than their typical right to
23 litigate against Corizon in federal District Court. And I
24 believe I already read your answer.

25 MR. MOXLEY: Your Honor, objection.

1 THE COURT: I get the point. I can read it. I've
2 read it. I got what it says.

3 BY MR. HEMENWAY:

4 Q So your testimony there was that pro se litigants
5 struggle with the basic court system, correct?

6 A Yes, most of them do.

7 Q Isn't the TCC telling the Court that if this case is
8 dismissed, those pro se claimants are going to need to
9 successfully litigate successor liability against YesCare?

10 A I guess so, yes. That could be the outcome. But I
11 think this question, quite honestly, is talking about the
12 opt in and opt out provisions, and I'm -- again, you just
13 kind of cherry picked some paragraphs here, but I --

14 Q We don't need --

15 A Of course you don't.

16 Q -- a colloquy.

17 A But --

18 MR. MOXLEY: Objection, Your Honor.

19 THE COURT: No. Hold on a second.

20 MR. HEMENWAY: Not answering the question.

21 THE COURT: Yeah, he's not answering the question.

22 You get to ask questions. He gets to answer them.

23 MR. HEMENWAY: Thank you, Your Honor.

24 THE COURT: And you don't get to -- that's the way
25 it works. And then you could put people on redirect. Now

1 there wasn't a question. Ask the question, answer it.

2 BY MR. HEMENWAY:

3 Q So speaking of that dismissal, you talked earlier about
4 that you didn't think it was a litigation chaos, or a
5 litigation black hole I believe. You understand that if the
6 case is dismissed, everybody goes back to where they
7 started?

8 A That's correct.

9 Q And you, yourself have described that as a race to the
10 courthouse, haven't you?

11 A Could be a race to the courthouse, yes.

12 Q And in a race to the courthouse, resources matter,
13 don't they?

14 A Yes.

15 Q That's not a race that a pro se litigant would
16 typically win, is it?

17 A (No verbal response.)

18 Q We need an oral answer, Mr. Griffiths?

19 A I don't know what -- I guess I don't know what you're
20 asking me to say. You have a law firm that's outside of
21 prison, right, someone with a computer, maybe an education
22 in law can make a filing, type up, you know, whatever they
23 need to type up and get filed through ECR.

24 And an inmate will use pencil and envelope to file a
25 motion. I don't know. But -- so the race to the courthouse

1 is -- that's what I'm referring to there.

2 Q Okay. Mr. Griffiths, you told us in February that TCC
3 hadn't taken a position on the settlement because it was --
4 it didn't have enough information, is that right?

5 A I believe so, yes.

6 Q In fact, you said if the TCC had more information, it
7 might decide the settlement is a good deal?

8 A Sure.

9 Q And the additional information you referred to
10 included, in part, more information on the value of the
11 personal injury claims in this case?

12 A Maybe value of the personal injury claims but more to
13 the point of -- I think what I was referring to was like how
14 much the other causes of action, right. We don't have
15 enough information to be able to assess the fraudulent
16 conveyance --

17 Q I understand your testimony there. My question was
18 different. It was -- and some of the information you
19 mentioned was more information about the value of the
20 personal injury claims in this case, was it not?

21 A Maybe -- where are you looking at? Where are your
22 reading?

23 Q I'm just asking if that's something that you've
24 referenced as being something that would help the TCC
25 evaluate whether the settlement's a good deal?

1 A Yeah, I think that we would have -- I think it would
2 behoove everybody to have medical people look at these files
3 and to get an idea of what these cases are about.

4 Q And the TCC hasn't done any of that analysis though,
5 has it?

6 A To my knowledge, no. I don't think there's enough
7 information for them to do that.

8 Q And your understanding was that the TCC's expert,
9 Mr. Atkinson was conducting an analysis of the value of the
10 claims, the creditor claims in this case, is that right?

11 A Yes.

12 Q And is it your understanding that he did that analysis?

13 A He did what he could, yes, from that.

14 Q Did he do the analysis or not? Does Mr. Atkinson
15 present his opinion of the value of the creditor claims in
16 this case?

17 A You can ask him. I think he's testifying Wednesday.

18 Q I'm asking your understanding because you told me that
19 he was doing the analysis?

20 A That's my understanding, yes. So you can ask him what
21 that is.

22 Q You also told us that you believed he was analyzing the
23 value of insurance, is that right?

24 A I believe that's part of what it is, yes.

25 Q And is it your understanding that he did that analysis?

1 A That's my understanding.

2 Q Okay. And have you read Mr. Atkinson's report that was
3 an exhibit to the TCC's objection to the 9019 motion?

4 A The answer is yes.

5 Q And is it your understanding that that report contains
6 an analysis of the value of the creditors claims in the
7 case?

8 A In what regard? I'm sorry.

9 Q You told me you've read Mr. Atkinson's report. I'm
10 asking if your understanding is that it contains a value --
11 an analysis of the value of the creditor claims in this
12 case?

13 A Well, that's what his report is, yes.

14 Q That's what his report is?

15 A Yeah.

16 Q And is it your understanding that his report contains
17 an analysis of the value of insurance in this case?

18 A I don't recall that. It might be in there but I don't
19 recall that.

20 Q So you believed he was doing it but you're not sure if
21 it's in the report?

22 A Yeah, I'm not looking at the report here, and I'm not -
23 -

24 Q So we talked about the settlement a lot today, and I
25 understand as I said earlier that the TCC's position is that

1 it opposes the settlement because it doesn't have enough
2 information to evaluate the deal, is that right?

3 A Yes, generally, yes.

4 Q So the TCC is not opposed to any settlement in this
5 case, correct?

6 A I don't think -- yeah, I don't think the TCC is opposed
7 to a settlement. I think it needs to have a fair, full
8 valuation of the --

9 Q Okay. And when we spoke last month, you told me that
10 TCC's position was that if there's a settlement that makes
11 sense and is fair, the creditors should take it?

12 A Correct.

13 Q Is that still your position?

14 A If it's a fully informed decision then yes.

15 MR. HEMENWAY: That's all I have.

16 THE COURT: Thank you.

17 MR. HEMENWAY: Pass the witness.

18 THE COURT: Any -- Mr. Patterson?

19 MR. PATTERSON: Yes, sir.

20 THE COURT: I'll let you go. I hear something's
21 coming up so I may -- I hear it in the background. So but
22 let's proceed. Mr. Patterson?

23 CROSS-EXAMINATION

24 BY MR. PATTERSON:

25 Q Mr. Griffiths, just -- I think you told me, or you told

1 the Court that your practice is primarily tort litigation,
2 personal injury?

3 A Personal injury. I also --

4 Q Okay.

5 A -- do family law too.

6 Q And you have represented people that are incarcerated?

7 A Correct.

8 Q And incarcerated throughout the time that the
9 litigation is going on?

10 A Yes.

11 Q And so you're also familiar with pro se litigants that
12 are incarcerated, correct?

13 A I am familiar with them.

14 Q Right. And you understand at least somewhat the
15 troubles or problems that they have in litigating their
16 claims?

17 A Yes, I mean I don't know what problems -- yes, there
18 are procedural issues. They don't have access to materials.
19 They don't have access to a law library, things like that.

20 Q And would it be fair to say that they are predominantly
21 less successful than say you are?

22 A Yes.

23 Q And why is that?

24 A Because of they're incarcerated. They lack those
25 resources.

1 Q Right. Okay. Can you tell me or tell the Court, or
2 describe the makeup of the body that you represent as a
3 member of TCC?

4 MR. MOXLEY: Objection, Your Honor, witness is not
5 a member of the TCC.

6 THE COURT: He's here, but he can tell me who's on
7 the TCC.

8 MR. PATTERSON: Sure.

9 THE COURT: I think that's where Mr. Patterson was
10 going.

11 MR. GRIFFITHS: I can tell you most. I mean I can
12 give you like a high level of it. I don't -- they're not
13 all my clients. I represent Nathan Alvarez, and Nathan
14 Alvarez is the only surviving person who survived prison.
15 The other five members are people who represent like
16 wrongful death, loss of family members and things like that.

17 BY MR. PATTERSON:

18 Q And are you familiar with the makeup of the body of
19 people that is represented by the TCC?

20 A I don't know what you're asking. I'm sorry.

21 Q Okay. How --

22 A I'm not trying to be difficult.

23 Q Describe for me who the TCC represents? You came up
24 and you testified that you believe that this is in the best
25 interest and that the committee is supporting it. I want to

1 know who you're speaking for? Can you tell us who these
2 people are generally --

3 A Sure.

4 MR. PATTERSON: -- that the TCC represents, or
5 purports to represent?

6 MR. MOXLEY: I'll just note asked and answered,
7 Your Honor.

8 THE COURT: Overruled.

9 MR. GRIFFITHS: Yeah. I can answer the question.
10 To the extent that they're family members of people who've
11 died in prison, have wrongful death claims, have cruel and
12 unusual punishment claims, right. They're -- if you're
13 asking for like the types of claims that they are, I can
14 talk a little bit about the wrongful death.

15 I think that was kind of mentioned in our motion
16 the type of claim that it is. If you're asking for anything
17 more personal, I don't know everybody personally. I know
18 Nathan Alvarez personally. I don't know necessarily
19 everybody else. Latonda (phonetic) Smith, I know her
20 personally.

21 BY MR. PATTERSON:

22 Q What percentage are pro se litigants that are
23 incarcerated, do you know?

24 A I don't know the answer. Pro se, I don't know how you
25 would know that. Nationally and in Arizona, I only work in

1 Arizona.

2 Q Right. Well, there was allegations in the TCC's motion
3 to dismiss that there are approximately 200 personal claims
4 on file, right?

5 A Okay.

6 Q And there was also testimony about 100 of those are
7 filed by pro se litigants, right?

8 A Okay.

9 Q So would you say that about half of your constituents
10 are unrepresented, pro se or incarcerated tort claimants?

11 A I would say a much larger percentage.

12 Q Much larger than 50 percent, right?

13 A Sure.

14 Q So how many -- are there any incarcerated tort
15 claimants on the committee?

16 A No.

17 Q And how many did you talk to?

18 A How many who?

19 Q Incarcerated pro se claimants did you talk to?

20 A I've talked to, I think three or four.

21 Q About this settlement?

22 A I haven't talked to them about the settlement, no.

23 Q What did you talk to them about?

24 A I've talked to them about the proceedings in this case.
25 They call and they ask questions, or I've been asked by the

1 District Court to reach out to them because they have
2 pending litigation going on against Corizon and they have
3 trial dates.

4 Q All right. But you didn't happen to mention the
5 proposed settlement to them?

6 A I don't recall that I did, no. Talked to --

7 Q Is there a reason why?

8 A Because -- the reason why is I'm one attorney --

9 Q Well, that was funny? I didn't catch the joke if it
10 was.

11 A Well, I don't understand why you're so angry about it,
12 but --

13 Q I'm not angry. I'm asking you a question. You talked
14 to these pro se litigants. You're here supposedly espousing
15 their views on the settlement. You talked to three or four
16 but you didn't mention it to them, and I'm trying to get at,
17 how do you know that this is in their best interest?

18 A How do I -- wait. Well, first of all, in the TCC, in
19 the committee itself, we talk about those issues. They talk
20 about it. And they know that they don't want to take a
21 settlement --

22 Q Who's they?

23 A The TCC members, the committee members.

24 Q How many of them are incarcerated pro se litigants?

25 A Four of them. Well, they're not incarcerated. They're

1 survivors of incarcerated folks.

2 Q Okay. And my question was how many are incarcerated
3 pro se litigants since that's more than half of the
4 constituency of the TCC?

5 A On the TCC, there are no incarcerated pro se.

6 Q On the committee itself, not --

7 A On the committee itself.

8 Q And so sitting around talking about it, doesn't get
9 their views?

10 A Correct, in a committee meeting, it doesn't, no.

11 Q Right. It doesn't get their views. You talked to
12 some. You didn't ask them. How many of the committee
13 members talked to incarcerated pro se litigants about this
14 settlement?

15 A I don't know the answer to that question.

16 Q Well, how do you know what your constituency wants if
17 over half have never been talked to about it?

18 A I don't know.

19 Q Well, then how did you come here today to say this is
20 in the best interest if you have no idea about over half of
21 your constituency? We're just going to leave them out in
22 the dark?

23 A I don't have an answer for you because --

24 MR. PATTERSON: You're going to presume to know?

25 MR. MOXLEY: Objection, Your Honor, compound. I

1 think we're harassing the witness.

2 THE COURT: I don't. Let's continue.

3 MR. PATTERSON: These 20 lawyers presume to know?
4 How many of them look like they've ever been incarcerated?
5 Look around the room?

6 MR. MOXLEY: Objection.

7 MR. PATTERSON: How many?

8 THE COURT: Yeah, I'll sustain that one.

9 BY MR. PATTERSON:

10 Q So how did you come to this conclusion, how? Might
11 over half might you have no idea?

12 A My conclusion is reached because when I talk to the
13 inmates, their value of the claims and the value of their
14 claims, when they talk about what they want to get done with
15 their claims is far outside of the value of anything that
16 was in -- could have been computed to be given to them as
17 part of the first settlement.

18 Q Okay. But you just said you talked to three or four,
19 and you didn't even mention it to them?

20 A Because that -- I didn't talk to them about the
21 settlement agreement.

22 Q Right.

23 A That's what you asked about.

24 Q And that's what we're here today about.

25 A Right. No, but you're asking me --

1 Q You just said it's in their best interest? How can you
2 say that? That's my question.

3 A Are you going to let me answer?

4 Q If you have an answer, I'd love for you to.

5 A Sure. I don't talk to them about the settlement
6 agreement per se.

7 Q My question was why?

8 A You didn't let me answer.

9 MR. PATTERSON: Why?

10 MR. MOXLEY: Your Honor --

11 THE COURT: You got to let him finish,
12 Mr. Patterson. Let him finish answer. So go ahead.

13 MR. GRIFFITHS: Thank you. When I have a
14 conversation with them, the conversations that do occur,
15 first of all, are privileged. But when I do talk to them
16 about the value of their claims or what they think they're
17 trying to get done with their claims, they have a high value
18 on those claims. And it doesn't match anything, wouldn't
19 come even close to the universe.

20 THE COURT: I guess the question is as a member,
21 as a fact witness --

22 MR. GRIFFITHS: Yeah.

23 THE COURT: -- here on behalf of the TCC, do you
24 have any perspective on what incarcerated pro se plaintiffs
25 think about this settlement agreement?

1 MR. GRIFFITHS: I don't have that answer.

2 THE COURT: Okay.

3 MR. GRIFFITHS: I don't.

4 THE COURT: I think that's --

5 MR. PATTERSON: All right.

6 BY MR. PATTERSON:

7 Q So you also talked about -- multiple times, you've
8 indicated a lack of information, right?

9 A Okay.

10 Q How many times has the committee come here and said,
11 Judge Lopez, they're not giving me what we need?

12 A The TCC, or the UCC?

13 Q The TCC? You said you couldn't give answers because
14 you just didn't have the information.

15 A Sure.

16 Q How many times did you come down here and tell the
17 judge, Judge, we're not getting cooperation. They're
18 withholding information that we need. How many times?

19 A I don't know the answer to that. I don't think that we
20 have. I think the UCC did at the beginning of this case and
21 it was kind of a long, drawn out -- that's my understanding
22 of the docket generally.

23 Q So you waited till the day of the hearing to complain
24 about the lack of information, and now you want to rely on
25 that, right?

1 A I don't think that we've waited on anything.

2 Q Well, did you come before today and tell the judge we
3 need your help to get information so we can do our analysis?

4 A I think that the committee was formed in November. I
5 think that they were asked three weeks later to go to a
6 mediation that they had just recently gotten 600,000 plus
7 documents given to them.

8 They went and tried to participate. And then they
9 continued their investigation. We've continued to do so
10 until the point that the 9019 motion was filed. Then we
11 filed a motion to dismiss, and an objection to the 9019.

12 And then our expert report was done, and that's when
13 Mr. Atkinson says of the documents I reviewed, I don't have
14 enough to make a decision. So at this point, maybe we do
15 come back to the Court and say we don't enough. But we're
16 here for a hearing on whether the 9019 is approved, or a
17 motion to dismiss is granted.

18 Q Well, no, the basis of your objection is you're unable
19 to value several things that you say are important, right?

20 A Correct.

21 Q Okay. And you wait till the day of the hearing to tell
22 the Judge you didn't get what you needed? I'm asking you
23 why did you wait until today to tell everyone we need more
24 information?

25 A I don't think anybody's waited until today to tell

1 anybody about that. I think --

2 Q Okay. Tell me when you came here and told the Judge
3 you needed this information?

4 A I think that this hearing had been set, and had been
5 set -- the start of this hearing had been set prior to the
6 date that Mr. Atkinson's report was due, or was finalized.
7 So forgive me for not predicting with three months and
8 600,000 pages of documents, the answers to all the questions
9 and being able to approach Judge Lopez, and then go through
10 motion practice in time for this hearing.

11 Q How do the pro se incarcerated litigants get paid if
12 this case is dismissed?

13 A The pro se incarcerated litigants can continue their
14 cases.

15 Q I know they can. How do they get paid?

16 A They would get paid from the Debtor. They'd get paid
17 from any other sources of revenue that they have in the
18 recovery.

19 Q And based upon your experience, what are the odds of
20 that?

21 A Based on my experience and also the chart itself,
22 they're low.

23 Q Very low, right?

24 A Right.

25 Q And what are the chances of them getting their

1 percentage payout in this bankruptcy case if they filed a
2 claim, or maybe the committee might do something to file
3 claims for them, what are the odds that they get their
4 percentage share payment if the bankruptcy case remains and
5 there's a plan confirmed?

6 MR. MOXLEY: Objection, Your Honor, calls for
7 legal conclusion.

8 MR. PATTERSON: Judge, he's the one that testified
9 --

10 THE COURT: Yeah.

11 MR. PATTERSON: -- they're better off with a
12 dismissal.

13 THE COURT: He did. I'll allow it. I don't know
14 if he can answer from a bankruptcy perspective but I think -
15 - I get the point, Mr. Patterson.

16 MR. PATTERSON: All right.

17 BY MR. PATTERSON:

18 Q Let's go -- I want to talk to you a minute, and I know
19 we're running late, and I'm almost done. I want to talk to
20 you a little bit about these claims that you say have not
21 been considered by the committee or the people that are
22 supporting these 9019. And I think you referred to them
23 generically as successor liability and alter ego claims,
24 right?

25 A Okay.

1 Q Am I correct, is that yes or no, not okay?

2 A Yes.

3 Q Yes, you agree with me? Those are the claims you say
4 have been ignored by the committee and the Debtor, right?

5 A Right. And the loss of business opportunity as well.

6 Q Lost opportunity?

7 A Yeah.

8 Q That was the breach of fiduciary duty, right?

9 A If you want to call it that, yeah.

10 Q No, I want to call it how you describe it. Is that a
11 breach of fiduciary duty that you talked about?

12 A They could be a breach of fiduciary duty. I think
13 that's what the other counsel was saying.

14 Q I know it could be. Is that what you were talking
15 about though when --

16 A No, I called it the misappropriation of business
17 opportunity. That's what I called it.

18 Q All right.

19 A And you'd be corrected.

20 Q Walk me through this now. You represent Mr. Alvarez,
21 that's correct?

22 A Correct.

23 Q Let's say that Mr. Alvarez, I don't know anything about
24 his claim. But his personal injury claim is determined by a
25 jury to be \$100, right?

1 A Okay.

2 Q \$100. What does his right to the successor liability,
3 how much does that increase his claim?

4 A For successor liability, it doesn't.

5 Q It's zero, right?

6 A Right.

7 Q How much does his alter ego claim increase his \$100
8 claim?

9 A It doesn't increase his \$100 claim.

10 Q It's zero also, right?

11 A Right.

12 Q And how much does the misappropriation of business
13 opportunity increase his \$100 claim?

14 A It doesn't.

15 Q It doesn't. And why is that? Explain to the Court why
16 it doesn't affect his claim at all?

17 A Because in your example, \$100 is a jury award, or court
18 award of some sort, or something.

19 Q For his personal injury?

20 A That's correct.

21 Q His first personal injury?

22 A Understood.

23 Q All right.

24 A However he stands to recover better if Tehum, which is
25 the tortfeasor in this case, or Corizon, if they're bankrupt

1 or an entity that doesn't have any resources, he can make a
2 recovery from those other sources.

3 Q These are methods of collection, right? They're not
4 damage claims?

5 A Not necessarily.

6 Q No, not necessarily. They're not, are they? They are
7 not damage claims?

8 A No, the last two are not. The last two, the alter ego
9 and successor liability, they're not necessarily damage
10 claims. Those are methods of recovery.

11 Q Right.

12 A The lost business opportunity though, and the billion
13 dollar contract that walked out the door because the
14 officers and directors of Corizon make it so that you can't
15 evaluate this plan fairly. The 9019 plan is an incomplete,
16 half-baked plan because those things aren't in the --

17 Q Let's wait on my question, all right. And my question
18 is who has that misappropriation claim? Does Mr. Alvarez
19 have a misappropriation claim?

20 A No.

21 Q No, he doesn't. And do any of those tort claimants?

22 A No.

23 Q No.

24 A They're still causes of actions.

25 Q So when you're evaluating the 9019 --

1 A Right.

2 Q -- and you're comparing to recovery for the creditors,
3 why does it come into play? You tell me. If none of them
4 have that claim, it doesn't affect their recovery. Their
5 claim is the same, right?

6 A It potentially increases the amount of the 9019
7 settlement numbers. The amount in the shopping cart.

8 Q Okay. I don't like the shopping cart. My wife is way
9 smarter than that. All right. She doesn't need a shopping
10 cart. She understands this.

11 A Okay.

12 Q All right. So I don't want to hear about shopping
13 cart.

14 A I'm just using the analogy --

15 Q Tell me about the claims.

16 A -- that's been --

17 MR. PATTERSON: You're a lawyer.

18 MR. MOXLEY: Objection, Your Honor.

19 MR. PATTERSON: What's the objection?

20 MR. MOXLEY: So the witness can answer the
21 question in a way that --

22 THE COURT: Well, I'm --

23 MR. PATTERSON: That's not an evidentiary
24 objection.

25 THE COURT: Hold on.

1 MR. PATTERSON: That's I don't like the question.

2 MR. MOXLEY: Oh, that's the objection. He's
3 harassing the witness at this point.

4 THE COURT: Wait, hold on a second folks. I'm not
5 sure there actually was a question. Why don't you ask the
6 question, Mr. Patterson.

7 MR. PATTERSON: All right.

8 THE COURT: I know you don't -- I know we got into
9 like I don't like shopping carts. I'm not really sure that
10 was a question. So if we can get a question for the
11 witness.

12 BY MR. PATTERSON:

13 Q How does it affect Mr. Alvarez' recovery?

14 A If Mr. Alvarez -- if there's a settlement in this case,
15 it could potentially greatly increase his recovery in the
16 settlement.

17 Q Does it increase his claim? His claim's still \$100,
18 right?

19 A Well, we wouldn't get to the part of a claim, like a
20 jury award or court award if there's a settlement.

21 Q And if the case is dismissed, where are you going to
22 bring, you, his lawyer, this misappropriation claim? Where
23 are you going to bring it?

24 A Where am I bring a misappropriation claim?

25 Q Yeah.

1 A I don't know. I'll think of a theory and throw it in
2 District Court with --

3 Q You'll have to dream it up because you don't have
4 standing, isn't that correct?

5 A We'll have to see. I don't know. I haven't evaluated
6 --

7 Q What do you mean you'll have to see?

8 A -- that, but the fact of the matter is there would be
9 alternate forms of recovery in the terms of alter ego and
10 successor liability that could be done.

11 Q And you would agree with me --

12 A And have --

13 Q -- would you not that this alter ego is a collection
14 theory only, right?

15 A It's --

16 Q It's a responsibility allocation, right?

17 A That's a way to say it, yes.

18 Q Does it change the pool of claims, the 200 claims on
19 file, it doesn't change that at all, does it?

20 A No.

21 Q All right. It only accesses additional funds
22 potentially?

23 A Correct.

24 Q If you can find someone else that's liable?

25 A Right.

1 Q And that's what this 9019 does, right?

2 A I'm sorry. The 9019 does what?

3 Q Accesses additional funds based upon this potential
4 exposure for these third parties, right?

5 A Sure.

6 Q All right. But you can't come today and tell the Court
7 whether that's a sufficient number or an insufficient
8 number, right?

9 A Right.

10 Q Because you said you didn't get the information?

11 A Correct.

12 Q All right. So you can't -- you nor your expert's going
13 to be able to opine on that at all because today, you say, I
14 don't have enough information, right?

15 A I won't speak for Mr. Atkinson, but yes.

16 Q Well, did you read his report?

17 A I did.

18 Q What does he say about it?

19 A That's what he says about it.

20 Q He can't say because he doesn't have enough information
21 today, right?

22 A Right.

23 Q So you can't take a position whether it's a good number
24 or a bad number?

25 A I can say it's a incomplete number.

1 Q You say it, but it's not based on anything, right?

2 A Based on the fact that it's an incomplete study, yes.

3 Q Okay.

4 A I can say it's incomplete. That's what I can say.

5 Q You can say it's incomplete?

6 A I don't have enough information.

7 Q Right. Same with the successor liability, right?

8 A Right.

9 Q I won't go through the whole thing, but again --

10 A That's fine.

11 Q -- but again, you and your expert say oh, today we
12 can't tell you whether it's good or bad because we don't
13 have enough information, right?

14 A Okay. Right.

15 Q No, that's yes or no, not okay? Yes or no?

16 A Yes.

17 Q All right. And just like prior question, you didn't
18 come in here before today and say, Judge Lopez, we need your
19 help getting this information, right?

20 MR. MOXLEY: Objection, Your Honor. I can do it
21 on redirect but objection to that question.

22 THE COURT: Overruled.

23 MR. PATTERSON: Right.

24 MR. GRIFFITHS: Can you ask the question again,
25 please?

1 BY MR. PATTERSON:

2 Q Sure. You didn't come to Judge Lopez before today, and
3 say, Judge, we need your help because we're not getting
4 information we need on the successor liability analysis?

5 A Correct.

6 Q All right. And just briefly, to finish this up, you
7 believe -- I think is what you testified to under oath, that
8 a dismissal is better off because of the black hole of
9 litigation that the bankruptcy's going to create, right? Is
10 that what you said?

11 A Well, I was using Mr. Bruckner's statement from, or his
12 description of how if the case was dismissed, if the
13 bankruptcy is dismissed, the claims go back into a black
14 hole, and I don't think that that's true. It's not.

15 Q How many pending State Court cases were there
16 prepetition --

17 A I don't know.

18 Q -- tort points? You have no idea?

19 A I don't know.

20 Q You do any investigation?

21 A Did I, no.

22 Q Yeah. So how do you know that it's better in the State
23 Court system or the federal court system outside of
24 bankruptcy? Would it make a difference to you if I told you
25 there were 10,000 tort cases pending on the petition date in

1 3,000 different jurisdictions? Does that change your
2 analysis --

3 A No.

4 Q -- to say we have the opportunity to bring them all in
5 one location and resolve the issues here?

6 A Here, sure. It might, if there were numbers that you
7 could say each claimant gets this but I haven't heard that
8 there's any kind of number given to them. So I think that -
9 -

10 Q Right.

11 A And I do believe that the inmates, the TCC members, I
12 know the TCC members want to resume their own independent
13 litigation.

14 Q Right.

15 A Whatever comes from it.

16 Q Of course, because they're sitting at this table,
17 right? They're all lawyers?

18 A The TCC --

19 Q All the lawyers say we want to go back to court and
20 continue litigating, right?

21 A Sure.

22 Q But over half of your constituency don't have lawyers
23 and they're in prison?

24 A Okay.

25 Q What do you mean okay?

1 A Okay.

2 Q So you're going to listen to the middle-aged white guys
3 instead of the guys in prison that have these claims?

4 A I would let them litigate the claims that they have.

5 Q And you know for a fact that they're less successful
6 and they're probably going to get zero, but you're okay as
7 speaking on behalf of the committee saying, yeah, let them
8 go take care of themselves? We're lawyers, we're going to
9 be okay, right?

10 A I'm okay with it but I think that's the better result,
11 yeah.

12 MR. PATTERSON: Okay. Great. No further
13 questions, Judge.

14 THE COURT: Okay. Redirect?

15 MR. MOXLEY: I have some redirect, Your Honor.

16 THE COURT: Okay.

17 MR. MOXLEY: If I may?

18 REDIRECT EXAMINATION

19 BY MR. MOXLEY:

20 Q Mr. Griffiths, are you aware that in the weeks leading
21 up to this hearing, there were a number of discovery
22 conferences in Judge Lopez' courtroom?

23 A I'm not aware of that.

24 MR. PATTERSON: Objection, Your Honor, leading the
25 witness.

1 THE COURT: Sustained.

2 BY MR. MOXLEY:

3 Q Now you were asked some questions by counsel just now
4 with respect to why didn't the TCC come to the Court with
5 respect to discovery issues prior. Do you recall that
6 testimony?

7 A Sure.

8 Q Are you aware one way or the other whether or not the
9 TCC did that?

10 A I don't know.

11 Q Are you aware one way or the other whether or not the
12 TCC filed a motion to compel, a combined motion to compel
13 and motion in limine?

14 MR. PATTERSON: Objection, leading the witness.

15 MR. MOXLEY: I'm asking if he's aware --

16 THE COURT: Overruled. If he's aware, he asked if
17 he's aware.

18 MR. GRIFFITHS: I do remember the motion in
19 limine, yes.

20 MR. MOXLEY: Would you recall that motion in
21 limine being a combined motion in limine and motion to
22 compel?

23 MR. PATTERSON: Objection, Your Honor.

24 THE COURT: That I'll sustain.

25 MR. GRIFFITHS: I do remember that it --

1 THE COURT: Hold on. That was sustained. You get
2 to ask another question though.

3 BY MR. MOXLEY:

4 Q You were asked some questions, Mr. Griffiths, about how
5 you reached conclusions with respect -- or without talking
6 to certain incarcerated people about the settlement. Do you
7 recall that?

8 A Yes.

9 Q Are your conclusions based on anything other than
10 conversations that you may have had with the claimants?

11 A No.

12 MR. MOXLEY: Are they based on -- have you taken
13 into account with respect to your views analysis that the
14 TCC has undertaken?

15 MR. PATTERSON: Objection, Your Honor, leading.

16 THE COURT: Sustained.

17 BY MR. MOXLEY:

18 Q Mr. Griffiths, you were asked some questions about how
19 you reached conclusions and what those conclusions were
20 based on. Do you recall those questions?

21 A Yes.

22 Q Okay. Please tell the Court what the basis for your
23 conclusions with respect to your views on the settlement
24 agreement are based on?

25 A My conclusions regarding the settlement?

1 Q Yes, sir.

2 A Is that this particular set of victims, the people in
3 the Tort Claimant Committee, right, the tort claimants, they
4 need to have remedy in the courts. And what happens with
5 the settlement in this case is it settles claims, kind of
6 blankets and -- there's no plan yet that's determined for
7 distributing what little funds there will be.

8 So my belief is that the best plan and the TCC's belief
9 is the best plan is to dismiss this, and then litigate their
10 cases so they can get their day in court.

11 Q Do you know, Mr. Griffiths, whether the TCC filed a
12 motion to compel?

13 A I believe that they did.

14 Q Did you know whether the TCC served a subpoena on
15 YesCare?

16 MR. PATTERSON: Objection, Your Honor, leading the
17 witness.

18 THE COURT: I'll overrule that on this question.

19 MR. GRIFFITHS: I'm sorry. What was your --

20 BY MR. MOXLEY:

21 Q The question was, Mr. Griffiths, do you know whether
22 the TCC served a subpoena on YesCare?

23 A I don't know. I'm sorry, I don't know.

24 MR. MOXLEY: Do you know if YesCare produced any
25 documents in response to any subpoenas?

1 MS. ENGLAND: Objection --

2 THE COURT: I just sustained.

3 BY MR. MOXLEY:

4 Q Do you know whether the TCC sought additional time to
5 conduct discovery?

6 A I believe that the TCC did request more time.

7 Q You recall Mr. Hemenway asking you some questions about
8 what would happen if this case is dismissed, and
9 specifically asked you whether pro se claimants would be in
10 a position where they would have to assert successor
11 liability claims on their own?

12 A Yes.

13 Q You recall those questions, yes?

14 A Yes.

15 Q Are you aware of any amicus filings in this case?

16 A I am aware of at least one.

17 MR. PATTERSON: Objection, Your Honor, leading the
18 witness.

19 MR. MOXLEY: I'm asking if the witness is aware of
20 the filing in the case?

21 MR. PATTERSON: He's providing him information --

22 THE COURT: Yeah.

23 MR. PATTERSON: -- and encouraging him to say yes.

24 MR. MOXLEY: Your Honor, a leading question

25 asks -- it implies the answer. I'm not --

1 THE COURT: I know what a leading question is.

2 MR. MOXLEY: I know you do.

3 (Crosstalk.)

4 MR. PATTERSON: -- aware of your question. I mean
5 maybe he didn't tell. But you're asking if he's aware of --

6 THE COURT: That's exactly, but that's the point
7 is that he wasn't aware, and now you're then now asking
8 questions about whether he's aware of something after he
9 said he wasn't aware. So I'll sustain the objection.

10 MR. MOXLEY: Well, I don't -- thank you, Judge.

11 BY MR. MOXLEY:

12 Q Let me ask you this, Mr. Griffiths. Do you think that
13 the premise of Mr. Hemenway's question is accurate, that pro
14 se claimants would be left on their own if this case was
15 dismissed?

16 A That's not fully true.

17 Q Okay. What do you mean by that?

18 A Well, there's been a lot of attention that's been drawn
19 to this case from this, and I think that there's attorneys
20 that would respond to and answer phone calls from pro se
21 litigants.

22 MR. PATTERSON: Objection, Your Honor, that's pure
23 speculation and hearsay based on --

24 THE COURT: It's speculation for sure. I'll
25 sustain. I'll strike. In other words, the witness

1 testified earlier that he thought they'd be worse off, and
2 now he can't turn around and say, but they might be able to
3 get some lawyers because of something. It's just, it's
4 inconsistent with his answer so --

5 MR. MOXLEY: I think -- respectfully, Your Honor,
6 if I may just be heard briefly on that?

7 THE COURT: Not really.

8 MR. MOXLEY: Okay. Thank you, Judge.

9 THE COURT: No, I mean you can, but in other
10 words, what we're going to do is then Recross and then I'm
11 going to let Mr. Patterson come up and start asking whether
12 he thought about that when he gave the answer that they were
13 going to be worse off and he was fine continuing with his
14 clients litigation, right. It's just -- you can open the
15 door if you want. I'll --

16 MR. MOXLEY: I understand, Your Honor. I'll
17 withdraw the question.

18 THE COURT: That's where I'm going.

19 MR. MOXLEY: You already ruled on it the question
20 so there's no question. I understand, Judge.

21 BY MR. MOXLEY:

22 Q Mr. Griffiths, you testified earlier in response to
23 questions from counsel that you reviewed Mr. Atkinson's
24 report, correct?

25 A That's correct.

1 Q Okay. Does that inform your views with respect to the
2 settlement agreement?

3 A It does.

4 Q In what way?

5 A In the way that I feel that the settlement agreement is
6 incomplete. It can't be fully known. It's inadequate in
7 the sense that it's leaving out claims.

8 MR. MOXLEY: Your Honor, may I have just one
9 moment?

10 THE COURT: Of course.

11 MR. MOXLEY: Thank you, Judge. Your Honor, I have
12 no further questions. Thank you.

13 THE COURT: Any further?

14 MS. ENGLAND: Nothing further.

15 THE COURT: All right. Well?

16 RECROSS-EXAMINATION

17 MR. PATTERSON: Quick because I know everyone
18 wants to leave.

19 BY MR. PATTERSON:

20 Q You talked about claims, Mr. Griffiths, and I won't
21 recount your testimony but let me ask you on question. Have
22 you looked at the claims register?

23 MR. MOXLEY: Your Honor, this is outside the
24 context of --

25 MR. PATTERSON: It's not. The very last question

1 that he asked him --

2 THE COURT: Overruled.

3 MR. PATTERSON: Thank you, Your Honor.

4 BY MR. PATTERSON:

5 Q Have you looked at the claims register?

6 A Not lately, no.

7 Q No. I didn't say lately. I said have you looked at
8 the claims register?

9 A Yes.

10 Q When?

11 A A long time ago.

12 Q How long ago?

13 A I don't recall.

14 Q Prior to the bar date?

15 A No, it was after that.

16 Q Okay. And at what meeting did the TCC as a committee
17 sit down and go through the claims that are on the claims
18 docket?

19 A We haven't discussed that at a meeting.

20 Q You haven't analyzed the claims?

21 A Not on a TCC meeting.

22 Q Has the TCC asked someone to analyze the claims?

23 A Mr. Atkinson.

24 Q I thought you said he wasn't able to do it because he
25 didn't have enough information?

1 A I don't know about the claims register part.

2 Q No? You said claims, he couldn't come up with a number
3 for the claims because he didn't have enough information?

4 That's what you said, isn't it?

5 A I think it referenced getting medical -- having a
6 medical review of that, yes.

7 Q No? That's not what you said. You said he couldn't
8 come up with a number, a claim number because he didn't --
9 because the Debtor didn't give him enough information.

10 Isn't that what you said?

11 A I guess at this point I don't recall what I said.

12 Thank you.

13 Q Okay. Well, let's start fresh then. Did Mr. Atkinson
14 give you a number of claims against the Debtor, a dollar
15 amount?

16 A I don't recall.

17 Q Did you review the report?

18 A I did.

19 Q Okay. And so now your testimony, when you say he
20 wasn't able to come up with a number of claims, tort claims,
21 is that testimony no good now because you're here under
22 oath, Mr. Griffiths?

23 A I'm aware.

24 Q Well, it doesn't seem like you're remembering, and so
25 what is it? Did someone give you that number?

1 A What number are you talking about?

2 Q The only number we've talked about on my Recross with
3 you which is the total number of tort claims against the
4 Debtor? That's the only number we've talked about.

5 A Well, you mentioned 3,000 claims over 1,000
6 jurisdictions, or 10,000 claims over 3,00 jurisdictions.

7 Q Okay. That's your recollection?

8 A Well, you --

9 Q Really, Mr. Griffiths?

10 A -- mentioned a bunch of numbers. I don't know what
11 you're talking about so my answer is I don't know.

12 Q That's your memory is that I represented to you there
13 were 3,000 claims filed in this case?

14 A It was a hypothetical, I think, that you did.

15 Q That's right. So why bring it up now? Why? My
16 question to you is did anyone give the committee an estimate
17 of the dollar amount of tort claims against the Debtor?

18 A No.

19 Q And why was that?

20 A Because I don't think that there's enough information
21 for them to know.

22 Q That's right. That's what you said earlier, right?
23 Now my question is why didn't you just give them the claims
24 register?

25 A Give who, Mr. Atkinson? He has --

1 Q Whoever it is you paid money from the estate to come up
2 with this report?

3 A He has access to those things. I'm not the one that
4 provides that.

5 Q Okay. And you read it and he says I don't have
6 information to estimate the dollar amount of claims and the
7 Debtor. Did you not pick up the phone and go, dude, we have
8 a claims register here? It's free. You have a calculator.
9 You just put a plus sign between each of those claims that
10 have been filed. Did you tell him that?

11 A No.

12 Q Did the committee do it on their own?

13 A The committee, the TCC members?

14 Q Yes.

15 A No. I'm sure they didn't.

16 Q Did you tell this big group of lawyers here to get one
17 of the paralegals to get a calculator and add them up, for
18 \$3 million, they didn't add up the claims on the register,
19 Mr. Griffiths?

20 A (No verbal response.)

21 Q You're raising your hands like you're baffled? I'm
22 sorry if I'm confusing you. Did you ask your lawyer, your
23 team of lawyers to do that?

24 A The TCC has asked the lawyers, the team of lawyers and
25 Mr. Atkinson to complete an investigation.

1 Q And all that money, no one thought to look at the
2 claims register?

3 A I don't know.

4 MR. PATTERSON: No further questions, Judge.

5 THE COURT: Any further questions?

6 MR. MOXLEY: Your Honor, may I have just one
7 moment?

8 THE COURT: Of course.

9 MR. MOXLEY: Your Honor, just briefly.

10 MR. MOXLEY: Mr. Griffiths, does the Disclosure
11 Statement contain a number that represents the base amount
12 of the proofs of claim that have been filed in this case?

13 MR. PATTERSON: Objection, Your Honor, leading the
14 witness.

15 MR. MOXLEY: Your Honor, counsel is --

16 THE COURT: Overruled.

17 MR. MOXLEY: -- aware of what's -- thank you,
18 Judge.

19 THE COURT: He can answer the question.

20 MR. GRIFFITHS: I don't recall. I believe it
21 does, but I don't recall specifically where in the
22 Disclosure Statement.

23 MR. MOXLEY: Thank you, Mr. Griffiths. I have no
24 further questions, Your Honor.

25 THE COURT: All right, folks. I believe -- any

1 other questions before I let this witness off?

2 (No audible response.)

3 THE COURT: All right, folks, thank you very much
4 for your time. We'll start at 9:30 on Wednesday. Thank
5 you.

6 Everyone is excused. Thank you.

7 (Proceeding adjourned at 8:26 p.m.)

8 * * * * *

9 I certify that the foregoing is a correct
10 transcript to the best of my ability produced from the
11 electronic sound recording of the Zoom/telephonic
12 proceedings in the above-entitled matter.

13 /S./ MARY D. HENRY

14 CERTIFIED BY THE AMERICAN ASSOCIATION OF

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18 DATE FILED: MARCH 28, 2024

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Exhibit B-4

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

IN RE: § CASE NO. 23-90086-11
TEHUM CARE SERVICES, § HOUSTON, TEXAS
INC., § WEDNESDAY,
DEBTOR. § MARCH 27, 2024
§ 9:35 A.M. TO 9:16 P.M.

CONTINUATION OF TRIAL

BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE
ELEC. RECORDING OFFICER: ZILDE COMPEAN
CASE MANAGER: ROSARIO SALDANA

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INDEX

| <u>Witness:</u> | <u>Direct</u> | <u>Cross</u> | <u>Redirect</u> | <u>Recross</u> |
|------------------|---------------|--------------|-----------------|----------------|
| DAVID BARTON | | | | |
| By Mr. Zluticky | . | . | 124 | . |
| By Mr. Moxley | 11 | . | . | 125 |
| MICHAEL ATKINSON | | | | |
| By Mr. Goodman | 129 | . | 357 | . |
| By Mr. Kaufman | . | 230 | . | . |
| By Mr. Hemenway | . | 313 | . | 359 |
| By Mr. Patterson | . | 323 | . | . |
| MATTHEW DUNDON | | | | |
| By Mr. Zluticky | 362 | . | . | . |
| By Mr. Moxley | . | 424 | . | . |

EXHIBITS: Marked Offered Received

(None offered.)

| <u>CLOSING:</u> | |
|-----------------|-----|
| By Mr. Brookner | 448 |
| By Mr. Zluticky | 462 |
| By Mr. Hamm | 488 |
| By Ms. Jones | 489 |
| By Mr. Nguyen | 490 |
| By Mr. Goodman | 504 |

1 **HOUSTON, TEXAS; WEDNESDAY, MARCH 27, 2024; 9:35 A.M.**

2 THE COURT: Good morning, everyone. Today is
3 March 27th. This is Judge Lopez. If you just give me about
4 a minute, we will get started.

5 I'm going to ask the parties -- this is a
6 continuation in the Tehum case. I'm going to ask parties to
7 just make electronic appearances, save a little time. And
8 we'll just be able to continue. If you just give me one
9 moment and we will get started.

10 (Pause in the proceeding.)

11 THE COURT: Okay. Good morning.

12 MR. MOXLEY: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. MOXLEY: Your Honor, would you like
15 appearances first? I just want to check on that.

16 THE COURT: No, no, no. I --

17 MR. MOXLEY: Okay. Very good.

18 THE COURT: Just state your name for the Record
19 when we start and we'll be good.

20 MR. MOXLEY: Of course, Your Honor. Cameron
21 Moxley of Brown Rudnick for the TCC, Judge.

22 Your Honor, I thought we may just begin very
23 briefly. There -- I don't believe there are any
24 housekeeping matters. I don't think there's a new proposed
25 order this morning.

1 THE COURT: Okay.

2 MR. MOXLEY: So, we -- we thought we would just
3 give a line up with the sort of witness today.

4 THE COURT: Okay.

5 MR. MOXLEY: So I think we're -- we're continuing
6 with the cross-examination of Mr. Barton, which is continued
7 from March 1st.

8 I think on -- on the continued cross is
9 approximately 90 minutes, or so. It depends a little bit on
10 how that goes.

11 THE COURT: Okay.

12 MR. MOXLEY: There's -- I imagine there will be
13 some redirect.

14 Then we would move to the TCC's expert witness,
15 Mr. Atkinson.

16 THE COURT: Okay.

17 MR. MOXLEY: I think we have probably
18 approximately one hour on direct for that. I'm not sure how
19 much cross will be for that. And then we would move to
20 Mr. Dundon.

21 I think our -- our, you know, I don't know how
22 much there would be for direct on Mr. Dundon. But just for
23 the TCC, I think we're expecting a pretty short cross-
24 examination for him, maybe 30 minutes or so.

25 THE COURT: Okay.

1 MR. MOXLEY: So that -- I think there -- from our
2 perspective, at least, we don't really have any doubt that
3 we'll get through the witnesses today and -- and through
4 closings.

5 THE COURT: Okay.

6 MR. MOXLEY: So that's -- that's our perspective,
7 Judge.

8 THE COURT: Okay.

9 (Pause in the proceeding.)

10 THE COURT: Let me hear from the Debtor's side.
11 You all -- sounds like this is where we're going --

12 MR. BROOKNER: I think we actually --

13 THE COURT: -- finish with the Barton cross.

14 MR. BROOKNER: -- are in agreement for a change
15 here, Your Honor.

16 THE COURT: Atkinson.

17 MR. MOXLEY: That sounds fine to us, Your Honor.

18 MR. BROOKNER: -- and then cross.

19 THE COURT: And I've given everyone how much time
20 I'm giving everyone for closing? Did I already tell
21 everyone?

22 MR. BROOKNER: We actually -- we -- we thought it
23 was 20 minutes. So --

24 THE COURT: Yeah.

25 MR. BROOKNER: -- we -- we -- we have no more than

1 25 minutes of argument.

2 THE COURT: Yeah. I -- I'd say --

3 MR. BROOKNER: Of closing, I mean. Sorry.

4 MR. MOXLEY: Same, same on our, Judge.

5 THE COURT: Okay. Good. I -- was going to shut
6 you all down at 30 minutes per side. And so --

7 MR. BROOKNER: If you give us 30 each we'll be
8 good to go.

9 THE COURT: Yeah. Okay. And that includes any
10 joinders, I think, 30 minutes each side so that you all have
11 to figure all that out.

12 MR. BROOKNER: The Debtor and the Committee split
13 the 30 or we have 30 each?

14 THE COURT: No, you will not have 30 each.
15 Thirty -- thirty minutes per side.

16 MR. BROOKNER: Okay. Got it.

17 THE COURT: That's what I mean.

18 MR. BROOKNER: Got it. Okay.

19 MR. ZLUTICKY: Thank you, Judge.

20 THE COURT: All right.

21 MR. ZLUTICKY: Then with that, I think, we can
22 get -- the only other, I guess, housekeeping point, Your
23 Honor, is --

24 THE COURT: Cause then I got to give them an hour.
25 And I'm not giving them an hour.

1 MR. BROOKNER: Point taken.

2 THE COURT: No. No. That's -- that's on me.

3 (Laughter.)

4 MR. ZLUTICKY: And then, Your Honor, just to make
5 sure in order of witnesses. We're starting with Mr. Barton.

6 MR. MOXLEY: Yes.

7 THE COURT: Barton, Atkinson, Dundon.

8 MR. ZLUTICKY: And Atkinson, Dundon?

9 MR. MR. MOXLEY: Yes.

10 MR. ZLUTICKY: Okay. That's fine.

11 MR. MOXLEY: Yes. Okay.

12 And Judge, on that, you know, yesterday I know
13 that the Court was -- mentioned the point about the order of
14 witnesses and are we going out of order, and when -- when do
15 cases close.

16 Mr. -- I think what we -- we would want to make
17 sure we do, at whatever time the Court wants to hear it, is
18 just make sure we move into evidence, the designated
19 testimony of YesCare's witness, who is
20 outside -- Mr. Sprouse, who -- who we put in the -- in the
21 initial filing, Judge, before the trial. We had designated
22 that testimony.

23 THE COURT: Why don't we do it right before
24 closing?

25 MR. MOXLEY: Very good, Judge. We'll do that.

1 THE COURT: Okay.

2 MR. MOXLEY: Thank you, Judge.

3 THE COURT: That'll be perfect.

4 MR. MOXLEY: Okay.

5 MR. BROOKNER: I don't --

6 THE COURT: Or we're --

7 MR. BROOKNER: May I address counsel directly,
8 Your Honor?

9 THE COURT: Yeah. Of course.

10 MR. BROOKNER: I don't think we've ever seen
11 proposed designations --

12 MR. MOXLEY: They were -- they were --

13 MR. BROOKNER: -- even if -- that's problem.

14 MR. MOXLEY: They were filed.

15 MR. BROOKNER: They were?

16 MR. MOXLEY: Yes, they were filed.

17 We -- we can take it up. We don't want to
18 waste --

19 MR. BROOKNER: All right. Fine.

20 MR. MOXLEY: Yes. I'm happy to work with you, but
21 we -- they were filed. Yes. Okay.

22 THE COURT: Okay.

23 MR. BROOKNER: Okay.

24 MR. MOXLEY: Very good.

25 THE COURT: At -- at least we'll -- we'll take up

1 depo designations at the end of -- once all the witnesses
2 are done and -- and everybody's rights are preserved. Why
3 don't we just say that?

4 MR. MOXLEY: That's fine, Judge.

5 THE COURT: Okay.

6 MR. MOXLEY: We just wanted to make sure there
7 wasn't a situation where we accidentally closed and then
8 Court didn't get that. Okay. Very good.

9 THE COURT: You got it.

10 MR. MOXLEY: So with that, Judge, I think we'll
11 just continue with Mr. Barton.

12 THE COURT: Okay. Mr. Barton, come on up.

13 (Pause in the proceeding.)

14 THE COURT: Are those Barton binders by the way?

15 MR. MOXLEY: Yes, Your Honor.

16 While -- while Mr. Barton is taking a seat, let me
17 just say for the Record, I believe the Court at the bench
18 and the witness have two binders; one is again the
19 transcripts, they're the hearing transcripts, as well as his
20 deposition transcript. And the other are documents we may
21 reference in the course of examination.

22 THE COURT: Okay.

23 MR. MOXLEY: And those will also come up on the
24 screen as well, Judge.

25 THE COURT: All righty.

1 MR. MOXLEY: They've been passed out around the
2 courtroom as well.

3 THE COURT: Mr. Barton, I -- I know that you were
4 sworn in originally. But let me just double swear you in
5 just to make sure you -- you're -- make sure that we have a
6 clean Record on that.

7 Will you please raise your right hand?

8 (Witness sworn.)

9 THE COURT: Okay. Counsel, you may proceed.

10 MR. MOXLEY: Thank you, Judge.

11 CROSS-EXAMINATION (RESUMED)

12 BY MR. MOXLEY:

13 Q Good morning, Mr. Barton.

14 A Good morning. Nice to see you.

15 Q Nice to see you as well. We've had a chance to meet a
16 couple of times now, it's good to see you again. Cameron
17 Moxley, of course for the Record, Mr. Barton for the TCC.

18 Mr. Barton, we're, of course, picking up on your cross-
19 examination continued from March 1st. You're aware of that.

20 A Yes.

21 Q Okay. Mr. Barton, since Court adjourned on March 1st,
22 have you discussed or communicated electronically with
23 anyone about the topics on which you testified?

24 A I've communicated with individuals about the case.

25 I've not met with anyone to prepare for further testimony.

1 Q Okay. When you say "about the case," were they -- were
2 those communications with anyone about the topics of your
3 testimony?

4 A Well, we've had a meeting of the Creditors' Committee.
5 And I think we -- we may have talked about issues that arose
6 in my testimony.

7 Q Okay. Did you talk about your testimony?

8 A No.

9 Q Okay. Are there issues that -- did any of those
10 discussions impact in any way what you -- what you had
11 testified about or cause you to rethink or which to change
12 any of your testimony?

13 A No.

14 Q Okay. So you mentioned the one meeting. Was it -- was
15 it one meeting, sir, with the -- with the UCC?

16 A I believe we've had just one meeting. We would
17 ordinarily have met Monday, but we postponed, given
18 the -- the -- the proceedings.

19 Q Okay. Outside of that one meeting with the UCC, did
20 you have any other communications with anyone about the
21 topics of your testimony?

22 A No, not about the topics of my testimony.

23 Q Did you have any other meetings with anyone or
24 communications with anyone about the case?

25 A Yes.

1 Q Okay. Who was that?

2 A The members of the Committee, counsel for the
3 Committee, and you know, some people, you know, gave me, you
4 know, after my testimony last time, and they said good job,
5 stuff like that.

6 Q Okay. Nothing about substance.

7 A Correct.

8 Q Okay. What about the Stoel Rives firm? Did you speak
9 with them about your testimony?

10 A I spoke with Brian Glover after my testimony. I wanted
11 guidance --

12 Q Well --

13 A -- attorney/client privilege conversation.

14 We did not talk about the substance of my testimony.

15 Q Well let me just make sure I'm clear.

16 Did you want guidance with respect to the testimony you
17 were going to give in this case?

18 A The Judge had, at the end of my testimony last time,
19 made it clear that I was not to talk about the -- the
20 substance of my testimony. And I wanted guidance on what
21 that meant, and how I would -- how best to comply with that.

22 Q I see. Okay. And that -- that was the topic that you
23 discussed with Mr. Glover.

24 A Yes.

25 Q Okay. Did you communicate with anyone else about your

1 testimony in this case since March 1st?

2 A Anyone else?

3 Q Other than the Committee, those who attended that
4 meeting, and Mr. Glover.

5 A I -- and was the question about the case?

6 Q Yes, sir.

7 A Yeah. I did. I spoke with my wife and -- and she
8 offered support and -- and there were conversations like
9 that.

10 Q Okay. Is it fair to say, Mr. Barton, that you had no
11 communications with anyone about the substance of your
12 testimony that you will -- that you have given or that you
13 will give today?

14 A That is fair to say.

15 Q Okay. Mr. Barton, the Rule 9019 motion that is the
16 subject of this hearing, it's a joint motion by the Debtor
17 and the UCC, right?

18 A That's correct.

19 Q And at the time it was filed, it attached a form of
20 settlement agreement on which the Debtor and UCC had agreed,
21 right?

22 A Correct.

23 Q And the UCC had approved that form of settlement
24 agreement that was attached to the Rule 9019 motion,
25 correct?

1 A Yes.

2 Q How mechanically did that approval get effectuated?

3 Was there a vote?

4 A Yes.

5 Q What was the outcome of the vote?

6 A Are you asking me the numbers?

7 Q I'm -- just the result was to move forward with the
8 motion?

9 A Yes.

10 Q Okay. Was it a unanimous vote?

11 A Yes.

12 Q Mr. Barton, you testified on direct examination that
13 the most important reason from the Committee's perspective
14 whether UCC supports the settlement is because it gets money
15 into the hands of creditors now, right?

16 A Right.

17 Q And by now, quote unquote "now," your word, you meant
18 the settlement payment would be made quote "upon
19 confirmation of a plan that's not yet before the Court,"
20 right?

21 A I meant upon confirmation of the plan.

22 Q Okay. What is your understanding as you sit here today
23 as to what the deal is with respect to when the settlement
24 payment must be made?

25 A The settlement payment, you mean the 40 million?

1 Q Yes, sir.

2 A Upon plan confirmation.

3 Q Okay. Are you not aware that the timing of that
4 settlement payment has now changed?

5 A I'm not sure I understand the question.

6 Q Okay. Are you aware that as of a new filing on March
7 5th, four days after you began your testimony, there is a
8 new form of order sought to be approved by the Rule 9019
9 motion?

10 A I'm aware there's a new form of order, yes.

11 Q Did anyone communicate with you about that new proposed
12 order?

13 A Yes.

14 Q Who?

15 A Mr. Zluticky.

16 Q Anyone else?

17 A I believe there was discussion among the Committee.

18 Q When did Mr. Zluticky first raise that issue with you
19 with respect to the new proposed form of order?

20 A I think it was shortly after my testimony, day or two.

21 Q Before March 5th? Before it was filed?

22 A Yes. I believe so.

23 Q Has it been explained to you that the timing of the
24 settlement payment under that new proposed form of order is
25 different than the timing of the settlement payment under

1 the previously proposed form of order that was filed with
2 the -- with the motion?

3 A Don't believe I've had a discussion on that very
4 specific topic.

5 Q Okay. Did the UCC meet to discuss the new proposed
6 form of order?

7 A We -- I don't believe we had a discussion
8 about -- about the proposed order.

9 Q When did you -- when -- when was that meeting?

10 A We met, oh I think it was the Monday after my
11 testimony.

12 Q Was it March 5th?

13 A It would have been -- I'm not sure. I'd have to look
14 at my calendar.

15 Q So the hearing began on March -- on Friday, March 1st.
16 That's when you testified, correct?

17 A Yes.

18 Q Okay. So I'll just represent to you that the Monday
19 after that was March 4th.

20 A Okay. I am not sure. I would have to look at my
21 calendar to tell you when -- when that Committee met.

22 Q The second day of this hearing was on Tuesday, March
23 5th. Did your meeting happen before the second day of this
24 hearing?

25 A I -- I would have to look at my calendar. I -- I don't

1 know. I would have to look at my calendar
2 to -- we've -- we've moved meetings a lot due to the -- the
3 proceedings. I -- I really would just have to --

4 Q Okay.

5 A -- look at my calendar.

6 Q Whenever that meeting was -- well, let me
7 strike -- strike that.

8 Would you agree with me that that meeting happened
9 either Monday, Tuesday, or Wednesday early that following
10 week after your testimony.

11 A I would have to look at my calendar.

12 MR. BROOKNER: Objection, Your Honor. He's asked
13 the same question five times. He's given the same answer --

14 MR. MOXLEY: I'd like to --

15 MR. BROOKNER: -- five time.

16 THE COURT: Overruled.

17 BY MR. MOXLEY:

18 Q Go ahead, sir.

19 A I would have to look at my calendar to see when those
20 meetings were -- happened. I could do that if you would
21 like.

22 Q But your -- just to be clear, your testimony is you're
23 not sure -- are you even sure whether the meeting happened
24 that week?

25 A It -- it may have been the following week.

1 Q Oh, okay.

2 A Yeah.

3 Q Did -- when the new proposed form of order was first
4 raised to you, had it already been filed?

5 A I don't believe so.

6 Q Okay. When the meeting was held among the UCC, had the
7 new -- had the new proposed form of order already been
8 filed?

9 A That's what I'm not sure about. I'd have to look at my
10 calendar.

11 Q You're just now sure.

12 A Yeah.

13 Q Okay. Okay. Thank you, sir.

14 Whenever this meeting was, were all the members of the
15 UCC present at it?

16 A I think there may have been one absence.

17 Q Okay. Were all the members -- we talked before about
18 the fact that the members are represented by their own
19 individual counsel as well, correct?

20 That's set forth in the UCC appointment order that the
21 counsel's identified for each, correct?

22 A Right. Okay.

23 Q My question is simply --

24 A Yes.

25 Q -- were all the -- were all the members' counsel

1 present for the meeting?

2 A No. I believe there was an absence.

3 Q Okay. Was the absence of counsel and a member, is that
4 the same member? Was -- was that member simply not
5 represented at that meeting? Or was it -- were all members
6 represented in some way, either because they personally
7 attended or by their counsel?

8 A I believe there was -- there was a member who was not
9 there personally or represented.

10 Q I see. Okay.

11 Was -- was that member one of the personal injury
12 claimants?

13 A I don't believe so.

14 Q Okay. Were you -- you were present at the meeting.

15 A Yes.

16 Q Okay. At that meeting, did anyone walk through the
17 changes in the new proposed form of order?

18 A There was discussion by email about changes that were
19 being made, pursuant to the Judge's questions about the
20 settlement agreement.

21 There is discussion by email about clarifying changes.
22 There was no dissent to making those clarifying changes.

23 I don't believe there was substantial discussion about
24 it at the meeting.

25 Q There wasn't substantial discussion about the new

1 proposed form of order at the meeting.

2 A I -- that, I -- I -- it was -- I think there was a
3 topic about it. I don't believe there was a controversy
4 about it, or extended discussion about it.

5 Q Okay. Okay. Among the -- among the -- strike that.

6 During the discussions about the new proposed form of
7 order, was the UCC advised that the date on which the
8 settlement payment would be -- would be made had changed?

9 MR. ZLUTICKY: Your Honor, I'm going to object to
10 the extent that this calls for information that was
11 communicated from an attorney. It's attorney/client
12 privilege. If -- if the witness can answer without invading
13 the privilege, I don't think I have a, necessarily, an
14 objection to the form of that question. But it is calling
15 for information about communication from counsel.

16 THE COURT: Let's find out. Can you answer the
17 question? Mr. Barton?

18 THE WITNESS: I -- I don't recall discussion of
19 the timing.

20 (Pause in the proceeding.)

21 BY MR. MOXLEY:

22 Q At -- at all?

23 A I don't recall discussion about timing.

24 Q You previously testified that you did not have any
25 discussions with counsel about the topics on which you

1 testified.

2 One of the topics on which you testified was when the
3 settlement payment would be made and why that was important
4 to you, right? Is it still the case that you had no
5 discussions -- I just want to make sure I'm clear. You had
6 no discussions with counsel with respect to when the
7 settlement payment would be made under the new proposed form
8 of order.

9 A I don't recall such discussions.

10 Q Did the UCC approve the new form of order before it was
11 filed?

12 A We did not take a vote on it.

13 Q Has the UCC approved it at any point?

14 A There -- it -- there was discussion by email, no
15 dissent. It -- it was not a controversial change.

16 Q But no vote was taken, right?

17 A No vote was taken, that's true.

18 Q A vote was taken of the prior -- with respect to the
19 prior order.

20 A Yeah.

21 Q Are you aware that -- well let me ask you this,
22 Mr. Perry.

23 Were you personally involved, I take it from your
24 answers --

25 A Barton.

1 Q I'm sorry, Mr. Barton.

2 A Right.

3 Q I was going to -- I was going to reference something
4 Mr. Perry said, so I -- forgive me, Mr. Barton. Let me
5 start my question again.

6 Mr. Barton, were you personally involved in any of the
7 negotiations surrounding the new proposed form of order?

8 A I was not personally involved in the negotiations, no.

9 Q Okay.

10 A I was kept apprised of what was going on and consulted.

11 Q In -- describe for me in what way you were kept
12 apprised and consulted.

13 A Through counsel.

14 Q In -- in real time as the negotiations were happening?

15 A There was at least one phone call. So I wouldn't say
16 in real time as they were happening.

17 Q Do you -- and, and again, not a memory test. But do you
18 know as you sit there when that phone call took place?

19 A No.

20 Q Are you aware that Mr. Perry -- you know who Mr. Perry
21 is, of course, yes?

22 A Yes.

23 Q Okay. Are you aware that Mr. Perry testified that the
24 new form of order was not finalized until he said literally
25 minutes before it was filed with the Court on March 5th?

1 You aware that he testified that way?

2 A I -- I did read Russell Perry's testimony. I probably
3 saw that and it wouldn't surprise me.

4 Q Okay.

5 (Pause in the proceeding.)

6 BY MR. MOXLEY:

7 Q So the UCC did not review the new proposed form of
8 order in the minutes between when it was finalized and when
9 it was filed, correct?

10 A Correct.

11 Q Okay. Do you know who was involved in negotiating the
12 new form of order?

13 A I know our -- the UCC's counsel was.

14 Q Okay. And -- and just -- in -- in terms of the human
15 beings who were involved for the -- for the UCC's counsel,
16 who was that?

17 A It would have been Nick Zluticky, would have been Zack
18 Hemmingway, although I don't know Zack's role in those
19 negotiations.

20 Q Do you know if anyone else retained by the UCC in this
21 case was involved with those discussions?

22 A I don't.

23 Q You don't. Your answer was yeah, I don't know.

24 A I don't know.

25 Q Okay. I just didn't hear you, sir. I wasn't being

1 difficult.

2 Did you review any -- did you personally, Mr. Barton,
3 review any drafts of the new proposed order before it was
4 filed?

5 A I did not review drafts. I was aware of the direction
6 that was being taken.

7 Q You say you were aware of the direction, but you
8 weren't aware that the timing of the settlement payment had
9 changed, correct?

10 A Correct.

11 Q Do you know who first raised the idea of changing the
12 form of proposed order?

13 A I don't.

14 Q Was it the UCC?

15 A Well, I recall during my testimony there were questions
16 about the order. And -- and I -- I believe during my
17 testimony there may have been discussions about clarifying.

18 Q Okay. My -- my --

19 A Yeah.

20 Q I appreciate that, sir.

21 A Yeah.

22 Q My question's just slightly different.

23 Do you know if it was the UCC who first suggested among
24 the parties who ended up changing the form of proposed
25 order, that it ought to be changed?

1 A The UCC did not formally initiate that request. But I
2 think flowing from, you know, the proceedings last time I
3 was here, I certainly supported clarifying the order, the
4 proposed order and the settlement agreement if it would
5 help.

6 (Pause in the proceeding.)

7 MR. MOXLEY: Your Honor, can I just have one
8 moment, please?

9 THE COURT: Uh-huh.

10 MR. MOXLEY: Judge, may I just have one moment?

11 THE COURT: Uh-huh.

12 (Pause in the proceeding.)

13 MR. MOXLEY: Thank you, Judge. Apologize for
14 that.

15 THE COURT: Uh-huh.

16 BY MR. MOXLEY:

17 Q Mr. Barton, was a draft of the new form of order, to
18 your knowledge, provided to the TCC before it was filed?

19 A To the TCC?

20 Q Yes, sir.

21 A I don't know.

22 Q So the settlement as it existed at the time the Rule
23 9019 motion was filed provided for the payment of the
24 settlement proceeds of the effective date of the plan,
25 correct?

1 A That's my understanding.

2 Q Okay. Let's look at Tab 3 of your binder. And
3 I'm -- there -- there's two binders. Oh, sorry, sir. It's
4 the white binders, the white set of binders there.

5 There's one binder on the cover that says Barton
6 transcripts binder. And there's another that just says
7 Barton binder. So I want you to look at the Barton binder.

8 A Barton binder.

9 Q Yes, sir.

10 A Tab 3?

11 Q Tab 3.

12 A Okay.

13 (Voices speaking off the Record.)

14 MR. MOXLEY: Your Honor, may Mr. Margaret
15 (phonetic) have presenter rights?

16 THE COURT: Yes.

17 (Pause in the proceeding.)

18 THE COURT: How do I find you there?

19 (Pause in the proceeding.)

20 THE COURT: You just --

21 (Pause in the proceeding.)

22 THE COURT: That way you can turn your camera on
23 and I can find you real fast.

24 (Court confers off the Record.)

25 BY MR. MOXLEY:

1 Q Now, Mr. Barton, these will be on your screen as well.
2 You're welcome to look in the binder. But it may be helpful
3 to see the screen as well.

4 Okay. So, sir, if you could just turn to Page 41 of 47
5 of the filing. And it's on your screen now as well.

6 A And this is the -- this is the original motion --

7 Q Yes, sir.

8 A -- that's -- that's correct.

9 You see at the top you can see that it was filed on
10 January 16th, 2024?

11 A Yes.

12 Q Okay. And if you look at Section, Paragraph 9(a) on
13 that page. You see conditions precedent, conditions
14 precedent? You see that?

15 A Yes.

16 Q Okay. And if you look there at -- at 9(a), it says,
17 "The effectiveness of this agreement is
18 conditioned upon the entry of an order
19 of the Court in form and substance
20 acceptable to the M2 parties approving
21 this agreement, pursuant to Rule 9019 of
22 the Federal Rules of Bankruptcy
23 Procedure and the entry of an order of
24 the Court confirming a Chapter 11 Plan
25 containing to the fullest extent

1 permitted by applicable law the
2 following provisions:"

3 And then there's romanettes (i) through (vi). Do you
4 see that?

5 A Yes.

6 Q Okay. And the revised form of order there changed the
7 trigger date for the settlement payment from confirmation to
8 a final non-appealable order.

9 You're not aware of that, are you?

10 A Can you show me?

11 Q I -- I can. But my question before you --

12 A Yeah.

13 Q -- do that is, are you aware of that?

14 A It's not something I focused on.

15 Q Okay. So let's look at Tab 19 of your binder.

16 Q And if you see Tab 19, let me know when you're there,
17 sir.

18 A Tab 19?

19 Q Yes, sir. Nineteen, one nine.

20 A Yes.

21 Q Are you at that document, sir?

22 A I am.

23 Q Okay. And if you look at that document, you'll see it
24 was filed -- you see at the top you can see the stamp from
25 the Court that says March 5th, 2024 at Docket 1432. And you

1 see it says, "Notice of Revised Proposed Order." Do you see
2 that?

3 A Yes.

4 Q Okay. And if you flip with me to Page 3.

5 A Uh-huh.

6 Q I'm sorry. Page 3 of the redline, which is Page 6 of
7 13 on the top.

8 (Pause in the proceeding.)

9 THE WITNESS: I'm not seeing that.

10 BY MR. MOXLEY:

11 Q So if you just turn a few pages in, if you look at the
12 top of the -- of the document, there's numbers that says
13 Page 1 of 2 of --

14 A Here we go.

15 Q Okay. I'm at Page 6 of 13. Are you there?

16 A Yes.

17 Q Okay. Can you see there, there's a new -- you
18 understand that there's the underlined and different colored
19 font there indicates a change, correct?

20 A (No audible response.)

21 Q Okay. So you see that it says Paragraph 9 of the
22 settlement agreement stricken and replaced in its entirety
23 with the following. If you just read with me, sir.

24 You see there's a new Paragraph 9, "Conditions
25 Precedent." And at A is says,

1 "The effectiveness of this agreement is
2 conditioned upon the entry of an order
3 of the Court in form and substance
4 acceptable to the M2 parties approving
5 this agreement, pursuant to Rule 9019 of
6 the Federal Rules of Bankruptcy
7 Procedure and the entry of a final order
8 of the Court that is not the subject of
9 an appeal, confirming a Chapter 11 Plan,
10 containing, to the fullest extent
11 permitted by applicable law, the
12 following provisions."

13 And there's romanettes (i) through (v) that follow. Do
14 you see that?

15 A I see. And I see the -- the change that you're --

16 Q You see the change.

17 A -- you're focusing on.

18 Q Yeah.

19 Do you have an understanding as to how that change from
20 the order -- from the timing of a settlement payment
21 arriving at confirmation versus arriving at final non-
22 appealable order impacts your testimony with respect to this
23 settlement agreement?

24 A Yeah. Well, you know, this change is in -- in
25 reviewing the changes, is -- is not something I focused on.

1 But here's -- now that you're directing my attention to it,
2 you know, my thought is that this is probably in there in
3 order to protect your right to ask for an appeal, if there's
4 an order.

5 Q Are you aware that if there -- the settlement payment
6 were to have arrived under the prior construct, it is
7 something arrived at confirmation that the TCC and any party
8 could still appeal?

9 A Yes.

10 Q So that wasn't the purpose of the change, was it?

11 A No. I don't think that follows. It still could be the
12 purpose of the change.

13 Q Okay. Well let me just make sure that I understand
14 what your understanding is.

15 Under the revised form or order that was filed on March
16 5th, the settlement money, the \$40 million, it doesn't show
17 up until there's a final order that can't be appealed any
18 longer, correct?

19 A Barely.

20 Q You have that understanding now.

21 A Yes.

22 Q Okay. You know how long the appellate process takes?

23 A It could take a while.

24 Q Could take two or three years.

25 A Uh-huh.

1 Q You agree with that?

2 A It could take -- I -- I don't know if it would take two
3 to three years, but it could take a year at least.

4 Q Okay. Let's look at the --

5 (Pause in the proceeding.)

6 BY MR. MOXLEY:

7 Q Actually, Mr. Barton, let me make sure I understand.

8 Four days after the hearing on the Rule 9019 motion was
9 underway, the Debtor changed a condition to when the
10 settlement payment would actually arrive from at
11 confirmation to a final non-appealable order, which you just
12 acknowledged would add a lot of time to when that payment
13 would arrive.

14 MR. BROOKNER: Objection to the question.

15 THE WITNESS: I don't have knowledge of that.

16 MR. MOXLEY: I haven't finished my questions. I
17 haven't my finished my question.

18 MR. BROOKNER: He started to acknowledge. Go
19 ahead.

20 THE WITNESS: Yeah. I -- I don't think if --

21 BY MR. MOXLEY:

22 Q I have -- there's not a question pending, sir. Let me
23 ask you a question. Okay?

24 A Okay.

25 Q Do you still support the settlement?

1 A I do.

2 Q You just learned of this term in this moment. But you
3 still support it?

4 A So under the initial plan, there could have been an
5 appeal as well.

6 Q Yes, sir.

7 Q And -- and I -- I don't, sitting here today, know how
8 that appeal would have affected the settlement payment.

9 And -- and -- I -- I am not confident sitting here today
10 that this is going to result in a delay that wouldn't have
11 resulted in another circumstance.

12 Q I see. So you just simply didn't know that the
13 settlement payment having to arrive at confirmation under
14 the prior construct would happen regardless of whether or
15 not there was an appeal.

16 A I don't know whether it would happen -- whether or not
17 it would.

18 I don't know whether the payment would have been made
19 if there was an appeal.

20 Q Okay. Is this still a joint motion?

21 A Yes.

22 Q The UCC still supports --

23 A Yes.

24 Q How do you know that, sir?

25 A We have had a meeting of the Committee since this was

1 filed and --

2 Q Right. But you're the Chair of that Committee. And
3 you didn't know about the timing of when the settlement
4 payment would arrive having changed.

5 I take it that since you didn't know about, you don't
6 know if your other members of your Committee know about
7 either, right?

8 A Every member of the Committee has seen this document.

9 Q Okay. But you're the Chair of the Committee and you
10 weren't aware of the impact of this change, right?

11 A I didn't focus on that particular change.

12 Q Okay. Do you have any confidence that any other member
13 of the Committee who are not lawyers may have focused on
14 that change?

15 A I suspect some of them did.

16 Q Okay. But you had no conversations with them about
17 that, right?

18 A I did not.

19 Q As you understand it, sir, when is -- or what is the
20 current deal with respect to when the settlement payment
21 will be paid?

22 A I -- I think that it's, as you -- I think it's in the
23 section you just showed to me.

24 Q Oh, I see.

25 So you're not aware, either, that the settling parties

1 made an oral representation in Court that they would change
2 that term again?

3 A I don't follow your question.

4 Q Right. You don't, do you? 'Cause you don't -- you're
5 not aware of that.

6 A No, I don't understand your question.

7 Q Okay. Are you aware that a counsel for the settling
8 parties stood up in the courtroom on Monday and offered to
9 modify this -- this term again to a different date?

10 A I am not aware of that.

11 Q Right. You don't actually know what the deal is right
12 now, do you?

13 A I wouldn't agree with that.

14 Q What is the deal, sir? When is the settlement payment
15 under the current deal supposed to arrive? What's your
16 understanding?

17 A I think it's as set out in the provision you just
18 showed me.

19 Q Okay. So if I represented to you that counsel for the
20 settling parties offered in court, in open court, on Monday
21 to change that date again, you're not aware of that, right?

22 A I'm not aware of what was said in open court on Monday.

23 Q Okay. So if you're not aware of that, would you agree
24 with me that it's fair to say that the UCC does not know, as
25 you sit here today, what the deal is?

1 MR. ZLUTICKY: Objection, Your Honor. It
2 misstates the witness' testimony.

3 THE COURT: Overruled.

4 MR. MOXLEY: Okay.

5 THE WITNESS: So we're -- we're working through
6 difficult issues quickly trying to be efficient. And if
7 there are still open issues, there -- there may still be
8 open issues.

9 One of the -- well, and so, if this needs to be
10 resolved, let's resolve it. If there's an issue here, let's
11 deal with it. But I -- I'm not at all upset that there was
12 a -- a -- that this was addressed in open court on Monday.
13 Sounds like maybe there's an issue here that needs to be
14 addressed. And I'm glad it is.

15 BY MR. MOXLEY:

16 Q Mr. Barton, you're -- you're a lawyer.

17 A Yeah.

18 Q You're a lawyer, right?

19 A Yeah.

20 Q Is that how it works? That you make a motion to -- for
21 the Court to approve a settlement agreement, but the -- what
22 the settlement agreement is constantly moves throughout the
23 hearing. Is that how it works?

24 A When there's back and forth like this and we're trying
25 to get a settlement so that we can get dollars in folks'

1 hands, yeah, and issues are raised that need to be addressed
2 in order to bring you on board, perhaps. Yeah. I mean,
3 that seems to me that it can work that way, yes.

4 Q So what -- what is -- what is your understanding of
5 what Judge Lopez is asked to approve today? What -- what's
6 the deal?

7 A As far as I know, the deal is as you -- is -- is
8 the -- is in the motion that has been filed.

9 (Pause in the proceeding.)

10 THE WITNESS: And I doubt the -- I'll leave it at
11 that.

12 BY MR. MOXLEY:

13 Q In response to the UCC's counsel's questions to you,
14 Mr. Barton, on direct examination, you testified that the
15 most important factor from the UCC's perspective was that
16 the settlement payment would be made now at confirmation.
17 You recall that?

18 A I think I said that it -- it was important to me that
19 money get into the hands of creditors quickly, yes.

20 Q That's no longer the case; is that right?

21 A I still want money to get into the hands of creditors
22 quickly.

23 Q Would you agree with me that the timing of the
24 settlement payment is a material change?

25 A I don't know.

1 Q You don't know one way or the other whether or not when
2 the settlement payment will arrive is a material change?

3 A No, I don't know. Because an appeal under the original
4 proposed order, an appeal may have delayed it as well. So,
5 no. I don't know if it's a material change.

6 Q And that -- and the reason you don't know is because
7 you're uncertain of the point you just mentioned about
8 whether an appeal from the prior order would change that.
9 That's the reason.

10 A At least one reason, yes.

11 Q There are other reasons?

12 A Not that I can think of now. But I -- I don't know if
13 it's a material change.

14 Q Do you understand that under the initial plan the
15 settling parties, those obligated to make the payment, bore
16 the risk that -- that confirmation order would be vacated on
17 appeal?

18 A I'm not aware.

19 Q Okay. You understand that under the new version that
20 no settlement money, the 40 million will arrive until all
21 appeals are exhausted?

22 A I understand that the current language says that the
23 money won't be due until there is a final order, subject to
24 appeal.

25 Q Who -- who do you think ought to bear that risk? The

1 creditors or the settling party, the appellate risk.

2 A Well, I would like money to get into the hands of -- of
3 creditors as fast as possible. And if there's an answer to
4 that question that makes it more likely that money gets into
5 the hands of creditors as fast as possible, I prefer that
6 outcome.

7 Q Right. And that was the outcome that you negotiated
8 for in the first form of the settlement agreement, right?

9 A Well, there's different language. I -- I don't,
10 sitting here today, know that the -- the different language
11 in the agreement now has any different effect than the prior
12 language.

13 Q Would -- would you prefer -- let me make sure I
14 understand.

15 A Yeah.

16 Q Would you prefer a settlement where Mr. Lefkowitz,
17 YesCare, the M2 parties who are obligated to make those
18 payments, must pay the money even if there is an appeal?

19 A I would.

20 Q Okay. You prefer that over a deal where the settling
21 parties, the M2 parties, obligated to make those payments
22 could withhold payment until the appellate process ran its
23 course, right?

24 A Can you repeat that question? I'm sorry.

25 Q You would prefer that deal, one where they had to pay

1 now at confirmation, to a deal where they didn't have to pay
2 until the appellate process ran its course, right?

3 A I'm not sure. The -- I would like money to get into
4 the hands of creditors as fast as possible.

5 Q Okay.

6 A But if the money is going to be taken away by an
7 appellate process, I think that could get pretty messy.

8 Q Okay. You were in the courtroom on -- on the first day
9 of this hearing on March 1st, right?

10 A Yes.

11 Q Do you recall before testimony began there was some
12 discussion amongst the Court and some of the lawyers? You
13 recall there was some discussion?

14 A Yes.

15 Q Okay. You recall that Judge Lopez raised some
16 questions with respect to wanting to understand the trigger
17 date? What triggered the settlement payment to be paid?
18 You recall that?

19 A I do.

20 Q It was important to the Court to know when the payment
21 would arrive, right?

22 A I -- I won't speak for the Court.

23 Q Okay. There was some questions about that, that fair.
24 That's fair.

25 A Yes.

1 Q It was -- there were -- the Judge had some questions
2 about that, right?

3 A Yes.

4 Q Okay. Do you have any questions about that today?
5 Would you like to know when the settlement payment's going
6 to arrive?

7 A I would like to know when the settlement will arrive,
8 will -- will -- will be paid, yes.

9 Q Do you know why the timing of when the settlement
10 payment will arrive changed?

11 A No. I'm not sure that the timing changes.
12 It -- there's -- there's now a -- a statement in there that
13 says that it will be, you know, paid when there's a final
14 order not subject to appeal.

15 Q Uh-huh.

16 A At the -- yeah, you know, I -- I think it's likely that
17 the -- the -- the party that might appeal and create the
18 delay would be the TCC.

19 So my hope would be that you would not appeal the order
20 and we get an order approving the settlement. But I don't
21 know -- I -- I don't have enough information to be able to
22 say which provision, the modified trigger or the earlier
23 version, is more beneficial to creditors. I would have to
24 think about that.

25 Q Right. You'd have to think about it. And no one's

1 talked to you about this change or its import, correct?

2 A They're moving very fast --

3 Q Yeah. See --

4 A -- trying to get stuff done.

5 Q So you -- you just -- you -- I -- and I -- and I'm
6 not -- I'm not being difficult with you. So I'm just trying
7 to understand the facts.

8 You just don't know, because no one talked to you about
9 the -- this change, correct?

10 A I -- I -- I -- that's fair. That's fair.

11 Q Okay. Okay. Who -- let me ask you this. And I
12 appreciate that you're not sure who bears the appellate
13 risk, under either the old construct, cause you weren't
14 advised about that or the new construct, right?

15 A I'm not sure.

16 Q Right.

17 Let's assume, just assume for the sake of my questions,
18 that the case is that under the prior construct the payment
19 would come in regardless of whether anybody appealed. It
20 would come in. Appeals could happen. The money would come
21 in.

22 And assume with me that under the new construct, that's
23 not the case. Money won't arrive until a final, non-
24 appealable order is obtained. Who does that benefit? Who
25 does the new construct benefit?

1 A I don't know.

2 Q Well we can agree it's not better for creditors, right?

3 A I don't know. I -- because I don't -- one of the
4 things on my mind right now is, let's suppose the settlement
5 is approved. Let's suppose the payments are made. And
6 let's suppose cash starts going to the creditors.

7 But there's an appeal. Let's suppose you win --

8 Q Uh-huh.

9 A -- that appeal.

10 I don't know what happens next. I don't know how good
11 that is for creditors, right? So I don't know whether it's
12 better to wait for an appeal or not. I'd have to think about
13 that.

14 Q Well, respectfully, sir, you're a lawyer. And I
15 appreciate that.

16 A Yeah.

17 Q But you also have counsel. And from that answer I take
18 it counsel has not advised you as to what happens in those
19 circumstances.

20 A I don't know what happens in those circumstances --

21 Q Right.

22 A -- that's all I can say.

23 Q Right. Understood.

24 (Pause in the proceeding.)

25 BY MR. MOXLEY:

1 Q So you don't know that under the prior order it was the
2 settling parties, those obligated to pay who bore that risk.

3 And that if the money came in and was distributed to
4 creditors, they got to keep it. You don't know that.

5 A I don't know.

6 Q If that was the case, if that was the case, would that
7 change your view?

8 A If the creditors could keep any money that was
9 disbursed, even if we lost an appeal, that would seem to me
10 to be better. Right. Get the money in their hands as fast
11 as possible in a way that they can keep it.

12 Q The way that they can keep it, right.

13 So if that was the case, that's a deal that you would
14 have preferred, correct?

15 A I think that's probably fair.

16 Q Right. Right.

17 (Pause in the proceeding.)

18 BY MR. MOXLEY:

19 Q Let me ask you this, Mr. Barton:

20 Does it bother you, as you sit there today, that you
21 haven't been advised on these issues?

22 A No.

23 Q Why is that?

24 A Um -- you raised good questions that I wish I had
25 asked. Let's put it that way.

1 Q And you wish you had asked those questions.

2 But you also wish that somebody had talked to you about
3 these changes before you got and took the stand today?

4 A I have no criticism of counsel in their -- in
5 their -- they're very good at keeping me and all members of
6 the Committee up-to-date on what's going on.

7 We just didn't happen to discuss this particular issue.

8 Q Okay. Let me just make sure I understand a couple of
9 things, Mr. Barton.

10 You testified that you would want money to be paid
11 quickly and the creditors could keep it, right?

12 A Yes.

13 Q Okay. And a change to the agreement that put off the
14 payment of the date by one or two years, that'd be something
15 you would not want, generally.

16 A Generally.

17 Q Okay. And if the agreement were changed to put the
18 payment date off by one to two years, you would want the UCC
19 to understand that and make an informed decision about that,
20 right?

21 A That's fair.

22 Q The UCC should make informed decisions, right?

23 A Yes.

24 Q Did the UCC make an informed decision as to whether or
25 not to support this new proposed form or order?

1 A They had the information and -- and there was no -- no
2 dissent from the -- but there's no objections to the -- the
3 revisions.

4 Q Do you think if somebody had told the members that this
5 new form of order provides that the settlement money won't
6 arrive for one to two years --

7 A It doesn't provide that.

8 Q Okay. Let me -- okay. Let me just ask you this
9 question, sir.

10 A Okay.

11 Q Do you think -- I'll take the one to two years out.

12 Do you think if somebody told the members that under
13 the prior construct, money would arrive at confirmation, you
14 get to keep it. Under the new construct, money does not
15 arrive at confirmation. You have to wait for the appellate
16 process, however long that takes. And only arrives if we
17 get to a final, non-appealable order.

18 You think there might have been a dissent then?

19 A Well, I don't know if the two situations you described
20 are the -- the actual situations. But even so, I -- I can't
21 comment on what other members of the Committee might have
22 thought.

23 Q Right. Because you don't know, right? That
24 didn't -- that scenario didn't happen. The Committee wasn't
25 informed of the difference between the two proposed orders,

1 correct?

2 A We were given the redline. And so, yes, we were
3 informed of the -- the differences.

4 Q Right. You were given the redline. There was a
5 discussion, but there wasn't a discussion about this.

6 A I don't recall a discussion about this particular
7 issue.

8 Q Has the UCC bargained for the settlement payment to be
9 placed into escrow now that it will be delayed until a
10 final, non-appealable order?

11 A I don't know.

12 Q You just don't know.

13 A I don't.

14 Q Do you think that would make sense to do?

15 A I don't know.

16 Q Not something you were -- that's been discussed with
17 you, right?

18 A I don't know.

19 Q Well at least make sure, okay.

20 A Yes.

21 Q I asked if that was something that has been discussed
22 with you. Do you -- do you know whether or not somebody's
23 talked to you about whether or not the settlement payment
24 ought to be put in escrow, given that there's a new time lag
25 when it arrives?

1 A There has not been a discussion of escrow recently.

2 Q Now the -- the settlement agreement that's before the
3 Court on the Rule 9019 motion, the original one, that was
4 filed on -- in January, that one was signed by everybody,
5 right?

6 A Yes.

7 Q The UCC signed it.

8 A I believe so.

9 Q Okay. I can show it to you if you'd like. I mean,
10 but --

11 A No, I believe so.

12 Q Yeah. Okay. And -- and -- and the settling parties
13 signed it, right. Mr. Lefkowitz signed it on behalf of a
14 number of entities, correct? Correct?

15 A I -- I don't know the answer to that question.

16 Q Okay. That's -- that's fine. That's fine. Let's just
17 look at it quickly. I just want to make sure
18 you're -- you're comfortable and clear on this.

19 So if we could go to Tab 3 in the binder, sir?

20 A Yes.

21 MR. MOXLEY: And just for the Record, this is the
22 Rule 9019 motion. It's at Docket 1259. And it attaches the
23 form -- the original form of the settlement agreement.

24 BY MR. MOXLEY:

25 Q If you go to the very last page, sir, Page 47 of 47,

1 very last page of the document.

2 A Yes.

3 Q You see Mr. Lefkowitz' signature there on behalf of a
4 number of entities?

5 A I do.

6 Q Okay. And if you look at one page earlier, Page 45 of
7 47, you see that Mr. Zluticky from the Stinson Law Firm
8 signed on behalf of the UCC?

9 A Yes.

10 Q So you agreed to be bound by this agreement if it was
11 approved by the Court, right? What a contract --

12 A Yes.

13 Q -- is.

14 A Yes.

15 Q And didn't Mr. Lefkowitz and all the entities on whose
16 behalf he signed also agreed to be bound by this if the
17 Court approved it?

18 A Yes.

19 Q So the -- the M2 parties, Mr. Lefkowitz, all the
20 signatories to this agreement, bound themselves to the terms
21 set forth in this agreement, correct?

22 A Yes.

23 Q Okay. So the M2 parties and the signatories who were
24 obligated under Section 4 to make the settlement payments,
25 if the settlement was approved, and if the plan was

1 confirmed, they agreed to pay that money if those conditions
2 were met, correct?

3 A Yes.

4 Q Now the timing of when the settlement payment will
5 arrive has changed, they no longer have to pay at
6 confirmation. What consideration did the UCC receive for
7 agreeing to this contract modification?

8 A I -- I'm not sure --

9 Q Uh-huh.

10 A -- that the changes that you pointed me to actually do
11 change the -- the date on which payment is to be made. But
12 to answer your question, but I am not aware we received any
13 consideration for that particular change.

14 Q If the idea of the settlement agreement was that the
15 form of the settlement agreement and the form of order
16 approving it could change if only some of the parties to it
17 wanted it to change, even if other parties got no
18 consideration for those changes, is it even a binding
19 contract?

20 MR. ZLUTICKY: Objection, Your Honor, to the
21 extent that it calls for a legal conclusion. He's not
22 testifying as a lawyer.

23 THE COURT: I'll -- I'll sustain that. But
24 he's -- he's the -- at least he can understand whether
25 there's a -- no. I'll sustain the objection.

1 MR. MOXLEY: Okay. Thank you, Your Honor.

2 BY MR. MOXLEY:

3 Q Mr. Barton, let me ask you -- let me ask it this way.

4 You're a lawyer. If the contract is signed and
5 executed and parties are obligated to do certain things, if
6 one of them is allowed to change a material term of that
7 contract unilaterally, is that a binding contract at all?

8 A I can imagine situations in which it would be.

9 Q Is it -- is it -- you're familiar, again, you're a
10 lawyer. Are you familiar with agreements to agree? Is it
11 really just an agreement to agree?

12 MR. ZLUTICKY: Objection, Your Honor. To ask the
13 witness to give a legal conclusion. He's not testifying as
14 a lawyer.

15 THE COURT: I -- I don't think legal -- I don't
16 think agreeing to agree is a legal conclusion. I'll
17 overruled. I think he can answer if he knows the answer.

18 THE WITNESS: No, I don't think this is an
19 agreement to agree.

20 BY MR. MOXLEY:

21 Q Okay. How is it not if -- if one or more of the
22 parties, but not all of the parties, insist on a change and
23 they're allowed to do that?

24 A Well, to the extent I understand the process here, the
25 settlement agreement needs to get the approval of the Court.

1 And if what you're asking is for an additional set of
2 signatures on the settlement agreement, I mean, we -- we
3 could get them.

4 Q Let's -- let's suppose that was the process.

5 A Yeah.

6 Q That you needed to get an additional set of signatures.
7 Given what you've seen today, and I think you called
8 them good questions that I raised to you --

9 A Yes.

10 Q -- today, would you seek additional advice from counsel
11 before you signed?

12 (Pause in the proceeding.)

13 THE WITNESS: Before I signed?

14 BY MR. MOXLEY:

15 Q Yes, sir.

16 A Before the Committee signed?

17 Q Before the Committee signed.

18 A I -- I don't know.

19 Q So if the process were as you just described it, that
20 hypothetical process, and I -- I said you're the Chair of
21 the Committee, sign this new form of agreement. Is it your
22 testimony that absent having any conversations with the
23 other members, holding a vote, getting advice on when the
24 settlement payment will actually arrive, whether or not the
25 settlement payment should be put in escrow, you would just

1 sign without getting any answers to any of those questions?

2 A That's not what I said.

3 Q Okay. Well then that's my question now. Is -- would
4 you sign under those circumstances, or would you want
5 answers to those questions?

6 A I would be interested in answers to those questions.

7 Q Right. And you wouldn't sign until you got answers to
8 those questions, right?

9 A That is probably true.

10 Q Mr. Barton, you testified on direct examination about
11 the view you have formed of the settling parties, meaning
12 YesCare, M2 Loan Co., Paragrove (phonetic), and
13 Mr. Lefkowitz, right? Do you recall that?

14 A What -- what about them?

15 Q You -- you recall giving testimony on direct about your
16 view, the view that you have formed, of them, yes? Okay.

17 A I recall.

18 Q And that view is that you don't trust them, right?

19 A Yes.

20 Q And you have that view because you've seen the
21 fraudulent transfers and the efforts to hide money from
22 creditors. That was your testimony, right?

23 A Yes.

24 Q Now the UCC and its professionals expended a
25 significant amount of time investigating the fraudulent

1 transfers, right?

2 A Yes.

3 Q And the estate incurred significant expenses
4 investigating the fraudulent transfers, right?

5 A Yes.

6 Q Is it fair to say that Mr. Lefkowitz as a Director of
7 the M2 parties and as the sole member of the Debtor, could
8 have easily instructed counsel for YesCare and the M2
9 parties to cooperate with the UCC's discovery requests to
10 save everyone time and expense?

11 A Could you ask the question again?

12 Q Is it fair to say that Mr. Lefkowitz, as a Director of
13 the M2 parties, and as the sole member of the Debtor, could
14 have easily instructed counsel for YesCare and the M2
15 parties to cooperate with the UCC's discovery requests to
16 save everyone time and expenses?

17 MR. BROOKNER: Objection, Your Honor.

18 Speculation. Anything's possible.

19 THE COURT: Sustained.

20 BY MR. MOXLEY:

21 Q Now, Mr. Barton, Mr. Lefkowitz and the settling parties
22 don't have to pay for a long time, and you don't trust them
23 because you've seen them hide money from creditors.

24 A I don't agree that they don't have a pay for a long
25 time.

1 Q Okay. They don't have to pay until there's a final,
2 non-appealable order is your -- your current understanding,
3 right? That may or may not be the case, but that's your
4 current understanding, right?

5 A My current understanding.

6 Q Okay. Doesn't a payment date that could be far into
7 the future, or just some time into the future, introduce
8 risks that settling parties that you don't trust could
9 behave in some way that you've seen them behave in the past?

10 A No. The risk I see is that -- that the TCC will appeal
11 this and delay, that I see.

12 Q That's the risk that you see.

13 A Yes. Okay.

14 Q Does the UCC have any concern now about this being an
15 illusory settlement payment?

16 A No.

17 Q Would you trust financial information from the settling
18 parties if you or your advisors did not take steps to
19 verify?

20 A Can you run -- can you say that question again? I
21 do --

22 Q Of course. Of course.

23 A -- couldn't hear what --

24 Q Of course. And if I'm talking too quickly, just tell
25 me.

1 A Okay.

2 Q Mr. Barton, would you trust financial information from
3 the settling parties if you or your advisors did not take
4 steps to verify it?

5 A I don't know.

6 Q You testified you don't trust them, right?

7 A Yeah.

8 Q And that's because they hide money from creditors,
9 right? That's what you testified before?

10 A One reason, yes.

11 Q Okay. There are -- there are other reasons you don't
12 trust them as well, correct?

13 A Yeah.

14 Q Okay. So my question is simple. If they gave you
15 financial information, you'd want your advisors to verify
16 it.

17 A I --

18 MR. BROOKNER: Objection, Your Honor.

19 THE WITNESS: I don't know what the --

20 MR. BROOKNER: Whose financial information are we
21 talking about here?

22 MR. MOXLEY: I -- I think the questioning was
23 clear, but I'll rephrase it, Your Honor.

24 THE COURT: Okay.

25 BY MR. MOXLEY:

1 Q I'm talking about the settling parties. You understand
2 the settling -- who the settling parties are.

3 A Yes.

4 Q Okay. Would your -- would you trust financial
5 information from the settling parties if you or your
6 advisors did not take steps to verify it?

7 MR. BROOKNER: Same objection, Your Honor. Which
8 financial information?

9 MR. MOXLEY: We just defined it. The settling
10 parties.

11 THE COURT: The settling parties is my
12 understanding.

13 THE WITNESS: I -- I don't know. I mean, I'd have
14 to look at the information in question. But in general, it
15 would be a good thing for us to verify it, yes.

16 BY MR. MOXLEY:

17 Q And you -- you would prefer that financial information,
18 if possible, be audited, right?

19 (Pause in the proceeding.)

20 A Depends on the kind of information we're talking about.
21 Depends on the information we're talking about.

22 Q Okay. But, Mr. Barton, you're -- you're -- you're in-
23 house counsel at a major hospital. You've been practicing
24 for some time.

25 Would you agree with me that it's better, all things

1 considered, to have audited financial information versus
2 unaudited financial information?

3 A It -- it is -- it is easier to rely on audited
4 financial information than unaudited financial information.

5 Q Particularly when the information is coming from people
6 you don't trust, right?

7 A Fair.

8 Q Okay.

9 Let's switch gears, Mr. Barton, and discuss St. Luke's
10 litigation in Idaho. You testified on direct, that in
11 addition to suing Corizon, St. Luke's also seeks a recovery
12 on a successor liability basis against other defendants,
13 right?

14 A Yes.

15 Q Okay. And St. Luke's actually filed a motion to amend
16 its complaint against Corizon one day after this bankruptcy
17 was filed, right?

18 A That's right.

19 Q And Tab 16 and 18 in your binder, sir, if you'd just
20 like to have them open generally for yourself, those are
21 the -- those are the motion papers that St. Luke's filed in
22 the United States District Court in the District of Idaho,
23 correct?

24 A What it looks like.

25 Q Okay. And at Tab 16, sir, the motion itself, you can

1 see that St. Luke's in that amended -- in that -- in that
2 motion to amend its complaint sought to name YesCare Corp,
3 CHS TX, Inc., Ms. Tirschwell, Mr. King, John Doe entities,
4 and John Doe natural persons as defendants, right?

5 A Yes.

6 Q And St. Luke's in that amendment seeks to recover from
7 those entities and -- and individuals on a successor
8 liability basis, right? I'm sorry from the -- from the
9 entities on a successor liability basis, right?

10 A We do.

11 Q And St. Luke's lead counsel in that case, I believe you
12 testified, is the former United States Attorney for the
13 District of Idaho, right?

14 A Right.

15 Q I -- I -- I take it that it's safe to assume that your
16 lead counsel in that case is a talented and experienced
17 attorney, right?

18 A She certainly is.

19 Q St. Luke's thought that this was a meritorious
20 amendment to file, right?

21 A Yes.

22 Q Right. St. Luke's doesn't go around filing
23 frivolously, does it?

24 A No.

25 Q Now you're the Deputy General Counsel of St. Luke's

1 right?

2 A That's correct.

3 Q So let's -- let's look at Tab 18, which is -- which is
4 the -- the memorandum, the brief in support of the motion to
5 amend. Let me know when you're there, sir.

6 A I'm there.

7 Q Okay. Now if you turn in it -- if you turn to --
8 (Pause in the proceeding.)

9 MR. MOXLEY: Sorry one second. I've got the wrong
10 tab. I did.

11 BY MR. MOXLEY:

12 Q I apologize. If you could turn to Tab 17, that's the
13 complaint?

14 (Pause in the proceeding.)

15 THE WITNESS: Tab 17?

16 BY MR. MOXLEY:

17 Q Yes. Tab 17 is the proposed amended complaint.

18 (Pause in the proceeding.)

19 BY MR. MOXLEY:

20 Q And if you could turn in that Paragraph 57, which is on
21 Page 13 of 21.

22 A Yeah.

23 Q You on Paragraph 57, sir?

24 A (No audible response.)

25 Q Okay. You see at Paragraph 57 in the proposed -- in

1 St. Luke's proposed amended complaint that St. Luke's
2 alleged that YesCare's website holds itself out as having 40
3 plus years of experience, provided care for over 1 million
4 patients for more than 475 correctional facilities, and that
5 YesCare has effectively stepped into the shoes of Corizon
6 Health; you see that?

7 MR. ZLUTICKY: Objection, Your Honor. This
8 document's not in evidence. It's hearsay. If there's a
9 question about what the document may say for the fact that
10 it was said, fine. But otherwise, this is a hearsay
11 document.

12 MR. MOXLEY: Your Honor, I'm not -- I'm not asking
13 for the admission of the document into evidence. I'm -- I'm
14 showing him the document for his benefit.

15 I could ask him about what Paragraph 57 says and
16 not put it in front of him. That seems unfair to the
17 witness.

18 MR. ZLUTICKY: Well, what's the -- what the point?
19 If it's not impeachment, you can't ask about hearsay
20 document.

21 MR. MOXLEY: It's cross-examination. Of course, I
22 can ask him about this document.

23 THE COURT: Yeah. He can ask about the document.
24 But I do -- and the statement in Paragraph 57 is not going
25 to be offered for the truth of the matter.

1 MR. MOXLEY: It is not, Your Honor.

2 THE COURT: Okay. Then I'll allow it.

3 MR. MOXLEY: Thank you, Judge.

4 THE WITNESS: Is there a question?

5 BY MR. MOXLEY:

6 Q The question was, do you see that?

7 A I do see that.

8 Q Okay. My question now for you, sir, as the Deputy
9 General Counsel of St. Luke's who filed this proposed
10 amended complaint, is St. Luke's had a basis to make those
11 allegations, based on what it found on the internet, right?

12 (Pause in the proceeding.)

13 THE WITNESS: Yes.

14 BY MR. MOXLEY:

15 Q YesCare didn't exist for 40 years. We know that,
16 right?

17 A Right.

18 Q And that was obvious to St. Luke's just from looking at
19 the website, right?

20 A That YesCare didn't exist for 40 years?

21 Q Yes, sir.

22 A Well, I think it's also just obvious from the -- the
23 nature of the divisional merger.

24 Q Right.

25 A Yeah.

1 Q Let me ask you, sir, did -- did you -- did you
2 personally in your role at St. Luke's, did you approve the
3 filing of these motions papers?

4 A No. And I -- I'd like to clarify something if I
5 could --

6 Q Please.

7 A -- about that.

8 I testified last time accurately that I am responsible
9 at St. Luke's for non-malpractice litigation.

10 Q Uh-huh.

11 A This case, interestingly enough, is one that I was not
12 responsible for.

13 Q Okay.

14 A So, it was just for reasons of who had availability and
15 expertise, handed to one of my colleagues.

16 Q Uh-huh.

17 A If this litigation revives, it will come back to me.

18 But I did not have any role in preparing this document.

19 I kept oversight and was aware of major events in the
20 Corizon litigation. But I did not manage that litigation.

21 Q Okay. No, and I appreciate that clarification. And
22 I'm sure my next couple of questions don't need to be asked.
23 But just so the Record's clear, I'm going to ask them.

24 The person, your colleague, who approved this, that
25 colleague wouldn't have -- wouldn't have approved a proposed

1 amended complaint that had no basis, correct?

2 A I think that's fair.

3 Q Okay. Now you testified on the first day of the
4 hearing on March 1st that you are not aware of the *Kelley*
5 (phonetic) case in the Federal District Court in Michigan.
6 Do you recall that?

7 A I do recall that.

8 Q Okay.

9 A And -- and may I clarify something about that as well?

10 Q You're welcome to, sir.

11 A Yeah. I -- I -- I Googled it after we talked.

12 Q Okay.

13 A I am aware of the case. I -- I don't know it by
14 *Kelley*. We talked about it in the -- in the Committee as
15 Ian Cross' case. And I just -- the name *Kelley* didn't ring
16 a bell for me.

17 Q I see.

18 A I apologize for that.

19 Q Okay. So you're aware of it as Ian Cross' case?

20 A Yeah.

21 Q Okay. Can I -- can -- if I refer to it as the *Kelley*
22 case today, you understand what case I'm talking about then?

23 A I do, yes.

24 Q Okay. So let me -- well let me -- given that, let me
25 just ask you something -- let me ask you then before to make

1 sure we're on the same page.

2 So when I asked you about the *Kelley* case before, now
3 just substitute in Ian Cross' case, and I said, would it
4 surprise you to hear that a Federal Court in Michigan in Ian
5 Cross' case, had ruled that CHS TX could be added as a
6 Defendant on a successor liability theory of recovery in a
7 pending case against Corizon.

8 Would that -- would that surprise you today?

9 A Yeah. When we talked last time, I -- I, you know, I
10 wasn't aware that specific holding of the case. But I -- I
11 guess it wouldn't surprise me.

12 Q Okay.

13 A Again, I've now read the case and --

14 Q I see.

15 A -- I don't think I'm surprised by anything in it.

16 Q So thank you for clarifying that, Mr. Barton.

17 A Yeah.

18 Q So just to be clear then, so -- so if I had referred to
19 it as Ian -- Ian Cross' case when I was questioning you on
20 March 1st, you still wouldn't have actually known the
21 holding of the *Kelley* case, right?

22 A That's fair.

23 Q Okay. All right.

24 So let's look at St. Luke's motion, this at now is at
25 Tab 18 if we could. This the motion to amend St. Luke's

1 complaint.

2 A Yes.

3 Q And if you turn with me, sir, to Page 6 of that brief.

4 A What tab is it?

5 Q Oh, sure. That's Tab 18.

6 Q And just for the Record, we're now within the

7 St. Luke's brief in support of its motion --

8 A Okay.

9 Q -- to amend the complaint.

10 If you turn to Page 6.

11 (Pause in the proceeding.)

12 BY MR. MOXLEY:

13 Q Are you there, sir?

14 A Yes.

15 Q You see in the second paragraph on that page the case
16 of *Kelley versus Corizon Health* in the Eastern District of
17 Michigan that's cited?

18 A Yes.

19 Q And do you see, if you look at Page 7, the second full
20 paragraph, you see the *Kelley* case is cited again?

21 A Yes.

22 Q And if you look at the top of Page 8. You'll see the
23 *Kelley* case cited again, the top of Page 8. You see that?

24 A Yes.

25 Q And if you look at a little further down on that page,

1 again Page 8, a second time *Kelley* case is cited on Page 8,
2 right?

3 A Yes.

4 Q And then if you turn to Page 12, you'll see the *Kelley*
5 case is cited there again, right?

6 A Yes.

7 Q So St. Luke's cited the *Kelley* case five times in a
8 15-page brief.

9 (Pause in the proceeding.)

10 BY MR. MOXLEY:

11 Q You weren't aware of this brief when it was filed,
12 though, right?

13 A No, I wasn't.

14 Q Okay. But --

15 A I -- I was aware that we are moving to amend. That's
16 it.

17 Q Right. Right. Okay.

18 But your colleague wouldn't have authorized a brief
19 that didn't have a good faith basis for it, right?

20 A That's fair.

21 Q Are you aware that the -- that the *Jackson versus*
22 *Corizon* case in the Eastern District of Michigan also
23 reached the same conclusion as the *Kelley* case on the same
24 day?

25 A I'm not.

1 Q Okay. Now St. Luke's alleged in the motion at pages 12
2 to 13, I'm looking two lines up from the bottom.

3 "Although there has been a name change
4 and some rebranding efforts, YesCare is
5 effectively a continuation of Corizon.
6 It has all of Corizon's assets,
7 employees, and almost all the same
8 Directors and Officers as Corizon.
9 Further, YesCare's website essentially
10 holds itself out as Corizon by claiming
11 it has over 40 years."

12 And it continues. You see that?

13 A I see that.

14 Q And it goes on to talk about website and YesCare's
15 purported experience set forth in the website, right?

16 (Pause in the proceeding.)

17 THE WITNESS: Yes.

18 BY MR. MOXLEY:

19 Q And you -- you yourself testified earlier in this
20 hearing back on March 1st, that you're aware that YesCare
21 has held itself out as continuing Corizon's business, right?

22 A Yeah.

23 Q Now St. Luke's lawyers and Stoel Rives, who I -- I know
24 are very experienced and talented as we discussed, they made
25 these argument on February 14th, 2023, the day after the

1 Tehum bankruptcy filing happened on February 13th, right?

2 (Pause in the proceeding.)

3 BY MR. MOXLEY:

4 Q Right?

5 A Yes.

6 Q Okay. So St. Luke's didn't require a ten month
7 investigation to determine that it was appropriate for
8 St. Luke's to seek to hold YesCare, CHS TX and others,
9 liable for the damages that Corizon owed St. Luke's, did it?

10 A No. And I don't know what our chances of success are.
11 But there's a good faith basis for that claim. I don't
12 think I'd ever denied that.

13 Q Right. And the discussion -- but the discussion of
14 successor liability in the Rule 9019 motion, I know you would
15 agree with me -- or I -- I take it you would agree with me,
16 that's at Paragraph 46 of that motion, right?

17 A Pardon me. I didn't understand the question.

18 Q Sure. The discussion of successor liability in the Rule
19 9019 motion is limited to Paragraph 46 in the motion,
20 correct?

21 A I -- I don't know. I'd have to look at the motion.

22 Q Okay. We can look at that.

23 But let me -- before we do that, let me just -- let me
24 just ask you, your lawyers for St. Luke's saw fit to cite
25 the *Kelley* decision five times in a 15-page brief and

1 thought it useful to immediately amend the complaint to try
2 to recover damages Corizon owed it from YesCare and CHS TX,
3 and other people.

4 But the UCC's position is that, pursuing successor
5 liability, would be a novel theory unlikely to succeed; is
6 that right?

7 A I novel theory whose -- where the chances of success
8 are unpredictable.

9 Q Did the UCC take into account all of the arguments for
10 successor liability and veil piercing that St. Luke's was
11 able to advance over a year ago?

12 A I think they considered the -- they're aware of the
13 cases that we cited and the -- and the websites.

14 Q Well did St. Luke's give the UCC's legal advisors their
15 research --

16 A We did not.

17 Q -- so they would know?

18 A We did not.

19 Q Okay. I think you made reference in response to
20 questions on direct examination to the Texas Business
21 Organizations Code previously; you recall that?

22 A Yeah.

23 Q Okay. And that statute's also referenced in Paragraph
24 46 of the motion, right? We can look at it. Let's look at
25 it. Let's look at it. Just turn to Tab 3.

1 A Yes.

2 Q Are you at Paragraph 46 of the -- of the Rule 9019
3 motion, sir?

4 A I am.

5 Q Okay.

6 A Well, I'm looking at it on the screen.

7 Q Looking at it on the screen. Okay. Very good.

8 And you see the reference there to the Texas Business
9 Organization statute.

10 A Yes.

11 Q And Paragraph 46 states, we'll just -- we'll just read
12 it so we're all on the same page.

13 "In addition to presenting a novel legal
14 theory, recovery under such a successor
15 liability theory would require a court of
16 competent jurisdiction to disregard the
17 relevant portions of Texas Business
18 Organization Code more directly than
19 under the fraudulent transfer context."

20 A Right.

21 Q You see that? And -- and you testified on the first
22 day of this hearing that the Texas statute, I believe you
23 words were, would have to be overturned to bring successor
24 liability claims, right?

25 A Yeah.

1 Q Okay. Have you read the Texas Business Organizations
2 Code?

3 A I have.

4 Q Are you familiar with Section 10.901 of the statute?

5 A I am.

6 Q You are. Well, we can look at that in a minute.

7 But I think you testified on direct that successor
8 liability provides a creditor with a right to bring a
9 lawsuit against its successor entity, right?

10 A Right.

11 Q Okay. And alter ego, the alter ego doctrine, that
12 provides a creditor with certain rights, vis-à-vis a
13 beneficial owner or officer, director, right?

14 A Right.

15 Q Okay. It provides a right -- the alter ego doctrine
16 provides a right for a creditor to sue a beneficial owner,
17 or director, or officer of the company, right?

18 A Can you repeat that question, please? I'm sorry, I
19 didn't catch it.

20 Q Yes, sir. That's okay.

21 The alter ego doctrine, I believe you testified to this
22 on direct. But the alter ego doctrine provides a right to a
23 creditor to sue directors or officers of the company, right?

24 A Right.

25 Q Okay. And fraudulent transfer law provides a creditor

1 with certain rights to avoid transactions, right?

2 A Right.

3 Q So let -- let's look -- let's look at the section of
4 the Texas Business Organizations Code that you testified you
5 read. That's at Tab 12 --

6 (Pause in the proceeding.)

7 BY MR. MOXLEY:

8 Q -- of your binder.

9 A Uh-huh.

10 Q Do you have Section 10.901 of the Texas Business
11 Organizations Code in front of you, sir?

12 A I do.

13 Q Okay. And you see that it provides,

14 "This Code does not affect, nullify, or
15 repeal the anti-trust law, or abridge
16 any right or rights of any creditor
17 under existing laws."

18 You see that?

19 A I do.

20 Q Now were you aware of that provision of the Texas
21 Business Organizations Code prior to looking at it just now.

22 A Yes.

23 Q You were. You read it before, right?

24 A Yes.

25 Q Okay. Well, thinking now about this provision of the

1 Code, the arguments that St. Luke's advanced in its motion
2 to amend, we know at the very least that the Stoel Rives
3 firm, your lawyers in Idaho, did not see the need to make
4 the argument that the Texas Business Organizations Code
5 needed to be overturned in order to -- in order to move to
6 amend to have YesCare, CHS TX, and the others as Defendants
7 on a successor liability theory, right?

8 MR. ZLUTICKY: Objection, Your Honor. The witness
9 has already stated that he wasn't aware. He doesn't have
10 personal knowledge of the filing of this case, and the
11 filing of this amendment.

12 MR. MOXLEY: Your -- Your Honor, he -- he
13 testified that he had general oversight of the process, even
14 though that -- on that particular day, I guess, he was busy.
15 And -- and so it went to a colleague.

16 But he said he still has oversight. And he said
17 that if this case is dismissed and that case is continuing,
18 it's coming back to him. He's -- he's familiar with the
19 motion.

20 THE COURT: What's the relevance of all this,
21 counsel?

22 MR. MOXLEY: The -- the relevance, Your Honor, is
23 his own -- his own employer moved to bring a successor
24 liability claim and didn't make the argument that the UCC now
25 says would have to be made in order to bring that argument.

1 THE COURT: Can't we just rely on the papers?

2 MR. MOXLEY: We -- we can, sir. I was wanted the
3 witness to be able to have an opportunity.

4 THE COURT: Just saying, but he -- he didn't file
5 the lawsuit. So I don't -- I don't know what -- I'm not
6 sure what I get out of someone who tells me that they
7 weren't involved in the actual filing of the lawsuit, or why
8 these decisions were made as to why they felt that way then
9 or how they feel now. I --

10 MR. MOXLEY: Thank you, Judge. We can move on.

11 (Pause in the proceeding.)

12 BY MR. MOXLEY:

13 Q Mr. Barton, you -- you testified earlier in this
14 hearing that your understanding is claims against YesCare on
15 a successor liability basis are estate causes of action,
16 right?

17 A Can you repeat that question?

18 Q Of course, sir.

19 You -- you testified earlier in this hearing on March
20 1st that your understanding is claims against YesCare on a
21 successor liability basis are estate causes of action,
22 right?

23 A On the successor liability basis, yes.

24 Q Okay.

25 (Pause in the proceeding.)

1 BY MR. MOXLEY:

2 Q Let -- let me just ask you one -- one quick question
3 before we move on to this line of questioning, sir.

4 If -- if the bankruptcy case is dismissed, and if the
5 Idaho litigation then proceeds, is it your intention, as the
6 person with oversight of that case, to still utilize the
7 Stoel Rives firm?

8 MR. ZLUTICKY: Objection, Your Honor. Calls for
9 speculation.

10 THE COURT: Sustained.

11 BY MR. MOXLEY:

12 Q Mr. Barton, at your deposition -- strike that.

13 Let -- let me just go back for a quick second, sir.
14 So -- so just again, so we're on the same page.

15 Your testimony on March 1st was that your understanding
16 is that claims against YesCare on a successor liability
17 basis are estate causes of action, right?

18 (Pause in the proceeding.)

19 THE WITNESS: Yes.

20 BY MR. MOXLEY:

21 Q Okay. Now at your deposition, you were -- would you
22 agree with me that you were incredulous when I asked about
23 someone taking the position that any claims against YesCare
24 might be settled by this agreement?

25 A Well, I -- I think at the deposition, the -- the claim

1 was made that -- that claims that did not belong to the
2 estate might be settled. So that was my, the source of my
3 incredulity.

4 Q Okay.

5 A Yeah.

6 Q Well let's -- let's look at your deposition, then --

7 A All right.

8 Q -- so we can be clear about this.

9 So in your transcripts binder, sir. There's a second
10 binder there. The very first tab, Tab A, is your deposition
11 transcript.

12 And when you have that -- when you have that in front
13 of you, if you could turn to Page 314 --

14 A Of which tab?

15 Q Tab A, sir.

16 A Okay.

17 Q It's the deposition transcript.

18 A Yes.

19 Q And if you could look with me on Page 314, beginning at
20 Line 18.

21 A Yes.

22 Q I asked you:

23 "Q Mr. Barton, would it also surprise
24 you if the claims asserted against
25 YesCare by injury tort claimants,"

1 Mr. Coffman interjected an objection. Then my question
2 continued.

3 "Were viewed by one of the settling
4 parties as being settled by the
5 settlement agreement attached to the
6 Rule 9019 motion."

7 Mr. Coffman, again, interjected an objection. And
8 Mr. Zutlicky as well.

9 And then your answer was:

10 "A I think you know my answer. The
11 settlement agreement settles claims of
12 the estates, that's plain on its face.
13 So it would be a surprise to me if
14 someone had that incorrect view."

15 Right?

16 MR. ZLUTICKY: Objection, Your Honor. This is
17 improper impeachment. This isn't inconsistent with the
18 witness' prior testimony.

19 MR. MOXLEY: I believe it is inconsistent, Your
20 Honor.

21 THE COURT: No, I -- overruled.

22 THE WITNESS: This is -- this is what I just said.
23 That my incredulity would be that someone thought that
24 claims other than estate claims were settled at the
25 mediation.

1 BY MR. MOXLEY:

2 Q So you -- you never mentioned during your deposition
3 anything to me when I asked you these questions about Fifth
4 Circuit law, right?

5 A I said the settlement agreement settles claims of the
6 estate. That's plain on it -- that's plain on its face. I
7 stand by that testimony.

8 Q Right. My question was different just now, though,
9 sir.

10 My question was, when I asked you questions about what
11 was settled and what was not settled in the settlement
12 agreement, none of your answers reference Circuit law, did
13 they?

14 A I don't recall talking about Circuit law.

15 Q And you never mentioned in any way -- any way in which
16 a claim against YesCare, held by a tort claimant, could be
17 settled and released under this agreement, right?

18 A I don't think we had that discussion, right.

19 Q When did you formulate the view that you now hold that
20 claims against YesCare on a successor liability basis are
21 estate causes of action?

22 A I don't know.

23 Q It was after your deposition, right?

24 A No, I don't think so. I don't know.

25 Q Was it after the TCC was formed?

1 A May have been.

2 Q It may have been after you reached the first \$37
3 million settlement, right?

4 A I don't know.

5 Q Why -- why is it that in any of the public filings that
6 have been made regarding the value and strength of these
7 claims, is nothing said about sucessor liability other than
8 Paragraph 46 of the motion?

9 MR. ZLUTICKY: Objection, Your Honor. It
10 misstates the Record.

11 THE COURT: I -- I'm going to sustain the
12 objection.

13 MR. MOXLEY: Okay. Thank you, Judge.

14 BY MR. MOXLEY:

15 Q Mr. Barton --

16 (Pause in the proceeding.)

17 BY MR. MOXLEY:

18 Q Do you know where in any public filing a person with a
19 tort claim against the YesCare on a successor liability
20 basis might look to learn that their claim is being released
21 under the settlement agreement if it's approved?

22 A I believe it's discussed in the -- the plan documents
23 that are no longer -- that we're no longer seeking to -- to
24 have approved. But I believe it's in there.

25 Q Okay. And -- and is it your view, just -- I just want

1 to understand what your view is.

2 A Yeah.

3 Q Is it your view that that discussion in those plan
4 documents, that's sufficient to inform folks that
5 their -- that their personal injury or wrongful death claim
6 is being released?

7 MR. BROOKNER: Your Honor, objection.

8 This -- this is mistating a legal conclusion. There's an
9 assumption in here that something wrong with somebody else
10 is being released without a legal finding as to who owns the
11 FIN (phonetic).

12 You know that our contentions that the law is that
13 successor liability claims are property of the estate.

14 THE COURT: Okay. Both of you -- both of you all
15 are --

16 MR. MOXLEY: I can move on, Your Honor.

17 THE COURT: Yeah. But I -- I also like objections
18 to just object. And I like responses to just be responsive
19 on just focus of evidence.

20 So, I'll, I mean, I -- I would have overruled the
21 objection. Because I think the question was where would you
22 find this information --

23 MR. MOXLEY: That is --

24 THE COURT: -- and whether that information would
25 be found in the motion that someone would be reading that

1 the Judge is being asked to approve if they read it.

2 That's -- I don't know if that's reaching a legal
3 conclusion or not. But I think that was the basis of the
4 question. So I would overrule.

5 But if you want to move on, I get it.

6 MR. MOXLEY: No, I'd like an answer to that
7 question, then, Judge.

8 BY MR. MOXLEY:

9 Q Where would -- where would somebody look?

10 A Can you -- can you repeat the question?

11 Q Yes. Where would a -- where would a claimant who has a
12 personal injury or wrongful death claim, look to -- to -- to
13 learn what you -- what you now have the understanding of,
14 that it's the Debtor's position that successor liability
15 claims against YesCare are being released by that settlement
16 agreement?

17 A So it's not the Debtor's position. So it -- the -- my
18 understanding is that the law in this Circuit is that the
19 successor liability claims would be the property of the
20 estate.

21 But if this Court or this Circuit rules otherwise, then
22 they wouldn't be.

23 (Pause in the proceeding.)

24 THE WITNESS: But it's not my position that
25 they're the property of the estate. It's not the UCC's

1 position. It's not the Debtor's position as far as I know.

2 BY MR. MOXLEY:

3 Q Are the UCC's views regarding whether the proposed
4 settlement is reasonable, based on its view regarding the
5 Texas Divisional Merger statute?

6 A Can you repeat the question.

7 Q Yes, sir.

8 Are the UCC's views regarding whether the proposed
9 settlement is reasonable, based on the the UCC's views
10 regarding the Texas Divisional Merger statute?

11 A We -- the -- the Texas Divisional Merger statute is
12 relevant. But, no, I wouldn't say that our view is -- is
13 based --

14 Q Okay.

15 A I mean, maybe -- maybe in part, but certainly not
16 primarily on -- on considerations about the -- the business
17 code.

18 Q Okay. Well let me ask.

19 Did the UCC base its decision, at least in part, to
20 support the settlement on the legal argument made in
21 Paragraph 46 of the Rule 9019 motion?

22 A I believe we felt it would be challenging in this
23 context to -- to get the Court to -- to get a court to
24 disregard the separate nature of YesCare and Corizon.

25 I -- I think that was a component of our thinking.

1 Q Okay. Do you think that St. Luke's and the UCC have
2 taken consistent positions on the impact of the Texas
3 statute on successor liability claims?

4 (Pause in the proceeding.)

5 THE WITNESS: Are you asking whether there's an
6 inconsistency between what the UCC says and what St. Luke's
7 says in its briefing?

8 BY MR. MOXLEY:

9 Q Yes, sir.

10 A I'm not aware of any inconsistency. We put forth in
11 our argument that's available to us. I don't know if we're
12 going to win it.

13 We believe, in this case, we have that same argument.
14 We don't think we're likely to win it. So we're going to
15 try a different way to get money into the hands of
16 creditors. It's not available to St. Luke's in the
17 civil -- in, you know, in our civil complaint. We don't
18 have the ability to go to a different court and -- and get
19 our money a different way.

20 Q So, thank you for that answer, sir.

21 Let me just be clear now, then. So you are familiar
22 with the arguments that were made in the brief in support of
23 St. Luke's motion to amend its complaint in Idaho; is that
24 right?

25 A You've --

1 MR. ZLUTICKY: Objection, Your Honor.

2 MR. MOXLEY: He just testified that way, Your
3 Honor.

4 THE COURT: What's the basis of the objection?

5 MR. ZLUTICKY: Sure, the witness previously
6 testified that he wasn't aware the arguments and then he
7 just showed him the arguments.

8 THE WITNESS: Yeah. He showed me the arguments.

9 THE COURT: Sustained.

10 (Pause in the proceeding.)

11 BY MR. MOXLEY:

12 Q St. Luke's is on the UCC, correct?

13 A Yes.

14 Q Does it seem odd to you, Mr. Barton, that St. Luke's
15 would claim it considers CHS TX on successor liability in
16 Idaho and that the UCC would say that argument is novel?

17 A No. It doesn't seem inconsistent.

18 Indeed, it -- it is on the strength of that argument,
19 right, that we -- that there is an argument that the entire
20 divisional merger is fraudulent and could be undone.

21 It is partly on the basis of that argument that we were
22 able to extract \$54 million here. That the argument,
23 there -- there is an argument there to disregard the
24 separate nature of the -- the entities here.

25 We just don't know that it's worth gambling the

1 creditors' money to make that argument.

2 Q I think --

3 A It's a very different situation than a private litigant
4 faces in making that argument.

5 Q My question, though, Mr. Barton, is that -- is that
6 St. Luke's didn't make the argument in Idaho that you'd have
7 to disregard or overturn the Texas statute. It just brought
8 a successor liability claim, or tried to, right?

9 MR. ZLUTICKY: Objection, Your Honor. The witness
10 already stated that he wasn't aware of the argument that
11 St. Luke's made in Idaho.

12 THE COURT: I think the point is established that
13 there was an argument made in Idaho that wasn't made today.
14 I think if that's the point, then I -- I get it.

15 MR. MOXLEY: Thank -- thank you, Judge. I'll move
16 on. Thank you.

17 (Pause in the proceeding.)

18 MR. MOXLEY: Your Honor, I'm -- I'm going to shift
19 to a -- a new topic. I'm happy to continue. But I just
20 wanted to raise that in case the Court or the witness would
21 like a break.

22 THE COURT: Don't worry about me. You worry about
23 your examining --

24 MR. MOXLEY: Okay, Judge.

25 THE COURT: But we can check with the witness. Do

1 you?

2 THE WITNESS: No, I'm fine.

3 MR. MOXLEY: Very good.

4 THE COURT: All right.

5 MR. MOXLEY: We'll just carry on, Judge. Thank
6 you.

7 THE COURT: Just from a timing standpoint, how
8 much more time do you think you got?

9 MR. MOXLEY: Your Honor, I believe --

10 (Pause in the proceeding.)

11 MR. MOXLEY: I -- maybe -- maybe 30 minutes.

12 THE COURT: Let's go.

13 MR. MOXLEY: Okay. Then very good, Judge.

14 Your Honor -- Your Honor, I apologize. It might
15 take slightly longer depending on the answers.

16 THE COURT: No, no, no. I understand.

17 MR. MOXLEY: Thank you, Judge.

18 BY MR. MOXLEY:

19 Q Okay. Mr. Barton, do you recall testifying previously
20 about your concern -- on direct about your concerns that a
21 dismissal would have a negative impact on *pro se* claimants,
22 particularly, currently incarcerated *pro se* claimants?

23 A Yes.

24 Q Are you aware of the Amicus filing in this this case by
25 the ACLU and other organizations?

1 A I am.

2 Q Have you read that Amicus filing?

3 A I have.

4 Q Okay. And I appreciate, Mr. Barton, that you're
5 concerned about *pro se* incarcerated claimants.

6 But, respectfully, you saw who those organizations
7 were. Would you agree with me that those organizations may
8 know better than you about what may be best for incarcerated
9 claimants in this case?

10 A I -- I suspect they do. And the point that they made
11 is that it's very important to have -- be very careful about
12 notice to incarcerated Plaintiff. And that is something
13 that the Committee has taken very seriously since the
14 beginning.

15 Q And you're -- you're familiar with the -- the -- having
16 read the document, you're familiar with the organizations
17 who filed that Amicas filing, correct?

18 A Not all of them. I'm certainly familiar with the ACLU.

19 Q Generally, you're familiar with those organizations,
20 right?

21 A Some of them I hadn't heard of.

22 Q Okay. Well, would you agree with me that those
23 organizations would be interested in enhancing and not
24 diminishing incarcerated claimants' access to justice?

25 A Okay.

1 Q You -- you would agree with that, right?

2 A Okay.

3 Q Well, no. I'd like to answer -- I'd like an answer,
4 Mr. Barton.

5 My question is, and I'll ask -- I'll ask about an
6 organization that I think you said specifically you're
7 familiar with.

8 A Yes.

9 Q Do you think the ACLU is interested in enhancing or
10 diminishing incarcerated prisoners' access to justice.

11 A They are -- they are likely interested in enhancing it.

12 Q Right. And those organizations support dismissal of
13 this bankruptcy case, don't they?

14 A Yes. Though it's interesting they, the ACLU brief,
15 cites the -- your motion to dismiss as a reason for
16 its -- for its Amicus brief and for the -- for its decision
17 to oppose the settlement.

18 I do think there are things in your brief that are
19 inaccurate. And so I -- I don't know if -- if ACLU would
20 feel the need to oppose the settlement if they had all the
21 facts.

22 Q Let me ask you this: Given that Amicus filing, we know
23 that those organizations are aware of this case now, right?

24 A Yes. Apparently through your brief.

25 Q What's your basis for that?

1 A A statement in the -- in the ACLU's brief that --

2 Q That's -- that's your only -- that's your only basis
3 for that statement, correct?

4 A Yes, sir.

5 Q Okay. And given the filing, we know that not only are
6 they aware of the case, our brief, they're -- they're aware
7 that there are *pro se* claimants who are incarcerated who
8 have claims in this case, right?

9 A Yes.

10 Q What facts do you think -- you had testified
11 that -- that you saw a reference in the ACLU's brief to our
12 motion to dismiss. And if -- you think if they had all the
13 facts, that you don't know what their position would be?

14 What -- what facts do you think would change the ACLU's
15 position?

16 MR. ZLUTICKY: Objection, Your Honor.

17 THE COURT: Sustained.

18 (Pause in the proceeding.)

19 BY MR. MOXLEY:

20 Q In response to Mr. Zulitcky's questions about whether
21 the UCC considered dismissing this case, you testified on
22 direct examination that the UCC weighed that option
23 carefully, right?

24 A Yes.

25 Q But you were concered about *pro se* incarcerated

1 peoples' rights.

2 A We were, indeed.

3 Q Did the UCC reach out to any of the organizations who
4 filed the Amicus brief that were -- that are focused on
5 incarcerated peoples' rights and their access to justice,
6 and get their perspective, or ask them questions about why
7 they support dismissal?

8 A You're asking if we reached out to the individuals
9 who -- to the entities that filed that Amicus brief?

10 Q I am.

11 A I'm not aware that we did.

12 Q You as the Chair --

13 A I don't know if we did.

14 Q Okay. You as the Chairperson of the UCC didn't
15 instruct your counsel, or your advisors to do that, did you?

16 A No.

17 Q The Amici raised the concern in their brief, which I
18 know you read. And so I'm assuming you saw, that if the
19 settlement is approved and a plan confirmed, it would pave
20 the way for future medical care providers in prison systems
21 to again file for bankruptcy to avoid paying creditors,
22 including tort claimants, what they're owed.

23 Do you share that concern?

24 MR. ZLUTICKY: Objection, Your Honor.

25 THE COURT: No. I think that's fair. Overruled.

1 THE WITNESS: You know, my focus, the focus of the
2 Committee, is on getting money into the hands of our
3 creditors.

4 I -- I -- I will say that the -- the effect of
5 what happens on -- on other cases in the future is secondary
6 to that.

7 BY MR. MOXLEY:

8 Q Okay. So that may have been a fact, irrespective of
9 our brief, why the ACLU took the position it does with
10 respect to dismissal right?

11 MR. ZLUTICKY: Objection.

12 MR. MOXLEY: I'll withdraw the question.

13 THE WITNESS: I have no idea. Well -- it --

14 MR. MOXLEY: I withdraw --

15 THE COURT: I'm going to -- I'm going to sustain
16 the objection. I'm --

17 MR. MOXLEY: I'll -- I'll move on.

18 THE COURT: Yeah. Go ahead.

19 MR. MOXLEY: Thank you, Judge.

20 BY MR. MOXLEY:

21 Q Let's switch gears, Mr. Barton.

22 Am I correct that the UCC does not support the last
23 plan on file, the second amended plan; is that right?

24 A That's correct.

25 Q Okay. And so if this settlement is approved, and if

1 a -- then -- then the -- I think you testified the plan
2 would be that the TCC and the -- strike that.

3 I take it that if this Rule 9019 motion is granted, the
4 intention of the UCC would be to go back and mediate with
5 the TCC and other interested parties to try to come up with
6 a plan structure; is that right?

7 A That is the idea.

8 Q So putting aside the amount of dollars that flow in
9 under the -- under this settlement versus the last
10 settlement that's no longer being -- being pursued, is there
11 any other aspect of the last filed plan, second amended
12 plan, that the UCC does not support?

13 MR. ZLUTICKY: Objection, Your Honor.

14 THE COURT: What's the objection?

15 MR. ZLUTICKY: He's already said that he doesn't
16 support the plan entirely. And he's now asking what
17 specific provisions he wouldn't support in the future.
18 That's calling for speculation.

19 MR. MOXLEY: No, Your Honor, I -- well, may I be
20 heard, Your Honor?

21 THE COURT: Yeah. Go ahead. Of course.

22 MR. MOXLEY: Okay. Thank you.

23 THE COURT: I was waiting on you.

24 MR. MOXLEY: I'm sorry.

25 THE COURT: I said I was waiting on your response.

1 MR. MOXLEY: Oh, thank you, Judge. Thank you,
2 Judge.

3 Your Honor, he testified before they no longer
4 support the prior plan, they support this plan. My question
5 is simply, is -- I'm actually would like to know the answer
6 to what Mr. Zutlicky just said.

7 Is it the entirety of it or are there -- or is it
8 just the dollars, just the consideration that comes in.
9 Because I -- I suspect, Judge, that the answer is --

10 THE COURT: I -- I don't -- I don't want you to --

11 MR. MOXLEY: Okay.

12 THE COURT: -- suspect what the answer is.
13 I -- I -- I think he could answer what parts of the second
14 amended plan they didn't specifically, the Committee
15 opposed. I think that's a fair question.

16 MR. ZLUTICKY: Well, Your Honor, the -- the
17 Committee did oppose the plan as a whole. And that's --

18 THE COURT: Yeah. But I'm saying, but I think he
19 can testify. He's the Chair of the Committee. He can
20 testify as to what -- what his understanding was about what
21 the Committee objected to.

22 THE WITNESS: So, hit me with the question again.

23 MR. MOXLEY: Yes, of course, Mr. Barton.

24 BY MR. MOXLEY:

25 Q My -- my question is, putting aside the amount of

1 dollars that change with respect to -- with respect to the
2 settlement from the last settlement to this settlement, are
3 there any other aspects of the last filed plan, the second
4 amended plan, that the UCC does not support?

5 A Well I think it -- it -- it's all up in the air.

6 So, we went into the last mediation with, the UCC did,
7 on the understanding that we were going to be talking about
8 the amount of money to bring into the estate and make
9 available to creditors. That would be the subject of the
10 mediation.

11 And that we would not include, as part of the
12 mediation, any discussion of the plan by which the dollars
13 would be distributed. And so, I think it's fair to say,
14 based on that history, that there isn't anything in
15 that -- in the -- in the existing plans that isn't up for
16 discussion with you all.

17 Q Okay. Thank you, sir.

18 Were you aware, Mr. Barton, that immediately after the
19 Rule 9019 motion and the TCC's motion to dismiss were filed
20 on January 16th, that the TCC reached out to your Committee
21 and requested mediation and proposed that the parties stay
22 litigation while that mediation took place?

23 A I'm sorry. I missed the first part of that. Can
24 you -- I apologize. My hearing is not great.

25 Q No, that's okay. Let me just talk into the microphone

1 more.

2 Mr. Barton, my question was, were you aware that
3 immediately after the Rule 9019 motion and the motion to
4 dismiss were filed on January 16th, that the TCC reached out
5 to your Committee and requested mediation, and proposed that
6 the parties stay litigation while that mediation took place?

7 A Mediation on what subject?

8 Q My -- my question is, are you aware that that -- that
9 that happened?

10 A Not sitting here today.

11 Q No one brought that to your attention.

12 A I don't know if anyone brought that to my attention.

13 Q So you -- you just learned that -- and I appreciate you
14 don't want to necessarily take my word for it.

15 But if that happened, you're hearing about that for the
16 first time.

17 A I don't know if I'm hearing about it for the first
18 time.

19 MR. ZLUTICKY: Objection, Your Honor.

20 THE COURT: I'm -- I'm not sure. He said he
21 didn't -- he said he's not aware if he knew of not. And I'm
22 not sure what that means.

23 I'm not sure if that means he's -- I'm -- I'm not
24 sure what the answer that is. So I think it's fair for him
25 to ask a little bit more questions, to try to understand

1 that.

2 THE WITNESS: I don't recall learning that
3 information.

4 (Pause in the proceeding.)

5 BY MR. MOXLEY:

6 Q Well let me ask you this question.

7 Are you aware that the UCC's counsel informed the TCC
8 that the UCC was unwilling to mediate in January?

9 A That the TCC was unwilling to mediate in January?

10 Q That the UCC was unwilling to meet -- your Committee
11 was unwilling to mediate with the Committee that I
12 represent.

13 A I -- I'm not aware of that.

14 Q Okay. Did you, as the Chair of that Committee,
15 instruct your counsel to tell the TCC's counsel that the UCC
16 was unwilling to mediate in January?

17 A Did I -- what was the question there?

18 Q You're the Chair of the UCC, correct?

19 A Yes.

20 Q As the Chair, did you instruct your counsel to tell the
21 TCC's counsel that the UCC was unwilling to mediate with the
22 TCC in January?

23 A I -- I did not give that instruction.

24 Q So --

25 (Pause in the proceeding.)

1 BY MR. MOXLEY:

2 Q Well, given that you didn't give that instruction,
3 I'm -- I'm really confused, Mr. Barton, how -- how is it
4 that the UCC, I guess, through its advisors was unwilling to
5 mediate with the TCC in January, but you're willing to meet
6 with us after the settlement is approved. Why -- why is
7 that?

8 A I -- I don't know. I'm not aware of any refusal to
9 mediate.

10 Q Do you think that if the Rule 9019 motion is granted,
11 that the effect would essentially be that the amount of
12 money that the settling parties would pay would be capped at
13 what it is now?

14 MR. ZLUTICKY: Objection, Your Honor. Calls for
15 speculation.

16 THE COURT: Overruled.

17 THE WITNESS: Can you repeat the question?

18 BY MR. MOXLEY:

19 Q Do you think that if the Court granted the Rule 9019
20 motion, the amount of money that the settling parties would
21 pay would be capped at what it is now?

22 A Well, there are -- there are -- well, I -- I don't know
23 if it would be capped.

24 Q Okay.

25 A Yeah.

1 Q Let me ask you this. You've -- you've -- you've
2 participated in a lot of the negotiations and the
3 mediations, right? I'm not asking for any substance of
4 mediation. But you participated in them, right?

5 A Yes.

6 Q Okay. So if the Court grants the motion that says the
7 \$54 million settlement is approved, do you think it's likely
8 that the settling parties who are obligated to make payments
9 under that agreement would pay more money than the amount
10 the Court has already approved?

11 A I don't.

12 Q Right.

13 A There are other claims that -- that the estate has,
14 such as against the Flax (phonetic) Group. So more money
15 might be made available to creditors eventually.

16 But I agree. I mean, the -- the money that we're
17 paying in exchange for a release. And I don't anticipate
18 that they'll be willing to pay more once they get out of it.

19 Q Mr. Barton, do you recall that Mr. Zutlicky asked you
20 some questions on direct regarding how the UCC takes into
21 account the views of its two members who are personal injury
22 claimants?

23 A Yes.

24 Q The UCC's past votes on whether to pursue certain
25 issues or take certain actions have not always been

1 unaimous, right?

2 A Correct.

3 Q The UCC was not unaimous in supporting one of the
4 bankruptcy plans that was filed in this case by the Debtor
5 and the UCC previously, right?

6 A Right.

7 Q At least one member of the UCC voted against one of the
8 prior bankruptcy plans in this case that was supported by
9 the Debtor and the UCC, right?

10 A Correct.

11 Q Was that UCC member who voted against one of those
12 prior bankruptcy plans in this case the holder of a personal
13 injury wrongful death claim?

14 A Yes.

15 Q Are you aware that the Debtor has objected to two
16 claims made by TCC members?

17 A Yes. Well, when you -- what claims are -- do you have
18 in mind?

19 Q Well, my question, sir, is you understand that there
20 are members on the TCC, right, the Tort Claimants Committee.
21 Yes?

22 A Yes.

23 Q Okay. My question is, are you aware -- and
24 those -- and some of the members have filed proofs of claim
25 in this bankruptcy case; you're aware of that.

1 A Yes.

2 Q Okay. My question now, sir, is are you aware that the
3 Debtor has objected to two claims made by the TCC members?

4 A I think I would need to know what claims you have in
5 mind before answering that question.

6 Q Okay. You're not --

7 A I'm now sure I know.

8 Q You're just not sure.

9 A I'm not sure.

10 Q Okay. That's fine.

11 Are you aware of any investigation by the Debtor into
12 the validity of St. Luke's claim.

13 A By the Debtor.

14 Q Yes, sir.

15 A I'm not.

16 Q Has the UCC investigated the validity of St. Luke's
17 claim?

18 A No.

19 Q That -- that -- that's kind of -- that's laughable,
20 right? That they wouldn't do that.

21 A I don't know if it's laughable. They haven't done it.

22 Q Well it seemed like you just laughed.

23 (Laughter.)

24 BY MR. MOXLEY:

25 Q Okay. Are you aware, Mr. Barton -- well, let me strike

1 that.

2 Did you hear the testimony in this case on Monday? Did
3 you participate in that hearing?

4 A I did not participate in the hearing. I've read the
5 testimony of Russell Perry.

6 Q Okay. Did you read the testimony of Mr. Lefkowitz?

7 A I did not.

8 Q Okay. Did anybody advise you that Mr. Lefkowitz
9 characterized St. Luke's claim in court on Monday as the
10 most fictitious claim in the entire case and said that
11 St. Lukes is not owed a dime.

12 A I got a report from counsel about that.

13 Q Okay.

14 (Pause in the proceeding.)

15 BY MR. MOXLEY:

16 Q If St. Luke's claim is fictitious, as Mr. Lefkowitz
17 characterized it, would that mean that the non-personal
18 injury claims aggregate value in this case would be
19 substantially reduced?

20 A St. Luke claim is not fictitious. But if it were,
21 what's the question?

22 Q Would the non-personal injury claims in this case, the
23 aggregate amount, be substantially reduced.

24 MR. ZLUTICKY: Objection, Your Honor. Calls for
25 speculation.

1 THE COURT: I -- I just think it's a matter of
2 math. You take one out, it gets less.

3 MR. MOXLEY: Right.

4 THE COURT: That's the point we're trying to get
5 to?

6 THE WITNESS: It -- it's that --

7 THE COURT: I get it.

8 THE WITNESS: Yes. I mean, we've got a \$32
9 million claim.

10 BY MR. MOXLEY:

11 Q That's the point.

12 A And that total number of claims if we withdrew it,
13 which we have no intention of doing. But if we withdrew it,
14 that would reduce it by the amount of the claim.

15 Q By -- by more than \$30 million, right?

16 A Yes.

17 Q Okay. If this bankruptcy case is dismissed, whether
18 people get paid or not would depend on their ability to
19 prove their claims in the U.S. Civil Justice System, right?

20 A Yes.

21 Q And St. Luke's would have to continue in the U.S. Civil
22 Justice System, right?

23 A Yes.

24 Q But if the settlement's approved, and a plan is
25 confirmed, then St. Luke's would not continue in the U.S.

1 Civil Justice System, right?

2 A That's right.

3 Q And you want the settlement approved and a plan
4 confirmed, right?

5 A I do.

6 Q So St. Luke's doesn't want to have to continue in the
7 U.S. Civil Justice System. It wants the settlement, right?

8 A The Committee wants the settlement approved. I don't
9 know what St. Luke's view is.

10 Q Okay. Well does St. Luke's -- you're the Deputy
11 General Counsel of St. Luke's. Does St. Luke's support the
12 settlement?

13 A That -- I don't think that's a live question. They've
14 not been asked whether they support or don't support the
15 settlement.

16 Q Well, Mr. Barton, St. Luke's filed a statement on the
17 Docket in this case --

18 A Well, I -- sorry.

19 Q -- in support of the settlement, didn't they?

20 A The Committee supports the settlement. And the
21 St. Luke's representative on the Committee supports the
22 settlement.

23 Q And didn't St. Luke's itself, as a claimant, file an
24 independent statement?

25 A And we did. I'm sorry. You're -- thank you. You

1 reminded me, yes. We did support the settlement.

2 Q You did, right?

3 A Thank you.

4 Q Okay. Okay. All right.

5 So there's not doubt, just be sure the Record's clear.

6 A Fair enough.

7 Q There's no doubt that St. Luke's itself supports the
8 settlement, right?

9 A Fair enough.

10 Q Okay.

11 (Pause in the proceeding.)

12 BY MR. MOXLEY:

13 Q Now if Mr. Lefcowitz is correct about the merits of
14 St. Luke's claim, that it's fictitious.

15 A Yes.

16 Q That would mean if it was litigated, you probably
17 wouldn't recover anything in the Civil Justice System,
18 right?

19 MR. ZLUTICKY: Objection, Your Honor. We're past
20 math. This calls for speculation.

21 MR. MOXLEY: No. I'm asking about the merits of
22 the claim, Your Honor. And where -- why it is -- I'm going
23 somewhere with this, Judge. And I think that's a fair
24 question.

25 THE COURT: I -- I -- can you ask the question

1 again?

2 MR. MOXLEY: Yes.

3 BY MR. MOXLEY:

4 Q My question is, if -- if the claim, as Mr. Lefkowitz
5 characterized it as fictitious, I'm asking if he agrees that
6 St. Luke's would be unlikely to succeed in its litigation in
7 Idaho.

8 MR. ZLUTICKY: Your Honor, same objection. Just
9 because you're going somewhere doesn't mean you can ask
10 improper questions to get there.

11 THE COURT: I -- I -- why don't you get to where
12 you're going, cause I'm not sure. He disagrees with
13 Mr. Lefkowitz' -- so saying if Mr. Lefkowitz is right, I'm
14 not really sure what that does for me. It's just two people
15 disagreeing about a claim that I know nothing about, so --

16 MR. MOXLEY: I'll -- I'll get where I'm going,
17 then, Judge.

18 THE COURT: Go ahead.

19 MR. MOXLEY: I'm going. Thank you, Your Honor.

20 BY MR. MOXLEY:

21 Q Let me ask you this, Mr. Barton:

22 If the settlement is approved and a plan confirmed that
23 results in the creation of a liquidation trust, like the one
24 contemplated by the second amended plan. Then there would
25 be a process for how claims would be handled, right?

1 A Right.

2 Q Okay. So let's look back at the last filed plan.

3 That's at -- that's at Tab -- that's at 18. That's at

4 Tab 18 in your binder.

5 (Voices speaking off the Record.)

6 BY MR. MOXLEY:

7 Q Sorry. Tab 8. I apologize. Thank you.

8 (Pause in the proceeding.)

9 BY MR. MOXLEY:

10 Q And if you see at the top of those pages, and it'll
11 come up on your screen, too, Mr. Barton. But if you see at
12 the top of those pages there of 177. I'd ask you to turn
13 with me to Page 46 of 177.

14 A Sorry. I'm not seeing this. What -- what's the tab?

15 Q Tab 8.

16 A Tab 8.

17 Q And, Mr. Barton, just for your convenience, I'll
18 just -- I'll just note it's on the screen. You're obviously
19 welcome to see the whole document in the binder. But I just
20 wanted you to know that.

21 A Okay.

22 Q So at Page 46 of -- of 177 of the -- of what is TCC
23 Exhibit 27, which is the Second Amended Disclosure Statement
24 and its attachment.

25 A Yes.

1 Q You see that there is a section entitled, "Liquidation
2 Trust Claims Administration Process." You see that?

3 A I do.

4 Q And if you look at the third paragraph down, the very
5 final paragraph on that page. It says,

6 "If a holder of a Class IV non-personal
7 injury claim does not choose to receive
8 the \$5,000 expedited distribution, such
9 holder will be required under the terms
10 of the Liquidation Trust Agreement to
11 participate in a mediation. Mediation
12 is an out-of-court claims process where
13 the holder will meet with the
14 liquidation trustee and a neutral
15 facilitator to potentially agree on an
16 amount for an allowed claim.
17 Before the mediation occurs, the
18 liquidation trustee will make a
19 settlement proposal to the holder, and
20 the holder may respond with additional
21 information if they do not wish to
22 accept the liquidation trustee's
23 proposal.
24 If the claim is resolved through or
25 before mediation, nothing further will

1 be required before distributions can be
2 made on the claim."

3 You see that?

4 MR. ZLUTICKY: Objection, Your Honor. What's the
5 relevance of this?

6 THE COURT: I don't know. I -- I think he can say
7 he saw -- he sees it. Now -- and then I think we're going
8 to get to the next question --

9 MR. MOXLEY: Yes.

10 THE COURT: -- which may -- which may draw a
11 relevance objection or not. I don't know.

12 I don't know where we're going with it, but I
13 guess we're going to find out real --

14 MR. ZLUTICKY: I'll be quiet, but I'll stick
15 around.

16 THE WITNESS: But I so see it.

17 BY MR. MOXLEY:

18 Q Okay. If --

19 (Pause in the proceeding.)

20 BY MR. MOXLEY:

21 Q If a liquidation trustee made a proposal to St. Lukes'
22 and St. Luke's accepted it under the prior plan, there would
23 be no judicial review whatsoever, right?

24 MR. ZLUTICKY: Objection, Your Honor. Calls for
25 speculation.

1 MR. MOXLEY: We need to know his understanding --

2 THE COURT: That causes -- that causes of a legal
3 conclusion.

4 MR. ZLUTICKY: It's also calling for a legal
5 conclusion. Also, I'm questioning the relevance. It's
6 already been established this isn't the plan.

7 MR. MOXLEY: May I be heard, Your Honor?

8 THE COURT: I -- I -- why don't we stick with
9 mine. I think it calls for a legal conclusion.

10 (Laughter.)

11 THE COURT: I think that works.

12 MR. MOXLEY: Your Honor, may I -- may I just be
13 heard briefly. We -- I think we need to know his
14 understanding of how the prior plan worked because it -- it
15 impacts the settlement agreement and understanding why it is
16 they support the settlement agreement.

17 This -- there were two previously-proposed
18 plans --

19 THE COURT: I -- I --

20 MR. MOXLEY: -- that this Committee supported,
21 Judge.

22 THE COURT: I know. But I -- I guess -- I think
23 you can ask him if that was his understanding as to how he
24 can -- but he can't say whether it would have required
25 judicial review or not.

1 MR. MOXLEY: Okay.

2 THE COURT: I --

3 MR. MOXLEY: I appreciate that. Thank you, Your
4 Honor.

5 BY MR. MOXLEY:

6 Q Is that your understanding of how the claims would have
7 been handled under the prior process?

8 A My understanding is as it's set out here in -- in this
9 paragraph.

10 Q Okay.

11 And your understanding of the prior process was that if
12 that process played out as described there, and St. Luke's
13 accepted the offer that was made, then no one other than
14 St. Luke's and the Trustee would know the amount of the
15 settlement, correct?

16 MR. ZLUTICKY: Objection, Your Honor. Again, this
17 calls for a legal conclusion on the terms of the plan that's
18 no longer in effect.

19 MR. MOXLEY: Your Honor, we think this is highly
20 relevant --

21 THE COURT: Relevant --

22 MR. MOXLEY: -- to why --

23 THE COURT: I think he can explain his
24 understanding. I think that's what he can do. Not how it
25 may actually work or not work. I think -- but I think he

1 can certainly explain his understanding.

2 THE WITNESS: Can you repeat the question?

3 BY MR. MOXLEY:

4 Q Is it your understanding that under the prior process
5 in the second amended plan, if the Trustee made a -- or the
6 mediator made an offer to St. Luke's that it accepted, let's
7 say for the full amount. Let's say the offered \$30 million
8 and you accepted it. The people who would know about that
9 would be St. Luke's, and the Trustee, and the mediator,
10 correct?

11 A I -- those people would know about it.

12 Q No one else would know about it, right?

13 A I -- I don't know that.

14 Q That's not -- okay. You still don't know. Okay.

15 (Pause in the proceeding.)

16 BY MR. MOXLEY:

17 Q Do you know how the liquidation trustee was selected
18 under the prior plan?

19 A Um -- I don't know how they were selected.

20 Q Well, let me just see if I can refresh --

21 A Yeah.

22 Q -- your recollection as to how the process previously
23 was.

24 So if you could turn to Page 92 of 177?

25 (Pause in the proceeding.)

1 BY MR. MOXLEY:

2 Q Are you there, sir?

3 A Not quite.

4 Q Okay.

5 A Yeah.

6 Q And if you look at Definition 73 there, sir. You see,

7 "Liquidation trustee is defined as

8 meaning the trustee of the liquidation

9 trust who shall be selected by the

10 Committee in consultation with the

11 Debtor,"

12 A Yes.

13 Q "And who shall be named in the plan supplement."

14 Does that refresh your recollection of the process,

15 sir?

16 A No. I mean, I think that that point -- that 73 is

17 true, though.

18 Q Okay.

19 A Yeah.

20 Q You're the Chair of the UCC, right?

21 A Yeah. Uh-huh.

22 Q So if the Committee that you chair that will select the

23 trustee in consultation with the Debtor, who will be

24 responsible for determining what the offer will be, or

25 would -- would have been to St. Luke's under this old

1 process, right?

2 A According to Paragraph 73 there, yes, sir.

3 Q So does that set up a situation where the Committee
4 could -- you, as the Chair of the Committee, could -- could
5 pick a trustee who would allow the claim in the full amount
6 and no one would know about it?

7 MR. ZLUTICKY: Objection, Your Honor. Calls for
8 speculation. Calls for a legal conclusion.

9 THE COURT: Yeah. Give me a little more credit,
10 too. I don't think I would have approved that. But -- but
11 go ahead.

12 (Laughter.)

13 MR. ZLUTICKY: Objection, Your Honor, you would
14 have never approved that.

15 THE COURT: But as proposed, I -- I get it.

16 BY MR. MOXLEY:

17 Q That's what was proposed, right?

18 A Well what was proposed?

19 Q Well, but that what was previously -- that was the
20 process that was previously proposed, right?

21 A Seventy-three, it -- it in Paragraph seventy-three is
22 what was proposed.

23 Q Okay. Is a system under which a trustee that you
24 helped pick, who then gets to determine the amount of your
25 claim and your share of whatever funds are available,

1 without any oversight and without anyone else even knowing,
2 is that better than the U.S. Civil Justice System?

3 MR. ZLUTICKY: Objection, Your Honor. It's
4 calling for speculation. It's also calling for an
5 evaluation of the U.S. legal system.

6 It's not been established the witness is an expert
7 on the U.S. legal system.

8 THE COURT: I'm going to overrule. He can -- he
9 can answer the question.

10 THE WITNESS: So let me just emphatically reject
11 any suggest that somehow St. Luke's is manipulating the
12 bankruptcy process to benefit itself personally. There's
13 nothing to suggest that.

14 So I guess I don't understand where your questions
15 are coming from.

16 BY MR. MOXLEY:

17 Q My questions are coming from understanding what the
18 process that you supported twice was.

19 The prior process that you supported twice would have
20 laid out that exact scenario where St. Luke's would have
21 picked the person.

22 A No. Not St. Luke's, the Committee.

23 Q The Committee would have picked the person who would
24 have made that determination as to what offer to make to
25 St. Luke's, right?

1 A I assume that selection would be subject to judicial
2 oversight. And there would be all kinds of mechanisms in
3 place to prevent any kind of funny business.

4 Q Well you also heard from the Judge, I think, this
5 system probably never would have been confirmed, right?

6 A I don't know. But it is not presently before the
7 Court. And no one is seeking its confirmation.

8 Q Mr. Barton, the Stinson firm represents a number of
9 Tehum's general unsecured creditors or their affiliates in
10 matters outside of this bankruptcy case, right?

11 A Can you say that again?

12 Q The Stinson firm, who represents the UCC, correct?

13 A Yes.

14 Q The Stinson firm represents a number of Tehum's general
15 unsecured creditors or their affiliates in matters outside
16 of this bankruptcy case, right?

17 A I -- I -- I don't know who Stinson represents.

18 Q Do -- do you -- do you know -- you have no knowledge of
19 that?

20 A I don't know who Stinson represents.

21 Q Have you see Stinson's employment retention filing in
22 this case?

23 A I don't know.

24 Q Okay. Let me -- let me see if I can refresh your
25 recollection. Let me show you what's at Tab -- it's

1 actually in the sleeve of your binder. So in your binder
2 sleeve.

3 MR. BROOKNER: Objection, Your Honor. He said I
4 don't recall. He said I don't know. You can't refresh
5 recollection of somebody who doesn't know.

6 MR. MOXLEY: I asked him if he had seen the
7 document and he said he didn't know. So I'm going to show
8 him the document. And let's see if it -- let's see if he
9 knows about it.

10 THE COURT: Fine with that.

11 (Pause in the proceeding.)

12 BY MR. MOXLEY:

13 Q Mr. Barton, do you have the -- do you have the -- the
14 Declaration of Mr. Zluticky? It's filed in this case at
15 Docket 321?

16 A Yes.

17 Q Okay. Have you seen this document before?

18 A I don't believe so.

19 Q Mr. Zluticky is an attorney with Stinson representing
20 the UCC, correct?

21 A Oh, I'm sorry. I have seen this Declaration. I -- I
22 thought you were describing a different document. I have
23 seen this Declaration, I believe.

24 Q Okay. Very good.

25 A Yeah.

1 Q Glad we found that out. Thank you, sir.

2 (Pause in the proceeding.)

3 BY MR. MOXLEY:

4 Q Are you aware of whether this Declaration has been
5 supplemented or amended in the nearly one year since it was
6 filed?

7 A I'm not.

8 Q Okay. Let's look at Paragraph 8 of this Declaration.
9 (Pause in the proceeding.)

10 BY MR. MOXLEY:

11 Q If you're looking at Paragraph 8 of the Declaration,
12 you see there's a subsection (b).

13 A Uh-huh.

14 Q That says, "Stinson currently represents the parties in
15 interest listed on the attached Exhibit 1." It goes on from
16 there. Do you see that?

17 A (No audible response.)

18 Q And it says, "In matters" -- it says -- let me
19 ask -- let me ask a clean question, sir, I apologize.

20 If you look at Paragraph 8(b), it reads,
21 "Stinson currently represents the
22 parties in interest listed on the
23 Attached Exhibit 1, or an affiliate,
24 subsidiary, or related to any thereof,
25 in matters wholly unrelated to this

1 Chapter 11 case.”

2 Do you see that?

3 (Pause in the proceeding.)

4 THE WITNESS: Where are you reading?

5 BY MR. MOXLEY:

6 Q I'm -- I'm at Paragraph 8, which is Page 3 of the
7 document.

8 A 8(b), yes.

9 Q You see that?

10 A I do.

11 Q Okay. And you see there's a reference in -- in
12 subsection (c) to an Exhibit 2?

13 A Yes.

14 Q And the description there is that those entities listed
15 on Exhibit 2 are ones where was just some uncertainty within
16 Stinson whether or not they represented that creditor
17 outside of the case; do you see that?

18 A Yes.

19 Q Okay. Mr. Barton, who are the members of the UCC?

20 A Who are the members of the UCC?

21 Q Yes. And I -- I'd be happy to show you the appointment
22 notice if that would help you. But if you know them off the
23 top of your head, I'm happy to do it that way as well.

24 A St. Luke's, Saint Alphonsus, Rachell Garwood, Latricia
25 Ravell (phonetic), Capital Region Medical Center --

1 (Pause in the proceeding.)

2 THE WITNESS: And I forget their name, but it's
3 got Staffing in the name.

4 BY MR. MOXLEY:

5 Q Maxim Healthcare Staffing?

6 A Maxim Healthcare Staffing.

7 Q And is there one more, sir?

8 A I think there's one more. And I'm -- I'm just blanking
9 on it.

10 Q Is that Truman (phonetic) Medical Center?

11 A Truman Medical Center.

12 Q So looking back at the Stinson retention application
13 Declaration. Let's look at Exhibit 1 to that. So that
14 begins on Page 8.

15 A Yes.

16 Q And if you look through the list, you can see it's
17 a -- it's a lengthy -- well I won't describe it as lengthy.
18 I'll strike that.

19 But you see there's a list that spans from Page 8 to
20 Page 12. Do you see that?

21 A Yes.

22 Q Okay. Do you see that St. Luke's is on this list?

23 A I don't.

24 (Pause in the proceeding.)

25 BY MR. MOXLEY:

1 Q Let me draw your attention to -- at the top -- or
2 Page 10 about six, six rows down.

3 A Yes. That's --

4 (Pause in the proceeding.)

5 BY MR. MOXLEY:

6 Q You see St. Luke's Health System on the list?

7 A Yes. We -- it -- but it says St. Luke's Hospital,
8 Kansas City.

9 Q Let's go back to the very first page of Exhibit 1. Do
10 you see there's a parties in interest and there's a Stinson
11 client?

12 A Yes.

13 Q Do you see --

14 A St. Luke's Health System does not have a hospital in
15 Kansas City.

16 Q Okay. Okay. Thank you for clarifying.

17 A St. Luke's Health System of -- of Idaho is not.

18 Q Okay. Very good.

19 A Yeah. And -- and we're not affiliated with any
20 St. Luke's branded facility anywhere else.

21 Q Okay.

22 A So that's common name for a hospital.

23 Q Okay.

24 A St. Luke's has nothing --

25 Q Very good.

1 A -- to do with us.

2 Q Thank you for -- thank you for clarifying.

3 A Yeah.

4 (Pause in the proceeding.)

5 MR. MOXLEY: Your Honor, may I just take one
6 moment?

7 THE COURT: Of course.

8 MR. MOXLEY: Thank you, Judge.

9 (Pause in the proceeding.)

10 MR. MOXLEY: I think we can probably wrap up our
11 cross-examination very quickly if we could just have a
12 five-minute break.

13 THE COURT: Of course.

14 MR. MOXLEY: That would -- that would be very
15 helpful, Judge.

16 THE COURT: Okay. I'll come back in five minutes.
17 Thank you.

18 MR. MOXLEY: Thank you, Judge.

19 THE CLERK: All rise.

20 (Recess taken from 11:34 a.m. to 11:44 a.m.)

21 THE COURT: Okay. We're back on the Record in
22 Tehum.

23 Counsel, you may proceed.

24 MR. MOXLEY: Thank you, Judge. I just have a
25 couple more questions.

1 THE COURT: Okay.

2 CROSS-EXAMINATION (CONT'D)

3 BY MR. MOXLEY:

4 Q Mr. Barton, do you know if any of the other members of
5 the UCC are represented by the Stinson firm in matters
6 unrelated to this case?

7 A I don't.

8 Q Okay. Thank you for confirming that, sir.

9 MR. MOXLEY: Your Honor, I have no further
10 questions at this time. I'll pass the witness.

11 THE COURT: Thank you. Any Redirect?

12 MR. ZLUTICKY: Your Honor, before Redirect, does
13 anybody else have any Cross of this witness?

14 THE COURT: I don't --

15 MR. NGUYEN: I have no Cross, yes.

16 THE COURT: Okay. Thank you.

17 MR. ZLUTICKY: I just didn't want to step on
18 anybody's toes.

19 THE COURT: Nope. You got it. Thank you.

20 (Pause in the proceeding.)

21 REDIRECT EXAMINATION

22 BY MR. ZUTLICKY:

23 Q Mr. Barton, earlier you were asked about some changes
24 to the settlement agreement that was filed on March 5th?

25 A Yes.

1 Q And that was after your testimony on March 1st?

2 A Yes.

3 Q One of the subjects of your testimony on March 1st was
4 the timing of the settlement payment. Do you recall that?

5 A Yes.

6 Q Okay. So did you view that as a subject of your
7 testimony?

8 A Yes.

9 Q And, therefore, something you and I weren't allowed to
10 discuss?

11 A Yes.

12 Q And so you and I didn't discuss the timing of the
13 payment between your testimony on March 1st and today?

14 A Thank you.

15 Q Per the Judge's instruction?

16 A Yes.

17 MR. ZLUTICKY: Pass the witness, Your Honor.

18 Thanks.

19 THE COURT: Thank you. Any further questions?

20 MR. MOXLEY: One very briefly, Your Honor.

21 RE-CROSS-EXAMINATION

22 BY MR. MOXLEY:

23 Q You testified under cross-examination moments ago,
24 though, today, Mr. Barton, that you did have discussions
25 with counsel about that new proposed form of order, correct?

1 A Yes.

2 Q Okay. To your knowledge, did other members of
3 the -- the UCC have any discussions with counsel outside of
4 the one meeting that you attended?

5 A Not to my knowledge.

6 MR. MOXLEY: Thank you. No further questions.

7 THE COURT: Any further question?

8 MR. ZLUTICKY: No further questions.

9 THE COURT: Thank you very much for your time,
10 Mr. Barton.

11 THE WITNESS: Do I leave these here?

12 THE COURT: Yes.

13 MR. MOXLEY: You don't have to take them.

14 THE COURT: Unless you just like them, I'll let
15 you --

16 (Witness steps down.)

17 MR. MOXLEY: Your Honor, may I approach?

18 THE COURT: Yes, of course.

19 MR. MOXLEY: Thank you.

20 THE COURT: Let's see. What would be the next
21 plan? I'm just thinking in terms of timing. At some point
22 folks are going to ask me to eat. And maybe not sure if now
23 makes time -- makes sense to do that and then we can start
24 fresh.

25 MR. GOODMAN: I think it does. While we actually

1 used the benefit of yesterday to, I think, dramatically
2 streamline and try to condense Mr. Atkinson's direct.

3 I do anticipate that there's going to be a lot of
4 folks who are going to want to cross --

5 THE COURT: Uh-huh.

6 MR. GOODMAN: -- him, not just the Debtor, but
7 even perhaps Mr. Patterson will want to cross him as well.
8 So that could go on.

9 THE COURT: Yeah.

10 MR. GOODMAN: So I do think rather than make
11 everyone --

12 THE COURT: Yeah. Why don't we -- why don't
13 we -- why don't we take our lunch break now and just come
14 back at 12:45.

15 MR. GOODMAN: Perfect. Thank you.

16 THE COURT: And -- and be ready to go. Thank you.

17 MR. GOODMAN: Thank you.

18 THE CLERK: All rise.

19 THE COURT: Everyone's excused. I'm just going to
20 shut stuff down over and get myself organized. Please go.

21 MR. GOODMAN: Thank you for everything.

22 THE COURT: Thank you.

23 (Recess taken from 11:47 a.m. to 12:45 p.m.)

24 THE CLERK: All rise.

25 (Pause in the proceeding.)

1 THE COURT: Good afternoon. This is Judge Lopez.
2 Today is March 27th. Time is 12:46. We're going to
3 continue on the Record in the Tehum case.

4 Okay. Counsel, if you can state your name for the
5 Record and how we will be proceeding.

6 MR. GOODMAN: Your Honor, Eric Goodman, Brown
7 Rudnick, counsel for the Official Committee of Tort
8 Claimants.

9 The next witness that will be called today is
10 Michael Atkinson. He is the financial advisor to the TCC
11 and he has filed for his Declaration and report in
12 connection with this matter. So --

13 THE COURT: Okay.

14 MR. GOODMAN: -- we're moving forward with his
15 testimony today.

16 THE COURT: Okay. Thank you.

17 In terms of giving presenter roles to someone, do
18 I need to -- okay. So can we switch it over the left table.

19 Okay. Mr. Atkinson, let me swear you in. Can you
20 please raise your right hand.

21 (Witness sworn.)

22 THE COURT: Okay. Thank you very much. We will
23 proceed with examination.

24 Mr. Atkinson, I just ask that you please just make
25 sure you speak into the mic to make sure that you have a

1 clean Record. It should pick you up if it's in the general
2 direction. And if any point there's an objection that is
3 lodged, please give me an opportunity to resolve the
4 objection.

5 THE WITNESS: Okay.

6 THE COURT: Thank you. All righty, counsel you
7 may -- oh, by the way, if you need a break at any point,
8 just let me know.

9 THE WITNESS: Thank you. Appreciate that.

10 THE COURT: All right. Mr. Goodman, you may
11 proceed.

12 MR. GOODMAN: Thank you, Your Honor. And thank
13 you for suggesting that we take lunch when we did. That was
14 a perfect -- perfectly timed break.

15 DIRECT EXAMINATION

16 BY MR. GOODMAN:

17 Q Mr. Atkinson, good afternoon.

18 A Good afternoon.

19 Q Can you please state your name for the Record?

20 A Sure. Michael Atkinson.

21 Q Okay. And where are you employed?

22 A I'm employed by Province.

23 Q Okay. What is your title at Province?

24 A I am a principle.

25 Q Okay. And how long have you held that position?

1 A I've been with Province for seven years, and I've been
2 a principle the whole time.

3 Q Okay. And what are your responsibilities at Province?

4 A I run Creditors' Committee cases, Debtor cases, and
5 some litigation matters as well.

6 Q Okay. Can you please describe your professional
7 background prior to Province?

8 A Sure. Prior to Province, I worked for a firm called
9 Protivity (phonetic) for ten years, where I was a Managing
10 Director. Before that, I was with my own firm called Penta
11 (phonetic) Advisory Services for about five years. And then
12 before that I was with Navigan (phonetic) Consulting. And
13 then before that I was with a company called CW Amos
14 (phonetic) a regional accounting firm.

15 But the whole time I've been doing bankruptcy
16 restructuring work.

17 Q Do you specialize in any particular field?

18 A Bankruptcy restructuring primarily.

19 Q Okay. And do you specialize in bankruptcies involving
20 tort claims?

21 A In the last seven years, I've represented a little over
22 15 mass tort cases for the Debtor and a couple outside, I
23 mean, serving for the Committee and a couple outside of
24 bankruptcy as well.

25 Q And how long have you worked in the restructuring?

1 A For 32 years.

2 Q Thirty-two years. Okay.

3 Have you been retained in other Chapter 11 cases?

4 A I have.

5 Q Okay. How many creditor committess have you
6 represented?

7 A I've probably represented almost a hundred Creditors
8 Committees in my career.

9 Q Okay. And how many Debtors-in-possession have you
10 represented?

11 A Over 30.

12 Q Thirty. Okay.

13 And how many post-confirmation trusts have you
14 represented?

15 A I have represented close to 50 post-confirmation
16 trusts.

17 Q Have you served as an expert witness in any avoidance
18 actions?

19 A I have.

20 Q Okay. Can you tell me about that?

21 A I have served as an expert witness in avoidance actions
22 in many of the post-confirmation trusts that I've been
23 involved in.

24 We've had fraudulent conveyance actions. We had
25 preference actions probably done hundreds of thousands of

1 preference actions. Have testified, at least seven times in
2 preference cases, which is kind of rare. And I've testified
3 numerous times in fraudulent conveyance actions as well.

4 Q Oh, yes. So that would involve the kind of work that
5 would take place, you know, if a trust were formed here and
6 that trust were then pursuing claims, right?

7 A Yes. That's correct.

8 Q Do you have experience serving as a Trustee who
9 adjudicates claims?

10 A I do.

11 Q You do?

12 A I do, yeah.

13 Q Okay. Do you have experience serving as a Trustee who
14 has pursued insurance recoveries?

15 A I do. I have done that.

16 Q Okay. Do you have experience serving as a Trustee who
17 has pursued other litigation causes of action.

18 A Yes, I have.

19 Q Okay. Are you currently serving as a Trustee in any
20 bankruptcy cases?

21 A I am.

22 Q Okay. Which ones?

23 A I'm the Trustee in the Meloncrot (phonetic) bankruptcy.

24 Q Okay. Have you been hired before as a claims expert?

25 A I have.

1 Q Okay. Are you a claims expert for a form Bankruptcy
2 Judge Chapman (phonetic) in the *Whittaker* (phonetic) case?

3 A I am. Judge Chapman's the future claims rep and I am
4 her -- her claims expert.

5 Q In that bankruptcy case?

6 A In that bankruptcy case, yes.

7 Q Where's that case pending?

8 A It's in -- I think it's in Delaware.

9 Q Okay. And do you represent former Bankruptcy Judge
10 Barbara Houser (phonetic) in the bankruptcy -- or sorry, in
11 the Boy Scouts post-confirmation trust?

12 A Yes. I did the Boy Scouts' bankruptcy for the victims
13 in that case. I was the claims expert for then. And then
14 Judge Houser post-bankruptcy hired me to help her with the
15 claims.

16 Q Okay. And are you currently involved in the *HonX* case
17 before Judge Isgur?

18 A The *HonX* case thankfully just got -- went effective.
19 So -- but I was the claims expert in that case with Judge
20 Isgur. And then I was hired by the post-confirmation
21 Trustee in that case to deal -- help deal with the claims as
22 well.

23 Q Okay. And that would be the administration of the
24 claims after the bankruptcy?

25 A Correct.

1 Q Where did you attend school?

2 A I went to school and got an undergrad degree, a B.S. in
3 Finance from Tufts University. And then I got an M.B.A.
4 from Loyola University.

5 Q Okay. Do you have any professional certifications?

6 A I -- I do.

7 Q Are you a certified public accountant?

8 A I -- I am.

9 Q Okay. How long have you been a certified public
10 accountant?

11 A Probably more than 25 years.

12 Q Are you a certified insolvency and restructuring
13 advisor?

14 A I am.

15 Q How long have you been a certified insolvency and
16 restructuring advisor?

17 A Over 20 years.

18 Q What does it mean to be a certified restructuring
19 advisor?

20 A You have to have practice in the bankruptcy
21 restructuring profession for, I think, over five years. And
22 then there are classes that you have to take, and exams.
23 And then there's a continuing education component as well.

24 Q Okay. Are you a accredited evaluation professional?

25 A I am.

1 Q Okay. How long have you been an accredited valuation
2 professional?

3 A I've been with -- that's with the AICPA. I've been one
4 of those for over 20 years.

5 Q Okay. Are you a certified valuation analyst?

6 A I am.

7 Q Okay. How long have been a certified valuation
8 analyst?

9 A Over 20 years as well.

10 Q Okay. What does it mean to be a certified valuation
11 analyst?

12 A In order to get that credential, you have to have done
13 a certain number of valuations. I think you have to submit
14 a number of valuations to peer review. And then there are
15 tests and classes you need to take to pass and then
16 ultimately become one. And then there's continuing
17 education you need to stay up with.

18 Q Okay. Do you have experience valuing claims against a
19 Debtor in bankruptcy cases?

20 A I -- I do.

21 Q Okay. And do you have experience valuing causes of
22 action that could be asserted by a Debtor in bankruptcy
23 cases?

24 A Yes, I do.

25 Q Okay. Roughly, how many years have you done that kind

1 of work?

2 A I would say since I started working, so 32 years.

3 Q Okay. Do you have experience valuing claims and causes
4 of action in bankruptcy cases involving mass tort liability?

5 A I do.

6 Q Can you describe that experience?

7 A I've been hired in, I think, seven or eight cases where
8 I was the claims expert for tort Committees.

9 So I was the claims expert in *HonX* I mentioned. I was
10 the claims expert in *Cypress no*, not *Cypress Pines*. I was a
11 claims expert in *Boy Scouts*. I was the claims expert in,
12 there's a case called *Barrett Minerals* in front of Judge
13 Isgur as well that I'm a claims expert.

14 I'm the claims expert in the *Whittaker* case for the
15 future claims rep. And I'm sure there are others. But
16 those are the ones that come to time.

17 Q Okay. And all those cases involve tort liability.

18 A Yes. They do.

19 Q Are you a certified fraud examiner?

20 A I am.

21 Q How long have you been a certified fraud examiner?

22 A For a little over 20 years, as well.

23 Q And what does it mean to be a certified fraud examiner?

24 A I think you have to have experience, requisite
25 experience. I -- I was involved in the *Enron* case years

1 ago. And done a lot of check kiting and ponzi scheme cases
2 along -- in -- throughout my career.

3 But ultimately, there's tests that you take, and
4 classes you take. And then ultimately you have to continue
5 with education beyond that.

6 Q Are you a -- are you certified in financial forensics?

7 A I am.

8 Q How long have you been certified in financial
9 forensics?

10 A Over 20 years as well.

11 Q Do you prepare a report in this case?

12 A I -- I did.

13 Q Okay. Could you go to Tab binder that's TCC 321 for
14 folks who are using the other binders.

15 A Okay.

16 (Pause in the proceeding.)

17 BY MR. GOODMAN:

18 Q Do you have that open?

19 A I do.

20 Q Can you identify this document?

21 A Yes. This is my Declaration in this case.

22 Q Okay. Does that Declaration include a report that you
23 prepared?

24 A It does.

25 Q Generally speaking, what materials did you review in

1 creating our report?

2 A So generally, I have a list of documents in my Appendix
3 A that I relied upon. But there were about 600,000 pages of
4 documents that were produced in the case. So I reviewed
5 those.

6 On certain documents, I've identified in my report that
7 you were in that production. Separately, I looked at the
8 filings in the bankruptcy case. I looked at deposition
9 transcripts, and some publically available documents as
10 well.

11 Q Okay. Did you arrive at any conclusions?

12 A I did.

13 Q Okay. We'll walk through each of your opinions in your
14 report in a moment. But could you provide us with a say,
15 high level summary of the conclusions that you were able to
16 reach?

17 A Sure. So, ultimately I reviewed the 9019 motion, as
18 well as the plan and Disclosure Statement. And then all of
19 the supporting documents that I was able to find. I came to
20 six conclusions in -- in the summary sort of --

21 From a summary perspective, I believe my first opinion
22 is there's not sufficient information to quantify the fair
23 value of the potential avoidance actions that arrived out of
24 the May, 2022 divisional merger.

25 My second opinion is that it appears that the UCC and

1 Debtor do not put much weight on the successor liability and
2 did not consider the alter ego claims in, at least the stuff
3 that I've reviewed.

4 The third opinion is that there's insufficient
5 information to determine the current financial wherewithal
6 of the current ability to pay of YesCare and its
7 subsidiaries.

8 The fourth opinion is the Debtor's calculation in their
9 Disclosure Statement related to personal injury claims was
10 flawed. It was based on 2014 data. And their source has
11 2023 data. So updating for that, I think increases the
12 claims by about 17 percent.

13 The fifth is that the plan is -- that was on file
14 originally, the only one I've seen, called for two different
15 trusts. And I did not think the treatment of the creditors
16 in that trusts were -- was fair amongst them.

17 And then my opinion is that the Debtor did not appear
18 to have a business to reorganize or rehabilitate in the
19 Chapter 11 case.

20 Q Okay. Thank you for that.

21 Do you believe that your testimony may be helpful in
22 assisting the Court in understanding the TCC's positions in
23 this case?

24 A I do.

25 Q And do you believe that your testimony may also be

1 helpful in assisting the Court in answering some of the
2 questions that gets raised in this hearing?

3 A I do.

4 Q Okay.

5 MR. GOODMAN: Your Honor, at this time, I would
6 tender Mr. Atkinson as an expert in the field of financial
7 restructuring, mass torts evaluation?

8 THE COURT: Any objection?

9 MR. KAUFMAN: It's a very broad category. I think
10 we can just take him up on cross or I can do a *voir dire*
11 now, which ever the Court prefers.

12 THE COURT: What do you -- which one are you
13 asking me for?

14 MR. KAUFMAN: Well, at -- tell me again the
15 category that -- that we're tendering him as a financial
16 expert on?

17 MR. GOODMAN: Financial restructuring, mass tort
18 work, and valuation.

19 MR. KAUFMAN: Yeah. So, Your Honor, I did take
20 his deposition. I understood he -- he had some experience
21 on some things, but not experience on other things.

22 I think, as we get his opinions, I can just go
23 through on cross why he may not have the experience
24 requisite to give opinions on certain things. And I -- and
25 I'll raise those as we go if that's helpful.

1 (Pause in the proceeding.)

2 THE COURT: Are you -- you objecting to him being
3 qualified as an expert on those two issues?

4 MR. KAUFMAN: No. But as we get into his
5 opinions, we may find that his opinions --

6 MR. GOODMAN: I think he's an allowed --

7 MR. KAUFMAN: -- don't fall within those
8 categories.

9 THE COURT: Okay. All right. He's qualified on
10 those.

11 MR. GOODMAN: Thank you.

12 (Pause in the proceeding.)

13 BY MR. GOODMAN:

14 Q Okay. Mr. Atkinson?

15 A Yes.

16 Q When were you retained by the TCC?

17 A I was retained by the TCC December 19th in 2023.

18 Q Okay. What did you do after you were hired by the TCC?

19 A Shortly after we were hired, we started looking at
20 documents that were on the Docket. And we put together a
21 document request list that we sent over to the Debtor, to
22 Mr. Perry, I think primarily. But maybe I copied some other
23 people as well.

24 Q Okay. Did you request any targeted items?

25 A I did. We tried to -- I usually try to find things that

1 I think are most relevant, not to overwhelm the Debtor. I
2 think I had 42 items or so in my list, my original list.

3 Q Okay. When did you start to receive documents?

4 A Mr. Perry responded to me the same day that I sent my
5 email saying that there was a -- a production that had been
6 provided to Brown Rudnick, my counsel, which I was not aware
7 of.

8 And I reached out to Brown Rudnick, and because of the
9 holidays, I think I got access just after Christmas. So
10 around December 27th I think.

11 Q Okay. When did you receive the YesCare financial
12 statements?

13 A There were -- in that initial production, there was
14 YesCare financials related to the divisional merger, so
15 right at the time of the divisional merger.

16 But I did not receive the YesCare financials and the
17 production associated with YesCare until the -- January
18 31st, I think --

19 Q Okay.

20 A -- of 2024.

21 Q Okay. And when did you complete your investigation and
22 finalize your report?

23 A My report was finalized the date that it was submitted,
24 which was February 23rd, 2024.

25 Q Okay. Did your team go through the documents that the

1 Debtor and the UCC produced?

2 A Yes. We -- we tried to do targeted searches, searching
3 for financial records, documents related to the divisional
4 merger, some of -- there were some transactions that we were
5 focused on and, obviously, there was claims that we were
6 focused on as well.

7 Q Okay. Are you familiar with the Rule 9019 motion that
8 the Debtor and the UCC filed?

9 A I am.

10 Q Okay. And when was the Rule 9019 motion filed?

11 A That was filed January 16th, 2024.

12 Q Okay. Is that something that you considered in
13 drafting your report?

14 A It is.

15 Q Okay. Are you generally aware of the causes of action
16 described in the Rule 9019 motion?

17 A I am.

18 Q Okay.

19 Could we put Paragraph -- if you go to TCC 125, it's
20 Tab 2 in your binder, Mr. Atkinson. I just wanted to ask you
21 some questions about Paragraph 27 of the motion.

22 A Okay.

23 Q Okay. You have a screen and the binder, great.

24 Do you have a general understanding regarding the first
25 three avoidance actions identified in Paragraph 27 of the

1 Rule 9019 motion?

2 A I do.

3 Q Okay. And what is that?

4 A These are avoidance actions where money was paid by the
5 Debtor. And they're contending, related to the first two,
6 that they're fraudulent transfers. And then just other
7 transfers that went to the benefit of a third party.

8 I think the M2 Loan Co. -- M2 Loan Co. amounts were
9 about \$25 million. Geneva, I believe was close to five.
10 And the payments to -- for the benefit of Paragrove
11 (phonetic), were about \$900,000.

12 Q Okay. Are you aware of any substantive differences
13 between the TCC on the on hand and the UCC on the other
14 hands, regarding those avoidance actions?

15 A No, I'm not.

16 Q Okay. Do you have a view as to the value of those
17 avoidance actions?

18 A I do. I, you know, they -- they seem to be to me --

19 MR. KAUFMAN: Your Honor, I -- I'm sorry. I have
20 to object to this answer. This is something that I did ask
21 about in his deposition. It sounds like he's now giving
22 valuations that he said he was not ready to give --

23 THE COURT: Yeah.

24 MR. KAUFMAN: -- a month ago.

25 MR. GOODMAN: Your Honor, I think that --

1 THE COURT: Yeah.

2 MR. GOODMAN: -- he gets to ask his questions when
3 he does cross.

4 THE COURT: Yeah. I think you get to cross him on
5 it.

6 MR. KAUFMAN: That's fine. I can do that.

7 MR. PATTERSON: Your Honor, may objection would
8 be -- calls for an opinion beyond the scope of his
9 purported -- let me just qualify that, legal opinion.

10 He's asking for causes of action.

11 THE COURT: Repeat the question.

12 MR. GOODMAN: I'll get to that, Your Honor. But
13 actually, I'm -- I'm very concerned by that objection. This
14 document was filed under seal in this case. And it's only
15 been provided to parties who have signed on to the
16 Protective Order.

17 If Mr. Patterson has --

18 THE WITNESS: I -- I can speak to that.

19 MR. GOODMAN: -- has -- if Mr. Patterson has seen
20 this document, that would imply someone in this courtroom
21 has violated the Protective Order in this case.

22 THE WITNESS: Yeah. And -- and the Protective
23 Order actually allows the parties who produced the documents
24 under the confidentiality designation to use them however we
25 want.

1 I provided Mr. Patterson a redacted copy that
2 redacted the parts that referenced confidential information.

3 MR. KAUFMAN: Your Honor --

4 THE COURT: I just need to see the order.

5 MR. KAUFMAN: Protective order doesn't work that
6 way, Your Honor.

7 THE COURT: Well, no. Why don't we just pull up
8 the Protective Order, then I can see it.

9 MR. KAUFMAN: Should we take a break on that?
10 This is actually a very important issue, cause this
11 implies --

12 THE COURT: No, no. It is.

13 MR. KAUFMAN: -- a break.

14 THE COURT: But -- but if someone can -- I'll
15 take -- I'll take a few minutes. But I also want someone to
16 just tell me what the Docket number of the Protective Order
17 is so that I can read it while parties are thinking about
18 it.

19 MR. GOODMAN: Sure.

20 THE COURT: There's a pending question of
21 what -- at some point he's probably going to have to reask
22 it.

23 MR. GOODMAN: That's fine with me.

24 THE COURT: So we'll just consider that fact.

25 THE WITNESS: Thank you.

1 THE COURT: Go down, but --

2 (Pause in the proceeding.)

3 THE COURT: I just want to know the Docket number.

4 MR. PATTERSON: I think -- and I get -- we got to
5 get there to the order. But I'm -- I'm just curious to how
6 we can put an expert up for questioning and not have his
7 report -- I haven't given it to anybody. I've read it.

8 So if Mr. Goodman expects me to cross examine or
9 question his witness, his expert, without the report, which
10 really is the guiderails for what he's going to tell the
11 Court, I -- I don't understand if he thinks this gives him
12 some benefit. But --

13 THE COURT: No.

14 MR. PATTERSON: -- makes no sense.

15 THE COURT: I -- I got it. I'm just trying to
16 deal with step one and step two --

17 MR. PATTERSON: Yeah.

18 THE COURT: -- on this.

19 MR. PATTERSON: Yeah. Just --

20 MR. KAUFMAN: Docket number is 1186.

21 MR. PATTERSON: It's 1186, Your Honor. Just a few
22 things to qualify. I just want to make sure the Court
23 understands.

24 THE COURT: No, no, no. Let's just deal with
25 things in stages here, 1186. You all talk. I'll give

1 you -- how much time you think you need?

2 MR. GOODMAN: Oh, I do recall these provisions. A
3 couple things I'll point out just quickly, Your Honor.

4 We're the producing party of this document.

5 THE COURT: No, no, no. I -- I can read it. I
6 just want to know how much time you think you all need.

7 I'm going to go back and read Docket 1186 and I'll
8 just go back -- just give me about --

9 MR. GOODMAN: Five?

10 THE COURT: -- a few -- about five minutes. All
11 right.

12 MR. GOODMAN: Okay.

13 THE COURT: Actually, it's 1:06. I'm come back at
14 1:15. Thank you.

15 MR. GOODMAN: Thank you.

16 THE CLERK: All rise.

17 (Recess taken from 1:06 p.m. to 1:29 p.m.)

18 THE COURT: I want Mr. Kaufman to come up, too. I
19 want to make a party to this.

20 So let's just deal with this from a first
21 principle standpoint. There was a -- I -- I signed kind of
22 a Stipulation and Agreed Confidentiality Protective Order at
23 Docket 1186 on December 6th, 2023.

24 Okay. So it's -- Mr. Goodman, you're telling me
25 that this report was provided, pursuant to this Stipulation

1 and Protective Order?

2 MR. GOODMAN: That's correct, Your Honor.

3 THE COURT: It was -- was it -- would you consider
4 it what the parties agreed that it was considered designated
5 material? Designated? Was it designated confidential or
6 highly confidential?

7 MR. GOODMAN: Yeah. Your Honor, it was filed
8 under seal with the Court, pursuant to the Protective Order.
9 So, yes. The answer is yes.

10 THE COURT: Yeah. And let's see.

11 (Pause in the proceeding.)

12 THE COURT: All righty.

13 (Pause in the proceeding.)

14 MR. GOODMAN: Your Honor, I'd like to propose a
15 solution.

16 THE COURT: Yep. Hold on a second. We got to
17 deal with first principles.

18 MR. GOODMAN: Okay.

19 THE COURT: Mr. Kaufman you said you get to use it
20 however you want. What does that mean and tell me the
21 paragraph that you're pointing to.

22 MR. KAUFMAN: Of course, Your Honor. You -- you
23 started by going to the definition of designated materials.

24 THE COURT: Right.

25 MR. KAUFMAN: The designated materials we're

1 talking about here are what the Debtor produced and what
2 YesCare produced, not what the TCC produced, because as you
3 can see from the report itself, it's not marked as
4 confidential.

5 It does cite to confidential --

6 THE COURT: Right. But --

7 MR. KAUFMAN: -- information.

8 THE COURT: Right.

9 MR. KAUFMAN: So if you look at -- you've got the
10 definition of designated materials and producing parties.

11 THE COURT: Right.

12 MR. KAUFMAN: If you look at Paragraph 26 of your
13 order --

14 THE COURT: Okay.

15 MR. KAUFMAN: Which is the bottom of Page 11.

16 THE WITNESS: Yeah.

17 MR. KAUFMAN: It says "Use of designated
18 materials by the producing party."

19 Here the producing parties are the Debtor and
20 YesCare. It says,

21 "Nothing in this order effects the
22 rights of the producing party to use
23 the --use or disclose its own designated
24 materials in any way."

25 THE COURT: Right.

1 MR. KAUFMAN: Of course the report itself is not
2 designated materials. What is are the references to the
3 designated material.

4 As I said, I redacted all references from the
5 report to those designated materials and produced the report
6 to -- or shared the report with Mr. Atkinson.

7 (Court reading.)

8 THE COURT: Tell me where in my -- okay, so,
9 sounds like this doesn't apply. But tell me where you get
10 to the use -- you said you -- you get to share your own
11 produced material.

12 If something was filed under the seal by the TCC,
13 tell me how you get to use that?

14 MR. KAUFMAN: So it was filed under seal, pursuant
15 to the Protective Order because of it's references to
16 the -- the protected material, the designated material.

17 THE COURT: Pursuant to the Debtor's designation
18 of protective material, which makes it the Debtor's report.
19 So the Debtor can do what it -- what it wants to do.

20 MR. GOODMAN: Well, again, Your Honor, it was not
21 produced. It's not produced materials. It's filed with the
22 Court.

23 THE COURT: I'm talking about the Madera materials
24 that you produced, that then got designated, and then report
25 incorporated designated material.

1 MR. KAUFMAN: That's correct, Your Honor.

2 THE COURT: Okay. Mr. Goodman, what's your
3 solution?

4 MR. GOODMAN: First, I don't agree with that
5 characterization, cause it is our report.

6 Here's my solution, Your Honor. We would like
7 authority or leave to, I mean, if they're gong to be sharing
8 our report, yeah, that was --

9 THE COURT: Well, could --

10 MR. GOODMAN: -- without other parties, we would
11 simply ask that we be permitted to file Mr. Akinsons's
12 Declaration with this report publicly on the Dockets. But
13 everyone in the case can see it.

14 THE COURT: I've got no issues.

15 MR. PATTERSON: I don't mind redacting a copy and
16 sending it to Mr. Goodman to file.

17 MR. GOODMAN: No, no.

18 THE COURT: No, no.

19 MR. PATTERSON: Give him the same copy of it --

20 THE COURT: No. I think he's going to file his
21 own completely unredacted copy on the Docket.

22 MR. PATTERSON: We like -- we would
23 like -- and -- and if -- if -- I don't know if it was
24 actually shaed in the redacted form, but I'm just
25 suggesting.

1 I think the solution to this is just permit us
2 without the report with the Court so that everyone in the
3 case has it.

4 MR. GOODMAN: We would object to that, cause it
5 does include many references, some -- most out of context of
6 confidential information, not just of the Debtor, but --

7 THE COURT: No. No. What I want -- what I want
8 on the Docket is exactly what Mr. Patteron saw and I want it
9 filed on the Docket. That's how we'll proceed.

10 MR. PATTERSON: Yeah. Or -- of, Judge also,
11 something else I think the witness may be struck. The 37(c)
12 is an obligation to produce the report. Or Rule 26.

13 THE COURT: It's Rule 26(a).

14 MR. PATTERSON: And --

15 THE COURT: And it doesn't apply. It doesn't
16 apply.

17 MR. PATTERSON: -- 37 says --

18 THE COURT: Rule 26(a), let's just take it one
19 step at a time.

20 MR. PATTERSON: Right.

21 THE COURT: Doesn't apply --

22 MR. PATTERSON: To contested matters.

23 THE COURT: -- to contested matters.

24 MR. PATTERSON: That's right.

25 But if there are -- they -- they were produced, I

1 mean, they were created. They're not required to --

2 THE COURT: Uh-huh.

3 MR. PATTERSON: -- as -- as under Rule 26. But if
4 they do and they're going to put a -- an expert on the
5 stand, they've got to be produced. They've got to be
6 shared. And 37(c) says if they're not, you don't get the
7 witness.

8 So if they want to fight about not
9 sharing -- look, they can't have it both ways. They can't
10 have an expert to get up and --

11 THE COURT: I think he's going to --

12 MR. PATTERSON: -- and not allow me to monitor
13 what he says, based upon the fact --

14 THE COURT: But I --

15 MR. PATTERSON: -- he's put in his report.

16 THE COURT: My understanding is that this is going
17 to proceed. It's just going to proceed in -- with the
18 redaction.

19 You're going to be able to ask your questions
20 based on the redacted --

21 MR. GOODMAN: Your Honor, again, but I --

22 THE COURT: -- portion of it.

23 MR. GOODMAN: -- I -- I -- I don't --

24 THE COURT: But I would --

25 MR. GOODMAN: I'm sorry, Your Honor.

1 THE COURT: Go ahead.

2 MR. GOODMAN: I don't know for a fact that what
3 was sent to --

4 THE COURT: No. No. But I think --

5 MR. GOODMAN: -- Patterson was redacted.

6 THE COURT: -- you get to -- I think --

7 MR. GOODMAN: I want -- I would like the
8 transmittal email, like whatever -- however it was produced
9 to him --

10 MR. PATTERSON: He's suggesting that someone's not
11 being candid with --

12 THE COURT: No, no. I just think --

13 MR. PATTERSON: -- the Court also.

14 THE COURT: I think people are entitled to see it.
15 I think --

16 MR. PATTERSON: What was that?

17 THE COURT: No, no, no. I think
18 Mr. Kaufman -- what I think we should do, Mr. Kaufman, you
19 should -- I should step off the bench. Maybe Mr. Atkinson
20 just feel like you'd have to be up there.

21 You share the email, or however it was transmitted
22 with the other side. You get to see what was redacted. And
23 then we'll proceed.

24 Get it on the Docket. Once it's on the Docket,
25 someone call me. I'll come out. We'll proceed.

1 MR. GOODMAN: You -- you want the transmittal
2 email or just the redacted?

3 THE COURT: No. No. I just need the report on
4 file. And I don't need, you know, whereas on this day the
5 Court held a hearing. Like just file it and call it what
6 you want, as long as it's all clear.

7 But -- but if there's any issue with -- before it
8 gets on file that you're saying doesn't it, you know,
9 anything, call me. I'll come out. I'll make the call. But
10 if the parties agree that this is the redacted version of
11 the report, and it's the report that's here, then get it on
12 the Docket and then we'll proceed.

13 MR. GOODMAN: Perfect. I think we can continue
14 with the questioning, Your Honor. I don't want the --

15 THE COURT: No, no. I know that.

16 MR. GOODMAN: Okay.

17 THE COURT: I'm just saying, I don't -- I don't
18 want to proceed until we get that on the Docket, cause I
19 think now we're all on -- we'll be on the same page. I
20 just -- I don't want to forget about that.

21 MR. GOODMAN: Oh, okay.

22 THE COURT: That's fine -- just so -- but you need
23 a chance to see it.

24 But once you see it, then let's let it hit the
25 Docket and then we'll go on.

1 MR. GOODMAN: Very well. Thank you, Your Honor.

2 THE COURT: All righty. So anyway, I'll stay here
3 for a minute or two and then I'll -- I'll step off and
4 Mr. Atkinson at some point we'll get to you.

5 MR. PATTERSON: Your Honor, do you want me to
6 share it with Ms. Saldana as well?

7 THE COURT: Nope.

8 MR. PATTERSON: Okay.

9 THE COURT: That's the last thing I want.

10 MR. PATTERSON: Okay.

11 THE COURT: Only when it hits the Docket.

12 (Pause in the proceeding.)

13 THE COURT: All righty, folks.

14 (Recess taken from 1:36 p.m. to 1:44 p.m.)

15 THE CLERK: All rise.

16 THE COURT: Okay. We're back on the Record in
17 Tehum. It is my understanding that at Docket Number 1479
18 there was a report that is filed.

19 Let's jump right back into the examination,
20 Mr. Goodman.

21 And Mr. Atkinson, I'm going to make them show
22 the -- make them start with a new question for you.

23 THE WITNESS: I appreciate that.

24 (Laughter)

25 DIRECT EXAMINATION (CONT'D)

1 BY MR. GOODMAN:

2 Q So, Mr. Atkinson, the last question that you answered
3 was, are you aware of any substantive differences between
4 the TCC and the UCC on the three avoidance claims identified
5 in Paragraph 27 of the Rule 9019 motion.

6 You answered that question, as I recall. So we're
7 going to move on to the next topic. Okay?

8 A Okay.

9 Q Very good. Okay.

10 Does your report contain a description of facts that
11 you uncovered in the course of your investigation involving
12 the creation of new entities in 2022 by YesCare to bid on
13 contracts involving prison and jail health?

14 MR. PATTERSON: Objection, Your Honor. He's
15 leading the witness.

16 THE COURT: Overruled.

17 THE WITNESS: Yes, it does.

18 BY MR. GOODMAN:

19 Q And where is that in your report?

20 A Paragraph 11, Paragraph --

21 (Pause in the proceeding.)

22 THE WITNESS: -- 15, Paragraph 17, 18 and 19.

23 BY MR. GOODMAN:

24 Q Okay. Can you please describe for the Court the facts
25 that you discovered in the course of your investigation on

1 these issues?

2 A Sure.

3 MR. KAUFMAN: So, Your Honor, this is where we
4 would object. I appreciate that he is an expert in the
5 field of valuations and the field of avoidance actions But
6 giving lay opinoins on facts that he reviewed is a different
7 matter.

8 He's not qualified as an expert on that fact -- on
9 that matter.

10 THE COURT: I don't -- I don't -- I think he's
11 just talking about what's in his report.

12 MR. KAUFMAN: Correct, Your Honor.

13 MR. PATTERSON: And my objection, Your Honor, is
14 that's hearsay. He's just going to read from his report.

15 THE COURT: I -- I agree.

16 MR. PATTERSON: We don't care what --

17 THE COURT: I agree if he's just going to read
18 from the report, but I think if he can talk about it --

19 MR. PATTERSON: Okay.

20 THE COURT: -- I think that's one thing.

21 MR. PATTERSON: Well they stuck it up in front of
22 him --

23 THE COURT: Well, I think we can just ask him --

24 MR. PATTERSON: -- for him to read.

25 THE COURT: I think we can take it down and he

1 can -- he can answer the question and people can refresh.

2 MR. PATTERSON: Right.

3 THE COURT: What's the other point.

4 MR. PATTERSON: As long as he doesn't have it in
5 front of him.

6 THE COURT: Yes.

7 MR. PATTERSON: That's correct.

8 (Pause in the proceeding.)

9 THE WITNESS: I can jump through all the hoops you
10 got.

11 THE COURT: Please proceed.

12 THE WITNESS: Okay. So what we found in the
13 discovery were probably 15 plus emails that were pre-
14 devisive merger where we had Mr. Lefkowitz, we had the CEO
15 of the company, we had the CFO of the company, we had the
16 Chief Legal Officer of the company, and various other
17 Corizon Employees that were setting up entities outside of
18 the Debtor. They were setting up entities that were owned
19 by YesCare and by the -- the CEO of Corizon, but not the
20 Debtor.

21 And they were actively bidding on, at least two,
22 RFP's for -- one for the state of Arizona, one for the state
23 of Alabama, where they were putting together RFP's which
24 basically, you know, said in some of them, formerly known as
25 Corizon.

1 They referenced that they had 5,000 employees at
2 YesCare. They referenced different -- different programs
3 that Corizon had that YesCare did not have yet.

4 They were, you know, bidding outside of the, you
5 know, basically using estate resources and bidding on
6 contracts for an entity that was not owned by the Debtor,
7 pre-divisive merger.

8 BY MR. GOODMAN:

9 Q Okay. So just to be clear. These new entities that
10 were being created, those were not owned by the Debtor?

11 A That's correct.

12 Q And do you know how many entitites were created?

13 A We don't know for sure. In the documents that were
14 produced, there was an Excel schedule that referenced 25.
15 We've seen documents in the discovery that clearly
16 identified I think it was up to eight of them that were set
17 up pre-divisive merger.

18 Q Okay. And one of these new entities was CHS of
19 Alabama?

20 A Correct.

21 Q Okay. So that means YesCare existed prior to the
22 divisional merger?

23 MR. KAUFMAN: Objection, Your Honor.

24 MR. PATTERSON: Objection, Your Honor.

25 MR. PATTERSON: Leading the witness.

1 THE COURT: Sustained.

2 BY MR. GOODMAN:

3 Q Do you know when YesCare was formed?

4 A Yes, there was an email that I looked at in the -- in
5 the production where Mr. Lefkowitz opened -- set up YesCare.
6 I think it was in January, 2022.

7 Q In January, 2022 was prior to the divisional merger.

8 A Correct. The divisional merger was in May of '22.

9 Q Okay. Now I want to get to an opinion that you set
10 forth in your report.

11 Could you go to Page 10, Paragraph 11?

12 MR. GOODMAN: I'll put this up, because I now know
13 that this has been redacted by the Debtor.

14 (Pause in the proceeding.)

15 BY MR. GOODMAN:

16 Q Okay. I want to just go over the opinion, and then I'm
17 going to ask you some questions about it.

18 So you see on Page 10, Paragraph 11, the sentence
19 begins,

20 "These facts suggest a possible scheme
21 to deliberately defraud the creditors of
22 Corizon Health as it appears that
23 business was being funneled away from
24 Corizon Health prior to the divisive
25 merger, creating further doubt on the

1 reliability of the fairness opinion as
2 well as the financial statements and
3 management projections relied on in
4 creating the fairness opinion.

5 In providing support, the YesCare and
6 its subsidiaries are mere continuations
7 or alter egos --"

8 MR. KAUFMAN: Objection, Your Honor. We're just
9 reading a report. This is hearsay.

10 BY MR. GOODMAN:

11 Q -- "of Corizon Health, the Debtor."

12 MR. PATTERSON: I'm going to object. It's not in
13 evidence.

14 THE COURT: Yes.

15 MR. PATTERSON: It's hearsay. He's just reading
16 from some random document.

17 MR. GOODMAN: I haven't asked the question yet,
18 Your Honor.

19 I -- I was just trying to stop the just reading
20 of the report through question form, since we already talked
21 about the witness not doing it.

22 THE COURT: Let's just get to the question.

23 BY MR. GOODMAN:

24 Q Mr. Atkinson, do you see the part that I just read.

25 MR. KAUFMAN: Okay. I'll object to that question.

1 THE COURT: Sustained. Why don't you just ask him
2 a question?

3 BY MR. GOODMAN:

4 Q Mr. Atkinson, how did you reach that conclusion?

5 A I reached that conclusion through the documents that
6 were produced by the Debtor and the series of emails that I
7 reviewed that clearly showed Debtor executives setting up
8 entities that were not owned by the Debtor and using the
9 Debtor resources to sort of bid on RFP's that would not
10 benefit the Debtor.

11 Q So are the Debtor's executives helping competitors at
12 this point?

13 A They were helping an --

14 MR. PATTERSON: Objection, Your Honor. That's
15 opinion testify that he's not qualified to give.

16 THE COURT: What was he qualified as an expert on?

17 MR. GOODMAN: Mass tort, valuation, and financial
18 restructuring.

19 THE COURT: So tell me how that question falls
20 into one of those two.

21 MR. GOODMAN: Because with respect to the
22 financial restructuring and also on the mass tort, cause
23 we're talking about fraudulent claims and claims arising
24 from the fraud that occurred here.

25 This would go to his valuation of causes of action

1 that are part of the settlement, Your Honor.

2 MR. KAUFMAN: And -- and if I could be heard on
3 it -- well, go ahead, Your Honor.

4 THE COURT: Go ahead.

5 MR. KAUFMAN: As I -- as I said at the outset.

6 THE COURT: I was surprised you didn't *voir dire*
7 the witness.

8 MR. KAUFMAN: And -- and I'm happy to at this --

9 THE COURT: A little to late for that, but -- but
10 go ahead.

11 MR. KAUFMAN: So this report, I -- I have no
12 problem, no -- no issue with Mr. Atkinson opining on the
13 value of mass tort claims, which I think is well within his
14 baileywick.

15 But I agree with what Mr. Patterson's saying.
16 We're now getting into a different area which is opining on
17 some emails that he read which he doesn't have the basis to
18 give opinion.

19 THE COURT: I tend to agree with that.

20 If he wants to talk about docs he reviewed and how
21 he formed valuations, or how he thinks the other folks
22 didn't form valuations, and things, I think that's fair
23 game.

24 And I think figuring out whether someone was
25 competing against someone else, that feels more --

1 MR. GOODMAN: Your Honor, I'll withdraw the
2 question.

3 THE COURT: -- investigative.

4 MR. GOODMAN: I'll withdraw the question.

5 THE COURT: Okay.

6 (Pause in the proceeding.)

7 BY MR. GOODMAN:

8 Q Okay. Mr. Atkinson, based on the documents that you
9 reviewed, well actually, let me back up.

10 Are the emails that you just referred to, documents
11 that are referenced in your report.

12 A They are.

13 Q And where are those referenced?

14 A They're referenced in -- in footnotes related to the
15 paragraphs that I mentioned earlier, Paragraphs 11, 15, 17,
16 18, 19.

17 Q Okay. And based on the documents that you did review,
18 can you tell who was involved in this scheme?.

19 A Yes.

20 Q Who is that?

21 MR. PATTERSON: Objection, Your Honor.

22 Clarification.

23 THE COURT: Objection to the characterization as a
24 scheme. I got it. Sustained.

25 MR. PATTERSON: And I'm also objecting, Your

1 Honor, referencing documents that aren't available. These
2 are part of the redaction.

3 MR. GOODMAN: Your Honor, I would be estatic if we
4 could file an unredacted version --

5 MR. PATTERSON: No. I know you would.

6 MR. GOODMAN: -- of this report. Because it's not
7 his stuff. But he's -- he's always willing to --

8 THE COURT: Yeah. But -- but -- yeah. I'm going
9 to overrule that objection. I think -- I think this -- I
10 think a lot of this could have been brought to me before.
11 And parties just waited to kind of raise the argument today.

12 And we are where we are. You -- you can ask your
13 next question. Go ahead.

14 MR. GOODMAN: Okay.

15 BY MR. GOODMAN:

16 Q All right. I want to get rid of the word "scheme."

17 Based on the documents that you reviewed, Mr. Atkinson,
18 can you tell who was involved in this conduct?

19 A The emails have Mr. Lefkowitz named in them. He sent
20 some of the emails. Sarah Tirschwell, who was the CEO.
21 Scott King who's the Chief Legal Officer. Jeff Shoreley
22 (phonetic) who's the CFO. And there are other parties that
23 worked for Corizon that were also included on those emails.

24 Q Okay. And, Mr. Atkinson, in your 30 plus years of
25 experience involving financial restructuring, have you

1 valuated claims before for breach of fiduciary duty?

2 A I have.

3 Q Okay. Based on what you discovered here in this case,
4 do you think that the Debtor may have the claim for breach
5 of fiduciary duty.

6 A They may.

7 MR. PATTERSON: Objection, Your Honor. Opinion
8 beyond the scope, even the broad scope that -- that he --

9 THE COURT: I agree. He gets to value them, but
10 he doesn't get to say whether they exist or not.

11 (Pause in the proceeding.)

12 MR. GOODMAN: I don't know if you can value
13 without knowing if it exists.

14 THE COURT: But he's forming the opinion as to
15 whether they exist or not. That's what you've asked him,
16 whether -- whether you think there's a valid claim for it,
17 right?

18 MR. GOODMAN: I -- actually, carefully worded this
19 one to say may have. I didn't say that they did. I
20 suggested that they might.

21 (Laughter.)

22 THE COURT: Sustained. Objection is sustained.

23 (Pause in the proceeding.)

24 BY MR. GOODMAN:

25 Q Based on the conduct -- the conduct that you

1 discovered, do you think that that could give rise to any
2 claims that could be asserted by the Debtor's estate?

3 MR. PATTERSON: Objection, Your Honor. Beyond the
4 scope of this.

5 THE COURT: Yeah. I agree. Sustained.

6 MR. GOODMAN: Okay.

7 (Pause in the proceeding.)

8 BY MR. GOODMAN:

9 Q Based on the information that you discovered,
10 Mr. Atkinson, what steps would you recommend that estate
11 fiduciaries take in this case.

12 MR. PATTERSON: Objection, Your Honor. Again,
13 beyond the scope of what he's qualified.

14 THE COURT: Sustained.

15 (Pause in the proceeding.)

16 BY MR. GOODMAN:

17 Q Mr. Atkinson, you've represented Creditors Committees
18 before; have you not?

19 A I have.

20 Q And you have -- how many Creditors Committees have you
21 represented?

22 A Almost a hundred.

23 Q You represented Debtors before have you not?

24 A I have.

25 Q Do you advise Debtors on whether they should consider

1 pursuing causes of action?

2 MR. PATTERSON: Objection, Your Honor. He's
3 leading the witness.

4 THE COURT: Overruled.

5 THE WITNESS: Yes.

6 BY MR. GOODMAN:

7 Q Okay. And how do you generally go about providing that
8 advice?

9 A We review the documents that -- we review the emails,
10 we review the underlying financial information, and we
11 provide counsel with the evidence, similar to this that
12 we're talking about here.

13 Q Okay. And if you were to perform that function in this
14 case, what would you do?

15 MR. PATTERSON: Objection, Your Honor. It calls
16 for speculation. And any opinion would be beyond the scope
17 of what he's qualified for.

18 THE COURT: Overruled.

19 THE WITNESS: I'm sorry. Can you repeat the
20 question?

21 BY MR. GOODMAN:

22 Q If you were to perform that same function here, what
23 would you do with the evidence that you discovered?

24 A I -- the evidence that I found seems pretty clear that
25 entities were being set up outside the Debtor.

1 I'd want to appreciate, you know, the value that was
2 being taken away. Cause it certainly goes to valuation.
3 You know, one of the things that these things directly
4 affect is the divisive merger and the future value of the
5 business, YesCare.

6 And whether Corizon assets were taken outside of
7 the -- of the value -- outside of their own value and given
8 to YesCare pre-merger and did it affect the valuation
9 ultimately for what was transferred away.

10 Q Okay. When you said "valuation," what are you
11 referring to?

12 A I'm referring to the divisive merger valuation. So at
13 the time of the divisive merger, the entities were split
14 into two. You had YesCare and you had RemainCo. and Tehum,
15 and ultimately what -- how much value went in each
16 direction.

17 Q Okay. And how would this pertain to that valuation?

18 A It would --

19 MR. PATTERSON: I'm going to object, Your Honor.
20 Vagueness of the question to "that" in the question, Your
21 Honor. Form of the question.

22 THE COURT: Overruled.

23 THE WITNESS: It would go to the projected cash
24 flows of the business.

25 So management put together projections for the

1 business. Those projections had cash flows going forward of
2 like \$300 million, which was generally where the unaudited
3 financials said, you know, cash flows were.

4 And they projected over time a slight increase
5 each year successively. But one of the contracts that we
6 found, we know YesCare ultimately got. It was a billion
7 dollar contract for the State of Alabama.

8 MR. KAUFMAN: I'm going to object to this part to
9 this part of his answer. Goes to hearsay. There's no
10 foundation that he has any firsthand knowledge of a contract
11 that YesCare got.

12 THE COURT: Does an expert need to have firsthand
13 knowledge?

14 MR. KAUFMAN: If he's going to testify about the
15 substance.

16 THE COURT: Just answer my question. Does an
17 expert need to have firsthand knowledge of things --

18 MR. KAUFMAN: No, but he's not an expert --

19 THE COURT: -- that he's opining upon.

20 MR. KAUFMAN: -- on this topic.

21 THE COURT: That's a better objection.

22 What's -- Mr. Patterson?

23 MR. PATTERSON: I would -- same objection, Your
24 Honor. Beyond the scope and he -- any testimony would be
25 opinion. And if he testified beyond the scope of what he's

1 been qualified for, he does have to have knowledge.

2 He can rely on hearsay with this.

3 THE COURT: Okay. I -- I think you're objection
4 is outside the scope, not just he doesn't have personal
5 knowledge.

6 MR. PATTERSON: Yes.

7 THE COURT: Did I understand that?
8 What's your response, counsel?

9 MR. GOODMAN: No. I think Mr. Atkinson here is
10 already offered in his report opinions that's offered at the
11 time that that we filed our oppositions for everyone and
12 their side has known about this.

13 THE COURT: Can you repeat the question?

14 MR. GOODMAN: Sure. I think that we could move on
15 to the next --

16 THE COURT: Okay.

17 MR. GOODMAN: -- I think at this point. That's
18 fine.

19 BY MR. GOODMAN:

20 Q Want to turn to the divisional merger itself,
21 Mr. Atkinson.

22 A Yeah.

23 Q Where in your report do you discuss the avoidance
24 claims involving the divisional merger?

25 A I talk about the divisional merger avoidance claims in

1 two places. In the summary of my opinion, Paragraph 1. And
2 then -- on -- on Page 7, Section 4, Paragraph 9, starting on
3 Paragraph 9.

4 Q Okay. What opinions are you offering to the Court on
5 this issue?

6 A The opinion that I'm offering is that there's not
7 sufficient information to quantify the fair value of the
8 potential avoidance actions arising out of the May 2022
9 divisional merger.

10 Q Okay. And these are avoidance actions that are
11 described in the Rule 9019 motion?

12 A Yes, they are.

13 Q Okay. And was this a cause of action that you were
14 asked by the TCC to value?

15 A It was one of them, yes.

16 Q Okay. And what did you do to evaluate and value this
17 cause of action, I think back in January of 2024?

18 A We looked at financial statements, unaudited financial
19 statements, that existed. We looked at the FTI fairness
20 opinion that was produced that had some relevant financial
21 information, again, unaudited financial information and
22 projections.

23 We looked at the documents that were uploaded by the
24 Debtor, as well as documents related to the divisional
25 merger.

1 Q Okay. And you were involved in a lot of cases
2 involving mass tort bankruptcies, correct?

3 A Yes.

4 Q Okay. When a Committee is formed in a case like this
5 one, what is the standard process that takes place in terms
6 of information sharing between a Committee and a Debtor?

7 MR. PATTERSON: Objection, Your Honor. Calls for
8 speculation. Improper opinion testify he isn't qualified --

9 THE COURT: I --

10 MR. GOODMAN: Actually, this is --

11 THE COURT: Overruled. This is right --

12 MR. GOODMAN: -- right in his wheelhouse.

13 THE COURT: -- in his wheelhouse. So I -- I think
14 you can answer that question.

15 MR. GOODMAN: I don't think it gets more in his
16 wheelhouse, Your Honor.

17 THE WITNESS: So --

18 MR. PATTERSON: And it's a -- but to state my
19 objection, Your Honor. Is the Court considering him an
20 expert in -- in running Committees? Of being members or?

21 THE COURT: No. I don't think that's at all.

22 I think he's just talking about his process, his
23 personal process and how he does his work.

24 MR. PATTERSON: Okay.

25 THE COURT: So I think I'll take it for that

1 purposes.

2 THE WITNESS: So in the, you know, almost a
3 hundred Committee cases that I've done in my career, one of
4 the first things I do is I reach out to the Debtor, Debtor's
5 FA, or Debtor's CRO and I introduce myself in an email or in
6 person.

7 And I suggest to them some documents that I would
8 like to get from them. I try to keep it simple. And then
9 usually the next step is the Debtors, because they
10 have -- the Debtor's financial people have been working on
11 the case for much longer than us because they bring their
12 pre-bankruptcy.

13 They generally have an agenda. And they usually
14 put on a presentation about the financial condition of the
15 company, the projections of the business, where the
16 bankruptcy is going.

17 That's, you know most -- 90 plus percent of the
18 time, that's they way the case goes.

19 BY MR. GOODMAN:

20 Q Okay. So in your experience in restructuring field,
21 does the Debtor typically want the Committee to have access
22 to its information and analysis?

23 MR. PATTERSON: Objection, Your Honor. Relevance
24 and beyond the scope.

25 THE COURT: Overruled.

1 THE WITNESS: Yes. The, you know, bankruptcy is
2 about consensus. So, generally what we experience is the
3 Debtors want to give us their views and support for whatever
4 their opinions are.

5 BY MR. GOODMAN:

6 Q And why is that?

7 A To get consensus. Cause ultimately, the bankruptcy,
8 you know, there's a plan. And they'll -- they'll need
9 votes. And the Committees are an important component to
10 that. And it also saves costs.

11 Q In your experience, is that important for the Debtor if
12 it wants to build consensus?

13 THE COURT: I --

14 MR. GOODMAN: Sorry. I'm going to withdraw that
15 question.

16 THE WITNESS: Yeah.

17 MR. GOODMAN: Bad question.

18 BY MR. GOODMAN:

19 Q Okay. Mr. Atkinson, did the Debtor in this case act in
20 the matter consistent with how you've Debtors act in other
21 cases?

22 MR. PATTERSON: Objection, Your Honor.

23 THE COURT: Yeah. Sustained.

24 MR. GOODMAN: Okay.

25 (Pause in the proceeding.)

1 THE COURT: I don't even know what that means,
2 like --

3 MR. PATTERSON: The objection?

4 THE COURT: No.

5 MR. PATTERSON: Oh, I'm sorry.

6 THE COURT: How Debtors are supposed to act in a
7 case.

8 (Pause in the proceeding.)

9 MR. GOODMAN: Okay.

10 BY MR. GOODMAN:

11 Q And, Mr. Atkinson, you've also been involved in cases
12 where there are multiple Committees, correct?

13 A Yes, I have.

14 Q Okay. And do those cases involved information sharing
15 processes?

16 A Yes. I'm currently in three cases that have --

17 MR. KAUFMAN: Objection. Non-responsive. It was
18 a yes or no questions.

19 THE COURT: No. And I think he can answer. But
20 I -- I just think it's irrelevant as to what people are
21 doing in other cases. And -- and why they're doing them.
22 And the processes under other cases.

23 I've got 60 cases I can think of off the top of my
24 head. And everyone is different. And every -- could be
25 multiple Committees, different Committees, same -- I

1 don't -- tell me -- tell me what the Judge has signed. Tell
2 me the process. Tell me when the Committees got formed.
3 I'll tell you how they're acting.

4 I just think it's -- I think it goes outside the
5 scope of what this expert testified to. Although, he's
6 probably lived it far more than all of us.

7 But I don't -- I don't see how relevant it is for
8 purposes of today. I think the lawyers can make that
9 argument.

10 MR. GOODMAN: I think I'll just get back to the
11 facts of this case, Your Honor.

12 THE COURT: Okay.

13 MR. GOODMAN: Thank you.

14 THE COURT: Thank you.

15 BY MR. GOODMAN:

16 Q You know, so what happened here in terms of the, you
17 know, interaction between the TCC, the Debtor, the TCC and
18 the UCC?

19 A So related to the Debtor, we got production from the
20 Debtor that I've mentioned which, I think, was about 600
21 pages of documents.

22 We did not get any analysis from the Debtor related to
23 the settlement that had occurred. Insurance, you know, how
24 they got to their insurance amounts. How they got to their
25 claiom amounts.

1 Although, their -- their Disclosure Statement has some
2 math related to that. But we -- there was -- there was no
3 presentation here that sort of tried to, you know give us
4 what the Debtor was thinking and how they to the outcome.

5 We weren't -- I was -- there was a mediation. I know
6 the TCC was there. I was not hired as of yet. So
7 we -- I've seen little to no information related to how we
8 get to the 9019 and the settlements.

9 Q Okay. Did the Debtors produce the YesCare financials?

10 A So the YesCare financials were ultimately, yes, they
11 did. They were produced to me. In the initial production,
12 there was only one. And I reached out to the Debtor in I
13 think January 2nd to try to get --

14 MR. KAUFMAN: Your Honor, this was a yes or no
15 question. I let it go a little bit. It's -- it's
16 continuing. It's non-responsive.

17 THE COURT: Overruled.

18 THE WITNESS: So on January 2nd I reached out to
19 the Debtor, cause I had just gotten the documents right
20 before New Years. And I went through them and I only saw
21 one -- one -- basically one financial statement for YesCare.

22 And I asked the Debtor -- Debtor's counsel, Gray
23 Reed if there was more. And they told me, I can't believe
24 they told me there was not at the time. But ultimately, we
25 found out later that there was. And we got the production

1 much later.

2 BY MR. GOODMAN:

3 Q Okay. Can you go to Tab 3 in your binder? This is TCC
4 Exhibit 331.

5 (Pause in the proceeding.)

6 BY MR. GOODMAN:

7 Q Do you see this?

8 A Yes.

9 Q Okay. And if you -- this is an email string. But do
10 you see the email, I think it was sent by you on
11 January 2nd, 2024. It begins, "Hi, Lydia." Do you see that
12 email?

13 A I do.

14 Q Did you send that email?

15 A I did.

16 Q Why did you sent that email?

17 A Because I had reviewed the financial documents
18 there -- all the documents that were produced. And I did
19 not see many, if any, financial information -- financial
20 information related to YesCare. I think I saw just a couple
21 of documents.

22 And I was surprised. So I reached out to Gray Reed and
23 Lydia to find out if I was missing something.

24 Q Okay. And did you get a response to your email?

25 A I did.

1 Q And when did you get the response?

2 A I got the response the same day, later -- later that
3 night.

4 Q And what was the response?

5 A The response was that the Debtor does not have any
6 YesCare financials related -- post the divisive merger other
7 than the balance sheet showing the allocation on -- and then
8 she also said that she reached out to counsel for YesCare.

9 And YesCare indicated that they would not be producing
10 any financial information. She put this in bold,

11 "other than the balance sheets
12 referenced above. If you have further
13 questions, requests -- requests related
14 to YesCare, please contact Melissa
15 Hayward to discuss."

16 Q Okay. At the time you got this response, what did this
17 email indicate to you regarding the Debtor's investigations?

18 MR. KAUFMAN: Objection, Your Honor. That calls
19 for speculation.

20 (Pause in the proceeding.)

21 THE COURT: Can you ask the question again?

22 BY MR. GOODMAN:

23 Q When you received the response, what did that email
24 indicate to you regarding the Debtor's investigations?

25 THE COURT: Overruled.

1 THE WITNESS: I was surprised that the Debtor did
2 not have financial information for YesCare beyond the
3 divisive merger. And it was limited to this information.

4 BY MR. GOODMAN:

5 Q Okay. Based on the response that you got from Debtor's
6 counsel, did you think at that time that you had all the
7 information that the Debtor had regarding the YesCare
8 financials?

9 A Yeah. I thought Ms. Webb was pretty in the -- in her
10 response to me, so yes. I thought I did.

11 Q Okay. Did the Debtor and the UCC ultimately produce
12 more financial statements for YesCare?

13 A Yes.

14 Q Can you tell me about that?

15 A The -- where we -- we were concerned that we didn't
16 have financial information. To the TCC started moving to
17 serve subpoenas. And at some point in time, I think it was
18 late January, January 31st, the Debtor came forward and said
19 that they had not produced, I think it was the whole YesCare
20 production, which was about 8,000 documents.

21 And they gave that to me January 31st.

22 Q Okay. And your report was filed February 23rd; is that
23 correct?

24 A Correct.

25 Q Okay. Now as of January 31st were you facing any

1 deadlines?

2 A Yes.

3 Q What were those?

4 A Well I had to get my report done in the next three
5 weeks.

6 Q Got it. Okay.

7 Shifting gears, Mr. Atkinson. Did you review the
8 FTI -- FTI fairness opinion?

9 A I did.

10 Q Okay. What is a fairness opinion?

11 A A fairness opinion, my experience is a bit of a rubber
12 stamp related to a transaction that's usually done by an
13 investment banker where they point to management's
14 projections and financial information to sort of justify a
15 transaction.

16 Q Okay. Was the FTI fairness opinion at all helpful to
17 you and the work that you were undertaking here to value
18 these claims?

19 A Not particularly, no.

20 Q Why is that?

21 A FTI, as almost all fairness opinions do, relied on
22 Debtor's financial statements, which again, are unaudited
23 here, and relied on Debtor's projections. And did not
24 verify those and test those amounts.

25 Q Okay.

1 (Pause in the proceeding.)

2 BY MR. GOODMAN:

3 Q Do you recall reviewing a letter sent by Reed -- Reed
4 Smith on behalf of FTI in the course of preparing a report?

5 MR. KAUFMAN: Your Honor, I'm just objecting,
6 because I didn't hear the name of the law firm.

7 MR. GOODMAN: Sorry. I'll -- I'll say it again --

8 THE COURT: Go ahead.

9 MR. GOODMAN: -- if I mumbled. Apologies.

10 THE COURT: Okay.

11 BY MR. GOODMAN:

12 Q Do you recall reviewing a letter sent by Reed Smith,
13 law firm Reed Smith.

14 MR. KAUFMAN: I thought you said Gray Reed Smith.

15 THE COURT: He did.

16 MR. GOODMAN: Did I really?

17 THE COURT: You said -- you said Gray Reed.

18 MR. GOODMAN: I will -- I'm going to begin all
19 over again.

20 BY MR. GOODMAN:

21 Q Do you recall reviewing a letter sent by Reed Smith on
22 behalf of FTI.

23 A I do.

24 Q Okay. What did that letter show?

25 MR. KAUFMAN: Objection.

1 THE COURT: What's the objection?

2 MR. KAUFMAN: Hearsay. This is not -- definitely
3 outside the scope of his expert opinions. He's just talking
4 about a letter that was sent to someone that's not even --

5 THE COURT: I thought it went to the fairness
6 opinion and valuation issue.

7 MR. GOODMAN: Yes.

8 THE COURT: I -- and I think he can say what it
9 says in the --

10 MR. KAUFMAN: What the Court will hear is that
11 this has nothing to do with the actual valuation.

12 THE COURT: Well when we get there, I'm sure
13 you'll make the objection. But for right now, let's just
14 take things one step at a time. Overruled.

15 THE WITNESS: The -- the letter said that it was
16 basically a cease and desist. Because what -- the -- what
17 the first day Declaration for Mr. Perry where he described
18 what FTI did, they said was incorrect related to what FTI's
19 fairness opinion actually was.

20 BY MR. GOODMAN:

21 Q Okay. Did that letter from Reed Smith have any impact
22 on your views as to whether or not the FTI fairness opinion
23 was helpful?

24 A Not particularly, no.

25 Q Why is that?

1 A Because I didn't put a lot of weight on the fairness
2 opinion to begin with.

3 Q Okay.

4 (Pause in the proceeding.)

5 BY MR. GOODMAN:

6 Q Did you review the financial statements of the Debtor
7 and the UCC ultimately produced?

8 A I did.

9 Q Okay. Were those financial statements unaudited?

10 A They were.

11 Q Okay. Had there been situations in your experience
12 where you have given credit to unaudited financial
13 statements when giving -- doing valuation work?

14 MR. PATTERSON: I'm going to object, Your Honor.
15 He's leading this witness.

16 THE COURT: Sustained.

17 (Pause in the proceeding.)

18 BY MR. GOODMAN:

19 Q Have you ever given credit to an unaudited financial
20 statement?

21 MR. PATTERSON: Objection, Your Honor. Relevance.
22 What he's ever done in the past has no bearing.

23 THE COURT: Overruled.

24 MR. KAUFMAN: Your Honor, I will also object that
25 in his deposition he said the exact opposite of what I think

1 he's being led into saying.

2 THE COURT: I'm -- I'm sure you'll -- I'm sure
3 you'll raise it on cross. Overruled.

4 THE WITNESS: I have used unaudited financial
5 statements before. Most of the cases I'm involved in have
6 audited financial statements. But most of the analysis that
7 I do involves mid-year sort of transactions. So I do look
8 at unaudited financial statements between audits.

9 And certainly there are situations in the past
10 where I had private companies, you know, years ago, that we
11 would have used the unaudited. But we would have verified
12 that information.

13 BY MR. GOODMAN:

14 Q Okay. But in this case, in your opinion, you know,
15 could you rely on the unaudited financial statements that
16 were given to you for YesCare?

17 A I did not. I did not believe I could.

18 Q And why is that?

19 A Because of what I found in discovery related to what
20 YesCare was doing, and the Debtor's executives were doing
21 related to setting up entities outside of YesCare, related
22 to the fact that we saw pretty significant amounts of
23 fraudulent transfers going out the door, the fact that we
24 had a Texas two-step here in this case.

25 There were numerous reasons why I would want to verify

1 those financial statements.

2 Q Okay. Thank you.

3 Did you consider whether Corizon Health owed any
4 secured debt prior to the divisional merger?

5 A I did.

6 Q Okay. What documents did you review on that issue?

7 A I think there -- there were numerous documents that FTI
8 fairness opinion had a balance sheet that the financial
9 statements that were filed, or provided, in discovery.
10 There was the divisive merger documents, and deposition
11 transcripts as well.

12 Q Okay. Do you recall if Mr. Dundon addressed this issue
13 at his deposition?

14 A I do.

15 Q Okay. And his deposition testimony, is that something
16 that you considered in the course of preparing a report?

17 A I did.

18 Q Okay. Do you recall what Mr. Dundon had to say on this
19 topic?

20 A Mr. Dundon said --

21 MR. KAUFMAN: This is -- this calls for hearsay,
22 again, outside the scope of his report.

23 THE COURT: Experts can rely on hearsay in forming
24 their opinions. And -- and I think that's what this is
25 going to.

1 MR. KAUFMAN: Okay. It didn't appear that it was
2 going into his opinions, but if --

3 THE COURT: At least he -- at least he gets to ask
4 the question, and then we get to figure out whether his
5 conclusion falls inside and outside of the scope of it.
6 So --

7 MR. PATTERSON: Well, I would follow-up with that
8 objection, Your Honor. He didn't ask what he relied on.
9 Simply factual it's a hearsay statement. So what someone
10 said was --

11 THE COURT: I thought -- I thought his preliminary
12 question was, did you rely on that in the formation of your
13 opinion and he said, yes. And then he said well, what did
14 Mr. Dundon say.

15 So I'm allowing it for that purposes.

16 MR. GOODMAN: Thank you. That is the purpose for
17 which it is intended. Thank you.

18 THE WITNESS: So what Mr. Dundon said related to
19 the debt, was that the debt was really equity. And it was
20 equity before the divisive merge.

21 BY MR. GOODMAN:

22 Q Okay. And did you have any reason to disagree with
23 Mr. Dundon on whether the debt was equity before the
24 divisive merger?

25 A I --

1 MR. PATTERSON: Objection, Your Honor. It goes
2 beyond the scope and would just be opinion testimony.
3 Either he relied on it or he didn't.

4 THE COURT: It's to say why he didn't rely on,
5 though. So overruled.

6 THE WITNESS: Can you -- I'm sorry. Can you
7 repeat the question?

8 BY MR. GOODMAN:

9 Q You know, why don't we go to just Tab 5 and bring up
10 the testimony I think you've been referring to so that we
11 can all see it?

12 It's TCC 144, Page 88, Line 14.

13 (Pause in the proceeding.)

14 BY MR. GOODMAN:

15 Q Before we dig into this, I mean, the secured debt
16 issue. That was something that was -- was that something
17 that was important to you in terms of forming an opinion
18 regarding the value of these claims?

19 A Yes.

20 Q Okay. And generally speaking, why was that?

21 A When you have a divisive merger, you're dividing the
22 company into two -- two different companies.

23 And you have assets on one side, and you have assets in
24 the other. And you have liabilities on one side, and
25 liabilities in the other. And you basically get to a net

1 asset value.

2 And if you have a, I mean, in this -- in this instance
3 you have about \$100 million of debt on the YesCare side.
4 And if it's not debt, it's equity. It makes the YesCare
5 value go up by \$100 million.

6 Q Okay. And I think the testimony I meant to refer to
7 actually starts on Line 24, 24.

8 MR. GOODMAN: I am just --
9 (Pause in the proceeding.)

10 BY MR. GOODMAN:

11 Q You see that testimony in your -- your binder, sir?

12 MR. KAUFMAN: Your Honor, I'm objecting now.
13 Because I'm looking through Mr. Atkinson's report. I don't
14 see any reference to this in his report.

15 MR. GOODMAN: Yes, it is. I think you can ask
16 that question on cross.

17 THE COURT: No, I think --

18 MR. GOODMAN: Well, Your Honor, I'd also like just
19 to make an observation. We were -- we're in a contested
20 matter under Rule 26. I know that the other side didn't see
21 fit to produce any expert reports, which is their
22 prerogative.

23 But, you know, our -- our witness did. I -- I
24 don't know that this concept of Mr. Atkinson is, you know,
25 penalized for having a report, you know, suddenly means that

1 that rule now springs into existence and applies.

2 I think he can testify as to his opinions
3 generally. I -- I do recall, specifically, that this is
4 referenced in ths report.

5 MR. KAUFMAN: Your Honor, I'm -- I guess I'm
6 asking where in the report it is and where would I have had
7 an opportunity to ask questions at his deposition about this
8 piece of testimony that he's just now made up.

9 THE COURT: Out of report about -- what's the
10 report? What's the question?

11 MR. GOODMAN: I -- I'm just -- he previously was
12 talking about how he reviewed, considered, and
13 relied -- relied on testimony that Mr. Dundon gave.

14 I'm now just showing that testimony, you know,
15 to --

16 THE COURT: Correct.

17 MR. GOODMAN: -- to him to confirm it.

18 MR. KAUFMAN: This isn't --

19 THE COURT: Is it -- is it -- is it in his report?
20 Dundon?

21 MR. GOODMAN: Yes.

22 THE COURT: All right.

23 MR. KAUFMAN: There are referencings -- references
24 to Dundon's testimony generally. There are no references to
25 what we're talking about now in terms of equitization of the

1 M2 debt.

2 THE COURT: Yeah.

3 MR. KAUFMAN: That's my problem. I didn't have an
4 opportunity to ask him questions about this.

5 THE COURT: Did you ask him questions about
6 Dundon's testimony?

7 MR. KAUFMAN: Oh, yes.

8 THE COURT: Did you -- did you ask him if he
9 relied on any other opinions and such?

10 MR. KAUFMAN: Oh, yes.

11 THE COURT: Then what's the question?

12 MR. GOODMAN: And, Your Honor, I -- I think we're
13 at cross-examination before I'm done -- done with my direct.

14 THE COURT: Yeah. I'll see where this goes. And
15 if I -- if I need to, I'll strike it. Go ahead.

16 MR. PATTERSON: Okay. Just further, Judge, for
17 the Record. Again, it's not a conclusion that he has in his
18 report that I can find. I've had it for an hour, but it's
19 not a conclusion.

20 And so this is wholly outside the boundaries of
21 what he said he was going to testify to.

22 THE COURT: I'm going to allow it.

23 MR. PATTERSON: This --

24 THE COURT: I'm going to allow it, and then
25 everybody can cross him on it. And if I -- if I give it no

1 weight or it's also out of bounds, then I -- I'll exclude
2 it.

3 Go ahead.

4 (Pause in the proceeding.)

5 BY MR. GOODMAN:

6 Q Okay. Again, Mr. Atkinson, you reviewed Mr. Dundon's
7 deposition transcript in the course of preparing your
8 report; is that correct?

9 A Yes, I -- I did.

10 Q Okay. And did you find testimony that Mr. Dundon gave
11 on this issue of debt equitization helpful to you?

12 A Yes, I quoted it in my report in Paragraph 9.

13 I'm -- I -- I wrote,

14 "Additionally Mr. Dundon testified at
15 his deposition that without being able
16 to credit the large amount of assumption
17 of debt, I think it's unlikely that FTI
18 would have passed favorably upon the
19 divisional merger."

20 Q Ah, so you did reference this in your report.

21 A I did.

22 Q I thought you did. Okay.

23 (Pause in the proceeding.)

24 BY MR. GOODMAN:

25 Q Okay. And --

1 MR. KAUFMAN: Your Honor, I'll just ask to strike
2 that sidebar comment.

3 THE COURT: No. No, no, no, no. You -- you
4 invited that one. I -- little control of action, we're
5 get -- we'll get there.

6 Okay. Please proceed.

7 MR. GOODMAN: Thank you, Your Honor.

8 BY MR. GOODMAN:

9 Q Okay. Again, so just coming back to the -- the import
10 of the impact of this debt equitization, how did this
11 impact?

12 A I'm sorry. Go ahead.

13 Q Sorry, I -- I got distracted by that one. Try again
14 before we move on.

15 So again, why was the equitization of the secured debt
16 important to you?

17 A Because if you looked at the fairness opinion that FTI
18 did, they included the debt. And in including the debt, the
19 value of YesCare was \$100 million lower than it would be if
20 you took the debt out and made it equity.

21 Q This could be one of the reasons why the FTI opinion,
22 fairness opinion, was wrong; could it?

23 A The FTI -- it could have been. I -- I don't know the
24 answer to that.

25 Q Okay. How does the Alabama contract factor into the

1 analysis as to the value of the assets that were assigned to
2 YesCare under the divisional merger?

3 MR. ZLUTICKY: Objection, Your Honor. Vague. I
4 don't know what he means by Alabama contract. There's been
5 no discuss of it in particular.

6 THE COURT: Why don't you set a little foundation.

7 MR. GOODMAN: Sure.

8 BY MR. GOODMAN:

9 Q Mr. Atkinson, are you aware of a --

10 THE COURT: I think it's fair.

11 BY MR. GOODMAN:

12 Q -- contract that was being pursued with the state of
13 Alabama?

14 A I am.

15 Q What do you kow about that?

16 A We -- we found support, third-party support. There
17 were a number of articles related to the Alabama contract.

18 There was an article that announced that YesCare had
19 won the contract. There was a article that said that they
20 got -- it got taken away again. And then there was another
21 article that said that it came back again.

22 And this -- this is all consistent with the documents
23 we found in discovery where they were bidding on the Alabama
24 contract.

25 The contract in -- in the articles was for over a

1 billion dollars. It was over 4 ½ years. It started in
2 2023, in April of 2023.

3 So that's -- that's -- that's what I know about that
4 contract.

5 Q Okay. Now that we've laid the -- some foundation, I'm
6 going to come back to my question.

7 How does the Alabama contract factor into the analysis
8 as to the value of the assets that were assigned to YesCare
9 under the divisional merger?

10 A So, the Debtors produced projections that were part of
11 FTI's fairness opinion. Those projections had about \$300
12 million of revenue each year. It grew over time,
13 the -- which was consistent with where Corizon was prior to
14 the divisional merger.

15 The Alabama contract, as I mentioned was a
16 billion -- over a billion dollars over 4 ½ years. So it's
17 about \$200 million a year, kind of growing over time.

18 And it would be over a 40 percent increase in the
19 amount. So instead of 300, it could be 500 million more.
20 Not sure exactly, but that's -- that's why it's relevant.
21 It goes to the future value of YesCare.

22 So understanding contracts that were being bid on and
23 the likelihood of winning, and the fact that the divisional
24 merger happened like a month before or a month and a half
25 before, they were awarded that contract were all things that

1 I was interest in.

2 Q Okay. Recall you previously testified that YesCare did
3 produce some financial statements, correct?

4 A Yes, they did.

5 Q And what is the date of the last financial statement
6 that YesCare produced?

7 A February, 2023.

8 Q Okay. Did that financial statement reflect the value
9 of the Alabama contract?

10 A I do not believe it did.

11 Q Okay. Would financial statements in subsequent months
12 include it?

13 A I would believe it would.

14 MR. KAUFMAN: Your Honor, I -- objection.

15 This is speculation. He doesn't know anything
16 about when the Alabama contract actually started, when
17 revenues would come in.

18 MR. GOODMAN: Oh, okay. I'm going to lay some
19 foundation testimony, Your Honor. I withdraw.

20 BY MR. GOODMAN:

21 Q Mr. Atkinson, do you know when the Alabama contract
22 started?

23 A Yeah. The Alabama contract started in April of 2023.

24 Q Okay. And the last financial statement produced by
25 YesCar was dated that date?

1 A Februray, 2023.

2 Q Okay. So that's just before the contract would have
3 began, correct?

4 A Correct.

5 Q Okay. And you previously testified, you said that
6 the -- why don't we strike that.

7 Did YesCare produce any financial statements post-
8 February, 2023?

9 A It did not.

10 Q Not. Okay.

11 Q Were you interested -- were you interested in the
12 course of performing your work and seeing financial
13 statements from YesCare that would have post-dated February,
14 2023?

15 A I was.

16 Q Why is that?

17 A Because I wanted to see the impact of the Alabama
18 contract on the financial statements.

19 Q Okay. Did you ever get that information?

20 A I did not.

21 Q Did you provide input on the TCC's discovery requests
22 in this case?

23 A I did.

24 Q Do you normally provide impact on discovery requests
25 when you're working on case?

1 A I do.

2 Q Why do you do that?

3 A Because there are financial aspects to most things that
4 we do in bankruptcy. And it's helpful to the -- to the TCC
5 if I'm helping provide context.

6 Q Okay. Did you provide input on the subpoena that the
7 TCC sent to YesCare?

8 A I did.

9 Q Okay. I want to go ahead and show you Exhibit TCC 344.
10 It's Tab 6 in your binder.

11 (Pause in the proceeding.)

12 BY MR. GOODMAN:

13 Q Have you seen this before, Mr. Atkinson?

14 A I have.

15 Q Okay. Is it your understanding that the TCC did serve
16 a subpoena on YesCare?

17 A Yes.

18 Q Okay. Did YesCare ever produce the financial
19 information post-February, 2023 that you wanted?

20 A No.

21 Q It did not. Okay.

22 What actions did the TCC take to try to obtain that
23 information?

24 A We -- we put together the subpoena. We -- I believe we
25 tried to serve it on counsel. Counsel refused to accept

1 service.

2 And I think counsel was out of town, or was in a trial,
3 or something. So eight days after we tried to, you know,
4 get counsel to accept the subpoena, we're -- we had to go
5 back to the drawing board and serve the subpoena directly on
6 YesCare.

7 Q Okay. Do you know if the TCC took any actions to try
8 to obtain more time so that it could get that information?

9 A We did.

10 Q What -- what actions did the TCC take?

11 A We wrote a letter to the Court sort of outlining the
12 issues and trying to get more time.

13 Q Okay. I'm going to go to Tab 7. This is a publicly
14 filed document on the Court's Docket at 1301.

15 (Pause in the proceeding.)

16 BY MR. GOODMAN:

17 Q You see that document in your binder?

18 A Yes. I have it.

19 Q Okay. Is this the letter that you were referring to?

20 MR. KAUFMAN: Your Honor, I'll -- I'm objecting
21 just based on the timing. This letter pre-dates the
22 subpoena that we just looked at.

23 THE COURT: Yeah.

24 MR. KAUFMAN: I don't think this is the letter
25 he's referring to.

1 THE COURT: I'm a little uncomfortable with
2 experts testifying about what happened and what got filed in
3 my case.

4 I thought -- I like my experts nice and
5 independent from what's going on.

6 MR. GOODMAN: Okay. We can move on, Your Honor.

7 THE COURT: Thank you.

8 MR. GOODMAN: Okay.

9 BY MR. GOODMAN:

10 Q So just coming back, you wanted additional information
11 from YesCare, correct?

12 A Yes.

13 Q Okay. And you had worked with the TCC to send a
14 subpoena to YesCare, correct?

15 A Yes.

16 Q And TCC, to your knowledge, was trying to seek
17 additional time to get that information, correct?

18 MR. PATTERSON: Objection, Your Honor. He's
19 leading the witness.

20 THE COURT: Sustained.

21 (Pause in the proceeding.)

22 BY MR. GOODMAN:

23 Q To your knowledge did the TCC try to obtain additional
24 time --

25 MR. PATTERSON: Objection, Your Honor. He's

1 leading the witness.

2 MR. GOODMAN: To --

3 THE COURT: And -- and I don't -- I don't -- I
4 think he can testify if he got the docs or if he didn't, not
5 efforts that the TCC did or on behalf.

6 And for somebody -- if TCC wants to put a witness
7 up to talk about what they did in the case, but I'm not sure
8 that this is outside of the scope about what the expert, I
9 think, can testify on, or he's qualified to testify on.

10 MR. GOODMAN: Okay.

11 (Pause in the proceeding.)

12 BY MR. GOODMAN:

13 Q Okay. So it's January of 2024, and you're trying to
14 complete the analysis regarding the value of the avoidance
15 actions pertaining to the divisional merger, you know, end
16 of the day, you know -- sorry. Strike that.

17 (Pause in the proceeding.)

18 BY MR. GOODMAN:

19 Q Okay. Sorry.

20 You previously said that you didn't have any financial
21 statement of YesCare that occurred after February, 2023,
22 correct?

23 A Yes.

24 Q Okay. So you didn't have anything at this point that
25 showed the impact of the Alabama contract.

1 MR. PATTERSON: Objection, Your Honor.

2 BY MR. GOODMAN:

3 Q Is that your prior testimony?

4 MR. PATTERSON: He's leading the witness.

5 THE COURT: Sustained.

6 BY MR. GOODMAN:

7 Q Without the information, right, that YesCare wouldn't
8 make available to you, could you value the avoidance action
9 derising out of the divisional merger?

10 MR. PATTERSON: Objection, Your Honor. Sidebar
11 comment. And it's character -- it's argumentative and asks
12 for hearsay. And it's beyond the scope of what he can
13 testify to.

14 (Pause in the proceeding.)

15 THE COURT: I'm going to overrule the question.

16 But I'm going to ask you:

17 Could -- did you -- were you -- did you feel that
18 based on the information that was provided to you that you
19 could perform the analysis.

20 THE WITNESS: I did not.

21 THE COURT: Okay.

22 BY MR. GOODMAN:

23 Q Why couldn't you perform the analysis, given this
24 information wasn't available to you?

25 A I think understanding what YesCare is worth, and

1 understanding the projections, and if they were accurate,
2 and the -- what -- had the impact of the Alabama contract
3 are all things that are very relevant to the determination
4 of the divisional merger asset value.

5 Q Okay. So is that why you reached the opinion that you
6 did in your report that you can't assign a value to those
7 claims?

8 A That's correct.

9 Q Okay. Was it surprising to you that the Debtor and the
10 UCC wanted to support this settlement that includes the
11 avoidance claims --

12 MR. PATTERSON: Objection, Your Honor.

13 BY MR. GOODMAN:

14 Q -- arising out of the --

15 MR. PATTERSON: I'm sorry. Objection, Your Honor.

16 THE COURT: Whether he was surprised or not
17 surprised I think is irrelevant. I'll sustain the -- what I
18 think the objection would have been.

19 MR. GOODMAN: Moving on, Your Honor.

20 BY MR. GOODMAN:

21 Q Mr. Atkinson, does your report discuss successor
22 liability and alter ego issues?

23 A It does.

24 Q Now where in your report is that?

25 A There's a summary of my opinion in Paragraph 2, and

1 then Page 10, Section 5, starting on Paragraph 12.

2 Q Okay. And what opinions are you able to offer to the
3 Court regarding these potential causes of action?

4 A My opinion is that it does not appear to me that the
5 UCC nor the Debtor put much weight on the causes of action
6 that they asserted related to successor liability. Or
7 apparently did not put any weight on the alter ego
8 arguments.

9 Q Okay. What information --

10 MR. KAUFMAN: Your Honor, I'm going to move to
11 strike that. That's beyond the scope of what he's actually
12 been designated as an expert to do.

13 THE COURT: Overruled.

14 BY MR. GOODMAN:

15 Q Mr. Atkinson, what information do you need to value
16 claims involving successor liability and alter ego?

17 A You need to understand three things, essentially.

18 You need to understand the claims against the Debtor,
19 the GUC claims and the tort claims. You need to understand
20 the ability to pay the parties that you're pursuing. And you
21 need to understand how good your claims are.

22 Q Okay. Is the starting to the analysis the claims
23 against the Debtor?

24 A Yes, I would say so.

25 Q Okay. Did you try to value the claims against the

1 Debtor?

2 A Yes.

3 Q Okay. You tell me about that.

4 A Sure. We got information related to the GUC claims and
5 we got information related to the tort claims. There was
6 some settlement history for about ten years.

7 We reviewed the settlement history. The Debtor,
8 ultimately in their, even though they had the settlement
9 history, did not use the settlement history. They used a
10 third-party source for determining what the value of the
11 claims were in their Disclosure Statement.

12 I similarly came to the same conclusion. And I did not
13 rely on the -- the underlying settlement data that there
14 provided. I noticed that one, we have a 200 -- like it was
15 224 claims at the time I was looking at it. I think it's
16 240 now. So not a lot of claims, relative to most of the
17 cases that I'm involved in.

18 And when I got into the details of the data, there
19 were, for example, if you looked at death claims, there were
20 some being paid at \$5,000 a claim and some being paid at \$6
21 million a claim.

22 And that was -- that really carried on throughout the
23 various types of claims. So it was very dispurgent. So
24 I -- I did not think I had information that I could value
25 the claims with.

1 Q Okay. Is there a claims register in this case?

2 A There is.

3 Q Did you review it?

4 A I did.

5 Q Okay. If you added up all of the claims in the claims
6 register in this case using a calculator, what would be
7 the -- what would the personal injury claims be worth?

8 A I think if you didn't take out duplicates it's over a
9 billion dollars. And if you take out duplicates, it's like
10 775,000 million.

11 Q Okay. Is that number in the Disclosure Statement?

12 A It is.

13 Q Okay. Would adding up all the claims in this -- would
14 adding up all of the claims in the claims register using a
15 calculator be the proper way to value personal injury
16 claims?

17 A No.

18 Q Okay. Did the Debtor produce any claims analysis to
19 you?

20 A They gave me settlement data, but no -- no analysis
21 of -- other than the Disclosure Statement where they applied
22 math to the number of claims in the case and applied
23 averages from some third-party sources.

24 Q Okay. Did the Debtor share any of its work product
25 with you on this issue?

1 A No.

2 Q Did the UCC produce any claims analysis to you?

3 A No.

4 Q Okay. Has the UCC shared any of its work products with
5 the TCC regarding claims analysis?

6 A No.

7 Q Were there any obvious errors of the Debtors' reported
8 valuation of personal injury and wrongful death claims in
9 the Disclosure Statement?

10 A Yes.

11 Q What was that?

12 A The Debtors relied on a -- a third-party source that's
13 a database that's put together by the federal government in
14 an article that referenced that.

15 And the settlement data they used from that source for
16 medical malpractice cases was -- they used the 2014 data
17 point. And the -- the source data had medical malpractice
18 claims, you know, additional claims that happened from 2014
19 to 2023.

20 And they had a number for -- you could get to a number
21 for 2023. So it -- to get to, you know, to use it for
22 today, you needed to bring it forward to 2023.

23 THE COURT: Is that a really basic back-up
24 question, the third-party source, can you just give me a
25 little bit more information just so I have --

1 THE WITNESS: Sure.

2 THE COURT: -- decent understanding of it. No,
3 just based on your understanding.

4 I don't -- is it -- is it a website?

5 THE WITNESS: Yeah. It's a -- it's a -- it's a
6 government website. Department of Health, I think, and
7 Human Services tracks medical malpractice settlements and
8 judgment for -- like since 1992.

9 THE COURT: Got it.

10 THE WITNESS: So, yeah.

11 THE COURT: Got it.

12 (Pause in the proceeding.)

13 MR. GOODMAN: Want to make sure the Judge has no
14 further questions.

15 THE COURT: No, no, no. I'm sorry. I just wanted
16 to make sure I -- I thought that's what you were referring
17 to. I just wanted to make sure that --

18 BY MR. GOODMAN:

19 Q To be clear, Mr. Atkinson, his questions are more
20 important than mine.

21 A I -- I get that.

22 Q Okay. Mr. Atkinson, did you consider settling data?

23 A I did.

24 Q Tell me about that.

25 A I looked at the settlement data. And as I mentioned

1 earlier, I noticed that -- I think I have ten years of
2 settlement data from the Debtor. There were no judgments in
3 the settlement data.

4 The -- the settlements that we did have were, you know,
5 pretty diverse in -- in these fairly unique situations
6 related to each claim, compared to other mass torts that
7 I've been involved in.

8 Q Okay. In this case, do you think that you could use
9 the settlement data to accurately value the tort claims?

10 A I do not believe so, no.

11 Q Why is that?

12 A Because the -- the -- as I mentioned when you looked at
13 the -- the payouts were so widespread for each type of
14 claim, that I just don't think it's fair to the claimants to
15 value their claims based on the historical settlement data.

16 I think there's a small population. And I think it's a
17 manageable one.

18 Q Okay. But in other cases, have you been able to
19 estimate the value of tort claims using settlement data?

20 A I have.

21 Q Okay. But not this one.

22 A Correct. Not this one.

23 Other cases like miso cases, there's a lot more data
24 out there, the types of injuries are more consistent. And
25 the -- and the -- there's just usually a lot more medical

1 information related to it.

2 Q Okay. Given the number of claims in this case, what
3 approach do you think should be utilized to value the
4 claims?

5 A I think they should be analyzed on a claim-by-claim
6 basis. We -- I had a case with Judge Isgur where we
7 utilized the PIK system. And we went out and sent out
8 questionairre to get more information. Maybe something like
9 that would be helpful here.

10 But probably, you probably would need a medical expert
11 to help determine the claim amounts.

12 Q And what is the PIK form?

13 A It's personal information questionairre.

14 So it's a -- in -- in *HonX*, me and the other claims
15 expert, the one for the future claims rep, created the
16 questionairre to get additional information that would be
17 helpful -- that we both thought would be helpful to value
18 the claims.

19 Q Okay. And the *HonX* case, that's pending in the
20 Southern District of Texas, right?

21 A Yeah. It's here.

22 Q Okay. So in your opinion, if parties in this case
23 really wanted to do a more detailed claims analysis, are
24 there bankruptcy tools that are available to do that?

25 A Yes.

1 Q But sitting here today, do you have access to the
2 information that you would need to do the claims-by-claims
3 analysis that you were discussing?

4 A I do not.

5 Q Okay. When did you begin analyzing the claims in this
6 case?

7 A Probably around the time -- we got the -- we got the
8 database around December 27th. So, soon after that we
9 probably started looking at the claims information.

10 Q Okay. And when did the Debtor again file the Rule 9019
11 motion?

12 A January 16th.

13 Q Okay. Sitting here today, are you able to offer an
14 opinion regarding the aggregate value of the claims against
15 the Debtor?

16 A I am not.

17 Q Okay. And what does that mean in terms of your ability
18 to then value potential causes of action based on successor
19 liability and alter ego.

20 MR. PATTERSON: Objection, Your Honor. That's
21 beyond the scope of expertise. Wasn't qualified to testify.

22 THE COURT: Yeah. I -- I --

23 MR. GOODMAN: Actually, Your Honor, I'm trying to
24 help the Court understand why it is that we can't value the
25 claims as sort of a foundational question.

1 THE COURT: Why don't you just ask the question.
2 I'll let you ask the question now.

3 MR. GOODMAN: Okay.

4 BY MR. GOODMAN:

5 Q What's the connection, Mr. Atkinson, between the fact
6 that you don't have information that you need to value the
7 claims against the Debtor and then, in turn, trying to value
8 claims involving successor liability, alter ego.

9 MR. KAUFMAN: And, Your Honor, just for the
10 Record, this is the same -- the same motion to strike I
11 made.

12 There's no foundation that he's an expert in
13 valuing successor liability or alter ego theories.

14 THE COURT: Overruled.

15 MR. KAUFMAN: And the fact --

16 THE COURT: Overruled. You can answer the
17 question.

18 THE WITNESS: Well at the heart of successor
19 liability and alter ego, is what there -- the claim's were.
20 And certainly, I'm a claims expert.

21 So I -- I do not believe without having claims
22 information, I can't determine one of the three most
23 important things to what a successor liability or alter ego
24 claim would be, which is what are the claims worth.
25 What -- how much can the parties pay. And then ultimately,

1 how good is the case.

2 BY MR. GOODMAN:

3 Q Okay. But your report, though, does include a range,
4 right, or 135 million to 187 million, correct?

5 MR. PATTERSON: Objection. Leading the witness.

6 He's now testifying two different ways. Or he's asking him
7 to testify two different ways.

8 THE COURT: Overruled. You can answer.

9 It's a -- really kind of a foundational question.

10 MR. GOODMAN: Yeah.

11 THE WITNESS: Yes. So I -- I do have a range in
12 my report. The range is, as I mentioned, understanding what
13 the claims' values are, which I do not believe I can value.
14 But the Debtor has valued them in their disclosure statement.

15 The -- both the GUC and the tort claims and the
16 value, if I correct for that, that one mistake related to
17 PI's, bringing them to 2023 values, the -- the range in the
18 Debtor's materials is 135 to \$185 million.

19 And the reason I included that is I wanted to give
20 perspective to the Court as to, at least based on the
21 Debtor's numbers, how significant that claim could be.

22 Again, it's -- it's -- it's a component of what's a alter
23 ego or successor liability claim worth, which is the value
24 of the claims.

25 BY MR. GOODMAN:

1 Q Okay. In your report, I believe you opine on -- on
2 whether the Debtor and the UCC actually evaluated potential
3 causes of action based on successor liability and alter ego?
4 Where is that?

5 (Pause in the proceeding.)

6 BY MR. GOODMAN:

7 Q I'm sorry. Is that on Page 10?

8 THE COURT: Why don't you just ask him the
9 question and not really --

10 BY MR. GOODMAN:

11 Q Yeah. That's -- Mr. Atkinson, are you offering an
12 opinion today on whether you think the Debtor and UCC
13 actually evaluated those causes of action in connection with
14 the settlement?

15 MR. KAUFMAN: And I'll object to that form of that
16 question.

17 THE COURT: Overruled.

18 BY MR. GOODMAN:

19 Q The question is, are you --

20 THE COURT: Yeah. Overruled.

21 THE WITNESS: Yes, I am.

22 In Paragraph --

23 THE COURT: Just -- just tell me what the opinion
24 is.

25 THE WITNESS: Sure. My -- my opinion is that the

1 Debtor did not calculate or include that in their analysis.
2 They highlighted in their 9019 motion four other causes of
3 action.

4 They highlighted the three fraudulent conveyances.
5 And then they highlighted the -- the divisional merger
6 amount. They did not highlight the alter ego or successor
7 liability.

8 There's additional testimony that I've reviewed
9 from David Barton, the UCC's designee, who pointed to the
10 9019 motion.

11 There's additional documents that I've seen
12 related to the -- the Disclosure Statement and what's
13 written in the Disclosure Statement.

14 There's not an emphasis on alter ego or successor
15 liability. I believe, based on just the sheer math of how
16 big the claims are from the Debtor, it's the -- by far the
17 largest claim in this case.

18 And the claims that the Debtor did -- Debtor and
19 UCC did settle, the three -- the three fraudulent conveyance
20 claims' gross amount is about \$30 million. And the divisive
21 merger, if you just take what the -- what the UCC's
22 financial advisor says, and you take out the debt of \$100
23 million, you'd be another \$100 million claim.

24 Again, I don't think that the value is there
25 related to what is YesCare worth. But there's substantial

1 amount of value that the Debtors -- Debtors and UCC settled.
2 But I don't see that this settlement -- the ultimate
3 settlement, the \$54 million settlement included an alter ego
4 or -- or successor liability, based on what I've seen.

5 (Pause in the proceeding.)

6 BY MR. GOODMAN:

7 Q Okay. I want to shift gears, Mr. Atkinson, and talk
8 about how much money the tort claimants might get if a
9 settlement is approved. This Court asked that question.
10 You need to be mindful of that.

11 Here -- here's the question, Mr. Atkinson, could you
12 tell just from the settlement that's before the Court in the
13 9019 motion, just from that itself, how much money would to
14 go tort claimants?

15 MR. KAUFMAN: Objection. This -- this is way
16 beyond the scope of his expert opinion.

17 THE COURT: What's your response counsel?

18 MR. GOODMAN: I -- I think this is actually a
19 foundational question. But it's more of an issue. And,
20 perhaps, the Court's already -- understands this that
21 without the plan to allocate --

22 THE COURT: Yeah. I don't want you testifying. I
23 don't want you testifying to -- I --

24 (Pause in the proceeding.)

25 THE COURT: I'm going to overrule. He can -- he

1 can answer.

2 THE WITNESS: No.

3 BY MR. GOODMAN:

4 Q Okay. And why is that?

5 A Cause I don't have sufficient information to
6 determine --

7 Q Okay.

8 A -- a claim.

9 Q Is there a plan on file in this case yet -- or sorry.
10 There -- there was a plan on file in this case,
11 correct?

12 A Yes. There was.

13 Q Okay.

14 A And there's no longer one is my understanding. And
15 without one, it's hard to know what the claims are worth.

16 Q Okay. And in your experience as a financial
17 restructuring advisor, do you -- have you reviewed plans of
18 reorganization?

19 MR. PATTERSON: Objection, Your Honor. It's
20 beyond the scope. Opinion and what he does in other cases,
21 especially beyond claims analysis, is not relevant.

22 THE COURT: I think it's just if he reviews plans
23 is the question. It's more of a foundational question. And
24 we can go. So I'll overrule the objection. He can answer.

25 THE WITNESS: Yes, I do.

1 BY MR. GOODMAN:

2 Q Okay. In the course of the work that you did here for
3 the TCC, did you evaluate the plan that was currently on
4 file?

5 A I did.

6 Q Okay. Does your report contain any opinions regarding
7 the fairness of the proposed allocation under the plan?

8 MR. KAUFMAN: Objection. This is irrelevant.

9 THE COURT: Overruled.

10 THE WITNESS: Yes, it does.

11 BY MR. GOODMAN:

12 Q And where is that in your report?

13 A It is on -- it's on Page 21, Section 8, starting on
14 Paragraph 30.

15 Q Okay. And what opinions did you reach?

16 A My opinion big picture was that the -- the plan that
17 was on file was not treating, you know, GUC claims and tort
18 clais fairly or evenly.

19 Essentially, there were a couple of things that I
20 notices. There -- there's more assured assets, like cash
21 and the ERC creditors. And they were disproportionately
22 being allocated to the GUC Trust. So the GUC Trust was
23 getting about 70 percent of the cash and the -- and the ERC
24 credits.

25 And then on the flip side, the litigation aspect, which

1 are more speculative were disproportionaltely allocated to
2 the tort claimants Committee, 70 percent to them versus 30
3 percent.

4 So the dollars were -- were disproportionately
5 allocated relative to the claim values. And then the last
6 point is, the claim amounts that were used to determine what
7 the Debtors have put together were understated the amount of
8 PI claims -- the dollar amount of PI claims. Cause they
9 used the 2014 dollars, not 2023.

10 Q Okay. Could -- could you or anyone help the Court
11 understand how much tort claimants would get solely based on
12 the settlement that's before the Court.

13 MR. KAUFMAN: Again, Your Honor. Object. This is
14 not relevant. It's outside the scope of his expertise.
15 And --

16 THE COURT: I just think it's -- help me with the
17 relevance.

18 MR. GOODMAN: It's a question that you asked at
19 the beginning of the case, Your Honor.

20 THE COURT: Yeah. I -- I'm okay with that. You
21 can -- you can ask something else.

22 THE WITNESS: No.

23 BY MR. GOODMAN:

24 Q Okay. And why is that?

25 A Because I do not have sufficient information -- I do

1 not have a plan. So I'm -- it's impossible for me to
2 determine the amount.

3 Q Okay. Do you have any views regarding the insurance
4 assets in this case?

5 A I do.

6 Q Okay. Do you deal with insurance issues in mass tort
7 bankruptcies?

8 MR. KAUFMAN: Your Honor, objection. This is
9 irrelevant. And, again, on deposition --

10 THE COURT: The insurance you find it irrelevant?

11 MR. KAUFMAN: You'll find out, if I could take him
12 on *voir dire* on this point. He told me in his deposition he
13 didn't look at the insurance.

14 THE COURT: Yeah. That was the -- that was the
15 whole -- that was the whole pre-you want to take it up now
16 question.

17 So I'm going to -- I'm going to let you cross him.
18 And we'll -- we'll -- it'll go to the weight, his testimony.
19 He can go.

20 THE WITNESS: So I am the trustee in the
21 Mallencrot (phonetic) Trust. We're pursuing insurance
22 in -- in that estate. We've been pursuing insurance in
23 Purdue.

24 I've had a lot of experience with cases where
25 insurance has been pursued. It has been my experience that

1 it takes a long time to get insurance, particularly in mass
2 tort cases.

3 In the *Boy Scouts* I was actively involved with
4 negotiations for getting some insurance monies paid. And
5 I'm involved with the post-confirmation trust now. And what
6 we're -- what we're finding is the insurance companies
7 basically make you litigate like each claim, essentially.

8 And it takes a long time. And they have good
9 counsel. And you're essentially paying them. So it's
10 a -- it's a hard road to getting paid in these mass tort
11 cases.

12 BY MR. GOODMAN:

13 Q Okay. Does that mean that insurance assets usually
14 need to be discounted?

15 (Pause in the proceeding.)

16 THE WITNESS: They're just hard to value.

17 MR. PATTERSON: Objection, Your Honor. He's
18 leading the witness.

19 MR. GOODMAN: Okay.

20 THE COURT: Sustained.

21 (Pause in the proceeding.)

22 BY MR. GOODMAN:

23 Q Do you have any views regarding the value of the ERC
24 credits in this case?

25 A I do. ERC credits, I -- I've -- I have -- in other

1 cases we have pursued them. As long as you have a -- a
2 company that's deserving of them and you do the math
3 correctly, which I know they have a consultant here.
4 Generally, you get those paid.

5 So I don't have any concerns about them getting paid.

6 Q Okay. Now does your report contain any opinions
7 regarding whether the Debtor has a business to reorganize?

8 A It does.

9 Q Okay. And what page of your report is that on?

10 MR. KAUFMAN: Objection. This -- relevance.

11 THE COURT: What -- what is the relevance here?

12 MR. GOODMAN: Actually, it's interesting, Your
13 Honor. We served an RFA on the Debtor and asked them to
14 admit that they had no business to reorganize. And they
15 actually denied the RFA.

16 So because of that --

17 MR. KAUFMAN: It's a little more nuance than that.

18 THE COURT: I know. But I -- I think we can just
19 then rely on that moreso than anything else.

20 I mean, what's he going to -- I'm not sure
21 he -- I'm not sure what he can testify to.

22 MR. KAUFMAN: We've -- we've also acknowledged
23 that since since our first day pleadings.

24 So it's not really up for dispute. It's not
25 relevant what is opinions are.

1 THE COURT: I agree.

2 MR. GOODMAN: Okay.

3 (Pause in the proceeding.)

4 MR. GOODMAN: I'm sorry. I'm a little confused,
5 Your Honor.

6 So do you not want him to offer any testimony on
7 the analysis that he did on whether the Debtor has a
8 business to reorganize?

9 THE COURT: I think they've admitted that they
10 don't. So I'm not sure what the analysis is going to show
11 that -- unless -- unless I think, to my understanding,
12 counsel just said. He just said it in the first day
13 business, I think -- first day papers that they don't have a
14 business to reorganize.

15 So I think with that admission, I'm not sure. I
16 think we're -- everybody's going to reach the same
17 conclusion on that.

18 MR. KAUFMAN: Okay. Thank you, Your Honor.

19 MR. GOODMAN: Save some time. Thank you.

20 MR. KAUFMAN: Okay. Good.

21 MR. GOODMAN: The whole things stipulated to.

22 THE COURT: Yeah.

23 MR. GOODMAN: I'm not going over it.

24 THE COURT: No, no. If -- if -- in other words,
25 if it's stipulated to, then I think we can move on.

1 MR. GOODMAN: Okay. Perfect. Thank you, Your
2 Honor. Saves time.

3 BY MR. GOODMAN:

4 Q All right. Home stretch, Mr. Atkinson.

5 (Pause in the proceeding.)

6 BY MR. GOODMAN:

7 Q Okay. Were you tasked with offering any opinions by
8 the TCC regarding plan releases in this case?

9 A I was not.

10 Q Okay. Were you tasked with offering any legal opinions
11 regarding what is or is not in the state causes of action?

12 A I was not.

13 Q Okay. Are you offering any opinions today as to
14 whether dismissal is better than a bankruptcy settlement?

15 A No.

16 Q No. Okay.

17 All right. Mr. Atkinson, do you adopt your Declaration
18 as your testimony in this case?

19 A I do.

20 MR. GOODMAN: With that, Your Honor.

21 MR. PATTERSON: I'm going to object to that cause
22 that's hearsay.

23 MR. GOODMAN: I would pass the witness.

24 MR. PATTERSON: He can't adopt hearsay.

25 THE COURT: I'm not -- I'm not sure what that

1 really means. But --

2 MR. PATTERSON: I don't either, so his testimony
3 is his testimony. He can't defer and say if I didn't say
4 it, but it's in my report, then I really said it. So --

5 THE COURT: Okay. I don't -- I don't think he
6 said that, though, either, though.

7 MR. PATTERSON: Well, I think that's what he's
8 trying to do.

9 THE COURT: I got it.

10 MR. PATTERSON: He's trying to adopt.

11 THE COURT: But let's -- let's see if he gets
12 there.

13 MR. KAUFMAN: Yeah. Until the point that they
14 offer the report into evidence, I think I'm okay with that
15 general statement. But I agree with Mr. Patterson, we would
16 object if they're trying to move that into evidence.

17 THE COURT: We'll have to see. I'll let you
18 proceed.

19 MR. GOODMAN: I --

20 THE COURT: The -- the preemptive strikes is what
21 I'm after. I'd -- I want to see the blow and then --

22 (Laughter.)

23 THE COURT: -- or the statement.

24 MR. GOODMAN: I -- I am actually ready to -- to
25 pass the witness, Your Honor.

1 THE COURT: Okay.

2 MR. GOODMAN: Do we want to give everyone break?

3 I don't need one, but I'm just --

4 THE COURT: Let me ask the witness.

5 THE WITNESS: I'm good if you are.

6 THE COURT: Okay.

7 MR. KAUFMAN: Your Honor, I would like to
8 consolidate, cause there are lot of things that I thought we
9 were going to cover that we didn't. I'd like to --

10 THE COURT: Sure. How much time do you think you
11 need.

12 MR. KAUFMAN: Can I have ten minutes?

13 THE COURT: Yeah. All right. We'll take a
14 10-minute break.

15 And, Mr. Atkinson, I remind you that you're still
16 under oath.

17 THE WITNESS: Okay.

18 THE COURT: Thank you.

19 THE CLERK: All rise.

20 (Recess taken from 2:56 p.m to 3:09 p.m.)

21 THE CLERK: All rise.

22 THE COURT: Okay. We're back on the Record in
23 Tehum, beginning with cross-examination.

24 MR. KAUFMAN: For the Court, Aaron Kaufman for the
25 Debtor.

1 CROSS-EXAMINATION

2 BY MR. KAUFMAN:

3 Q Mr. Atkinson, good to see you again.

4 A Thank you.

5 Q Last time we met for this, it was in the DC office of
6 Brown Rudnick for your deposition, right?

7 A Yes. That's correct.

8 Q And that was a little over a month ago on
9 February 26th, right?

10 A That makes sense, yeah.

11 Q And during that deposition, we talked about your
12 background. You covered some of that on Direct, right?

13 A Yes.

14 Q It's basically you have 30-plus years of experience
15 covering hundreds of Debtors, Committees,
16 official/unofficial Committees, right?

17 A Yes. That's right.

18 Q And those Committees and those cases cover a wide
19 variety of industries; is that fair?

20 A Yes. That's fair.

21 Q Many of those cases included claims arising from mass
22 torts. I think you said seven or eight, right?

23 A Yeah, probably more than that, but yes.

24 Q Okay. More than that. So more than seven or eight
25 over 30 years?

1 A Yes.

2 Q Okay. For example, I think you mentioned was the *HonX*
3 case, right?

4 A Yes.

5 Q And that concerned some asbestos liabilities, right?

6 A That's right.

7 Q And we'll discuss that a little more later, but
8 ultimately you supported a settlement, a global settlement,
9 in the *HonX* case, right?

10 A That's correct.

11 Q Another case you mentioned very briefly, I thought I
12 heard you talked about the *Purdue Pharmacy* case, right?

13 A *Purdue Pharma*, yes.

14 Q *Purdue Pharma*, thank you.

15 And that involved a wide variety of mass tort claims
16 arising from the opioid epidemic, right?

17 A Opioid-related claims, yes.

18 Q And you submitted a Declaration in support of the
19 settlement and the Plan confirmation in that case, right?

20 A That's correct.

21 Q And we'll come back to this in a few minutes, too, but
22 is it fair to say -- I think you did in your Declaration --
23 that the *Purdue Pharma* settlement, the Sackler settlement in
24 the *Purdue* case was an imperfect solution.

25 Does that sound familiar?

1 A It could be. I don't know one way or the other. I
2 don't remember that.

3 Q You don't remember saying or at least adopting the
4 statement that the settlement was an imperfect solution that
5 nevertheless is superior to any other available alternative
6 for the majority of *Purdue's* creditors? You don't remember
7 saying that?

8 A I probably did.

9 Q It was a few years ago, right?

10 A Yeah, unfortunately, because that case has not been
11 confirmed still.

12 Q It's before the Supreme Court?

13 A Yeah, correct.

14 Q You were also one of the financial advisors that worked
15 with the Brown Rudnick firm and others for an Unofficial
16 Committee in the *Boy Scouts of America* case. I think you
17 mentioned that, right?

18 A Yes.

19 Q And the *Boy Scouts* case involved some claims arising
20 from misconduct, sexual abuse, right?

21 A Yes.

22 Q And your client supported the Plan in that case, right?

23 A The Unofficial Tort Committee supported the Plan, yes.

24 Q Just out of curiosity, did the Court approve the fees
25 to be paid for the Unofficial Tort Committee in that case?

1 A I do not believe they did.

2 Q It was like \$21 million, right?

3 A That's correct. I believe that's right.

4 Q They were -- again, the Court didn't approve the Debtor
5 to pay those fees, right?

6 A I don't believe that they did. I don't know if it's
7 been filed yet, but I don't think the Court has.

8 Q There's a published opinion denying those fees, right?

9 A Okay. Got it.

10 Q Would you agree that the TCC's constituents, the tort
11 claimants, are a subset of the UCC's constituents in this
12 case?

13 A They should be, yes.

14 Q So the UCC represents all creditors? The TCC
15 represents a subset of all creditors?

16 A Yes. And it's weird --

17 Q It's just a yes or no question.

18 A Okay, sorry.

19 Q Thank you.

20 Are you aware of the costs that have been incurred by
21 the TCC in this case?

22 A Generally, not specifically.

23 Q Yeah, and when we spoke a month ago, I think you told
24 me that you were not aware, right?

25 A Correct.

1 Q And also when we spoke about a month ago, you were not
2 aware of any budgets that the TCC had approved for
3 litigation costs --

4 (Counsel confer.)

5 And when we spoke a month ago, you were not aware of
6 any budgets that the TCC had approved concerning the
7 litigation costs for the TCC to object to the 9019 motion
8 and file it's motion to dismiss, right?

9 MR. GOODMAN: Objection, Your Honor. I think this
10 is well outside the scope of the witness's assigned asks. I
11 just raise this issue because I think we're trying to get
12 through today and --

13 MR. KAUFMAN: He's a financial advisor for the
14 TCC. I'm just asking what he's done within the scope of his
15 duties.

16 THE COURT: Right, but he was designated as an
17 expert in this case. I'll give you a little bit of leeway
18 'cause I'm been admittedly a little flexible here, but the
19 fact that he's the -- he's an FA, he's not testifying in
20 this capacity as one, he's testifying in the capacity as an
21 expert. So if that somehow relates to that analysis, I'm
22 all for it. But if not, then find a happy home.

23 MR. GOODMAN: Your Honor, the point of making his,
24 you know, questions regarding budgets and how much fees
25 they've incurred and we've incurred, I don't think that's --

1 MR. KAUFMAN: I don't know if Your Honor read the
2 motion to compel filed this morning, but it kind of relates
3 to this.

4 THE COURT: Let me just tell you, I didn't.

5 (Laughter)

6 THE COURT: I think I'm 100 percent zoned in on
7 the analysis in front of me, and so.

8 MR. GOODMAN: Thank you.

9 THE COURT: Let's go.

10 THE WITNESS: Okay. Do you mind repeating? I'm
11 sorry.

12 MR. KAUFMAN: Not at all.

13 THE COURT: He's going to ask a whole other
14 question.

15 MR. KAUFMAN: I'm going to ask a whole other
16 question.

17 THE WITNESS: Okay, okay, good. Thank you.

18 BY MR. KAUFMAN:

19 Q Have you seen the fee statements filed by the TCC's
20 professionals in this case?

21 A I've seen mine. I don't know that I've seen anyone
22 else's.

23 Q So you're not aware that the TCC's professionals have
24 billed the estate \$2.4 million through February of this
25 case, are you?

1 MR. GOODMAN: Objection, Your Honor. First, this
2 case (indiscernible). I'm just not sure how that's relevant
3 to any of the opinions he actually has testified on in this
4 case.

5 THE COURT: What's the relevance, counsel?

6 MR. KAUFMAN: The relevance is part of his
7 opinions in his report -- and maybe we didn't cover this on
8 Direct, but part of his opinions were the net -- the net
9 that would be distributable out of the settlement and we
10 made some assumptions. We had a demonstrative and I'm
11 trying to understand what he expects the TCC to incur.

12 THE COURT: Well, I'll allow a little bit of it.
13 I'll overrule the objection.

14 MR. KAUFMAN: This is just one or two more
15 questions, then I'll be done.

16 BY MR. KAUFMAN:

17 Q Are you aware that it's \$2.4 million since February?

18 A No. I think I said I have not seen that.

19 Q So you're not aware that the fees incurred from
20 November when the TCC was appointed through the end of
21 February is already more than the UCC's professionals billed
22 for all of last year? You aware of that?

23 A I'm not aware of that.

24 Q We spent quite a bit of time in your deposition a
25 little over six, maybe seven hours about a month ago, right?

1 A It was a long time.

2 Q And you told me about your recent case experience,
3 *HonX, Water Gremlins, Kitty Whitaker, Purdue, Arrow, Boy*
4 *Scouts*, among others, right

5 A Yes.

6 Q But in your 30 years of working this restructuring
7 space, you don't actually have any experience with
8 divisional mergers under Texas law, do you?

9 A I do not.

10 Q So it's fair to say you've never valued claims arising
11 from a divisional merger?

12 A No.

13 Q It's not fair to say that?

14 A No, I'm sorry. I misunderstood your question. Would
15 you ask it again?

16 Q Is it fair to say that you've never valued causes of
17 action arising from a Texas divisional merger?

18 A I have not.

19 Q Did you hear Mr. Perry's testimony -- well, I guess let
20 me ask you this: Have you attended the hearings so far in
21 his case, the first three days?

22 A I have not.

23 Q Have you read any transcripts from the hearings?

24 A I have not.

25 Q Have you spoken with anybody about what statements were

1 made on the record at those hearings?

2 A I'm sure there were comments that I've heard, but you
3 know, it's one-off comments.

4 Q Okay. So would it surprise you to hear that Mr. Perry
5 testified on March 5th and again on Monday, three weeks
6 later, that about a quarter of the total 241 personal injury
7 claims were allocated to CHSTX under the divisional merger?
8 Would that surprise you?

9 A That would surprise me, yes.

10 Q So you dispute that?

11 A I dispute that. I'm confused -- I don't know
12 specifically what you're speaking about, but these are
13 claims against -- so these are claims against Corizon
14 because they -- are you saying that somehow the contracts
15 were assumed by YesCare?

16 Q Have you read the plan of divisional merger?

17 A I have, I have, but I'm trying to understand what
18 you're being specific about.

19 Q You're familiar with the provisions of the Texas
20 divisional merger that say claims from these contracts that
21 are being allocated to YesCare, the claims go with the
22 contracts and YesCare is responsible for those tort claims.
23 Are you familiar with that?

24 A I am, but I would think that --

25 Q And that covers 60 of the filed Proofs of Claim in this

1 case, right?

2 A Yeah, but I don't know that I agree with what you're
3 saying.

4 Q Because you've never dealt with the Texas divisional
5 merger?

6 A No, based on what I've read in the documents.

7 Q Are you a lawyer?

8 A I am not.

9 Q And again, you don't have any experience reviewing
10 plans of divisional merger, do you?

11 A I have not.

12 Q Is it fair to say that TCC didn't ask you to opine on
13 how the divisional merger might have affected tort claimants
14 and their rights to pursue Defendants?

15 A I don't think I opined on that, no.

16 Q So for example, the two TCC members that you were asked
17 about on Direct, that the Debtor objected to -- that's Paris
18 Morgan and Elizabeth Frederick -- you have no opinion of
19 whether those claims are actually validly asserted against
20 the Debtor, do you?

21 A I don't remember being asked about that on Direct.

22 Q So that's a no, you weren't asked to opine?

23 A I have no idea what you're talking about.

24 Q So is it fair to say you're not offering opinions on
25 that?

1 A I don't understand your question. Maybe you can
2 rephrase it.

3 Q Are you familiar -- do you know who Elizabeth Frederick
4 is?

5 A Yes.

6 Q Who is she?

7 A She's a member of the Committee.

8 Q Okay. And she's filed a Proof of Claim in this case,
9 right?

10 A That's my understanding, yes.

11 Q Do you know what contracts, which facility her claim
12 arising from?

13 A I do not.

14 Q Would it surprise you to know it was Florida?

15 A But I didn't know it would surprise me. Anything would
16 surprise me.

17 Q So if the Florida contract was allocated to YesCare,
18 CHSTX under the divisional merger and the plan of divisional
19 merger says any personal injury claims arising from those
20 allocated contracts goes to CHSTX, her claim would be
21 against that entity, right?

22 A It sounds like a legal conclusion.

23 Q And you're not offering any opinions on that?

24 A I'm not, no Sorry, now I get it.

25 Q Thank you.

1 So I want to talk about what you are offering opinions
2 on and for the purposes of this exercise, your report is in
3 the white binder to your right, if you want to refer to it,
4 feel free. This isn't a memory test.

5 A Okay.

6 Q But you talked about in your Direct that there were six
7 categories, six opinions that you were offering, right?

8 A Yes.

9 Q And so I want to quickly go through those and I will
10 cover it, we'll drill down as we go.

11 First, you were asked to opine on the potential claims
12 arising from the divisional merger, the 2022 Texas
13 divisional merger, right?

14 A Yes.

15 Q And ultimately your conclusion was you had no opinion
16 to offer because you have insufficient information, right?

17 A That's fair.

18 Q In fact, at the top of page 7 in your report, there's
19 in bold -- I think you commented on bold in your Direct,
20 "There is insufficient information to value the potential
21 avoidance actions arising out of the divisional merger."

22 Did I read that correctly?

23 A Are you -- I'm confused about the --

24 Q Page 7, in the middle of the page.

25 A Oh, Page 7 of my report?

1 Q Of your report.

2 A Okay. I was on -- in a different section.

3 Yes. I see the heading, the headings are bolded, yes.

4 Q Did I read it right?

5 A I didn't comment on bold.

6 Q There's insufficient of value --

7 THE COURT: Hold on just a second. You guys are
8 interrupting each other.

9 Go ahead and ask your question and I want you to
10 answer.

11 BY MR. KAUFMAN:

12 Q At the top -- you see at the top of Page 7, maybe it's
13 in the middle?

14 A I see it.

15 Q It says, "There is insufficient information to value
16 the potential avoidance actions arising out of the
17 divisional merger."

18 A I see that.

19 Q Is that consistent with what your conclusion is?

20 A Yes.

21 Q So you're not offering any opinions about the value of
22 potential avoidance actions arising from the divisional
23 merger, are you?

24 A Well, my opinion is there's insufficient information,
25 which I think is an opinion.

1 Q And you're not aware of any -- well, strike that. Let
2 me withdraw that.

3 The second opinion in your report that you covered in
4 Direct was you were asked to opine on whether the Debtor or
5 the UCC gave sufficient weight to successor liability and
6 alter ego theories, right?

7 A Yes.

8 Q And so we'll come back to this when I drill down, but
9 just as a quick aside, you would agree with me, wouldn't
10 you, that it's not uncommon to release those kinds of
11 theories in the context of a global settlement, right?

12 A If they're paid for, yes.

13 Q And in fact, you supported global releases in the
14 *Purdue* case and the *HonX* case, among others, right?

15 A Because they were paid for.

16 Q And you assumed that those were released?

17 A I would assume so, yes.

18 Q Third, you were asked to assess whether YesCare and the
19 other settlement parties have sufficient financial
20 wherewithal to pay a larger settlement for a larger
21 judgment, right?

22 A Correct.

23 Q And again, your report says you didn't have sufficient
24 information to do that, right? That's on Page 17, if you
25 need to refer.

1 A That's my opinion is there's insufficient information
2 to know if they do.

3 Q So for purposes of your opinions today, you've just
4 assumed for the analysis of successor liability and alter
5 ego theories, that they do, right?

6 A Yes. We requested --

7 Q Just a yes or no question. Mr. Goodman can ask you to
8 clean that up on Redirect.

9 A Okay.

10 Q As we discussed in your -- hold on, if contrary
11 information about the financial wherewithal of YesCare or
12 settlement parties comes to light, would you agree with me
13 that that just would reduce the value of those claims?

14 A Verified financial information, or?

15 Q If information -- financial information about YesCare
16 and the other settlement parties comes to light, if you
17 learn new information that says, oh, YesCare is just not
18 worth that much, all that would do is reduce the value of
19 these alter ego successory liability theories, wouldn't it?

20 A Yeah, if I was able to confirm that, yes.

21 Q Mr. Atkinson, have you heard any testimony -- I guess
22 you haven't. Have you heard from anyone else about the
23 testimony in this case that the Debtor or the UCC discounted
24 the settlement value based on the settlement parties'
25 inability to pay?

1 A I did not hear that related to the trial, no.

2 Q Did you hear it anywhere else?

3 A No, no.

4 Q So the forth category in your report is that the Debtor
5 improperly estimated the range of tort claims in the
6 Disclosure Statement that was filed in October, right?

7 A Yes.

8 Q But that Disclosure Statement was filed before the
9 mediation in December, right?

10 A Yes.

11 Q And it was filed before you were hired by the TCC,
12 right?

13 A Correct.

14 Q And it was filed before you requested specific
15 information about this case, right?

16 A Yes. Because I was not hired before that.

17 Q And that specific information is the ten-year analysis,
18 the ten-year payment history analysis that's summarized in
19 the Debtor UCC'S Exhibit 26 to your left there, if you want
20 to look at it.

21 A That the Debtors didn't rely on in their Disclosure
22 Statement?

23 Q Correct.

24 A Okay.

25 Q Because the Disclosure Statement was in October. You

1 were hired in December, right?

2 A But the data existed before that, right?

3 Q Right. And nobody is asking the Court to approve that
4 today, are they?

5 A The Disclosure Statement?

6 Q Correct.

7 A It doesn't -- my understanding is it's not up for
8 approval.

9 Q Okay. Are you to say that you requested that ten-year
10 payment data?

11 A I don't remember if it was ten years, but we'd
12 definitely look for payment data.

13 Q And you -- I'm sorry.

14 You said in your Direct that you gave some input on the
15 information that the TCC was seeking from the Debtor, right?

16 A I said that -- again, I just don't remember if we asked
17 for ten years or not. I asked for settlement data.

18 Q Now I'm talking about your testimony on Direct. You
19 told Mr. Goodman that you gave input on what the TCC
20 requested from the Debtor. Do you remember saying that?

21 A That was, I think, a subpoena that would have been much
22 later than the data --

23 Q Are you saying that you didn't give any input on the
24 Debtors or the UCC's request for this ten-year payment data?
25 It's a yes or no question.

1 A The data that you're referring to was given to me by
2 the Debtor. I sent a list of 42 things I wanted. The
3 Debtor said there's a data room with 600,000 pages in it, so
4 I don't think they created the 600,000 pages based on me,
5 like, hours earlier asking for data. So the data was
6 provided -- unrelated.

7 Q Mr. Atkinson, can you turn to Exhibit 36 in the
8 notebook?

9 A Which notebook. I'm sorry.

10 Q Volume II.

11 MR. GOODMAN: Your Honor, I just -- can counsel
12 let the witness answer the question?

13 MR. KAUFMAN: These are yes or no questions, Your
14 Honor, I want him to answer.

15 THE COURT: Well, then you can move to strike, but
16 you've got to let him finish.

17 I'm not sure that last one was a yes or no.

18 MR. KAUFMAN: And I misspoke, it's Exhibit 63.

19 BY MR. KAUFMAN:

20 Q Let me know when you're there, sir.

21 A I'm there now.

22 Q We're talking about information you requested. You
23 said you sent a list of 42 documents, right?

24 A I did.

25 Q And that's in this email chain, isn't it?

1 MR. KAUFMAN: And for the Record, Your Honor, 63
2 is Docket No. 1410-63 and it's been admitted.

3 THE WITNESS: Yes. This includes that, yes.

4 BY MR. KAUFMAN:

5 Q Okay. And do you see at the top of the page, there's
6 an email from Ms. Webb who I think you mentioned on Direct.

7 A Which page, just so I know.

8 Q First page of Exhibit 63, Page 1 of 7 at the top.

9 A Okay. Got it.

10 Yes. I see the email from Ms. Webb.

11 Q Okay. And that lists -- I can't count them here, but
12 probably close to a dozen, maybe more, of documents with
13 Bates labels all highly confidential, attorney's eyes only,
14 right?

15 A Yes.

16 Q And that included the ten-year payment history that
17 we're talking about now, isn't it?

18 A Yeah, all I was saying is I don't know if it was -- if
19 I asked for ten years. I did ask for payment data, yes.

20 Q And you got it, right?

21 A I did, yes.

22 Q On December 28th?

23 A Yes.

24 Q Which was nine days after you were hired?

25 A Correct.

1 Q Three days after Christmas?

2 A Three days after Christmas, yes.

3 Q The fifth category in your -- that you talked about on
4 Direct was that the ultra plan that's not before the Court
5 anymore, unfairly allocated estate assets between the tort
6 claimants and the non-tort claimants, right?

7 A Yes.

8 Q And finally, the sixth category is that the Debtor is
9 not operating, right, which was never in dispute?

10 A That's what you told me, yes.

11 Q So in your deposition, I asked if you intended to offer
12 any opinions or testimony beyond those six categories. Do
13 you recall?

14 A I recall you asking me that, yes.

15 Q You said, no, you weren't aware of any, right?

16 A I said I was not aware of any at the time, yes.

17 Q So let's talk about what's not in your report. First,
18 there's an appendix to your report, right?

19 A Yes.

20 Q And I think you talked about this on Direct, the
21 appendix is what you relied upon for the opinions in your
22 report, right?

23 A There are things that I considered, yeah. I mean, I
24 relied -- I think we talked about this in my deposition. I
25 relied on my experience, as well.

1 Q Understood.

2 A Yeah.

3 Q But specific documents pertaining to this case, if you
4 didn't cite it in your report, then you just didn't rely on
5 it, or you didn't find it relevant to your opinion, right?

6 A I think I tried to list the things that I relied upon,
7 yes.

8 Q Okay. Do you remember saying -- and this is -- if you
9 want to look at the small binder on Tab B, it has your
10 deposition. Let's look specifically at Page 53.

11 Tell me when you're there.

12 A I am there.

13 Q Starting on Line 3, see, I asked you:

14 "Question: Okay. Did you review documents other than
15 what's in the appendix?

16 "Answer: I'm sure I did, yes.

17 "Question: Okay. So is it fair to assume that if you
18 reviewed it, but didn't put it in your appendix, you decided
19 that you didn't need to rely upon that document. Is that
20 fair?"

21 Mr. Moxley objected and you answered:

22 "It wasn't something that made its way into my report
23 and so it's not something I relied on for the opinions I
24 have."

25 Does that refresh your recollection?

1 A Yes.

2 Q Is that still accurate?

3 A Yeah. I mean, I think I said before that, that the
4 spirit of what I was trying to capture was everything that
5 was in my report, so that was the goal.

6 Q My question was: Is what you said in this excerpt
7 right here that I just read to you, was that accurate at the
8 time? You were under oath then, you're under oath now.

9 A Yeah, it's related -- the whole thing is related to
10 each other, but yes.

11 Q Okay. So two key documents that you didn't cite in
12 your appendix to your report were, one, Exhibit No. 26 and
13 the underlying ten-year payment data, right?

14 A Yes. I agree with that.

15 Q You didn't put it in your report?

16 A Did not.

17 Q And another thing you didn't put in your report -- and
18 we'll talk about this a little more in a few moments -- is
19 the contract profitability, or the profitability by contract
20 that the Debtor produced to you. And that's admitted as
21 Debtor UCC Exhibit 73, right?

22 A Correct.

23 Q I think you told me last month that your analysis also
24 didn't take into account other sources or recovery that may
25 be available for tort claimants, like insurance, right? Do

1 you remember that?

2 A I don't remember that. I don't know the context, but I
3 definitely have the insurance listed as -- in my report.

4 Q Sure, but I asked you about this and let's turn to
5 Page 151 of your deposition.

6 A Okay.

7 Q This is going to be a long excerpt, so get ready.

8 A Okay. I'm getting there.

9 Q It starts on Page 21.

10 A 151, you said?

11 Q 151, Line 21:

12 "Question: Well you said you reviewed the Disclosure
13 Statement, right?

14 "Answer: I did.

15 "Question: Okay. And the Disclosure Statement
16 discloses the availability of other assets, such as
17 insurance, employee retention credits, causes of action that
18 are not being released. Do you see that?

19 "Answer: Yes.

20 "Question: Do you have any reason to dispute that
21 those are accurate disclosures?

22 "Answer: That they exist you mean, that those causes
23 of action exist?

24 "Question: That those other assets are available for
25 recovery to creditors?

1 "Answer: I'm aware they exist, yes.

2 "Question: Okay. You haven't done an assessment of
3 the value of those other causes of action, other assets and
4 insurance?

5 "Answer: I have not."

6 And skip down -- well, let me stop there. Does that
7 refresh your recollection?

8 A Yes.

9 Q Okay. Now turn to Page 303 because this came up again
10 a couple of hours later.

11 And look at Line 9:

12 "Question: Those are tax credits, the insurance
13 policies and other lawsuits, right?

14 "Answer: Yes. That's my understanding.

15 "Question: 14, do you intend to offer any opinions or
16 testimony on the value of those assets?

17 "Answer: I do not.

18 "Question: And just to make sure I understood you
19 correctly, you have not analyzed the insurance policies that
20 are available to creditors in this case?

21 "Answer: I have not."

22 Does that refresh your recollection?

23 A Sure.

24 Q So let me ask my question again. Your analysis does
25 not include or does not take into account sources of

1 recovery for creditors, like insurance, right?

2 A I disagree with that. I think that you're
3 mischaracterizing what I said. What I -- can I respond, or?

4 Q I think Mr. Goodman can ask you to clean this up on
5 Redirect.

6 A Okay. That's fine.

7 Q So I just want to be clear on what's in your -- what
8 actually is in your opinions. You're not offering
9 evaluation of the tort claims filed in this case, right?

10 A That's correct.

11 Q But you are an expert in that area, right?

12 A I am.

13 Q And you're not able to offer opinions on the value of
14 the claims arising from the divisional merger, right?

15 A I don't have information to do that.

16 Q So no, you're not offering opinions?

17 A I'm not.

18 Q And you're not able to offer opinions on the value of
19 other avoidance actions, right? Fraudulent transfers? We
20 talked about this.

21 A That's correct.

22 Q And you're not able to offer opinions on the value or
23 the financial wherewithal of the YesCare and other
24 settlement parties, are you?

25 A I don't have information to do that.

1 Q So you're not offering those opinions?

2 A I'm not.

3 Q And you're not offering any opinions as to what a fair
4 settlement amount should be in this case, are you?

5 A I don't have information to do that, so no.

6 Q Again, the answer is no?

7 A No.

8 Q I want to cover one thing you did talk about in your
9 Direct because it's in -- as we found out, it is in your
10 report -- and that's the topic of the equitization of the M2
11 debt. Do you recall that testimony?

12 A I do.

13 Q You relied on Mr. Dundon's deposition for purposes of
14 that analysis, right?

15 A I did. Everything happened in mediation, so I didn't
16 know what happened.

17 Q Okay. Do you understand that is hotly contested by M2,
18 the equitization and recharacterization of its debt?

19 A I don't know the answer to that.

20 Q You don't know, so you just assume that Mr. Dundon was
21 correct in his analysis, right?

22 A That was my only data point.

23 Q If you stuck around until Mr. Dundon testifies, you
24 might hear that he understands that was hotly contested and
25 up for dispute, right?

1 MR. GOODMAN: Objection, Your Honor.

2 THE COURT: Sustained.

3 BY MR. KAUFMAN:

4 Q Since you issued your report on February 23rd, nothing
5 new has been produced, right?

6 A Not that I'm aware of. I don't think so, no.

7 Q So let's drill down onto the topics of your analysis.
8 First I want to talk -- we're going to go out of order a
9 little bit. I want to talk about the tort claim valuations
10 first.

11 For the Record, you did review that ten-year history
12 that the Debtor produced to you on December 28th, right?

13 A I did.

14 Q And you said -- I think you told me you tried to make
15 sense of it, right?

16 A I don't remember what I said. I did review the data
17 and I saw that it was inconsistent. So --

18 Q And you told me you didn't generate any specific output
19 after reviewing and trying to analyze that data, right?

20 A I did not.

21 Q Okay. And you didn't cite it in your report. We
22 covered this, right?

23 A I did not.

24 Q And you didn't engage with Mr. Perry to get an
25 understanding of what this data captured, right?

1 A I had his Disclosure Statement estimate -- he didn't
2 rely on it, either.

3 Q Right. He didn't rely on it in the October Disclosure
4 Statement, but after you received these data points in
5 December, you told me, you tried to make sense of it,
6 couldn't, and didn't even both to call the Debtor and see
7 how they could make sense of it for you, right?

8 A Well, the Debtor hadn't. I didn't -- they literally --

9 Q Yes or no question. Did you or did you not contact
10 Mr. Perry to try to make sense of it?

11 A I did not.

12 Q And in fact, that's actually because you didn't even
13 realize you had that data until February; is that right?

14 A That's not true.

15 Q Okay. Let's turn to Page 271 of your deposition.
16 Starting on line 19. Let me know when you're there.

17 A Go ahead.

18 Q "Question: Did you ask for a meeting with the Debtor's
19 representatives to better understand the historical payments
20 in the spreadsheet you referenced?

21 "Answer: I think that unfortunately the Excel file I
22 got was after the pivot had occurred. I don't, you know,
23 there was some mix-up, I think, early on where people thought
24 we had the documents we didn't have, and I believe the Excel
25 file -- don't hold me to this, but my memory is that we

1 didn't get it until February 3rd or 5th, or something like
2 that."

3 Right?

4 A I said don't hold me to this. And I was wrong.
5 Clearly I got it earlier.

6 Q In December.

7 A And I reviewed it earlier.

8 Q And the pivot you're talking about is when the TCC
9 filed its motion to dismiss and when the Debtor and UCC
10 filed their 9019, right?

11 A In the 9019.

12 Q About mid-January?

13 A Yes.

14 Q So you had a full 2-1/2 weeks by the time you were
15 hired to engage with the Debtor on this point, but you
16 didn't?

17 A Over the holidays, yes.

18 Q Well, I think we talked about you got the data three
19 days after Christmas, right?

20 A The 27th.

21 Q You were sending emails to the Debtor in that time,
22 weren't you?

23 A Yeah, on this January 2nd, I sent an email about stuff
24 I was still missing.

25 Q Okay. But you didn't ask for a call with Mr. Perry,

1 did you?

2 A I did not, no.

3 Q And you said this in your Direct, I think you
4 characterized the ten-year payment data as "widespread,"
5 right?

6 A (No audible response.)

7 Q Those are the words I wrote down in your testimony.
8 You didn't remember saying "widespread?"

9 A If you give me a second to respond, I'd love to do
10 that. I'm sorry.

11 Q Sorry, you looked like you were thinking and I was
12 trying to help you remember.

13 A I was not. I don't -- appreciate though.

14 I was -- when -- I'm just trying to make sure I
15 understand the context of what you're asking me. So when I
16 looked at the claimant data --

17 Q I'm just asking if you used the word "widespread."

18 A Can I answer your question?

19 Q Yeah, my question was: Did you use the word
20 "widespread?"

21 A Well, I don't recall what I said specific.

22 Q And do you remember using the words "massively
23 different" or "wildly diverse" when I asked you about this
24 in your deposition?

25 A I'm sure I did.

1 Q So you discounted the ten-year payment history, right?

2 A I did not think the ten-year payment history was
3 helpful for estimating the claims in this case.

4 Q So you discounted it?

5 A I did, just like the Debtor did.

6 Q Well, again, we talked about this. You didn't
7 ask -- the ten-year payment history didn't come to you until
8 you asked for this after you were hired in December, right?

9 A Yeah, the ten-year --

10 Q So you understand the Debtor doesn't --

11 MR. GOODMAN: Your Honor?

12 MR. KAUFMAN: It's a yes or no question. He gave
13 me a yes, and I --

14 THE COURT: You're cutting him off, right, and
15 then you're not really phrasing them like yes or no
16 questions. There's a -- you're kind of leaving the door
17 open. You want to tighten the question up. You can get
18 there, but you're not. But you can't cut him off after he
19 starts.

20 In other words, saying stuff like, "So you didn't
21 really do that, did you? That kind of opens the door to me
22 to say all kind of stuff that I did or didn't do. You can
23 get there on a yes or no. It's just not there yet.

24 MR. KAUFMAN: All right. Let's try this -- let's
25 try this again, apologies.

1 BY MR. KAUFMAN:

2 Q I think you characterized it this way, so correct me if
3 I'm not saying this right.

4 What was in the Disclosure Statement was not specific
5 to this case, right, as it relates to the tort claims?

6 A I don't agree with that.

7 Q You don't agree that the Disclosure Statement
8 estimation of tort claims was not specific to this case
9 based -- because it was based on a public database?

10 A I don't even understand how to respond to that. You're
11 saying the Debtor's Disclosure Statement for this case and
12 the estimates the Debtor put together do not relate to this
13 case?

14 Q I'm using your words. And we can look at your
15 deposition if you want to.

16 A No. I'm just trying to understand what you're asking
17 me. Are you telling me that I said that or are you telling
18 me -- you're asking me a question?

19 Q The ten-year data that you requested --

20 A Okay.

21 Q -- and got is specific to this case because it concerns
22 payment data that the Debtor had made historically, right?

23 A It was settlement data the Debtor made, yes.

24 Q But specific to this case.

25 A Yes.

1 Q But the claims estimation that was given in the
2 liquidation analysis from October is not specific to this
3 case because it was based on -- I think you talked about
4 this on your direct, it was just using public information
5 and projecting it out based on the number of tort claims in
6 this case.

7 A It was based on the number of claims in this case but
8 the per claim amount was not in this case.

9 Q So you would agree with me that between the two, the
10 public information in the government database or the
11 Debtor's ten-year history, one's specific, one's not, so the
12 specific one, the ten-year payment history, would be a
13 better way to --

14 A No, I --

15 Q -- assess claims.

16 A -- completely disagree with that.

17 Q You think the public information in the database would
18 be better.

19 A I don't know that which is better but I don't agree
20 that one is better than the other.

21 Q Well one gives a higher valuation for claims, right?

22 A One includes judgments and one does not.

23 Q You're saying this ten-year specific payment history
24 doesn't include judgments against the Debtor.

25 A I don't believe there are judgments --

1 Q You don't know that, though, do you?

2 A I don't believe there was.

3 Q You don't believe but you don't know that, do you?

4 A I don't know that, no.

5 (Pause in the proceedings.)

6 Q You would -- you'd consider yourself an expert in the
7 area of value and tort claims in mass tort cases, right?

8 A Yes.

9 Q In fact that's why you were hired in this case, right?

10 A It's one of the reasons, yes.

11 Q But the TCC didn't ask you to do that work, did they?

12 MR. GOODMAN: Objection, Your Honor. I think
13 that's false.

14 THE COURT: No, I think he can answer.

15 MR. GOODMAN: Okay.

16 BY MR. KAUFMAN:

17 A I think they anticipated me doing that work, yes.

18 Q But then you didn't that work, did you?

19 A I didn't have information to do that work.

20 Q So that's a no.

21 A I tried to but I didn't have the information to do it.

22 Q I'm so glad you used that word. Are you a Star Wars
23 fan?

24 A Star Wars, no.

25 Q So you don't know the famous Yoda saying, do or do not,

1 there is no try, you're not familiar with that.

2 A I have no idea what you're talking about.

3 MR. GOODMAN: Objection, Your Honor, I'm not sure
4 the relevance of that.

5 Q You didn't do it, though, did you?

6 A I couldn't do it. I didn't have sufficient information
7 or time.

8 Q Well, and I have to quibble with you. You said they --
9 the TCC expected you to do that work, right? That's what
10 you just said.

11 A It was one of the things that when I pitched the case
12 that I was entasked to try to do.

13 Q And when I asked you about this last month, you told me
14 they didn't ask you to do that; you remember that?

15 A I don't recall that, no.

16 Q Let's look at page 27 of your deposition, start at line
17 ten.

18 "QUESTION: Have you been hired as a claims expert
19 in this case?

20 "ANSWER: I've not been asked as of yet to do
21 that. So, no, it's certainly something that I
22 could do if needed.

23 "QUESTION: Do you intend to offer a claims expert
24 analysis in this case?

25 "ANSWER: Only insofar as what's in my report,

1 that would be my answer."

2 You remember that?

3 A Yes.

4 Q And there's no claims valuation in your report other
5 than an upward adjustment of the Debtor's debt.

6 A Because I didn't have information to do it.

7 Q It's just a yes or no question, right?

8 A No, I don't know which -- you want to --

9 Q You didn't do a claims analysis for purposes of this
10 case, did you?

11 A I did not.

12 Q Even -- you didn't do a claims analysis in this case
13 even though, as you characterized on direct, 240 tort claims
14 is a manageable size, right?

15 A Yes, I believe it's a manageable size, yes.

16 Q It's much more manageable than in your other cases like
17 *Purdue* and *Boy Scouts*, right?

18 A Most of them, yes.

19 Q You said a claim pool of this limited size, 240, you
20 would want to do things like interview some of the
21 claimants, maybe get a medical examiner, right?

22 A Yes.

23 Q But you didn't do that in this case, did you?

24 A I didn't have time.

25 Q You didn't have time.

1 A No.

2 Q How long would it take?

3 A More than the two weeks I had to do my report.

4 Q Did you do a sampling?

5 A No.

6 Q You have six tort claimant committee -- six tort

7 claimants on your committee, right?

8 A We do.

9 Q Did you interview any of them?

10 A I did not.

11 Q The motion also references Ms. Grisham, Mr. Hall, a few

12 others; did you interview any of them?

13 A No.

14 Q Did you interview any of the incarcerated pro se

15 claimants?

16 A I did not.

17 Q You didn't interview anyone, did you?

18 A I did not.

19 Q I just asked you about the pro se incarcerated

20 individuals. You realize that that represents over half of

21 your claim pool, right?

22 A The -- of the 240 you're saying.

23 Q Yes.

24 A Yes.

25 Q You didn't interview a single one, did you?

1 A I did not.

2 Q No one on your team did either, did they?

3 A We did not.

4 Q And you didn't review any other proofs of claim either,
5 did you?

6 A We reviewed proofs of claim.

7 Q Did you review the underlying pleadings in their
8 lawsuits?

9 A I didn't personally but I'm sure people on my team did.

10 Q I need you to turn to page 228 of your deposition.

11 A Sure.

12 Q Because you gave me a different answer last month.

13 A Okay.

14 Q At line 18 I asked, do you intend to review these
15 claims and the pleadings filed in the underlying lawsuits
16 between now and your testimony in this hearing? Answer: I
17 don't believe so, no.

18 Did you change your answer after we spoke a month ago?

19 A No.

20 Q You read the TCC's motion to dismiss, right?

21 A I did.

22 Q Let's turn to a new topic. You spent quite a bit of
23 time talking about valuing successor liabilities and alter
24 ego theories on your direct; do you recall that?

25 A I do. I remember talking about that.

1 Q Your contention is that the Debtor and the UCC gave
2 insufficient or no weight to alter ego or successor
3 liability theories, right?

4 A That's my view, yes.

5 Q And that's -- your assessment in that regard is based
6 at least in part on your view that the 9019 motion doesn't
7 even mention the world alter ego, right?

8 A That's one of the things, yeah.

9 Q And you also contend that the 9019 motion doesn't list
10 successor liability theories in the bullet points in that
11 infamous paragraph 27 that we keep putting up on the board,
12 right?

13 A It's not in the beginning, yes.

14 Q I'm sorry?

15 A It's not in the beginning of that 9019, no.

16 Q It's not in that bullet-pointed list, right?

17 A Correct, yeah.

18 Q But it is mentioned later, right?

19 A Yeah, paragraph 42 or something --

20 Q And it is listed specifically in the settlement
21 agreement, right?

22 A As a release I think, yeah.

23 Q We talked about the *Purdue* case briefly; you remember
24 you said you submitted a declaration in support of the
25 *Purdue* settlement and confirmation of the plan in *Purdue*.

1 A I do.

2 Q And your declaration, you might want to pull this up,
3 it's behind tab A in that little binder next to your
4 deposition. That declaration was submitted under penalty of
5 perjury, right?

6 A Correct.

7 Q And you attached a letter to your declaration, right?

8 A Yes.

9 Q And in paragraph 26 of your declaration, so this is on
10 page nine of 37 at the top -- at the docket -- the date the
11 Court file-stamped.

12 A Okay.

13 Q You with me.

14 A Yes.

15 Q You say, I believe that the official committee's view
16 of the plan is accurately set forth in the attached UCC
17 letter; you see that?

18 A I see that.

19 Q Okay. So would you say that you were adopting the
20 statements of the UCC letter in your declaration?

21 A (No audible response.)

22 Q Why else would you attach it if you weren't adopting
23 the statements in the letter?

24 A Are you asking me two different questions? Yes, I
25 agree with that.

1 Q Let's turn to page 30 of the UCC -- 30 of your
2 declaration which now gets into the UCC letter. You with
3 me.

4 A I'm confused about what document you have me looking
5 at.

6 Q Oh, I'm looking at your declaration.

7 A In my declaration, yeah. This --

8 Q No, no, your *Purdue* declaration you have.

9 A Oh, my *Purdue* one, okay, sorry.

10 Q Yes. So for the record, this was filed in the *Purdue*
11 case, which is 19-23649, docket number 3460; do you see that
12 at the top?

13 A I do.

14 Q And then I'm looking at page 30 of 37; are you with me?

15 A Yeah, I am now.

16 Q Let's look at the paragraph, the second full paragraph
17 right above section seven, the one that starts to be clear;
18 do you see that?

19 A (No audible response.)

20 Q You see where --

21 A Yeah. Okay.

22 Q You with me. You say, to be clear, the UCC does not
23 believe the Sacklers' settlement reflects the full value of
24 the claims against the Sacklers and related parties before
25 taking these -- taking other factors into account.

1 Moreover, the UCC acknowledges that many creditors,
2 including those who have suffered the most harm as a result
3 of the Sacklers role in the opioid crisis, may view the
4 proposed Sackler settlement unfavorably.

5 Indeed, the UCC understands why certain creditors
6 believe the Sacklers should be forced to give up more, if
7 not all, of their wealth in exchange for the releases
8 proposed under the plan.

9 Notwithstanding the foregoing -- and this is what I
10 mentioned earlier -- the UCC views the Sacklers settlement
11 as an imperfect solution that nevertheless is superior to
12 any other available alternatives for the majority of
13 Purdue's creditors. Do you remember adopting that statement
14 in --

15 A I do.

16 Q -- the *Purdue* case?

17 A I do.

18 Q And that released alter ego theories and successor
19 liability theories, right?

20 A I believe it did.

21 Q And alter ego theories in the Sackler context were
22 front and center on the UCC's mind, right?

23 A It was why we got \$7 billion, or should be getting \$7
24 billion.

25 Q So turn to me a few pages to page 34 of 37 at the top.

1 You with me?

2 A I am.

3 Q Let's look at section D, the one that says the plan
4 represents a reasonable resolution of claims against the
5 Sacklers and related parties; do you see that section?

6 A Yes.

7 Q And there's a chart there, right?

8 A Yes.

9 Q Four rows on that chart, right?

10 A Yes.

11 Q Just like four bullet points in paragraph 27 of the
12 9019 motion; you see that?

13 A Yes.

14 Q I see intentional fraudulent conveyances, constructive
15 fraudulent conveyances, breach of fiduciary duty, and unjust
16 enrichment. That's all that's listed in that chart, right?

17 A Correct.

18 Q Doesn't say anything about alter ego theories, does it?

19 A Yeah, the main --

20 Q A yes or no question.

21 A You can --

22 Q Mr. Goodman --

23 A (Indiscernible).

24 Q Mr. Goodman --

25 A Can I correct --

1 Q -- will ask you on Redirect to clean this up. It's a
2 yes or no question. Does it say the word alter ego theories
3 in there?

4 A I do not see it.

5 Q Thank you. And just so we're clear, you don't take the
6 position that the absence of the word alter ego theory or
7 successor liability theory from that chart on page 34 of
8 your declaration in the *Purdue* case means that the UCC
9 ignored or gave insufficient weight to those theories in
10 that case, do you?

11 A We weren't focused on those theories in that case.

12 Q You weren't focused on alter ego theories in *Purdue*.

13 A No, we were not focused on alter ego theories, no.

14 Q You weren't. I just want to make sure I heard you
15 right. The UCC was not focused on alter ego theories in the
16 *Purdue* case.

17 A We were focused on the fraudulent conveyances.

18 Q I thought you just told me that the reason you got \$7
19 billion was because you were focused on alter ego theories.
20 Did I mishear you?

21 A I misspoke earlier.

22 Q But you do take the position in this case that because
23 the word's alter ego or successor liability theory don't
24 appear on that bullet point list on paragraph seven -- 27 of
25 the UCC in the Debtor's joint motion, they must have given

1 insufficient weight in this case; is that your position?

2 A Correct.

3 Q And again you would agree with me that it's not
4 uncommon to release those theories in the context of a
5 global settlement, right?

6 A Global settlement means global so everything's
7 released.

8 Q So that's a yes?

9 A Yes.

10 Q In fact, you supported such a settlement in the *Hoenig*
11 case, right?

12 A Yes.

13 Q And you supported it in that *Purdue* case, right?

14 A Yes.

15 Q And when I asked you about your experience assessing
16 the merits of alter ego and successor liability theories
17 before, you couldn't give me a single example of a court
18 accepting your testimony on those theories, could you?

19 A I don't think so, no.

20 Q We spent eight hours on the record in your deposition,
21 right?

22 A We didn't talk about that for eight hours but yes.

23 Q That's fair, we didn't talk about it for eight hours.

24 But we did spend quite a bit of time talking about that; is
25 that fair?

1 A Yes.

2 Q And similarly in all this time we spent talking about
3 alter ego theories and successor liability theories, in your
4 deposition you didn't give me a single example of a case
5 where you actually litigated alter ego or successor
6 liability theories to a successful judgment, did you?

7 A We did not litigate it, no. They were settled.

8 Q In your 30 years of experience in this industry, not
9 one case was litigated to judgment on those theories.

10 A None that I was involved in.

11 Q Let's talk about how you value those theories, even
12 though you don't have experience litigating them to
13 judgment. You said that you start with the financial
14 wherewithal of the targets, right?

15 A I think I -- well, I don't know if I said that in my
16 deposition. I said today is something different than that.

17 Q You did. You actually said two different things in
18 your deposition; do you remember?

19 A I have no idea what --

20 Q Today you said a third thing. So I want to understand
21 where we actually start with assessing it. Where do you
22 think we start with assessing the merits and the value of
23 successor liability and alter ego theories?

24 A Today I said that we start with the value of the claims
25 in the case.

1 Q The tort claims.

2 A The tort -- well, both tort and the GUC claims.

3 Q Okay. And when I asked you this in your deposition,
4 you said you start with the financial wherewithal of the
5 target, right?

6 A I may have said that. It's -- all three things are
7 important so I don't know that which matters the most. But
8 I would think now that you would want to start with the
9 claims if I was going to tell you what you would do.

10 Q Okay. And again I've heard three -- you said three
11 things right? Just now.

12 A I said three things just now.

13 Q Okay. What's the third thing?

14 A The third is how good are your claims.

15 Q How good the theories are.

16 A Well, the support for the theories.

17 Q Okay. We're going to come back to that. But you
18 assumed for purposes of your report and your testimony today
19 that alter ego and successor liability theories are strong
20 in this case, right?

21 A I believe so, yes.

22 Q Let's just talk about it now. And that's based on some
23 emails that you read, right? In part at least.

24 A In part, yes.

25 Q And the other part of it is that one opinion that

1 counsel told you to read, right?

2 A That would be another reason, yes.

3 Q Anything else? I asked you about this in your
4 deposition. You said that was it, right?

5 A I don't know what I said in my deposition. You want to
6 show me, I'm happy to look at it.

7 Q Would you agree with me that that's -- that was the
8 entirety of your analysis. The strength of the opinions are
9 the emails you read and the opinion you read, right?

10 A There were a lot of emails I read but yes.

11 Q Okay. But still those two broad categories, the emails
12 you read and the *Kelley* decision that we talked about,
13 right?

14 A Yes.

15 Q Okay. And so you assumed based on what counsel told
16 you about the *Kelley* opinion that that lends support to
17 successor liability theories in this case, right?

18 A Just related to that opinion, yes, I relied on counsel
19 for that opinion.

20 Q We have to talk about the merits of the case, right,
21 the merits of successor liability or alter ego theories as
22 legal theories, right?

23 A Yes.

24 Q And you're not a lawyer.

25 A I am not.

1 Q So you don't have an understanding of what that *Kelley*
2 decision says outside of what counsel told you that it says,
3 right?

4 A That's fair.

5 Q And other than that one *Kelley* decision that we've
6 talked about, you weren't here but we've mentioned this
7 every day of trial. Other than that one decision, you're
8 not aware of any definitive legal authorities that lends
9 support to the strength of successor liability or alter ego
10 theories that would apply in this case, are you?

11 MR. GOODMAN: Your Honor, I think counsel --
12 objection. I think counsel has just established for, I
13 don't know, third or fourth time that Mr. Atkinson's not a
14 lawyer and is not offering a legal opinion --

15 MR. KAUFMAN: This is a different --

16 MR. GOODMAN: He's asking him questions about
17 legal research, and I don't see how that's relevant.

18 MR. KAUFMAN: It's a different question.

19 THE COURT: I'll allow it.

20 MR. KAUFMAN: Do you need me to re-ask,
21 Mr. Atkinson?

22 THE WITNESS: If you don't mind.

23 MR. KAUFMAN: Not a problem.

24 BY MR. KAUFMAN:

25 Q You're not aware of any legal, definitive legal

1 authorities in general -- let me withdraw that and start
2 fresh.

3 You're not aware of any definitive legal theories that
4 lend support to the strength of successor liability or alter
5 ego theories that would apply in this case, are you?

6 A I'm not a lawyer so no.

7 Q Right. And you told me that to give opinions on the
8 merits of successor liability or alter ego theories in the
9 context of this settlement, you would need to know the law
10 on those theories, right?

11 A I would think so, yes.

12 Q But you don't know.

13 A I'm not a lawyer.

14 Q So you don't know, right?

15 A I'm not a lawyer so no.

16 Q No, you don't know. I just need a clear answer.

17 A No.

18 (Pause in the proceedings.)

19 Q Let's turn to a different -- slightly different matter.
20 You didn't try to value any estate causes of action in this
21 case, right?

22 A I tried to value the -- yeah, I did try to.

23 Q You're saying now that you tried to value estate causes
24 of action.

25 A I tried to value the divisional merger.

1 Q Okay. Get that notebook back out. We got to go back
2 through it. All right, page 292, let's go to line 18. Oh,
3 sorry, I need to go back a little bit. Page 292, starting
4 on line eight.

5 "QUESTION: And what about valuation of estate
6 causes of action, was that something that TCC
7 asked you to do.

8 "ANSWER: I think I looked at that and considered
9 that it's a -- you know, it's speculative
10 litigation. My experience is it's very difficult
11 to value those things. So that's my opinion. I
12 don't think it's something that -- it's not
13 something that I tried to do. And I don't think
14 it's frankly something that's easily done or
15 really at all well."

16 You remember that statement, you didn't try to do it?

17 A I don't even understand what I'm responding to in
18 reading this so I've no idea.

19 Q Well, the question's right there on line eight through
20 ten. What about valuation of estate causes of action, was
21 that something that TCC asked you to do? And you didn't ask
22 me to clarify that then, did you?

23 A I didn't. But I -- as I sit here now, I don't know
24 what the estate causes of action are.

25 Q Okay. Then so you're not offering any opinions on

1 that, are you?

2 A I don't know which cause of action you're referring to.

3 Q Estate causes of action, that's my question.

4 A I don't know which one specifically.

5 Q Ones that are being settled in this case. You didn't
6 value those, did you?

7 A I tried to value the divisional merger. I did not
8 have --

9 Q But you told me a month ago you didn't try --

10 A My expert reports --

11 Q -- because it was too speculative.

12 A -- literally says I tried to and I didn't have
13 sufficient information to do it so I did not do it.

14 Q Let's quickly go back to that *Kelley* decision. You
15 said you don't have an -- you didn't have an understanding
16 of what that *Kelley* opinion says other than what you
17 discussed with counsel, right?

18 A I think that's fair.

19 Q But you did tell me that the *Kelley* decision is just
20 one court considering the specific facts before it, right?
21 Do you remember telling me that?

22 A Yes.

23 Q And you don't know if any other tort claimants in this
24 bankruptcy case have actually asserted alter ego or
25 successor liability theories in their lawsuits, do you?

1 Other than Mr. *Kelley*.

2 A I'm not aware.

3 Q Are you aware that fewer than five tort claimants,
4 including Mr. *Kelley*, have actually tried to assert alter
5 ego and successor liability theories in their lawsuits?

6 MR. GOODMAN: Objection, Your Honor, asked and
7 answered.

8 THE COURT: Overruled.

9 BY MR. KAUFMAN:

10 A I'm not aware.

11 Q But in your report -- and I think you talked about this
12 in your direct testimony -- you say that you would expect
13 any settlement of those theories, successor liability and
14 alter ego, to pay tort claimants in full or close to in
15 full, right? That's at the bottom of paragraph three of
16 your report if you need to refresh your recollection.

17 A Yes.

18 Q Top of page five.

19 A Yes.

20 Q And that statement is caveat -- has two very big
21 caveats, doesn't it?

22 A It does.

23 Q Okay. First, you've assumed that YesCare and the
24 settlement parties can pay any amount, right?

25 A Yeah, that's correct.

1 Q And, two, you didn't discount the litigation risks, did
2 you?

3 A Not in that analysis, no.

4 Q Because you're not a lawyer.

5 A I am not a lawyer, correct.

6 Q And you also didn't factor in litigation risk as a
7 discount because you haven't been involved in the case long
8 enough, right?

9 A (No audible response.)

10 Q I can cite you the deposition if you'd like to
11 refresh --

12 A Well, I'm sure --

13 Q -- your recollection.

14 A -- I don't know the context but I'm sure I said that.

15 Q Let's -- let me help you refresh your recollection.

16 Look --

17 A Okay.

18 Q -- at page 363.

19 A Okay.

20 Q Line six.

21 A Okay.

22 Q Start on line four. You said, I've not adjusted for
23 litigation risk.

24 A Okay.

25 Q My question was, I understand that, I'm trying to

1 understand why, why not. Answer: Well, I mean, I think the
2 reality is we've only been in this case for a very short
3 period of time and we did not put together the sort of
4 document discovery that was done here. But based on the
5 limited discovery that we've had access to, it seems like
6 the claims are pretty strong. You see that?

7 A Yes.

8 Q But again your assumption that the claims are strong
9 are based on that one *Kelley* decision, right? And some
10 emails.

11 A Yes. A number of emails, yes.

12 Q But you have no understanding of what that opinion
13 actually says, and you're not a lawyer, right?

14 A I'm not a lawyer.

15 Q And you have no understanding of what that opinion
16 says, outside of what counsel told you to assume, right?

17 A That's what I said earlier, yes.

18 Q So you say in your report, and you testified on direct,
19 that your assessment of alter ego and successor liability
20 theories is based on your review of emails and that one
21 Michigan magistrate opinion, right?

22 (Pause in the proceedings.)

23 A I mean, there's a lot of emails but yes.

24 Q But you don't know the legal standards applicable to
25 alter ego or successor liability theories, right, because

1 you're not a lawyer.

2 A Yes.

3 Q And you don't know whether that Michigan opinion
4 resolved the claims on the merits, do you?

5 A I do not.

6 Q And you don't know whether that opinion extended to
7 CHSTX or YesCare Corp. or both, do you?

8 A I thought -- I think I remember it going to just CH
9 Texas, I think.

10 Q Okay. It didn't extend beyond that, did it?

11 A I don't believe it did.

12 Q Or any other settlement parties for that matter, right?

13 A I don't believe it did. I don't believe the Court
14 understood what it was ruling on. But I don't believe it
15 did.

16 Q You don't think the Court understood what it was ruling
17 on.

18 A Yeah. I don't know what the -- I don't know anything
19 about the case, that case. But I know the discovery that I
20 had in this case clearly indicates there's other entities
21 that are out there. So I don't know if the Court
22 appreciated that.

23 MR. KAUFMAN: Okay. Well, Mr. Goodman can clean
24 that up on redirect.

25 Q But you don't know even -- you don't even know what law

1 the Michigan magistrate applied in that case, do you?

2 A I'm not a lawyer.

3 Q Did they apply Texas law?

4 A I don't believe they applied Texas law, no.

5 Q Would it surprise you to learn that the Michigan
6 magistrate had to make an eerie guess about what Michigan
7 law even was? Do you understand what that means?

8 A I have no idea.

9 Q And did you realize that the Michigan magistrate
10 opinion in the *Kelley* case actually contemplated that the
11 result might have been different if Texas law applied; did
12 you know that?

13 MR. GOODMAN: Your Honor, objection again, I mean,
14 Mr. Atkinson I think has testified over and over again that
15 he's not a lawyer. To ask him to repeatedly opine on a
16 case --

17 MR. KAUFMAN: Just asking if he knows.

18 MR. GOODMAN: -- (indiscernible).

19 THE COURT: Just -- I think he's just asking if he
20 knows, so I'll overrule.

21 THE WITNESS: I do not.

22 BY MR. KAUFMAN:

23 Q Would it surprise you to learn sitting here today that
24 that opinion, the *Kelley* opinion, actually dismissed
25 Mr. Kelley's alter ego theories?

1 A I don't know any -- it's not surprising. I don't know.

2 Q Wouldn't you need to know these sorts of things to give
3 an appropriate litigation discount or litigation risk
4 discount so --

5 A I didn't give one.

6 Q But you would need to know these to give one, right?

7 A Potentially, yes.

8 Q So your view that the alter ego theories and the
9 successor liability theories should pay to our claimants in
10 full or close to in full without factoring litigation risks,
11 right?

12 A (No audible response.)

13 Q Is -- let me ask this again. You look confused. Your
14 view in your report in your testimony today was that tort
15 claimants should be paid more is without giving any
16 consideration to these litigation risks, right?

17 A No.

18 Q Let's turn to a new topic. You talked about in direct
19 the financial wherewithal of the settlement parties, and
20 your view is you just don't have enough information, right?

21 A Correct.

22 Q And that's because in part you didn't get the YesCare
23 information until the end of January, right?

24 A I never got the Yes Care information I needed, so no.

25 Q Right. But the financial statements from YesCare you

1 did get, went through February 23rd. I think you said that
2 in your direct, right?

3 A Yes. I didn't know if -- yes, that's correct.

4 Q But they were unaudited, right?

5 A They were unaudited, correct.

6 Q And you have discomfort relying on unaudited reports.

7 I think we talked about this in your deposition.

8 A Yeah, particularly in this case, yes.

9 Q Well, in fact you told me in your deposition you
10 couldn't think of a single case in your 30 years' history
11 that you've ever relied upon unaudited reports; don't you
12 remember saying that?

13 A I don't remember what I said. But I'm sure that I --
14 if I verified them, I would rely on them.

15 Q And you didn't try to verify them in this case, did
16 you?

17 A I didn't have information sufficient to verify them.

18 Q Did you hear -- well, I guess you didn't hear
19 Mr. Perry's testimony. Would it surprise you to hear that
20 Mr. Perry testified in his March 5th testimony that he was
21 able to verify certain datapoints that allowed him to feel
22 comfortable relying on the unaudited financial for the
23 general purpose of showing the downward trend?

24 A I'm not aware that we have financials, so it would
25 surprise me. I'm not aware we have financials on

1 February 20, 2023. And that's what I'm most interested in.

2 So if he found them and then looked at those, then I would
3 be very surprised.

4 Q But you did review the audited financials for Corizon
5 before the divisional merger, right?

6 A From like four years ago.

7 Q From 2017 through 2019, right?

8 A Yeah. From years ago.

9 Q And those were verified by E&Y, Ernst & Young, right?

10 A That's correct.

11 Q And I think you told me your wife used to work for her
12 so you couldn't distrust them just --

13 A I think I said the opposite of -- no, I'm -- no, that's
14 true, that's true.

15 Q You would agree with me that based on your review of
16 those audited financials from 2017 through 2019 that there
17 was a downward trend in operations, right?

18 A There was, yes.

19 Q Okay. And Mr. Perry's contention is that that downward
20 trend continued after 2020, right; are you aware of that?
21 Did you review his deposition transcript?

22 A I would be surprised that that's the case because I
23 think the Debtor's projections in the fairness opinion had
24 revenue increasing over time.

25 Q Those were projections.

1 A Right. So why would you --

2 Q After the divisional merger.

3 A Right. But why would you project them going up if the
4 downward -- if it's a downward shift?

5 A I'm -- you're talking about projections from 2022
6 forward, right?

7 A Correct.

8 Q After Perigrove took over.

9 A Correct.

10 Q Okay. I'm talking about before Perigrove took over,
11 from 2020 until 2022.

12 A Okay.

13 Q Would it surprise you to hear that the Debtor noticed a
14 downward trend during that period of time?

15 A I don't know one way or the other.

16 Q And it's not just the Debtor that viewed the unaudited
17 financials showing a downward trend. The UCC also believed
18 that; are you aware of that? You said you reviewed
19 Mr. Dundon's deposition.

20 A I did. I don't recall that.

21 Q Are you saying that they shouldn't have relied on
22 unaudited financials?

23 A I believe that they should have been -- in this case
24 they should have been verified.

25 Q Okay. But you told me in your deposition that you had

1 no reason to distrust the unaudited financials for 2020; do
2 you remember that?

3 A I don't remember that. I don't remember what the --

4 Q Because that was before Perigrove took over, right?

5 A That may be the case. I don't recall. It's kind of
6 not relevant so I'm not sure why.

7 Q It's not relevant that the Debtor was suffering a
8 downward trend from 2017 until 2022 you're --

9 A No, the 2020 financials were not relevant. If I had
10 financials I could rely on all the way through, then it
11 would be relevant.

12 Q Okay. So you discounted all unaudited financials
13 altogether, right, because you couldn't rely on them.

14 A I think it's fair that I did not rely on the unaudited
15 financials in this case.

16 Q Okay. You would agree with me that Corizon, as an
17 organization with its 300 million of revenue, is much
18 smaller company than the average company you typically deal
19 with, right?

20 A Well I would say in my career it's probably in the
21 middle of the companies I deal with. But my -- in recent
22 years, much larger companies.

23 Q Okay. Let's look at page 353 of your deposition, just
24 so we're clear. Look at line 18; are you there?

25 A Yeah.

1 Q I ask you, question, would you consider Tehum Care
2 Services or I guess Corizon and Valitas, would you consider
3 that big company based on -- I guess I -- that was poor --
4 bad English. But would you consider that a big company
5 based on compared to the other that you typically represent?

6 And your answer is, it's smaller than the average
7 company I look at, yes.

8 A Currently, yes.

9 Q Okay. You would agree with me that audited financials
10 cost money, right?

11 A Yes.

12 Q And starting in mid-2020, which you have financials up
13 through the end of 2019, starting in mid-2020, Corizon's
14 debt and equity were owned by the same company, the Flex
15 Group, right?

16 A Yes.

17 Q And that's a totally private company, right?

18 A Yes.

19 Q So all the debt and equity are now private, there's no
20 reason to have audited financials anymore, is there?

21 A I guess they decided that, yes.

22 Q Well, other than to give a financial advisor such as
23 yourself some comfort in a third party's verification of
24 financial statements, is there any other benefit for a
25 distressed company like Corizon to pay for financial audits?

1 A Well, if they were going to sell the business, there
2 could be benefits.

3 Q And they did try to see the business in 2021, didn't
4 they?

5 A They did.

6 Q Okay. And did you review those emails?

7 A I -- well, I'm sure I did. I don't recall them
8 specifically.

9 Q So you're familiar that there were investment bankers
10 that were hired in 2021, right?

11 A I did know that, yes.

12 Q Okay. And the investment bankers surveyed the market
13 to see if competitors or other strategics would purchase the
14 company, right?

15 A (No audible response.)

16 Q Bird (phonetic), Centurion, to name a few.

17 A I'm sure they did, yes.

18 Q And they all passed, didn't they?

19 A That's what I'm understanding, yes.

20 Q Let's turn to another component that you talked about
21 in your direct, the Alabama contract; you recall your
22 testimony from earlier this afternoon?

23 A Yes.

24 Q You have some experience with government contracts and
25 the RFP bidding process, correct?

1 A Yes.

2 Q Okay. And -- but your knowledge of the Alabama
3 contract is limited to your review of what was on the
4 internet, right?

5 A And what I found in the discovery.

6 Q In the discovery --

7 A In the emails that I reviewed.

8 Q Okay. But as it relates to the terms of the Alabama
9 contract, all you have to go on is what you found on the
10 internet, right?

11 A That's right. We did not get financials beyond
12 February, 2023.

13 Q In fact, in the bottom of page 17 and the top of page
14 18 of your report, that's all you cite to is public
15 information on the internet, right?

16 A That's correct.

17 Q So you don't actually know when CHSTX or CHSAL or any
18 other YesCare entity actually started receiving revenues
19 under that contract, do you?

20 A That's part of the problem, yes.

21 Q Okay. For all you know, the contract could still be
22 under negotiation, right?

23 A Well, based on the third party source that we had,
24 these articles, it seems like it's not. And if we had
25 gotten financials, then I'd know.

1 Q And we saw the subpoena on your direct. Do you
2 remember what the date of the subpoena was?

3 A Date of the subpoena, I do not remember the date of the
4 subpoena.

5 Q Not a memory test. It was December 6th; do you dispute
6 that? I'm sorry, February 6th.

7 A I was going to say it's definitely not December.

8 Q February 6th of 2024, any reason to dispute that?

9 A No.

10 Q Okay. But you don't even know when that was served, do
11 you?

12 A We tried to serve it, I think, on counsel, and it was
13 not successful.

14 Q I'm just asking for what you know. Do you --

15 A I'm trying to remember. Give me one second to think
16 about it. We tried to serve it on counsel. I remember
17 seeing -- I don't remember a specific date, though.

18 Q You don't know when it was served, do you?

19 A I know it was very late in the game because we were --
20 because we lost eight days trying to serve it on counsel,
21 and then we ended up having to send someone to serve it on
22 YesCare in Tennessee.

23 Q But you first raised this issue with the Debtor and the
24 UCC on January 2nd, according to the email that we saw in
25 your direct, right?

1 A Right. The email of where they told me it didn't
2 exist.

3 Q Yeah. And still the TCC waited a month to do anything
4 about it, right?

5 A I don't know that that's fair or true.

6 Q In your report you estimate that YesCare would have
7 received \$230 million a year under this Alabama contract,
8 right? That's gross revenues, right?

9 A Yes.

10 Q Okay. And that's just based on simple math, a billion
11 divided by 54 months, right?

12 A I think so, yes.

13 Q So just simple math, right?

14 A Yes.

15 Q You don't actually know what revenue is paid under that
16 contract, do you?

17 A I do not.

18 Q And you don't know whether that contract is actually
19 profitable for YesCare, do you?

20 A I do not.

21 Q And you don't -- do you know anything about the
22 profitability of the Debtor's contracts historically?

23 A I -- well we have the unaudited financials, yes.

24 Q And in fact the Debtor produced a report to you showing
25 you exactly how profitable every contract it ever had going

1 back many years, right?

2 A I know the Debtor's provided that to me. I --

3 Q And that's Exhibit 73 in the Debtor UCC book right next
4 to you, right?

5 A I can look at it if you want me to.

6 Q You're welcome to. Oh, you know what, it's not in
7 there because it's a native file. Are you familiar with the
8 profitability by contract --

9 A I remember --

10 Q -- Excel spreadsheet?

11 A I remember looking at that. I have the same issues,
12 though, because I was not able to verify that information.

13 Q Well you didn't even know you had it, though, did you?

14 A On the day that we -- you deposed me, now.

15 Q Okay. That's right. When I deposed you, you told me
16 that you don't remember seeing it, right?

17 A Yeah, my team had looked at it, I had not.

18 Q And you told me you were going to have words with
19 someone on your team because it wasn't cited in your report,
20 right?

21 A I don't remember that specifically but I'm sure I did.

22 Q Let's look at page -- it starts on page 413 of your
23 deposition.

24 A Okay.

25 Q And let's look at line 17. Question: Okay, so if you

1 didn't cite to the reports given to you in the production,
2 the profitability by contract reports, you just didn't rely,
3 you didn't find it relevant to cite it in your report, or I
4 -- and Mr. Moxley said that you had already answered that.

5 You continued, or I didn't see it, one or the other
6 because I know did search terms to look through things. And
7 my question was, if it was emailed to you directly, can we
8 assume you saw it?

9 "ANSWER: I don't know that you can assume that,
10 no. Someone on my team should have seen it if it
11 was emailed to me directly.

12 "QUESTION: You'll have words with them later.

13 "ANSWER: Yes, yes exactly."

14 You remember that now?

15 A I do.

16 Q Did you have words with them?

17 A I did. We --

18 Q Just a yes or no question. Mr. Goodman can clean this
19 up on redirect.

20 A Okay.

21 Q As it pertains to the new Alabama contract, you don't
22 actually know whether YesCare's performance under the
23 contract was profitable, do you?

24 A We do not, no. We did not get financial information.

25 Q Okay. And you didn't hear Mr. Perry's testimony that

1 the majority of the Debtor's contracts were historically
2 unprofitable, did you, because you weren't here in court?

3 A I was not here.

4 Q You don't know what YesCare spends on overhead to
5 service the Alabama contract, do you?

6 A I do not know.

7 Q And you didn't look and see what the Debtor
8 historically spent to service contracts, did you?

9 A That's correct.

10 Q You don't know what YesCare's SG and A, selling general
11 and administrative, expenses are for this contract, do you?

12 A I do not know.

13 Q And again you didn't look at the Debtor's historical SG
14 and A either, did you?

15 A I did not.

16 Q And, likewise, you don't know what contracts YesCare
17 may have lost since the divisional merger in 2022, do you?

18 A I did -- I do not.

19 Q So while you've assumed in your report that YesCare's
20 generating \$230 million of revenue more a year, all that is
21 is speculation, right?

22 A Because I don't have information.

23 Q Because you don't know YesCare's actual cash flow and
24 its actual profitability, right?

25 A That's correct.

1 Q And you didn't try to extrapolate based on historical
2 cashflow or historical profitability, did you?

3 A I don't think that's appropriate.

4 Q So you didn't do that, did you?

5 A No.

6 Q Let's turn to a new topic. You said you didn't try to
7 value potential fraudulent transfer claims that were
8 described in the 9019, did you? I think we already looked
9 at this in your deposition; you remember that statement?

10 A That's true.

11 Q Okay. But you agree with me that it is relatively easy
12 to quantify fraudulent transfer claims that are based on
13 just transfers of cash, right?

14 A Yes.

15 Q And that's what the \$30 million that we're talking
16 about is, right?

17 A Yes, for the first three.

18 Q Right. And you said you have extensive experience
19 litigating those sorts of fraudulent transfer.

20 A Fraudulent transfers, yes.

21 Q And actual fraudulent transfers.

22 A Yeah, both.

23 Q Okay. So you're familiar -- because you've been
24 liquidating trustee or plan trustee in a number of cases
25 before, you're familiar with what sorts of factors you

1 should consider before you litigate or when you decide to
2 settle those claims, right?

3 A Yes, with counsel, yes.

4 Q Yeah. You look at likelihood of success on the merits,
5 the cost of litigation, what money you have to go pursue
6 that litigation, and what creditors would think of a
7 settlement, right?

8 A Yes.

9 Q Did you do that in this case?

10 A Did not.

11 Q So you don't know one way or the other whether \$54
12 million is sufficient to settle the claims in this case, do
13 you?

14 A I was not in mediation so I do not know.

15 Q And that's because you want more information to assess
16 the settlement, right?

17 A Yeah. I'd love to understand what, you know, what the
18 Debtor -- how the Debtor and the UCC got to their
19 conclusion, but they have not shared that with me.

20 Q And you didn't even ask for a meeting with Mr. Perry,
21 did you?

22 A I did not.

23 Q You didn't even ask for a meeting with Mr. Dundon or
24 any of the Committeemen of the UCC members, did you?

25 A I did not.

1 Q And you told me in your deposition that the top three
2 pieces of information that you would want to help you assess
3 the merits of the \$54 million settlement are a tort claim
4 valuation, right, that's one.

5 A Okay.

6 Q Audited financials, that's two, right?

7 A Okay.

8 Q Yes or no.

9 A I don't remember this so --

10 Q Oh, okay. Let's look at page 120 of your deposition,
11 line 16.

12 A Okay.

13 Q One of the most important pieces of information that
14 the TCC would absolutely need before it can make an
15 assessment as to the fair settlement value, there was an
16 objection.

17 You answered, for me, I think it's probably three
18 things that are most important. I think a more detailed
19 claims analysis would be one of them.

20 I think verified third party -- verified financial
21 records, including projections and underlying support for
22 them, and I think support for the Defendant's financial --
23 current financial wherewithal, third-party support for that.

24 Did I read that right?

25 A Yes.

1 Q You still agree with that.

2 A (No audible response.)

3 Q Sir, I can't tell if you're thinking.

4 A I'm just reading it. Do you mind give --

5 Q Oh, not at all.

6 A -- me a second. Okay.

7 Q Not at all.

8 A Thank you. I think that's fair.

9 Q Okay. So on that first point, tort claim valuations or
10 valuation of claims, you didn't hear Mr. Perry talk about
11 the ten-year payment history in his direct testimony, did
12 you?

13 A I did not.

14 Q Okay. Do you dispute that historically a hundred
15 percent of all pro se claimants settle or receive less than
16 a hundred thousand dollars; do you dispute that?

17 A I don't recall that but that would not surprise me.

18 Q Why don't we look at exhibit -- Debtor and UCC Exhibit
19 26? It's in the volume two. It's the first exhibit in
20 volume two. Oh, it's not the first. Are you with me on
21 Exhibit 26?

22 A I'm on 26.

23 MR. KAUFMAN: Let's flip to that second page. And
24 for the record, Your Honor, this is filed under seal at
25 14 -- docket 1413-2.

1 Q You with me, Mr. Atkinson?

2 A I am.

3 Q Okay. At the top of page two, see that the gray is the
4 pro se's.

5 A Yes.

6 Q Do you agree with me -- do you have any reason to
7 dispute that in the last ten years all 100 percent of pro se
8 litigants have settled or received less than a hundred
9 thousand dollars; do you see that?

10 A I cannot tell if the ones out to the right are gray or
11 dark blue. They look gray to me.

12 Q Yeah, well look at the left side. Do you see the
13 hundred percent above the bar in the gray?

14 A Oh, okay.

15 Q Any reason to dispute that?

16 A I don't recall the underlying data but I -- that's what
17 the schedule shows, yes.

18 Q Any reason to think Mr. Perry and his team are wrong
19 here?

20 A I don't -- I just don't know.

21 Q And let's look at the next line, the next bar, the blue
22 bar. That's the represented claims; 72.3 percent have
23 settled or received a hundred thousand dollars or less. Do
24 you see that?

25 A I do.

1 Q Any reason to dispute that?

2 A Again, I don't -- just don't know.

3 Q Your team had the data, right?

4 A Correct.

5 Q And they didn't do this analysis, did they?

6 A We did look at these claims.

7 Q Did you --

8 A I don't -- we didn't create these charts, no. I mean,
9 my experience with tort claims is historical settlements,
10 particularly when you have a distressed Debtor and they're
11 not pursuing, you know, other claimants that have money, the
12 settlements are low, and particularly prison cases as well.

13 Q Company hasn't been distressed for ten years, though,
14 has it?

15 A The company has not been -- well, the audited
16 financials, you know, as you said, were going -- trending
17 downward.

18 Q Yeah. But it was profitable until at least 2016,
19 wasn't it?

20 A It was profitable, yes.

21 Q Okay. And this payment history goes back way beyond
22 that, right?

23 A Yes. I don't know the details on these claim
24 settlements.

25 Q But you reviewed the ten-year claim history, didn't

1 you?

2 A I know what the numbers on the page -- I saw the
3 numbers on the page, yes.

4 Q Okay. But you didn't do a analysis, a summary like
5 this for yourself to understand -- I mean, you said
6 widespread, massively different, words like that. But you
7 didn't put them on a chart to see if that was in fact true.

8 A Oh, I did do -- I did -- not this chart. I -- this is
9 not a chart that I would have created.

10 Q I hesitate to ask this question, but how did you come
11 up with the conclusion that they were wildly, massively
12 disparate, or whatever words you used, if you didn't even
13 try to put them on a chart to see just how widespread they
14 were?

15 A We did have charts.

16 Q Okay. And you didn't produce those, did you?

17 A I didn't rely on them, no.

18 Q You didn't put them in your report.

19 A I did not rely on them.

20 Q Again we talked about this. The pro se incarcerated
21 individual claimants in this case represents over half of
22 your claim pool, doesn't it?

23 A I think with the new claims that have been filed after
24 the bar date, my understanding it's gone up. And I think
25 the Debtor said that those are pro se's.

1 Before that it was about a third I think were -- or
2 two-thirds were pro se's and one-third were not. I think --
3 as when there's 240 claims.

4 But I think now there's been 18 more claims or
5 something like that --

6 Q Sixty of those are against YesCare so they're not even
7 our claims, right?

8 A I don't know that I understand that or agree with that.

9 Q So on the second point, we're talking about the things
10 that you need to assess, whether 54 million is the right
11 number, understanding the claim pool is one.

12 The second was having audited financials or third-party
13 verified financials, right?

14 A Yes.

15 Q Okay. And you've said that you don't -- you can't rely
16 on the unaudited financials in this case because of
17 Perigrove conduct, right?

18 A I think a number of things but that was one of them.

19 Q And that's your view, right?

20 A It's my -- yeah, my view.

21 Q But the Debtor and the UCC have a different view, don't
22 they?

23 A I don't know what their view is.

24 Q And then on your final point regarding the settling
25 party's financial wherewithal, you've already agreed with me

1 that if you get new information that shows that they
2 actually can't pay infinite settlement amounts, all that
3 does is lower the settlement value, right?

4 A If I'm comfortable with it, yes.

5 Q Let's turn to another topic, the best interest of
6 creditors; you're familiar with that phrase.

7 A Yes.

8 Q You've been doing this for 30 years, you're comfortable
9 knowing what's in the best interest of creditors.

10 A I do as from a non-lawyer perspective.

11 Q Understood. Outside of relying on TCC counsel and what
12 they told you to assume, you took no steps to actually
13 assess what was in the best interest of creditors in this
14 case, right?

15 A Related to what?

16 Q Understanding what's best for your constituents.

17 A I don't know that I follow your question.

18 Q Okay. Let's look at page 234 because I asked you this
19 before -- of your deposition, 234, line three. You with me?

20 A I am there now.

21 Q The question was, what steps have you undertaken --

22 MR. KAUFMAN: Who's hitting the mic?

23 THE WITNESS: Oh, that was me.

24 BY MR. KAUFMAN:

25 Q Question was, what steps have you undertaken to find

1 out what the tort claimants actually want out of this
2 bankruptcy case. There was an objection. What steps have I
3 personally taken? I don't -- I think I've relied on counsel
4 for that. Do you remember that testimony?

5 A Yes.

6 Q So you took no steps other than relying on your counsel
7 to understand what your constituents actually want.

8 A Well counsel was talking to them much longer than I
9 was.

10 Q And we've established you didn't talk to them, right?

11 A Correct.

12 Q And you're not aware that any of your committee members
13 spoke to incarcerated individuals, are you?

14 A I don't know. I imagine they did, though.

15 Q The fact is, Mr. Atkinson, you don't know whether
16 dismissal is actually best for your tort claimant
17 constituents, do you?

18 MR. GOODMAN: Your Honor, I want to object. And I
19 think we asked Mr. Atkinson specifically if he's offering
20 any opinion (indiscernible) and he said no.

21 THE COURT: Overruled. He can answer.

22 MR. KAUFMAN: You want me to ask again?

23 THE WITNESS: If you don't mind. I'm sorry.

24 MR. KAUFMAN: Yeah.

25 BY MR. KAUFMAN:

1 Q You don't actually know whether dismissal is in the
2 best interest of your tort constituent creditors, do you?

3 A I do not know.

4 Q And you would agree with me that there are other
5 alternatives for the tort claimants, other than going into
6 the back -- going back into the tort system, right?

7 A Yes, there's other options.

8 Q In fact, when we talked about this in your deposition,
9 you said, well someone can write a bigger check, right?

10 A At some point I did say that, yes.

11 Q Yeah. But no one's offering to write a bigger check,
12 are they?

13 A I don't know that they are or aren't.

14 (Pause in the proceedings.)

15 Q And even if someone was offering to write a bigger
16 check, you're not even in a position to assess whether
17 that's a big enough check, are you?

18 A I am not.

19 Q And yet the TCC is asking the Court to deny this
20 settlement and dismiss the case, right?

21 A Yes.

22 Q So let's play this out. You don't know as we sit here
23 today which tort claimants are presently asserting successor
24 or alter -- successor liability or alter ego theories in
25 their litigation, right?

1 A Correct.

2 Q And you don't know for certainty that CHSTX or YesCare
3 or any of its subsidiaries actually have financial
4 wherewithal to pay judgments in the tort system, do you?

5 A It's not been provided to me.

6 Q You don't know, right?

7 A Well, I would assume they do because it would have
8 saved a lot of time and money if they told us.

9 Q But you don't know, do you?

10 A I do not know.

11 Q You don't know how long litigation would take for these
12 tort claimants in the tort system to get judgments, do you?

13 A Not specifically, no.

14 Q And you don't know how long -- even if they were
15 successful, how long it would take them to collect on those
16 judgments, do you?

17 A I don't know.

18 Q And the only settlement on the table, the one that the
19 Debtor and the UCC are proposing, is this 54 million and
20 change that's before the Court, right?

21 A That's my understanding, yes.

22 Q And the only real party in interest that's standing in
23 their way of approving this settlement and distributing
24 money to your constituents is the TCC, right?

25 A I don't know that we're the only party. I mean, it

1 hasn't been decided yet, right?

2 Q The only party making arguments in this hearing, aren't
3 you?

4 A I don't know.

5 Q the other witnesses that have been called so far,
6 aren't you?

7 A I haven't been in trial so I don't know.

8 Q Despite all these unknowns, the UTC -- the TCC is
9 seeking dismissal and threatening to appeal for years,
10 right?

11 A Well, we're seeking dismissal. I don't think you have
12 to appeal if we win that.

13 Q You didn't hear Mr. Goodman say that if you loose,
14 you're just going to appeal?

15 A I was not in trial so I don't know if he said that.

16 Q Do you have any reason to doubt that a TCC will appeal
17 an order approving the settlement?

18 A I -- we don't think the settlement's fair. And we
19 don't have the information to verify it so, yeah, we --
20 until we know that, we are against it.

21 Q Have any opinions on whether that appeal would be
22 successful?

23 A I'm not a lawyer.

24 MR. KAUFMAN: Pass the witness, Your Honor.

25 THE COURT: Okay. Let me ask you, Mr. Atkinson.

1 I know we've been going for a while.

2 THE WITNESS: It's up to you. I'm good either
3 way.

4 THE COURT: Okay.

5 MR. KAUFMAN: I feel like it was just five
6 minutes.

7 MR. HEMENWAY: I'll be quick, Your Honor.

8 THE COURT: No, no, no. I want you to take as
9 much time as you need. I just want -- I'm just --

10 MR. HEMENWAY: I just meant if --

11 THE COURT: -- getting us --

12 MR. HEMENWAY: -- you're planning for a break.

13 THE COURT: No, no. How much time you -- how
14 much --

15 MR. HEMENWAY: Short 10-15 minutes.

16 THE COURT: Okay. Let's keep going. I just
17 wanted to check with the witness.

18 MR. HEMENWAY: Thank you.

19 Good afternoon, Mr. Atkinson. Zach Hemenway for
20 the Unsecured Creditors Committee. We met last month as
21 well.

22 THE WITNESS: Yeah.

23 CROSS-EXAMINATION

24 BY MR. HEMENWAY:

25 Q Mr. Atkinson, you testified earlier about the Alabama

1 contract, and you said it represented I believe a 40 percent
2 increase over the pre-divisional merger projections for
3 YesCare; is that right?

4 A Yes.

5 Q So you're familiar with those projections, I assume.

6 A That were in the FTI fairness opinion.

7 Q And you're aware, are you not, that Corizon's revenue
8 has run a downward trend leading up to the divisional
9 merger? I think you alluded to that earlier with
10 Mr. Kaufman.

11 A The unaudited financials showed that, yes.

12 Q So you were aware that the revenues were going down.

13 A Well that's what the unaudited financials show, yes.

14 Q Okay. I'll take that as a yes. Did the projection you
15 reviewed assume that that trend would continue or that it
16 would reverse?

17 A I'm sorry, can you repeat that?

18 Q Did the projections you're talking about, the pre-
19 divisional merger projections of YesCare after the
20 divisional merger, did they assume that that trend would
21 continue downward or that it would reverse and revenue would
22 increase?

23 A It -- the revenue was increasing each year in the
24 projections.

25 Q And that's because the projections assumed YesCare

1 would keep existing profitable contracts and get new ones,
2 isn't it?

3 A I do not know what was baked into those assumptions.

4 Q Are you assuming they projected years in the future and
5 assumed the company would not pursue any new contracts?

6 Q Well, I assumed that they were pursuing new contracts
7 historically and were unsuccessful and it came going down.
8 So I don't know what the assumption was going forward. I
9 have no idea.

10 Q Do you have any understanding of how the prison
11 healthcare business works?

12 A I do.

13 Q And you understand they pursue new contracts from time
14 to time.

15 A Yes.

16 Q And that contracts expire or are terminated.

17 A Correct.

18 Q Okay. And do you agree with me that it assumed that
19 they would keep profitable contracts or keep some contracts
20 following divisional merger?

21 A The projections you're saying, yeah, I assumed that
22 there are some contracts to stay on and some that drop off
23 and maybe new ones --

24 Q And the revenue had to come from somewhere, didn't it?

25 A I'm sorry?

1 Q The revenue had to come from somewhere, didn't it?

2 A Yes.

3 Q Okay. That didn't happen, Mr. Atkinson, did it? Well
4 it didn't keep all their contracts, did they?

5 A I assume that they lost some -- I don't know that for
6 sure.

7 Q You don't know.

8 A I don't know.

9 Q Okay. You said he found out about the Alabama contract
10 by reading public coverage of it; is that right?

11 A Correct.

12 Q Newspaper articles, that kind of thing.

13 A Yes, some articles.

14 Q So you're telling me that you didn't notice that in the
15 same articles talking about YesCare getting that contract,
16 they noted that a New Mexico contract had been terminated
17 two years early that same month.

18 A I did not see that, no.

19 Q Okay. You weren't looking for information on the
20 Alabama contract, huh?

21 A I just was looking at it because that was highlighted
22 in the documents that I reviewed that the Debtor produced.
23 They did not see New Mexico in that.

24 Q Okay. And you didn't look to see if they lost any
25 other contracts, it sounds like.

1 A I just -- I really just wanted to get the actual
2 financials so I know exactly what happened instead of
3 guessing.

4 Q But the actual financials and the Alabama news
5 coverage, right?

6 A Well, no, I wanted the actual financials and I wouldn't
7 need to look at the Alabama --

8 MR. HEMENWAY: I'll move on.

9 THE WITNESS: Okay.

10 BY MR. HEMENWAY:

11 Q Mr. Atkinson, you haven't reviewed the insurance
12 policies in this case, have you?

13 A I have not.

14 Q And you're aware we mediated with two insurance
15 companies in this case. You didn't attend either of those
16 mediations.

17 A Yeah, I think they all happened before I was hired.

18 Q Sure. So you would agree with me, would you not, that
19 the discussions of insurance you had with Mr. Goodman
20 earlier about timing and what insurance companies do, that's
21 based solely on your experiences in other cases, isn't it?

22 A That's true.

23 Q You don't actually know anything about what the
24 insurance companies might do in this case.

25 A I don't know specifically what they would do in this

1 case, no.

2 Q Do you -- I mean I guess you're -- by your caveat
3 there, you're referring to the fact that you have dealt with
4 insurance companies in other cases. Back to my question
5 that's solely the basis of your opinion.

6 A Correct.

7 Q We talked earlier about the concept that the debt that
8 came to YesCare in the divisional merger may have been
9 equitized rather than a secured debt; is that right?

10 A Yes.

11 Q Is that a concept you're familiar with in your 30 years
12 of experience?

13 A Yes.

14 Q And you told Mr. Goodman that distinction is important
15 to your analysis of the divisional merger; is that right?

16 A I don't remember saying it's important. But it's -- I
17 do think it's important to know that if that's true.

18 Q I mean, if it's not important, why'd you talk about it
19 today?

20 A Oh, I don't know. He brought it up. I'm not asking
21 the questions.

22 Q I thought you said it was important. But, I mean, do
23 you agree with me that it's important to the analysis?

24 A Yeah. At the end of the day you have assets on -- and
25 liabilities on both sides of the equation. And if the

1 liabilities go away, it makes the value on one side go up.

2 Q And you're aware that the Debtor and the UCC don't
3 agree on that issue, aren't you?

4 A I'm not aware of that.

5 Q You're not aware of that.

6 A I mean, I heard that today but I did not know that
7 before

8 Q You didn't see that in any of the pleadings, Disclosure
9 Statement.

10 A I think I saw that in the Disclosure Statement.

11 Q So you're not aware of it, but you also saw it in a
12 Disclosure Statement --

13 A I just -- when you referenced the Disclosure Statement,
14 you reminded me that --

15 Q Oh, okay.

16 A -- I saw it there.

17 Q So you were aware of it, you just forgot when I asked
18 you the question the first time.

19 A Correct.

20 Q Okay, thank you. And are you aware that the parties
21 that were participating in the divisional merger, they also
22 dispute that characterization?

23 A I'm not aware. But I'm not surprised that they do.

24 Q Okay. And I believe you testified that you're relying
25 on Mr. Dundon's analysis on that issue.

1 Q That's was -- what Mr. Dundon said so I was just
2 referencing that that was his opinion.

3 Q But do you do your own analysis?

4 A I did not know.

5 Q Okay. So are you relying on Mr. Dundon's analysis or
6 do you just have no thoughts on it whatsoever?

7 A I do not have an opinion on the value of the divisional
8 merger. So I don't get to a conclusion in my reports so,
9 no, I'm not relying on it.

10 Q When Mr. Kaufman asked you about Mr. Dundon's analysis
11 and whether you did your own, you said, that all happened in
12 mediation; is that right?

13 A I may have said that. I don't remember the context
14 but --

15 Q I just want to understand what you meant there. You're
16 suggesting the UCC conducted its analysis on an issue at the
17 mediation and that's why you couldn't do your own.

18 A Oh, no. I don't think I was referring to why I
19 couldn't do my own.

20 Q Okay. But you didn't do your own.

21 A I have not, no.

22 Q Okay. So it's a concept you're familiar with, you've
23 testified it's important to the analysis of the divisional
24 merger, but you didn't think it was worth looking into
25 yourself.

1 A The -- as I said before, I do not have sufficient
2 information to value YesCare and, therefore, I cannot value
3 the divisional merger. And so --

4 Q But my question, sir, was about the debt, the secure
5 debt that the Debtor had prior to the divisional merger.

6 A Right. I'm familiar with that.

7 Q You've read Mr. Dundon's testimony. Do you -- did he
8 say that he needed YesCare financials to do that?

9 A I believe he needs YesCare financials. He apparently
10 does not.

11 Q Okay. But the searches that you had your team do, they
12 didn't try to look at how that secured debt was treated
13 prior to the divisional merger.

14 A We definitely looked at the debt prior to the
15 divisional merger. We saw that it was there. We know it
16 was in the FTI's fairness opinion.

17 MR. HEMENWAY: Okay. So you just didn't do
18 anything else with it. Sorry, I'll withdraw. That's not a
19 question.

20 Q You also said that the UCC hadn't claimed -- hadn't
21 shred any claims analysis with you, correct? You told
22 Mr. Goodman that.

23 A That's correct.

24 Q So you're not aware that I provided the TCC with our
25 analysis of pro se incarcerated claims?

1 A I am not aware of that, no.

2 Q Or that I sent it to TCC counsel at their request on
3 December 19th.

4 A I'm not aware of that, no.

5 Q Okay. Would you agree with me then that when you said
6 the UCC hadn't provided its claim analysis to the TCC, you
7 just meant that I'd sent it to these gentleman and not to
8 you?

9 A If that's true, I don't know.

10 MR. HEMENWAY: Okay. That's all I have, Your
11 Honor.

12 THE COURT: Thank you.

13 Let me just -- Mr. Patterson, before you get
14 started, how much time do you think you've got? I'm just
15 thinking what are we --

16 MR. PATTERSON: Probably about like last night,
17 about 30 minutes, --

18 THE COURT: Why don't we --

19 MR. PATTERSON: -- 30, 40 minutes.

20 THE COURT: Why don't we just take like a ten-
21 minute break and then we'll get started? Be a good time
22 to start.

23 THE CLERK: All rise.

24 (Recess taken from 4:44 p.m. to 4:55 p.m.)

25 THE COURT: Okay, this is Judge Lopez.

1 March 27th. We are back on the Record in Tehum. The time
2 is now 4:55. We'll continue with cross-examination.

3 Mr. Patterson, you may proceed.

4 MR. PATTERSON: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. PATTERSON:

7 Q Mr. Atkinson, who -- I assumed you were hired to do
8 the -- that you came here to testify about today, right?

9 A Yes.

10 Q And who hired you?

11 A The TCC Committee.

12 Q And who specifically contacted you?

13 A I was contacted by counsel to pitch with other
14 Plaintiff advisors to the Committee to get hired for the
15 work.

16 Q All right. And how much were you paid?

17 A I've been paid zero dollars so far.

18 Q How much have you accrued?

19 A I think it's a little over \$500,000.

20 Q And have you sent that bill to the Committee?

21 A I do not believe so, no. Part of the bill I sent, but
22 I think maybe one month. I don't recall.

23 Q And for how many months work is that 500,000?

24 A I've been hired since December 19th.

25 Q So you don't send monthly? Was it a flat fee?

1 A No it was not a flat fee.

2 Q Hourly?

3 A Hourly, yeah.

4 Q Plus expenses?

5 A Correct.

6 Q And did you enter into a contract with the Committee?

7 A No. The way it works in bankruptcy is you submit to
8 the Court an application to be employed. The Court approves
9 that application. And then each bill has to go to the Court
10 to get approved. And then the Debtor pays that bill.

11 Q I got you. That's how it works. So with respect to
12 your work, what were you initially hired to do?

13 A I was hired to assist the Tort Committee in this case.
14 There was a number of things that they asked us to look
15 into. They asked us to look into the prior settlement, the
16 prior Disclosure Statement, the claims in the case. Those
17 are some of the things they asked me to do.

18 Q What about the claims?

19 A They wanted -- at one point in time, you know, the
20 claims estimation is something that I told the Committee I
21 could do. So that's what they were interested in.

22 Q Claims estimation since we had a lot of tort claims,
23 right?

24 A Yes. Since -- well both tort claims and general
25 unsecured claims.

1 Q And let's go to your report or your Declaration, I
2 guess. Were you given any instructions on conclusions that
3 you should reach?

4 A Nothing that I should reach. I was -- the only one
5 that I recall being asked about was whether there was a
6 business to be reorganized by counsel. So that's the only
7 one that counsel asked me if I could look into that. And I
8 did.

9 Q Okay. Let me ask it in a different way. Did counsel
10 instruct you a particular outcome that they needed on any of
11 these issues?

12 A No.

13 Q On any issues that weren't reported?

14 A No.

15 Q You weren't given any instructions whatsoever regarding
16 analyzing the proposed 9019?

17 A I wasn't given specific instructions on anything, no.

18 Q And with respect to your Declaration or what everyone
19 has referred to as your report, how many drafts did you
20 prepare?

21 A The way I do my reports is I have one file and I just
22 continue to update that file. So I don't -- however often I
23 changed it. We started working on it soon after the
24 January 16th 9019 was filed.

25 Q You keep all your versions?

1 A It's one version, so I keep -- continue to update it.

2 Q So if I were to look at it, I couldn't tell what was
3 changed from day one?

4 A I don't know if you could or couldn't. I'm not sure.

5 Q All right. Now, do you periodically send that draft to
6 your lawyers?

7 A When I got finished or got close to being finished, I
8 sent a draft to the lawyers, yes.

9 Q And did they make changes?

10 A I do not recall if they did or did not, no. They
11 wouldn't make changes directly to it. They would discuss it
12 with me. But I just don't recall if there were changes made
13 here.

14 Q Okay. Well, you said they wouldn't. Did they discuss
15 changes with you?

16 A I don't recall if they did.

17 (Pause in the proceedings.)

18 Q And I believe you testified that your expertise or your
19 work really is in the mass torts arena, right?

20 A That's not true.

21 Q Oh it's not true?

22 A No.

23 Q Where is it?

24 A I've been doing bankruptcy, general bankruptcy work for
25 over 30 years. I do valuations, I do expert witness

1 testimony and in recent years I've been doing some mass tort
2 cases.

3 Q That's just a new -- a new thing you've been working
4 on?

5 A Well the last seven years. So, that new.

6 Q I see. And would you consider this case a mass tort
7 case?

8 A Not really. It includes tort claims and there's a tort
9 Committee. But I wouldn't call it a mass tort, no.

10 Q Is it because the claims are so dissimilar, right?

11 A It's because there's only 200 and some of them.

12 Q Right, and they're all different? Mass tort is going
13 to be a lot of claims. A lot more than we have here plus a
14 lot of similar claims, right? Asbestos exposure, ear drum
15 damage, right? All the same.

16 A Well the damages are different in -- so there's
17 different types of ear drum damages. There's different
18 types of asbestos damage, different type of Ameso
19 (phonetic).

20 Q Same cause?

21 A Same what?

22 Q Same causation?

23 A Correct. I think the causation here is medical care.
24 Poor medical care.

25 Q You have Med Mal, right? You have sexual abuse, right?

1 A Yep.

2 Q Wrongful death? Are you agreeing with me or --

3 A I don't know what you're asking me.

4 Q The different types of claims in this case. They're
5 not all the same. It's not the same causation, would you
6 agree with me?

7 A There are definitely different causes of action in this
8 case. Different causes or different types of claims is the
9 right way to say it.

10 Q Unlike a mass tort case where there's a single or maybe
11 two causation -- common causation points for each claim,
12 right?

13 A That's not true.

14 Q Really?

15 A Really.

16 Q Okay, so asbestos. One multiple hundred causes or just
17 one the asbestos?

18 A You were generalizing mass tort cases. And I would
19 consider the boy scouts a mass tort case. And there was
20 lots of different types of issues in that case.

21 Q Well it was all sexual abuse, right?

22 A There was different types of sexual abuse. But it was
23 sexual abuse --

24 Q Sexual abuse.

25 A Well here it's medical malpractice. Different types of

1 medical malpractice. But it's still medical malpractice.

2 Q Sexual abuse is medical malpractice?

3 A No, I'm saying there's different types of medical
4 malpractice. In this case there's different types of sexual
5 abuse in the boy scouts.

6 Q Are you suggesting that this case involved 200 similar
7 claims?

8 A No.

9 Q Okay, why are you arguing that there's a single
10 causation?

11 A I sorry. I didn't mean to argue. Go ahead.

12 Q I'm asking you, are you? Are you suggesting to this
13 Court that this involves 200 single source claims?

14 A No.

15 Q Med Mal?

16 A No. Go ahead.

17 Q I get to determine that. You don't get to tell me, all
18 right?

19 A Okay.

20 Q Okay. So answer my question and we'll move along.
21 What are you suggesting then? You seem to be pushing back
22 when I suggest this is not a mass tort case. Other than the
23 numbers, right. I agree with you.

24 A I'm not pushing back. I would agree.

25 Q You would agree with me it's not a mass tort case other

1 than the numbers, right? We both agree that 200 isn't
2 enough to classify as a mass tort, but it's not a single
3 cause or one or two cause case, right?

4 A Correct.

5 Q All right. That affects your ability to review the
6 claims; does it not?

7 A It affects, yes.

8 (Pause in the proceedings.)

9 Q Now I went through your report. And granted I only had
10 a couple of hours. Let me ask you -- and I haven't heard
11 today. I want to approach this a little bit differently.
12 Maybe a little simpler to satisfy Mr. Goodman. It's simple.

13 Do you support the proposed settlement that's been
14 provided to the Court?

15 A Mike Atkinson?

16 Q Yes.

17 A No.

18 Q Your analysis?

19 A No, does not.

20 Q And why?

21 A Because I don't have sufficient information to
22 determine whether it's a good settlement or not.

23 Q Okay. So you can't tell the Court in your expert
24 opinion that the settlement proposal is adequate, right? Is
25 that fair?

1 A Yes.

2 Q But you also -- let's look at it from both directions.

3 You also can't sit there and say in your expert opinion it's
4 a bad settlement offer, can you?

5 A I think without having sufficient information, it's a
6 bad settlement offer. If I knew -- if I had all the
7 information I needed, then I could opine on whether it's
8 good or bad.

9 Q Well, that sounds to me like it would you're looking
10 for a particular outcome. If you're telling, under oath,
11 you don't have sufficient information, isn't it
12 true that you don't have sufficient information to say it's
13 good or it's bad, right?

14 A That's fair.

15 Q Okay. And I thought you just disagreed with me. You
16 can't tell the Court that it's a bad deal, can you?

17 A I cannot tell the Court that it's good or bad.

18 Q That's right. And so why would you then jump to the
19 conclusion that you need information to show that it's a bad
20 deal? Isn't that what you said?

21 A Well, you know, look there's information that we need
22 and we wanted and we requested it from the parties.

23 Q Right.

24 A If the information was going to give us comfort that
25 the deal was good, you would think that they would give it

1 to us. They have not given it to us.

2 Q Well, that's an assumption on your part.

3 A Well, I think it's a fair assumption. It's a concern
4 that we have --

5 Q You might think it is. But everyone might not, right?
6 Because how do you know what to ask for if you don't know
7 what's there?

8 A I know --

9 Q And maybe the assumption is you don't like the
10 information that was given to you, so you say I need
11 something different. Maybe that's a good assumption?

12 A Is that a question?

13 Q Yes, it is.

14 A Can you rephrase it, I can't understand the question.

15 Q Well, you're saying that it's fair to assume that the
16 information that you don't have is bad for the person who
17 has the information, right? Is that what you're suggesting?

18 A I'm saying we've requested the information. If the
19 information would help prove the settlement is good, you
20 would think that they would provide it to us.

21 Q Okay.

22 A And they have not provided it to us.

23 Q All right. And I'm telling you that you do have some
24 information, but you refused to utilize it so I'm going to
25 assume it shows that the offer is good. Isn't that the same

1 as you're doing?

2 A No, --

3 Q It's not, why?

4 A -- what you just said is absolutely not true.

5 Q Why?

6 A I'm using the -- you just said I'm not using the
7 information I've gotten.

8 Q Correct.

9 A I am trying to use the information I've gotten.

10 Q And did you use the --

11 MR. GOODMAN: Your Honor, I think (indiscernible).

12 MR. PATTERSON: All right and that's a speaking
13 objection. That's a speaking objection.

14 THE COURT: Go ahead and ask your next question,
15 Mr. Patterson.

16 MR. PATTERSON: Thank you, Your Honor.

17 BY MR. PATTERSON:

18 Q You have -- I think you said multiple times through
19 your statement un-audited financials, right?

20 A Yes.

21 Q Okay. Now you've refused to utilize those to perform
22 any analysis with respect to the divisional merger or the
23 third party causes of action; isn't that right?

24 A No, it's not right.

25 Q Did you do the analysis?

1 A I have incomplete information to do the analysis.

2 So --

3 Q Listen to my question.

4 MR. GOODMAN: Your Honor, --

5 THE WITNESS: Can I --

6 BY MR. PATTERSON:

7 Q Listen to my question. All right. Did you do the
8 analysis, yes or no?

9 A No.

10 Q All right. And you didn't do it, why?

11 A Because I did not have sufficient information to do it.

12 Q All right. What were you missing?

13 A Related to -- there's different things that I'm
14 missing. One of the things I'm missing is YesCare financials
15 beyond February 2023. The ability to verify those
16 financials.

17 I'm missing information from the Debtor that where they
18 opine on what the claims are. It's based on a claims
19 analysis. That is something that is done on a claim by
20 claim basis so that we can all agree that it is the right
21 outcome.

22 I don't have sufficient information for those two
23 things.

24 Q Okay. Post 2023 financials for YesCare, right?

25 Correct?

1 A Correct.

2 Q And the Debtor claim analysis, right? Or anything
3 else?

4 A So that I can be comfortable with it. So I need those
5 things to support.

6 Q Support, right? You do have some information, right/

7 A I don't have --

8 Q You do have YesCare financials, correct?

9 A Through February 2023.

10 Q Okay. So that's a yes or no question. So, just try to
11 focus and we'll go faster. All right. You do have YesCare
12 financials; is that correct?

13 A I have some, yes.

14 Q Okay. And you didn't use them to perform any analysis,
15 did you? Yes or no?

16 A I did not do an analysis, no.

17 Q All right. To me, that concludes you refuse to use the
18 information that you had to do an analysis, correct?

19 A No.

20 Q Why? Where's the analysis then?

21 A In order to do the analysis that would be appropriate,
22 I need all the information.

23 Q I didn't say appropriate analysis.

24 MR. GOODMAN: Your Honor,

25 THE WITNESS: Can I finish?

1 MR. PATTERSON: I said analysis.

2 THE COURT: You've got to let him finish,

3 Mr. Patterson.

4 BY MR. PATTERSON:

5 Q You don't need to raise your voice. Just answer my
6 question.

7 A Ask another one.

8 Q Nope, I like that one.

9 A I don't know what it was. Do you mind repeating it?

10 Q All right. You refused to utilize the information that
11 you did have to do an analysis. I didn't say to do an
12 appropriate analysis. I said to do an analysis. Isn't that
13 true?

14 A Yes, that's true.

15 Q All right. And so it's not that you didn't have the
16 information, is that you didn't have information that you
17 liked, right?

18 A It's not about liking it. It's about have the
19 information that I need to do a proper analysis.

20 Q Okay, is that a standard. Is that some kind of
21 standard in one of your professional licensed organizations
22 that says you can't use that?

23 A I want to get to a conclusion that's correct --

24 Q No, listen to my question again. See, is there a
25 standard in one of your licensing organizations that tells

1 you that would be a violation of a standard in doing the
2 evaluation by using un-audited financial statements?

3 A I don't know one way or the other.

4 Q Okay. So it's not you're a governing board or an
5 ethical obligation that keeps you from performing this
6 analysis utilizing a certain form of data. It's that your
7 personal opinion, you don't want to use it, right?

8 A No that's not true. I'm not --

9 Q Okay, what's keeping you from using it then?

10 A -- I'm not comfortable that the information I have is
11 accurate.

12 Q Okay, that's a personal opinion.

13 MR. GOODMAN: Your Honor.

14 THE COURT: You've got to let him finish,
15 Mr. Patterson.

16 MR. PATTERSON: And you probably need to stand
17 when you address the court.

18 THE COURT: Guys, we're --

19 BY MR. PATTERSON:

20 Q So, --

21 THE COURT: Hold on folks. I'm not doing it.
22 Let's just ask questions. Let's get to answers.

23 BY MR. PATTERSON:

24 Q Okay, so you have financial information that you're not
25 comfortable with, right?

1 A I've have incomplete financial information that I'm not
2 comfortable with.

3 Q Okay, what's incomplete about it? Let's take it --
4 there's two pieces there. What's incomplete about it?

5 A I don't have sufficient information to verify what I
6 have and I do not have information beyond 2023 for YesCare.

7 Q All right. Now, let's think about it a minute. You
8 testified at length about emails and letters you found in
9 discovery and you reviewed them and you utilized them in
10 coming to your opinions, right?

11 A Correct.

12 Q Did you verify that those were true and correct?

13 A The emails that were provided --

14 Q Yeah,

15 A -- in discovery --

16 Q Right.

17 A -- that they were true and correct?

18 Q Right.

19 A They were produced by the Debtor and the Debtor's
20 email.

21 Q I understand. I understand. And my question though
22 is, did you verify them in any way?

23 A I did not.

24 Q Did you ask someone to authenticate them?

25 A I did not.

1 Q So similar to the financial information you choose to
2 utilize and rely on some information that's not proven true
3 and accurate. And you choose not to use some, right?

4 A Well that's not completely true. The stuff that I
5 relied on -- the emails that I relied on -- we went out and
6 looked for third party verification and we found articles
7 that said that YesCare was proposing to Alabama. It said
8 that YesCare was proposing to Arizona, which is consistent
9 with the emails that we saw in the documents.

10 Q Okay, I wasn't referring to the Alabama specifically
11 the emails. You referred to some emails that you said led
12 you to believe, to suspect that there were bad things going
13 on in creating these new entities. Do you remember that?

14 A Yes.

15 Q Okay. Did you verify those emails?

16 A The emails referred to the Alabama contract, they
17 referred to --

18 Q No, no. Listen to me. You testified earlier that
19 pre-petition there were entities that were being created
20 that were unrelated to the Debtor. And that raised concerns
21 with you, right? Do you remember that?

22 A I do remember that.

23 Q Right. And you said you found out about those
24 creations through emails, right?

25 A Yes.

1 Q And letters and communications that were in discovery,
2 right?

3 A Yes.

4 Q Okay. And you relied upon those, right?

5 A I did, I included them in my report.

6 Q I know their included. We just talked about them. I'm
7 asking did you rely on them?

8 A I did.

9 Q Okay. Did you verify them?

10 A Yes, I did. I looked at -- to some extent, I looked at
11 articles. Those emails that we were referring to talk about
12 the Alabama contract. They talk about setting up these
13 Alabama entities. They talk about setting up the Arizona
14 entity.

15 And I found third party articles about YesCare
16 proposing on those contracts and getting those contracts.
17 So it is completely consistent with emails that I saw.

18 Q Okay.

19 (Pause in the proceedings.)

20 Q You had no information -- correct me if I'm wrong --
21 but you're telling us you had no information to corroborate
22 any of the unaudited financial information that was
23 provided?

24 A That's not true.

25 Q Okay. So there was some information that would

1 corroborate it?

2 A There was some information that would be corroborate
3 it.

4 Q Okay. But you still didn't want to use it for an
5 analysis, right?

6 A It was a component of the analysis. I did not have
7 other pieces that I needed.

8 Q All right.

9 (Pause in the proceedings.)

10 Q Were you told by anyone not to use unaudited financial
11 information?

12 A No.

13 Q Have you ever used unaudited financial information to
14 create evaluation?

15 A Yes.

16 Q Just not this case?

17 A I didn't think it was appropriate in this case, no.

18 Q All right.

19 (Pause in the proceedings.)

20 Q The claim analysis, you said you didn't have the
21 Debtor's claim analysis so you couldn't do your own, right?

22 A That's not what I said.

23 Q Okay. I'm sorry. You said you were missing
24 information and that's why you couldn't do an analysis to
25 tell the Court -- to show the Court to support your

1 conclusion that the settlement is not in the best interest
2 of the creditors?

3 A What I need for related to the claims is I believe the
4 claims need to be valued on a claim-by-claim basis.

5 Q Okay.

6 A And that analysis, I've not seen.

7 Q Are you capable of doing that?

8 A With time, yes it could be done.

9 Q Okay. Did you start?

10 A No.

11 Q Did you do a sampling?

12 A Did not.

13 Q Why?

14 A Because we pivoted to try and do the report, because we
15 had limited time.

16 Q But that's the essences of the report; is it not?

17 A It is not.

18 Q What is?

19 A The essences of the report ultimately is I do not have
20 information, sufficient information to have a conclusion.

21 Q You rushed to the conclusion I don't have what I need,
22 that's what I need to put in the report?

23 A I did not rush to the conclusion, no.

24 Q You just said that's right where you went to when you
25 had to do the report, you had to get on paper that you

1 didn't have sufficient information?

2 A No, we --

3 Q That's why you didn't start your claim analysis, right?

4 A That is not right. We started working on -- we started
5 working on trying to value the claims and we did not have
6 sufficient time to do that.

7 Q Oh, now you did you start. I thought you just told me
8 you didn't start it.

9 A No --

10 Q Now you did start.

11 A -- no, we always start it. We sent out a discovery
12 request list. We try to get information to try to do the
13 analysis --

14 Q A request?

15 A Yeah.

16 Q To do a claim analysis?

17 A Yes.

18 Q Why -- who would you send discovery to, to do a claim
19 analysis?

20 A No, we sent discovery request to get information from
21 the Debtor to see what they had done.

22 Q Wait --

23 A Since they had already approved -- they had already
24 settled the claims.

25 Q Why do you care what the Debtor done? I thought you

1 were doing your own analysis?

2 A Well the Debtor settled the claims. There's a 9019
3 saying this is a fair out come. I assume the Debtor had
4 done an analysis. I think that's a good, fair starting
5 point.

6 Q Why wouldn't you do your own? That's what I'm asking
7 you.

8 A There was not enough time to do that.

9 Q How much time are we talking about?

10 A I don't know. It's 240 claims. I don't know who all
11 the claimants are. I couldn't do that on my own any way.
12 It's something that would have to be done in conjunction
13 with the Debtor.

14 Q Wait a minute you just said there wasn't enough time.
15 And I asked you how much time and you said you didn't know.

16 A I don't know specifically, no.

17 Q Well how did you know there wasn't enough time then?

18 A Because what ended up happening was the 9019 was filed
19 on January 16th and we pivoted to -- we had to work with the
20 information that we had at that point in time.

21 Q Okay. And why didn't you do a sampling of claims
22 analysis?

23 A I didn't think a sampling -- the size that we could
24 probably do, would probably not be helpful.

25 Q Probably?

1 A Yeah. Most definitely if you go back and look at the
2 settlement data. The claims were disbursed as far as a
3 death claims were paid 5,000 in some instances and paid 6
4 million in other instances.

5 Q I could not understand what that last answer was. Tell
6 me what you were trying to explain, again.

7 A I'm saying that the claims information that we had
8 gotten from the Debtor was -- showed very large variances
9 and the types of claims, as you pointed out, were very
10 diverse.

11 So my view was the claims needed to be done on a claim
12 by claim basis.

13 Q Okay. I think we've done that like three times.
14 You've told me that three times. And I'm asking you why
15 didn't you get started on that?

16 A In order to do the proper claims analysis here, every
17 claim needs to be valued.

18 Q Of course.

19 A You can't take a sampling of the claims to get to the
20 right answer.

21 Q Of course. But for an expert report you can take a
22 sample, right. And extrapolate from that. You're an
23 expert, right?

24 A Yes, that's essentially what the Debtor's did. Is they
25 took an average settlement amount and they applied it to the

1 number of claims that are out there and that's the number
2 they went with.

3 I personally believe in this case, that you need to
4 look at each claim individually to get to the right answer.

5 Q I agree. And why didn't you get started? I keep
6 asking you that.

7 A I did not have time to do that.

8 Q And how much time would you need?

9 A I don't know -- I don't know who all the -- I don't
10 know the contact information for the claimants. In order to
11 do that properly in bankruptcy, we've done this before. As
12 I mentioned, the Debtors sends out PIK form.

13 Q Yeah.

14 A We get information back. Probably need medical
15 experts. It takes time.

16 Q Right. But you're the -- I think you're the expert,
17 right?

18 A Correct. But I couldn't just go out and --

19 Q Okay.

20 A -- start contacting the creditors and --

21 Q Why?

22 A Because I just couldn't do that not --

23 Q Why?

24 A -- the way bankruptcy works. I'd have to go through
25 the Court.

1 Q That's not how bankruptcy works?

2 A No, that's not how claims estimation is done.

3 Q How is it done? Tell me then.

4 A You use the information that the Debtor has and if the
5 Debtor doesn't have the proper information, the Debtor
6 requests --

7 Q What information?

8 A -- it by -- Each claim here is different and unique.

9 Q Yes.

10 A We need medical experts to look at the claims.

11 Q Why would the Debtor have the medical experts?

12 A Because the Debtor is settling these causes of actions
13 that I believe in order to properly value the claims, they
14 should have done this analysis.

15 Q It appears that your report is more of I don't like
16 what they did, but I'm not going to tell you what I think,
17 right?

18 A No, that's not true.

19 Q So, your expert opinion, Mr. Atkinson. The tort
20 claimants that are incarcerated, are they to be considered
21 separately or differently?

22 A I think all claimants should be considered together. I
23 don't know why you would differentiate the claims.

24 Q You don't. So Mr. Goodman's client, medical
25 malpractice claims, represented by Brown Rudnick, is going

1 to get the same result as the incarcerated pro se in your
2 expert opinion?

3 MR. GOODMAN: Objection, Your Honor. Brown
4 Rudnick does not represent any --

5 MR. PATTERSON: Oh, good Lord.

6 THE COURT: I'm taking it as a hypothetical. A
7 firm that is represented versus a pro se. That's how I'll
8 construe the question.

9 MR. GOODMAN: Yes.

10 MR. PATTERSON: Yes, Your Honor.

11 THE WITNESS: So are you suggesting -- I just want
12 to make sure I answer your question. Are you saying
13 incarcerated people, none of them have lawyers, is that what
14 you're suggesting? They're all pro se.

15 BY MR. PATTERSON:

16 Q I'm not suggesting anything. You're the expert,
17 Mr. Atkinson.

18 A Well you just -- you gave me -- I think you gave me a
19 hypothetical.

20 Q Answer my question.

21 A I'm trying to.

22 Q Okay.

23 A You gave me a hypothetical.

24 Q Right.

25 A You said an incarcerated claimant --

1 Q Pro se.

2 A You didn't say pro se before. Now you're saying pro
3 se. And that's the distinction --

4 Q Well, Mr. Goodman interrupted me, so. Pro se.

5 A Okay, so can you repeat the question now I don't
6 want --

7 Q Sure. Are you suggesting that a claimant with the same
8 claim, medical malpractice, took out the appendix and there
9 was nothing with the appendix. Whatever it is. Medical
10 malpractice.

11 One of them is represented by Brown Rudnick. One of
12 them is incarcerated and is pro se. Are you suggesting to
13 this Court that the outcome of those two cases is identical
14 as an expert?

15 A In what context?

16 Q The result of getting paid a dollar amount.

17 A Well in bankruptcy if the claims are both good, they
18 should both get paid the same amount of money.

19 Q Sure.

20 A So if they're the same claim, they should get paid the
21 same amount of money.

22 Q That's right. And how about out of bankruptcy?

23 A Well I think out of bankruptcy, people that have
24 counsel generally get paid more.

25 Q That's right. And so can you conclude, as an expert

1 then, that a dismissal of this case would work a detriment
2 to those pro se incarcerated individuals with Tort claims?

3 A I can't conclude that, no.

4 Q How? Are you now suggesting that they end up the same?

5 A We don't know how much their going to get paid.

6 Q Correct. But you're an expert. Tell me. In your
7 expert opinion, is that pro se incarcerated plaintiff going
8 to end up with anywhere near Brown and Rudnick's client? At
9 the end of the day, the same tort injury.

10 A Again, I don't know -- you're giving me a hypothetical.
11 I don't know the answer to that.

12 Q You're an expert though. You're a claims expert,
13 right?

14 A I am, yes.

15 Q I'm asking you a claims question. Why don't you want
16 to answer? Do you not like the answer?

17 A No, I just don't understand the question.

18 Q Please, what part do you not understand?

19 A Go ahead, ask it again.

20 Q We'll walk through it. Tell me which part you don't
21 understand.

22 A Go ahead and ask me again.

23 Q No, I want to know what part you don't understand.

24 A I don't --

25 Q You just told me under oath you don't understand my

1 question.

2 THE COURT: Both of you are being argumentative to
3 each other. And I just want to tone the temperature a
4 little bit. So go ahead and ask another question.

5 BY MR. PATTERSON:

6 Q Are you suggesting, as an expert, that pro se litigants
7 fair no worse outside of bankruptcy than litigants with
8 counsel?

9 A Some pro se -- on average pro se litigants do worse
10 than ones with counsel.

11 Q That's right. And in this case, more particularly,
12 these incarcerated plaintiffs, pro se plaintiffs, who were
13 injured while in prison. Are you suggesting they're going
14 to do the same or better than claimants who have counsel if
15 this case is dismissed?

16 A I'm not suggesting that, no.

17 Q Okay. Will you agree with me they'll do worse?

18 A They more likely than not would do worse without
19 counsel.

20 Q Okay. So, as far as the pro se litigants, generally
21 speaking -- I'm not talking about this 9019 -- but generally
22 speaking, the pro se litigants would fair better with this
23 bankruptcy in tact, operating, than not. Would you agree
24 with me?

25 A I don't know that I agree with that, no.

1 Q Okay, tell me why.

2 A There's not a plan in my file. I don't know what
3 the --

4 Q I'm not talking about -- I said generally. Generally.
5 Not under a particular plan. Generally in getting paid.

6 A I don't know the answer to that.

7 Q Why? You're an expert.

8 A I am an expert, but I don't know all the facts in order
9 to determine that.

10 Q I just gave you the facts. The facts of this case.
11 Will these pro se litigants do better in a bankruptcy case
12 administration with this Judge sitting on the bench than
13 dismissing the case and telling them to go be your own
14 lawyer in federal district court of New York?

15 A I guess it depends on what happens with this case.

16 Q Mr. Atkinson, it's a general question. I'm going to
17 give you one more chance --

18 A If you --

19 Q -- just be honest okay. Just be honest.

20 A I'm trying to.

21 Q I know you don't like the answer, because of who's
22 paying you, right? Or who hired you. But you've got to be
23 honest, right? You're an expert you have a credibility
24 issue here. Right?

25 MR. GOODMAN: Your Honor, objection. This is

1 getting really argumentative.

2 THE COURT: Sustained.

3 (Pause in the proceedings.)

4 BY MR. PATTERSON:

5 Q Is there value to an alter ego claim?

6 A I need more context than that.

7 Q Nope.

8 A Okay, I can't answer that question.

9 Q Why?

10 A Because I don't know if there's ability to pay, I don't
11 know if there's -- there's a lot of factors that --

12 Q No, to an alter ego claim. Not to an underlying claim,
13 but to an alter ego claim, itself. Forget about everything
14 else. Alter Ego. Is there a value to that claim?

15 A I can't answer that question.

16 Q Why?

17 A I can't. I don't understand the question. You're not
18 giving me details to answer the question.

19 Q What details do you need?

20 A I don't know. Is it a legal question that you are
21 asking me?

22 Q No. You're an evaluation expert. You've talked about
23 the value of alter ego claims.

24 A Correct.

25 Q Okay, tell me what you need to know.

1 A I need to know who's bringing the claim.

2 Q I am.

3 A Okay. I need to know who we're -- who you're pursuing.

4 Q I'm suing Chase Bank.

5 A Okay. So Chase Bank has the money to pay you?

6 Q Billions.

7 A And I need to know how good your claim is.

8 Q Excellent. I'm the lawyer.

9 A Then there's value.

10 Q Okay, how much?

11 A I don't know -- what is -- I don't know the answer to
12 that.

13 Q I don't either. Does an alter ego claim have it?
14 That's my only claim in the lawsuit, alter ego.

15 A The alter ego claim would be, you know, whatever the
16 value of your damages are. So if you're a claimant in this
17 case and you're owed \$10 and there's an alter ego claim and
18 the party you're pursuing has \$10, then you have a good
19 case, excellent case because you're the lawyer. Then it's
20 worth \$10.

21 Q Okay. So it's a collection. It's a pass-through.
22 It's a way to collect my damages caused by something else,
23 right?

24 A Correct.

25 Q So if I have a \$10 tort claim, my claim is \$10 and

1 someone says, well Mr. Atkinson you didn't consider you
2 alter ego claim. Right? Does that change the value of my
3 \$10 claim?

4 A It does not.

5 Q Right. Zero. And so if I'm valuing claims, why do I
6 need to consider and talk about the value of -- the
7 hypothetical value of an alter ego claim?

8 A Because we're ultimately trying to value what's going
9 to be paid on that claim.

10 Q Right.

11 A The settlement amount.

12 Q Outside of bankruptcy, right? But it doesn't effect
13 the \$10 tort claim. It talks about collectability. Right?

14 A The \$10 tort claim would be entitled -- under your
15 hypothetical where it's you're the lawyer -- it's entitled
16 to \$10.

17 Q Right. Right. Irrespectable alter ego. Right?

18 A Well because of alter ego in your hypothetical.

19 Q The Debtor pays it or somebody else pays it, right?
20 It's still a \$10 claim.

21 A It is still a \$10 claim.

22 Q Right. And so your suggestion that they didn't even
23 mention alter ego in their valuations, doesn't really make
24 sense, right?

25 A No, that's not true.

1 Q Why? Does it alter the value of the claims?

2 A It alters the settlement of -- this whole thing is
3 about the settlement amount. There's a 9019. They've
4 settled the claims for \$54 million.

5 Q Right.

6 A So what's the value of the successor liability claim?
7 The Debtor's have estimated their claims in this case at 135
8 to 187 million.

9 Q Right.

10 A If, in your hypothetical you are the lawyer and you're
11 pursuing Chase Bank for that amount of money, the amount
12 should be -- and you have a good case, the amount should be
13 135 million or 187 million.

14 Q It goes --

15 A To how much you can get paid.

16 Q Right. And you don't know whether that's a good deal
17 or not as proposed by the Debtor, right?

18 A I don't have sufficient information --

19 Q That's right. You don't know if it's good or bad.

20 A I don't have --

21 Q It may be good, it may be bad. Right?

22 A Yes, sir.

23 Q Okay, so what was the purpose of your testimony today
24 if you don't know if it's good or bad?

25 A There's a 9019 on file. We're trying to decide whether

1 it should be approved or not.

2 Q Right.

3 A And we're trying to understand what went into deciding
4 it was a good deal.

5 Q Right.

6 A And I don't have information to determine if it's a
7 good deal or not. Or a bad deal.

8 Q Great.

9 MR. PATTERSON: No further questions, Judge.

10 THE COURT: Thank you. Any further cross? Any
11 redirect?

12 Okay, please proceed.

13 MR. GOODMAN: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. GOODMAN:

16 Q Mr. Atkinson, would it be reasonable in your view to
17 support a settlement without adequate information?

18 A No.

19 Q Okay. Mr. Atkinson, do you know who has the burden of
20 proof on the Rule 9019 Motion?

21 A The Debtor does.

22 MR. KAUFMAN: Objection.

23 THE COURT: Yeah, I'll sustain.

24 BY MR. GOODMAN:

25 Q Mr. Atkinson, is it fair to say that the TCC

1 desperately wants YesCare financial information?

2 A Yes.

3 Q Is it also correct that to day, YesCare has not
4 produced its current financials?

5 MR. KAUFMAN: Objection, leading.

6 THE COURT: Overruled.

7 THE WITNESS: That's correct.

8 BY MR. GOODMAN:

9 Q Okay. Has YesCare opened its books and records to the
10 TCC?

11 A It has not.

12 Q Has any of the settlement parties produced their
13 current financials?

14 A I have not seen them, no.

15 Q Has Mr. Lefkowitz produced current financials?

16 A He has not.

17 Q Have any of the settlement parties made their books and
18 records available?

19 A They have not.

20 Q Okay. So how could you verify the financial statement
21 for YesCare if YesCare won't make its books and records
22 available?

23 A I can't.

24 Q And how could you determine if YesCare would have a
25 problem paying a judgment, if YesCare won't product it's

1 current financial record?

2 A I can't.

3 Q Okay.

4 MR. KAUFMAN: Still leading.

5 THE COURT: Overruled.

6 BY MR. GOODMAN:

7 Q My last question. Let's see if we can get through it.
8 What does it tell you in all of your experience in the
9 restructuring field, that YesCare financials are a central
10 issue in this case? And yet the Debtor wants to settle
11 claims against YesCare without the information.

12 MR. KAUFMAN: Objection, Your Honor.

13 THE COURT: I'll sustain that.

14 MR. GOODMAN: Nothing further.

15 THE COURT: Any Cross?

16 MR. KAUFMAN: No further questions.

17 (Pause in the proceedings.)

18 RE CROSS-EXAMINATION

19 BY MR. HEMENWAY:

20 Q Mr. Atkinson I've just got one question after that.
21 Your testimony is that it's vital to get YesCare's
22 financials, right? I think that's what you said, it's
23 vital.

24 A I don't know if I said vital. But it's important. I
25 can't value the claims without it.

1 Q You can't do your job, right?

2 A Yes.

3 Q Okay. Yet you billed this estate \$500,000 when you
4 know all along you can't do your job?

5 A I didn't know all along I wasn't going to get the
6 financials. We've been trying to get them from the
7 beginning since we've been hired.

8 Q But if you can't do your job, what's the -- right?
9 You're telling the Court I can't do anything without this,
10 this data. You haven't come and gotten an order for it,
11 right? Yet we've got \$3 million worth of lawyers and
12 \$500,000 worth of experts that are all saying we can't do
13 our job without these financials, right?

14 A Yes.

15 MR. HEMENWAY: No further questions.

16 THE COURT: Further questions?

17 (No audible response.)

18 THE COURT: Thank you very much for your time,
19 Mr. Atkinson.

20 (Witness steps down.)

21 MR. KAUFMAN: Your Honor, just very briefly.

22 THE COURT: Oh, I think he was first. So he gets
23 to first.

24 MR. ZLUTICKY: I apologize for being slightly
25 quicker. The next witness is Mr. Matt Dundon. He's not in

1 the courtroom. So I would need just a minute to bring him
2 into the courtroom.

3 THE COURT: Okay.

4 MR. GOODMAN: I apologize for not standing when I
5 objected, Your Honor. But given the pace of things, it's
6 hard for me to actually get up off the seat. So I'm sorry.

7 THE COURT: Let's just get -- how long do you
8 think it will take to get Mr. Dundon in?

9 MR. ZLUTICKY: We're grabbing him right now, Your
10 Honor.

11 THE COURT: Okay, let's get him.

12 (Pause in the proceedings.)

13 THE COURT: Mr. Zluticky, from a timing
14 standpoint, how much direct do you have? I'm just trying to
15 get a sense of tonight to talk about.

16 MR. ZLUTICKY: Your Honor, I'm trying to -- I was
17 trying to pare down at the last break. I'm hoping it will
18 be under an hour.

19 THE COURT: Okay. And in terms of cross, what do
20 you expect?

21 MR. MOXLEY: Your Honor, we'd probably expect 15
22 to 20 minutes.

23 THE COURT: Okay.

24 MR. ZLUTICKY: Your Honor, the Official Committee
25 of Unsecured Creditors would call Matt Dundon.

1 THE COURT: Okay, Mr. Dundon, why don't you come
2 up? What about binders? Does anyone need to grab binders
3 or any of that stuff?

4 MR. ZLUTICKY: Mr. Dundon, for the Record, there's
5 going to be two black binders on your left. And those will
6 be the ones that we refer to if we need to refer to them
7 today.

8 THE WITNESS: Thank you.

9 THE COURT: All right, Mr. Dundon, can you please
10 raise your right hand?

11 (Witness sworn.)

12 THE COURT: Okay, we'll let the Record reflect the
13 witness has been properly sworn in.

14 MR. ZLUTICKY: Your Honor, may I approach the
15 witness to give him some water?

16 THE COURT: Yes, of course.

17 DIRECT EXAMINATION

18 BY MR. ZLUTICKY:

19 Q Please state your name for the Record.

20 A Matthew Dundon.

21 Q What company do you work for?

22 A Dundon Advisors, LLC.

23 Q How long have you worked there?

24 A A little more than eight years.

25 Q What is your job title?

1 A Principal.

2 Q Do you have a bachelor's degree?

3 A I do.

4 Q From what university?

5 A From the University of California, Berkley.

6 Q Do you have any post graduate degrees?

7 A I do.

8 Q What kind of degree?

9 A I have a law degree.

10 Q From what university?

11 A From the University of Chicago.

12 Q When did you graduate from the University of Chicago

13 school of Law?

14 A 1998.

15 Q Where did you work after law school?

16 A I initially worked at the new York office of Willkie

17 Farr and Gallagher.

18 Q At some point did you leave the private practice of

19 law?

20 A I did.

21 Q Approximately when was that?

22 A 2003.

23 Q And what did you do after you left the private practice

24 of law?

25 A I went into the Fixed Income and Distressed business.

1 Q And then at some point you founded Dundon Advisors; is
2 that right?

3 A That's right.

4 Q When did you start Dundon Advisors?

5 A In February of 2016.

6 Q What kind of work have you performed at Dundon Advisors
7 since 2016?

8 A We primarily advise institutional clients on distressed
9 and litigation investments. And we offer restructuring
10 advisory service to creditors, Debtors, and other stake
11 holders.

12 Q Gave you been an advisor to the Unsecured Creditors
13 Committee at Dundon Advisors?

14 A I have.

15 Q Approximately how many times?

16 A Around 100.

17 Q Have you been advisor to Tort Claim Committees at
18 Dundon Advisors?

19 A I have.

20 Q How many times?

21 A Depending on how you define tort claim Committees. A
22 dozen or so.

23 Q Okay. Would that be both joint and unofficial?

24 A Yes.

25 Q Have you been a litigation trustee or liquidating

1 trustee in bankruptcy case?

2 A I have.

3 Q Have you worked on cases involving mass torts?

4 A Yes.

5 Q Okay. Tell me a little bit about that experience.

6 A So, we are regularly engaged both by law firms and
7 groups of law firms and groups of mass tort plaintiffs who
8 have claims against distressed companies that may be in or
9 contemplating going into bankruptcy.

10 And we also advise other creditors in cases that are
11 mass tort centric.

12 Q Do you have an understanding of what avoidance actions
13 are?

14 A I do.

15 Q What is that understanding?

16 A Avoidance actions are efforts to claw back transfers
17 that were preferences under the Bankruptcy Code or
18 fraudulent under the Bankruptcy Code or applicable state
19 law.

20 Q What experience do you have with avoidance actions that
21 help you form this understanding?

22 A So avoidance actions are at least potentially an asset
23 of virtually every bankruptcy estate that we come across in
24 any side of our business.

25 Q Have you valued potential avoidance actions at Dundon

1 Advisors?

2 A Yes.

3 Q Can you please tell me about your experience valuing
4 potential avoidance actions?

5 MR. MOXLEY: Your Honor, I'd like to object to the
6 question, Judge. I specifically, Your Honor will recall
7 that we made a motion to compel, a joint motion to compel
8 motion in limine at the outset of the hearing and the Court
9 denied that motion.

10 But without prejudice subject to our ability to
11 object to questions when they illicit testimony. That the
12 witness was specifically instructed not to answer during
13 deposition.

14 And at Mr. Dundon's deposition, I specifically
15 asked if he would offer any testimony at the hearing as to
16 the value of avoidance actions in support of the motion and
17 he was instructed to not to answer that question.

18 So, Judge, on that basis, I don't think it's
19 appropriate to solicit testimony from Mr. Dundon today given
20 that we were foreclosed for being able to ask questions
21 about that at the deposition on privilege grounds.

22 MR. ZLUTICKY: Your Honor, I'm not asking
23 Mr. Dundon the specific evaluation question. I'm asking him
24 about his experience. I also think this is consistent with
25 what we've been doing thus far, possible subject for cross.

1 THE COURT: Yeah, but you're not going to -- I'm
2 fine with you asking about his experience. But if there's a
3 specific topic that's shut down and he couldn't answer it,
4 he's not going to be able to talk about it today.

5 MR. ZLUTICKY: I understand.

6 MR. MOXLEY: Your Honor, what's the relevance of
7 his experience valuing avoidance actions? He can't offer an
8 opinion on avoidance actions.

9 THE COURT: I don't know. But the fact that he's
10 done the experience, I'm fine with it. It's background.
11 But I think if he gets into specifics, I'll preserve the
12 objection.

13 MR. MOXLEY: Thank you, Judge.

14 MR. ZLUTICKY: And, Your Honor, he did talk about
15 it at his deposition. But we can get to that --

16 THE COURT: Okay.

17 MR. ZLUTICKY: -- we can cross that bridge if we
18 need to.

19 THE COURT: Okay.

20 BY MR. ZLUTICKY:

21 Q So, Mr. Dundon, please tell me your experience valuing
22 potential avoidance actions at Dundon?

23 A So in a significant subset of the bankruptcy cases in
24 which we have some role, avoidance actions appear promising.
25 And so we take the next step and begin to think about their

1 value.

2 Q Have you valued potential successor liability or alter
3 ego claims at Dundon?

4 A Yes.

5 Q Can you describe that experience for the Court?

6 A So, in a high proportion of large and complex cases,
7 there's often a controlling private equity sponsor, a lender
8 that one could argue was in control. Somebody who bought
9 some significant portion of assets before a financial
10 distress or during financial distress.

11 And we look at those entities as potentially also being
12 on the hook for the debt owed to our clients or owed to
13 creditors in the case.

14 Q Do you have experience pursuing or settling those types
15 of claims?

16 A Yes.

17 Q And do those experiences help inform your view
18 regarding the potential causes of action in this case?

19 A Yes.

20 Q Is Dundon Advisor the financial advisor to the UCC in
21 this case?

22 A Yes.

23 Q And if I say UCC, you and I can understand I mean the
24 official Committee of unsecured creditors?

25 A I do understand it that way.

1 Q And so I don't want to retread a lot of old ground
2 here, Mr. Dundon. David Barton previously testified on this
3 case on behalf of the UCC. He testified of the UCC meets at
4 least once a week.

5 Do you attend most of those meetings?

6 A I do.

7 Q Have you spoken with members of the UCC at those
8 meetings?

9 A I have.

10 Q Have you spoken with members of the UCC outside those
11 meetings?

12 A I have.

13 Q In the 12 months as you've served as financial advisor
14 to the UCC, have you formed a view on the level of
15 engagement with the UCC in this bankruptcy case?

16 A I have.

17 Q What is that view?

18 A It's exceptionally high.

19 Q Why do you say that?

20 A I've been involved with lots of official Committees
21 over the past eight years. And I've observed that quite
22 often there are only one or two members who are really
23 engaged. Many times, most Committee members --
24 unfortunately sometimes all Committee members -- just take
25 the lead of their professionals.

1 Whereas in this case I've seen a very high level of
2 intellectual engagement. A lot of push back of you and me
3 and other people to make sure that we're giving good advise
4 and that the decisions are the right ones.

5 Q Do some of the members of the UCC have contract claims
6 against the Debtor?

7 A Yes.

8 Q Do some of the members of the UCC have personal injury
9 or tort claims against the Debtor?

10 A Yes.

11 Q Do the tort claimant or personal injury claimant
12 members on the UCC attend those meetings either personally
13 or through their respective counsel?

14 A Yes.

15 Q Does the UCC listen to those members?

16 A Yes.

17 Q Does that include you as its financial advisor?

18 A Very much so.

19 Q Have you spoken with personal injury or tort claimant
20 members of the UCC or their respective counsel, inside
21 meetings of the UCC?

22 A Yes.

23 Q What about outside of the meeting?

24 A That as well.

25 Q Have you formed a view on the level of sophistication

1 engagement of the tort claimant or personally injury members
2 of the UCC in this bankruptcy case?

3 A I have.

4 Q What is that view?

5 A That it's high.

6 Q Why do you say that?

7 A One of the two personal injury claimant members is
8 represented by a partner at one of the plaintiff law firms
9 in the country that participates very aggressively and
10 effectively in bankruptcies and has a lot of sophistication.

11 The others represented by a plaintiff law firm that has
12 considerable bankruptcy experience in my knowledge and then
13 also has a very well regarded bankruptcy lawyer working on
14 the team.

15 Q I want to now shift to the UCC's investigation in this
16 case.

17 A Okay.

18 Q When did the UCC start its investigation?

19 A Immediately after it was formed and hired its
20 professionals.

21 Q What did you know about the investigation needs of the
22 UCC when you were being engaged?

23 A I assumed that we were going to be looking at the major
24 headings that people are concerned about in divisional
25 mergers. Including, you know, fraudulent transfers as well

1 as the standard things of what are the preferences breaches
2 the fiduciary duty and the like.

3 Q Did the UCC identify areas that were required
4 investigation in this bankruptcy case?

5 A It did.

6 Q so, if you could please turn to Exhibit 1 in Volume 1
7 in of your black binder. It wouldn't be that binder. It
8 would be one of the one's next. Volume one.

9 (Pause in the proceedings.)

10 MR. ZLUTICKY: And, Your Honor, just for the
11 Record that's Docket number 1410 -- 1410.

12 THE COURT: Thank you.

13 BY MR. ZLUTICKY:

14 Q So this is the rule 9019 motion. Do you see that?

15 A I do.

16 Q have you reviewed this document before?

17 A I have.

18 Q Are you familiar with it?

19 A I believe I am.

20 Q Are some of the areas of the UCC's investigation
21 described in the Rule 9019 Motion?

22 A Yes.

23 Q Are all of the areas of the UCC's investigation
24 described in the Rule 9019 Motion?

25 A No.

1 Q Why not?

2 A The 9019 Motion had to focus on issues that were most
3 significant in the minds of the parties to the agreement.

4 Q If you could please turn to Tab 18 in your notebook?
5 It's Exhibit 18.

6 (Pause in the proceedings.)

7 MR. ZLUTICKY: And Your Honor this is Docket
8 1410-18.

9 BY MR. ZLUTICKY:

10 Q This is the Second Amended Disclosure Statement filed
11 in this case. Do you see that?

12 A I do.

13 Q does the Second Amended Disclosure Statement -- well
14 let me back up for a moment, Mr. Dundon. I apologize. Are
15 you familiar with this document?

16 A I am.

17 Q have you reviewed this document before?

18 A I have.

19 Q Does the Second Amended Disclosure Statement include
20 other areas of the UCC's investigation in addition to what's
21 described in the Rule 9019 Motion?

22 A It does.

23 Q Are all of the areas of the UCC's investigation
24 described in either the motion or the Disclosure Statement?

25 A No.

1 Q Why not?

2 A In the case of the Disclosure Statement, the objective
3 was to focus on the most material issues that would inform
4 creditors how to vote on the Plan, which is the purpose of
5 the Disclosure Statement.

6 Q Was the divisional merger one of the areas investigated
7 by the UCC in this case?

8 A It was.

9 Q Do you have an understanding of what the divisional
10 merger is, that's been described in this case?

11 A Yes.

12 Q Okay. And what is that understanding?

13 A A series of transactions were undertaken under Texas
14 Corporate Law. The results of which was that substantial
15 all the operating assets that the Debtor had owned became
16 property of the YesCare entity.

17 Which assumed only a subset of liabilities associated
18 with those assets. And the Debtor retained the balance of
19 the -- excuse me -- the balance of the liabilities and
20 Moreland did some subset of assets as well as a funding
21 agreement.

22 Q Were there other areas of investigation the UCC pursued
23 in addition to the divisional merger?

24 A Yes.

25 Q Was one of those areas transfers made by the Debtor to

1 some of the settlement parties prior to the bankruptcy
2 filing?

3 A Yes.

4 Q Did the UCC investigate potential successor liability
5 claims against the settlement parties?

6 A Yes.

7 Q Did the UCC investigate potential alter ego claims
8 against the settlement parties?

9 A Yes.

10 Q Did the UCC investigate potential breach of fiduciary
11 duty claims against the settlement parties?

12 A Yes.

13 Q Can you describe your involvement in those
14 investigations?

15 A So, I led the work of my team on the advisors looking
16 at the business and financial elements and issues in
17 questions that those investigations brought to light.

18 Q Did you review documents produced to the UCC in this
19 case?

20 A I did.

21 Q Do you know how many?

22 A No.

23 Q How would you characterize the amount of documents you
24 reviewed?

25 A A lot.

1 Q Did you and your team analyze those documents?

2 A Yes.

3 Q did you provide updates to the UCC members on the
4 status of the investigation?

5 A Yes.

6 Q What kinds of documents did you and your team look at?

7 A So we reviewed financial statements, bank records. We
8 reviewed a variety of documents that related to the
9 divisional merger and its back drop. We reviewed material
10 contracts of the Debtors business.

11 Q Did you review deposition transcripts?

12 A Yes.

13 Q Did the UCC receive all the information it asked for in
14 its investigation of the settlement parties?

15 A No.

16 Q Why not?

17 A This kind of investigation you never get everything
18 that you ask for.

19 Q Did the UCC receive enough information to conduct its
20 investigation?

21 A Yes.

22 Q Why do you say that?

23 A We relevant picture on divisional merger, on potential
24 avoidance actions and a number of other items that we
25 thought were relevant and potentially had value from a

1 litigation settlement perspective.

2 Q so we're going to turn back to Tab 1, the Rule 9019
3 motion.

4 A Okay.

5 Q It's Docket 1410-1. Paragraph 27.

6 A Yes.

7 Q That paragraph outlines categories of potential claims
8 against the settlement parties. Do you see that in
9 Paragraph 27?

10 A I do.

11 Q And it lists four main categories. Is that right?

12 A It does.

13 Q Are those the only potential claims against the
14 settlement parties that the UCC identified?

15 A No.

16 Q And that's not what this does, does it?

17 A It does not say that.

18 Q What types of additional claims against the settlement
19 parties did the UCC identify?

20 A So breach of fiduciary duty, successor liability, alter
21 ego among others.

22 Q After completing its investigation, did the UCC
23 identify potential claims against YesCare arising out of the
24 divisional merger?

25 A It did.

1 Q What are those claims?

2 A They're primarily claims that the fraudulent
3 transfer -- excuse me. The divisional merger was, it self a
4 fraudulent transfer.

5 Q Are there any other potential claims against YesCare?

6 A Yes.

7 Q Like what?

8 A Like successor liability.

9 Q Why does the UCC believe that the divisional merger was
10 a fraudulent transfer?

11 A We believe it might be found to be a fraudulent
12 transfer because it was a transaction that occurred while
13 the Debtor was insolvent or possessed unreasonably small
14 capital or was rendered insolvent or insufficiently
15 capitalized by the transaction.

16 And it was a transaction whereby it gave more to
17 YesCare in value than it got.

18 Q Are you familiar with FTI Financial Advisors?

19 A I am.

20 Q Did FTI prepare a fairness opinion on the divisional
21 merger?

22 A It did.

23 Q Have you reviewed it?

24 A I have.

25 Q Are you familiar with it?

1 A I would say I am.

2 Q What was FTI's opinion about the divisional merger?

3 A That it was fair to the Debtor's creditors.

4 Q What is the UCC's view of that fairness?

5 A That it's not reliable.

6 Q Why is that?

7 A Two primary reasons. The first is that it liens
8 heavily on a purported assumption of debt in the divisional
9 merger around \$100 million of debt that moved from the
10 Debtor to YesCare.

11 Many thinks that that was -- excuse me -- that had been
12 equitized before that transfer. So there was no value
13 received by the Debtor in being relieved of that debt.

14 MR. MOXLEY: Your Honor, objection. I would move
15 to strike the last answer. At Mr. Dundon's deposition, --
16 and Your Honor, if you'd like a copy of the transcript I'd
17 be happy to give you one for the purpose of my objection.

18 But at his deposition, I asked him about FTI's
19 analysis on that point. And he mentioned something similar
20 to what he just said. I asked him if he could tell me why
21 that was his view. And he said -- and I can show you the
22 transcript. But he said that he could not do so without
23 invading privilege communication.

24 I think it's inappropriate now that he comes with
25 this information when he was not able to answer those

1 questions at deposition.

2 THE COURT: Counsel?

3 MR. ZLUTICKY: Your Honor, we did not instruct
4 Mr. Dundon not to answer questions about valuation in his
5 deposition. And if he can point to the portion of the
6 transcript that show that.

7 THE COURT: Did he say that though? In other
8 words, did he answer the question that he couldn't answer it
9 on the basis of privilege?

10 MR. ZLUTICKY: Oh we're just talking about FTI.
11 So I believe that he did -- I mean, we can look at the
12 transcript.

13 THE COURT: Why don't we -- why don't we just
14 check?

15 MR. MOXLEY: Can we just do that judge? You don't
16 mind?

17 THE COURT: Not at all.

18 MR. ZLUTICKY: Your Honor, if we're just talking
19 about FTI like at this point, I can withdraw that question
20 and move on to a different topic.

21 THE COURT: All right.

22 MR. ZLUTICKY: Very good, thank you, Judge.

23 MR. MOXLEY: Well, Your Honor, I think there was
24 an answer to it though and I think my motion to strike. I
25 think we need to check that.

1 THE COURT: No, I'll strike the answer and if you
2 want to come back to it, you certainly can if you want to.

3 MR. ZLUTICKY: Thank you, Your Honor.

4 BY MR. ZLUTICKY:

5 Q What is the UCC's view of the merits of the potential
6 fraudulent transfer claims against YesCare?

7 A They have merit.

8 Q Why do you say that?

9 A Because we believe that the first leg of the --
10 speaking about the fraudulent transfer -- the first leg of
11 insolvency of unreasonably small capitalization is met.

12 And then the second leg, we think that there's a good
13 argument that the value of the assets that went to YesCare
14 preceded the consideration received by the Debtor.

15 Q If we could turn to Paragraph 46 of this settlement
16 motion that's in front of you, the Rule 9019 motion.

17 (Pause in the proceedings.)

18 A I'm there.

19 Q It says, "The UCC and the Debtor have also evaluated
20 the viability of potential claims against CHS, Texas/YesCare
21 based on the divisional merger under theories based on or
22 derivative of successor liability."

23 Do you see that in Paragraph 46?

24 A I do.

25 Q Those potential claims included successor liability,

1 right?

2 A Yes.

3 Q What other potential claims are included in that
4 evaluation described in Paragraph 46?

5 A Alter ego.

6 Q So the UCC evaluated potential alter ego claims against
7 the settlement parties?

8 A It did.

9 Q what is the UCC's views of the merits of the potential
10 alter ego claims against the settlement parties?

11 A We think that they could be asserted, but they would be
12 heavy lift to fail.

13 Q Why is that?

14 A Fundamentally it would require that a Court would find
15 that the divisional merger was not capable of achieving the
16 intent of separately assets and liabilities. And having a
17 successor that didn't bear the liabilities that were
18 intended to be left behind.

19 And to our knowledge, there's been no court that's ever
20 delivered, you know, a final judgment that's held a theory
21 such as that.

22 Q what is the UCC's views on the merits of potential
23 successor liability claims against YesCare?

24 A Similar.

25 Q Are there any other reasons for that other than what

1 you just described?

2 A No, that's the --

3 MR. MOXLEY: Objection, Your Honor. I think this
4 calls for a legal conclusion. The likelihood of success on
5 the merits of a cause of action I'm not sure that Mr. Dundon
6 is qualified to answer that, Your Honor.

7 THE COURT: Overruled. You can answer.

8 THE WITNESS: I think the Committee, you know, in
9 making its decision with my advice and counsel's advice
10 didn't see that there was a home run there.

11 BY MR. ZLUTICKY:

12 Q Why not?

13 A Similarly because it seems to be in the face of the --
14 of what the divisional merger statute is intended to
15 achieve.

16 Q Does the UCC know whether YesCare disputes potential
17 successor liability claims?

18 A It does dispute them.

19 Q Does the UCC know whether the other settling parties
20 dispute potential alter ego claims?

21 A They do.

22 Q So the first category of causes of action that are in
23 Paragraph 27, are the pre-petition fraudulent transfers. Do
24 you see that?

25 A I do.

1 Q What are those?

2 A Those are a series of transfers between the Debtor on
3 one hand and certain settlement parties in the other hand,
4 that didn't appear to have significant receptacle value.

5 Q How were they identified in the investigation?

6 A They were identified on the books and records of the
7 Debtor primarily bank records.

8 Q Did the UCC calculate the potential damages from these
9 causes of action?

10 A Yes.

11 Q And how would you describe that calculation?

12 MR. MOXLEY: Objection, Your Honor. This is the
13 same objection that I made earlier. We're talking about now
14 the valuation of the avoidance action.

15 MR. ZLUTICKY: He absolutely asked Mr. Dundon these
16 questions in his deposition and he provided the answers.

17 THE COURT: We can just check the transcript.

18 MR. MOXLEY: Are we -- are we limiting this to
19 the -- may I direct a question to counsel, Your Honor?

20 THE COURT: Why don't you just talk -- here's what
21 I just like to do actually. Why don't we just take --
22 Mr. Dundon just so we can -- maybe you-all can -- does it
23 make sense for you-all to talk for a few minutes to figure
24 the scope of where you're going?

25 MR. MOXLEY: Sure.

1 THE COURT: And then just so we can have a clean
2 Record while we do this. Mr. Dundon, we're going to take
3 about five minutes and then we'll -- you're free to. We'll
4 come back on in about five minutes. Thank you.

5 (Recess taken from 6:04 p.m. to 6:09 p.m.)

6 THE COURT: Alrighty. This is Judge Lopez back
7 on the Record in Tehum.

8 You may have heard the fire alarm. It is my
9 understanding it is just two separate floors that they're
10 going to do. At some point, I feel better if they actually
11 got to our floor. I'd feel like they cared about me a
12 little bit, but they haven't done it yet. But --

13 (Laughter.)

14 MR. ZLUTICKY: Maybe our floor is fine.

15 THE COURT: It's just a lot of mixed feelings
16 about that.

17 Okay, folks, back on the Record in Tehum. Very
18 serious matters. Okay, let's talk.

19 MR. MOXLEY: Your Honor, I'm happy to have the
20 session now if you'd like to have there be a question, and
21 I --

22 THE COURT: Yeah, why don't we do that?

23 But what I would like is, is there a transcript
24 just so I know I can flip to it --

25 MR. MOXLEY: Yes, Judge.

1 THE COURT: -- whenever it's quick.

2 MR. MOXLEY: I've handed one to your Clerk.

3 THE COURT: Thank you. That's what I needed to
4 know.

5 Alright. Mr. Dundon, I apologize for the
6 interruption and the bad joke. Let's proceed.

7 DIRECT EXAMINATION (CONT'D)

8 BY MR. ZLUTICKY:

9 Q So, I believe the last question that I asked was, how
10 would you describe the UCC's calculation of the potential
11 damages from the pre-petition transfers?

12 A We had the bank records. We looked at the aggregate
13 cash that went out to Transferees. We looked at any cash
14 that came back, and we asked about any non-cash value that
15 might have come back.

16 Q Was that a complex transaction calculation?

17 A No.

18 Q Why not?

19 A Because the cash was visible on the bank records and
20 we were not provided any even purported information about
21 reciprocal value that was non-cash.

22 Q Does the UCC have a precise number for potential
23 damages for each of these causes of action?

24 A Yes.

25 Q So, if you look at paragraph -- let's start at

1 Paragraph 28.

2 A Yes.

3 Q So, there's a calculation on Paragraph 28 of the total
4 amounts transferred to M2 Loan Co., and it listed
5 approximately \$24.5 million.

6 Do you see that?

7 A That's right. That's the net.

8 Q And so, that number is that the value of those claims?

9 A No.

10 Q Why not?

11 A So, to get the value, you have to take into account
12 the risk that a Court would disagree with you, that the
13 transfers were fraudulent. You have to subtract an estimate
14 for litigation cost. You have to subtract the time value of
15 money. It can take a long time to get awards and to collect
16 on them. And you have to make some provision for partial or
17 entire non-collectability even of an award that you've
18 obtained.

19 Q What kind of impact does that have on the value of
20 potential claims?

21 A Avoidance actions like this is a very significant one.

22 Q Explain that.

23 A So, those discounting factors I just laid out, you
24 know, litigation risk, collection risk, time value of money,
25 litigation cost just add up to a big haircut.

1 Q Now, I want to talk about the fraudulent transfer
2 claim based on the divisional merger itself that we were
3 talking about earlier; how is that claim identified in the
4 investigation?

5 A I would say that every divisional merger or you know,
6 we consider that as a target.

7 Q And you were aware of the occurrence of the divisional
8 merger before you were engaged in this matter?

9 A I was.

10 Q Did the UCC attempt to calculate the potential damages
11 from the fraudulent transfer action related to the
12 divisional merger?

13 A Yes.

14 Q And what number was the UCC trying to calculate there?

15 A One, a calculation or a determination that the Debtor
16 was insolvent or rendered insolvent or (indiscernible)
17 capitalized. So, kind of that leg. And then, the other leg
18 was the value of the assets, were they more than any
19 consideration received back from (indiscernible) to the
20 Debtor?

21 Q And when you say the value of the assets, what assets
22 are you talking about?

23 A So, we're talking in this case about the business
24 operations.

25 Q The business operations of the Debtor that were

1 transferred to CSS Texas?

2 A Yes.

3 Q And that's at the time of the divisional merger in May
4 of 2022?

5 A Correct.

6 Q What was your role in that process of the
7 investigation?

8 A I led a team of colleagues to primarily focus on what
9 the value of those business operations was at that time.

10 Q Who assisted you in that effort?

11 A Primarily, my colleagues Heather Barlow and Lee Rooney
12 (phonetic).

13 Q Did you and your colleagues calculate the potential
14 damages from the avoidance action is as it relates to the
15 divisional merger?

16 A Yes.

17 Q And how did you do that?

18 A So, we --

19 MR. MOXLEY: Objection, Your Honor. This may be
20 the point where I need to object. And I would just draw
21 your attention, Your Honor, if you have the transcript
22 Binder there. I'm at Page 140 of the transcript, Line 15.
23 And I just want to say, before I read this, that --

24 THE COURT: Hold on a second. Let me just get
25 there before you say anything.

1 MR. MOXLEY: Yes, Judge.

2 THE COURT: 140?

3 MR. MOXLEY: 140, yes, Judge.

4 THE COURT: Okay.

5 MR. MOXLEY: And Your Honor, I just want to say
6 for the Record that the TCC respects Mr. Dundon's
7 qualifications and his experience as a restructuring
8 professional, it's just a matter of what the -- what the
9 record is. So, the question at the deposition that I asked
10 at Page 140, Line 15 was "Mr. Dundon" --

11 THE COURT: That's the only nice thing I've heard
12 today about --

13 MR. MOXLEY: Oh.

14 (Laughter.)

15 MR. MOXLEY: There you go.

16 THE COURT: Go ahead.

17 MR. MOXLEY: Happy to provide a nice comment for
18 once, Judge.

19 So, I asked Mr. Dundon, I said, "Mr. Dundon, will
20 you offer any testimony at the hearing as to the value of
21 the avoidance claims in support of the motion?"

22 THE COURT: Yes.

23 MR. MOXLEY: And Mr. Zluticky interposed an
24 objection to the form, and then he said, "This seeks
25 information protected by attorney-client privilege and of

1 the work product doctrine. I'm instructing the witness not
2 to answer the question," and Mr. Kaufman then said, "The
3 Debtor joins the objection and appreciates the instruction
4 of Counsel." So, I asked if he would offer an opinion as to
5 the value of the avoidance claims in support of the motion.
6 He was instructed not to answer that question by the UCC,
7 and the Debtor's Counsel joined.

8 MR. ZLUTICKY: Trying not to interrupt, Your
9 Honor.

10 So, two things, No. 1, he's asking if he's going
11 to offer testimony. This was on, you know, this was mid-
12 February before we filed our witness and exhibit list. He's
13 asking for the mental impressions of Counsel. The real
14 question is did he ask Mr. Dundon about the value, about the
15 calculation? And for that, we need to turn to a Page 87 of
16 the transcript, Lines 8 through. 25.

17 THE COURT: I don't want you to read it.

18 MR. ZLUTICKY: I'm not going to read it, Your
19 Honor.

20 THE COURT: No, no, I'm just asking in general.

21 MR. ZLUTICKY: Yeah, and that's not the only
22 place either, Your Honor, but we can start there.

23 THE COURT: But what's the -- tell me what you
24 think he can talk about.

25 MR. ZLUTICKY: Your Honor, if you if you turn to

1 Page 88 as well --

2 THE COURT: Yeah.

3 MR. ZLUTICKY: Mr. Dundon's going through his
4 analysis of what the value was of NewCo and RemainCo.
5 Continues on for several pages thereafter, but the idea that
6 he wasn't allowed to get answers on this topic is just
7 completely incorrect.

8 THE COURT: Well, I don't know if it's completely
9 incorrect. If he's going to testify about this stuff here,
10 I'm good with it. You're saying if he goes outside of the
11 scope of this depo, that the stuff that he said in the
12 depo --

13 MR. MOXLEY: Right, we asked if he's going to
14 offer an opinion at the hearing, and we were told he wasn't
15 allowed to tell me that.

16 THE COURT: Right.

17 MR. MOXLEY: And so, I don't know if this is his
18 actual opinion or what. Yes, of course, he can say some of
19 the other facts that he relayed here, but --

20 THE COURT: Right.

21 MR. MOXLEY: -- I don't know if he's offering an
22 expert opinion on that, Your Honor. He hasn't been tendered
23 as an expert yet, but I if he's going to offer an opinion as
24 to what the value of those is, I think that that's
25 inappropriate, Judge, given the prior instruction. And I

1 don't know what these facts, these really are other than
2 that and I don't think they've been tendered yet.

3 MR. ZLUTICKY: Your Honor, the --

4 THE COURT: Hold on, hold on, hold on.

5 MR KAUFMAN: And the Debtor would like to be
6 heard at some point on this as well.

7 THE COURT: Sure, I don't -- I got it, he can
8 talk about this, but if he's going to be asked the specific
9 question, is there an opinion as to the value? You're going
10 to have to point me to something where he gives an opinion
11 of the value that's counter to everyone shutting him down on
12 this point.

13 MR KAUFMAN: Yes. Thank you, Your Honor.

14 So, if you look at Page 88 and 89, in particular,
15 one of the questions was, "So, Mr. Dundon, the avoidance
16 claims based on the divisional merger could be worth up
17 to" --

18 THE COURT: Yeah, but he also asked -- right,
19 that's where things get a little, that's where things I
20 think get a little murky for the TCC because you just told
21 him not to offer an opinion of value. So, maybe he's
22 offering something, but it's not going to be the opinion of
23 value because you just told him not to do it.

24 MR. ZLUTICKY: Well, Your Honor --

25 THE COURT: And the Debtor joined and appreciated

1 the comments.

2 MR. ZLUTICKY: Understood, Your Honor.

3 I think there's a distinction between figuring
4 out what Mr. Dundon did for the UCC, and what the UCC's
5 views are, and who the UCC is going to list on a witness and
6 exhibit list. He was able to ask Mr. Dundon about the
7 work --

8 THE COURT: "Will you offer testimony at the
9 hearing as to the value of the avoidance claim?" "Objection
10 to the form of the question. It seeks information
11 protected." "Will you offer any testimony as to the value of
12 the avoidance claims in support of the motion?"

13 MR KAUFMAN: It was that first part of the
14 question that the Debtor joined the objection.

15 THE COURT: That's not what you said here.
16 Unless you can point me to something that that's what you
17 said.

18 MR KAUFMAN: It was asking for what might have
19 been shared at mediation.

20 THE COURT: That's not what's not what was asked
21 here. That's not what you joined to. I'm looking at
22 Page 141.

23 MR KAUFMAN: It was the lead up, and also this
24 was --

25 THE COURT: I'm just telling you what you said.

1 I'm just going on what the text says. "Mr. Dundon, will you
2 offer any opinions at the hearing on the value of the PI
3 claims?" That got shut down. "Will you offer any testimony
4 as to the value of the avoidance claims?" That got shut
5 down.

6 MR. ZLUTICKY: Your Honor --

7 THE COURT: Just saying he can't testify
8 inconsistent with where he got shut down.

9 MR. ZLUTICKY: Your Honor, there are other points
10 in the deposition where he absolutely goes through in
11 detail --

12 THE COURT: I know, but you shut him down on the
13 on the on "Are you going to show up today and talk about
14 it?" In other words, the question here is "Are you going to
15 show up at the hearing and provide a value of the opinion?"
16 and you shut him down and said don't talk about that. So, I
17 mean, how's he going to talk about it today? That's the
18 question. I agree with you. He said it and he talks about
19 stuff in other places but when asked -- I don't even know
20 how it's privileged as to whether he's going to -- well, I
21 guess, "Will you offer any testimony?" and he wasn't allowed
22 to answer that question. It really goes to whether he's
23 going to offer any testimony today. That was considered
24 attorney-client privilege.

25 MR KAUFMAN: I don't know how Mr. -- go ahead.

1 MR. ZLUTICKY: And work product doctrine, Your
2 Honor, because --

3 THE COURT: How is it work product if --

4 MR. ZLUTICKY: Well, it's the mental impressions
5 of --

6 THE COURT: -- somebody is asking is the guy
7 going to show up to hearing? It's not mental impressions.
8 Are you going to show up and offer an opinion on value?
9 Will you offer testimony at the hearing? The answer could
10 have been "I don't know if they're going to call me or not,"
11 but how is that privileged work product? I guess it -- I
12 don't know.

13 MR. MOXLEY: We don't believe it is, Your Honor.

14 MR KAUFMAN: I don't know how Mr. Dundon knows
15 that without conferring without conferring with Counsel.

16 THE COURT: Huh?

17 MR KAUFMAN: I don't know how Mr. Dunson would
18 have any way to say yes or not to that without conferring
19 with Counsel?

20 THE COURT: Right, he could have conferred with
21 counsel, but he got shut down --

22 MR. ZLUTICKY: Well --

23 THE COURT: -- by both of you.

24 MR. ZLUTICKY: Well, Your Honor, there's nothing
25 that Mr. Dundon is going to testify about the methodology

1 that he did on behalf of the UCC here, that Mr. Moxley was
2 not able to depose him on. This is not trial by surprise.

3 THE COURT: Yeah, but just look at what y'all did
4 in this deposition, right? You told him not to offer any
5 value. That's what you did. In other words, he can testify
6 to the words that he sent, but he is not going to be able to
7 testify. I'm not sure if I can qualify it as an opinion of
8 value from the UCC. That I think because I think he got
9 shut down when asked if he was going to do that or not. I
10 mean, I don't --

11 MR. ZLUTICKY: Your Honor, we're not offering
12 this as an expert opinion of what the value is. We're
13 offering it to show what the UCC did and what the UCC views
14 are.

15 THE COURT: I --

16 MR. ZLUTICKY: Mr. Moxley, was able to discover
17 all of that information through the deposition.

18 THE COURT: I think he can talk about what he,
19 kind of the Page 80, what I would call if you flip to it,
20 the Page 88, 89 --

21 MR. ZLUTICKY: There's Page 69 as well, Your
22 Honor, and it continues on from there. There are multiple
23 valuation methodologies that were used. Mr. Moxley did ask
24 him questions about those methodologies.

25 THE COURT: I think --

1 MR. ZLUTICKY: He was not instructed not to
2 answer.

3 THE COURT: I think he can talk about
4 methodology, but the ultimate conclusion, I'm not sure we
5 get there. But from the UCC's perspective, I don't --

6 MR. MOXLEY: Thank you, Your Honor.

7 THE COURT: All right. In other words, we're
8 going to play it like if it was fair game at the depot. I
9 think to the most part it's fair game if you're going to get
10 into methodology but if he's the ultimately now concludes a
11 value, because I suspect that was going to be the follow up
12 question --

13 MR. MOXLEY: Right, Your Honor. Right, because
14 what we can go through some of the methodologies, he can
15 talk about some of the facts, but at the end of the day,
16 that is --

17 THE COURT: I mean, he testified to the views,
18 right?

19 MR. MOXLEY: Yes.

20 THE COURT: Like what the UCC viewed, and I'll
21 take it for what it's worth.

22 MR. ZLUTICKY: And Your Honor, he also testified
23 as to what the UCC said the value was in the deposition.

24 MR. MOXLEY: But this is the problem, though,
25 Judge, is how that --

1 THE COURT: I know but it goes it goes to weight
2 to me in terms of like, what do I consider that an official
3 opinion of value when he was told it was unclear whether he
4 was going to do it or not, I just, I got to call it fair.

5 MR. MOXLEY: Thank you. Judge.

6 THE COURT: All right, let's go.

7 BY MR. ZLUTICKY:

8 Q So, Mr. Dundon, how did you and your colleagues
9 perform that calculation on the fraudulent transfer claim
10 arising out of the divisional merger?

11 A So, the heart of this was trying to come to a value or
12 valuation range for those businesses that those contracts
13 and operations that moved to YesCare and we sought to apply
14 the three kind of common business valuation approaches. The
15 first is a market multiple approach, second, a comparable
16 transaction approach, and the third, a discounted present
17 value of future cash flows.

18 Q Okay. So, let's back up for a moment. YesCare or CHS
19 Texas was receiving a lot of or most of the Debtor's
20 operational assets in the divisional merger, right?

21 A Yes.

22 Q And that included contracts that were allocated to CHS
23 Texas in the divisional merger?

24 A Yes.

25 Q Did you analyze the financial performance of those

1 existing contracts?

2 A We did.

3 Q Earlier you mentioned three different methodologies;
4 why did you use multiple methods to calculate that number?

5 A So, each valuation method has certain acuties and
6 also certain imprecisions, and when you apply more than one,
7 you hopefully get a better view on what value truly is.

8 Q I believe you said the first was a market multiple
9 approach; how does that work generally?

10 A So, you try to find a publicly traded company that has
11 a business that is similar to the business you're trying to
12 value, and then you compute a ratio of its market enterprise
13 value to ideally its earnings before interest, taxes,
14 depreciation, and amortization, but also sometimes its
15 revenue. And total enterprise value is the sum of its
16 market capitalization and its net debt.

17 Q How did you do the market multiple calculation here
18 then?

19 A So, we identified some companies in the prison
20 services business and the correctional services business
21 where we could make a determination of a market enterprise
22 value and where we knew, in this case, the revenue, because
23 the Debtor's businesses had generated negative EBITDA pretty
24 consistently. So, we weren't going to get a relevant data
25 point with looking at multiples of enterprise value to

1 EBITDA.

2 Q So, what was the result of your calculation?

3 A So, we came to a very a broad range of value between
4 zero, using EBITDA multiples, and about \$75 million.

5 MR. MOXLEY: I just object, Your Honor, to note
6 that the Court should take that hat answer for what it's
7 worth in light of the discussion we had previously, Judge.

8 THE COURT: Uh-huh.

9 MR. MOXLEY: Thank you.

10 BY MR. ZLUTICKY:

11 Q How much weight would you generally afford to the
12 market multiple approach?

13 A Generally, we would afford a high weight to it.

14 Q Did you afford it a high weight here?

15 A It's hard to because we had to use the revenue
16 multiple which is not that reliable.

17 Q Why did you have to use a revenue multiple?

18 A Because the EBITDA of the Debtors, the historic EBITDA
19 was negative.

20 THE COURT: When you mean the Debtor, who are you
21 referring to in the historical financials?

22 MR. DUNDON: So, the operations of, the business
23 operations through the divisional merger date. So, the
24 various prison health care contracts. In the aggregate,
25 they plus overhead generated negative earnings per interest,

1 tax, depreciation --

2 THE COURT: Yes, but are you talking pre or post
3 divisional merger. That's what I'm --

4 MR. DUNDON: Pre, pre.

5 THE COURT: So, which entity are you -- that's
6 what I'm just trying to make sure I've got my entities
7 right. Which --

8 MR. DUNDON: Corizon.

9 THE COURT: Okay, okay. No, when you said the
10 Debtor, I just -- that's why I was trying to note whether
11 you meant pre or post.

12 MR. DUNDON: Thank you Your Honor.

13 THE COURT: Okay.

14 MR. DUNDON: Yeah, the Corizon businesses up to
15 the May 22nd divisional merger.

16 THE COURT: Got it, thank you.

17 No, no, and I apologize. I just want to make
18 sure I've got my entities straight.

19 BY MR. ZLUTICKY:

20 Q So, Mr. Dundon, just so I'm clear, you're talking
21 about the calculation for the number for Corizon Health,
22 Inc., which is now known as to Tehum Care Services, Inc.?

23 A Right, when it had its operating businesses.

24 Q Okay, and that's the operating business enterprise
25 that was allocated to CHS Texas?

1 A Correct.

2 Q You didn't use a market multiple approach utilizing
3 EBITDA here, why?

4 A Well, in a sense, we used it because it would mean the
5 company was worthless, right, as a data point because it had
6 negative EBITDA, which means any multiple produces a zero
7 valuation. In another sense, you could argue that we
8 disregarded it to use revenue because it was an available
9 indicia that produced a meaningful positive number.

10 Q But you said utilizing a revenue multiple is less
11 reliable?

12 A That's right.

13 Q Why is that?

14 A Because the same level of revenue can produce very
15 different levels of, let's call it normalized profit margin.
16 And so, that's generally what people -- at least, the
17 potential to generate profit in the future. If a business
18 is losing money now is really what you're going for in
19 valuation because that's what people are paying for is
20 earnings.

21 Q You said the comparable transactions approach was the
22 second approach, is that right?

23 A Yes.

24 Q How does that work?

25 A So, you look for the purchase or sale or spinoff of a

1 business that had similarities to the business that you're
2 trying to value and for which valuation data is available
3 about the purchase price or the transaction. Typically, a
4 multiple of once again, EBITDA, or revenue, or sometimes
5 book value, or other data points that people use to jump off
6 on value.

7 Q Were you able to do that analysis here?

8 A No.

9 Q Why not?

10 A We couldn't identify a good universe of comparable
11 transactions that we thought was useful.

12 Q And where did you look?

13 A Publicly available information about the industry,
14 industry databases.

15 Q And why wasn't there more information for you to go
16 on?

17 A Well, there was plenty of information. There just
18 weren't enough transactions.

19 Q And the third approach you mentioned was the
20 discounted cash flow approach; is that right?

21 A Yes.

22 Q Can you describe that methodology?

23 A So, in that methodology, you use your learning about
24 the historical operations, assets, and other characteristics
25 of the business to project the cash flow that it will

1 generate over into the future, and then you discount that
2 cash flow back to present value, also using what we call a
3 terminal multiple on the final years cash flow. And that
4 involves two things, the projection of cash flow and then
5 secondly, the determination of a proper discount rate. And
6 the discount rate is typically a weighted average cost of
7 capital, which in this effort, we have to devise.

8 Q So, before we get into that methodology in more
9 detail, I want to just go back really quick on the
10 comparable transactions. What weight does it -- well,
11 strike that.

12 So, on the comparable transactions approach, does the
13 fact that this business was a correctional facility health
14 care business have an impact on utilizing the comparable
15 transactions approach?

16 A In a sense, there just aren't a lot of players in the
17 space and the transactions, when they occur, tend to be
18 private. So, you don't know don't have the relevant
19 multiple data. And overall, it's just not a very popular
20 space for institutional investors for political reasons.

21 Q So, back to the discounted cash flow approach; how did
22 you factor in existing contracts that were being allocated
23 to YesCare in utilizing that approach?

24 A So, as we thought about future cash flows, we made an
25 assumption of, maybe an optimistic assumption that the

1 company would allow its negative gross profit contracts, of
2 which it had some, roll off or it would renegotiate those
3 contracts to generate positive margin, that it would not
4 renew or extend contracts that burned money, and that it
5 would also, you know, some of those contracts might be
6 restructured to generate positive gross profit, and the
7 company would go out into the market and win some additional
8 positive gross margin contracts so it could have positive
9 cash flow in the future.

10 Q So, your analysis went contract by contract?

11 A It utilized a contract power system.

12 (Automated phone recording.)

13 Q How did the performance vary contract by contract?

14 A So, as of the divisional merger date, there were some
15 bad contracts that were in the company that generated, were
16 significant money losers.

17 Q Can you give us an example?

18 A The State of Maryland contract is the most
19 conspicuous.

20 Q Why do you say that?

21 A It just was a big contract in percentage of revenue
22 terms and it lost a lot of money.

23 Q And so, what assumptions did you make as to the
24 existing contracts that were being allocated to CHS Texas?

25 Hold your answer.

1 (Announcement regarding courthouse alarm system.)

2 MR. ZLUTICKY: Now, I really hope we don't hear
3 that again.

4 (Laughter.)

5 BY MR. ZLUTICKY:

6 Q What assumptions did you make as to existing
7 contracts?

8 A So, the projections assumed that the contract mix that
9 the company had would move to a contract mix that would
10 support positive cash flow in the future.

11 Q And what about future contracts? How did you factor
12 that in?

13 A We assumed that they would win some positive gross
14 profit contracts.

15 Q Are you familiar with a contract that YesCare
16 purportedly entered into with the state of Alabama in 2023?

17 A I am.

18 Q Did you review that contract?

19 A I reviewed what on its face appears to be that
20 contract.

21 Q Did your methodology assume that YesCare would win
22 contracts like the Alabama contract?

23 A It assumed that it would, as I said, it would win some
24 positive gross profit contracts and lose some negative gross
25 profit.

1 Q You do know that it's been reported as totaling \$1
2 billion in revenue, though, right?

3 A Over many years, yes.

4 Q So, is that contract worth \$1 billion?

5 A No.

6 Q Why not?

7 A That contract is worth, really, you know, a multiple
8 of the annual EBITDA or cash flow it can generate.

9 Q What was the result of your DCF analysis?

10 A The result of our DCF analysis was that, you know, the
11 central tendency of value was between 13 and 35 million.

12 Q Have you ever used the DCF methodology before?

13 A Yes.

14 Q How many times?

15 A Hundreds of times.

16 Q What weight do you typically ascribe to the DCF
17 methodology in your analysis?

18 A A high weight.

19 Q Did you afford a higher weight than the market
20 multiple approach here?

21 A Yes.

22 Q Why is that?

23 A Because, as we said, the market multiple approach had
24 to draw heavily on revenue multiples, which are just less
25 reliable.

1 Q So, that --

2 THE COURT: I'm sorry. Can I ask a question?

3 MR. ZLUTICKY: Yeah, go ahead.

4 THE COURT: Has your -- has your DCF analysis
5 ever been produced?

6 MR. DUNDON: Your Honor, no, it has not.

7 THE COURT: Okay.

8 MR. ZLUTICKY: The underlying documents that
9 Mr. Dundon reviewed that were discussed in his deposition
10 have all been produced.

11 THE COURT: No, I'm just asking, like, is there
12 something -- I'm typically used to seeing a DCF and then I
13 can look at my own stuff and look at the exit multiple and
14 see what -- I just want to know if I'm just getting
15 testimony, or am I going to look at a DCF and get kind of
16 the runs and then look at some of the backup -- you know,
17 kind of I get it not an expert report. I'm just trying to
18 understand if there's a Docket because if there is, I'd like
19 to look at it but if it's just testimony, then I'll just
20 take really good notes.

21 MR. ZLUTICKY: It is just testimony, Your Honor.

22 THE COURT: Okay. No, no. No, this is not a
23 particular (indiscernible) I just need to know. Sometimes,
24 I like to take notes on docs. Sometimes I like to just take
25 good notes. So, this is a good note.

1 Please proceed.

2 BY MR. ZLUTICKY:

3 Q So, Mr. Dunn, this analysis, was that prepared for the
4 UCC in advance of the mediations?

5 A It was.

6 Q And I believe that you testified that that was an oral
7 presentation that you made to the UCC?

8 A Yes.

9 Q So, is that 13 to 35 million a precise number?

10 A No.

11 Q Why not?

12 A Because it relies upon projections and estimates going
13 out several years and assumptions about what would happen in
14 the business. So, it has a decent level of approximation
15 and --

16 Q So, does the UCC just use your calculation to see how
17 much the business enterprise, how much that fraudulent
18 transfer claim is worth?

19 A It's one of a number of data points.

20 Q Does that number factor in litigation risk?

21 A No.

22 Q How would litigation risk impact that number?

23 A So, significantly.

24 Q In what way?

25 A So, we sort of thought of three major buckets of

1 litigation risk in this leg of the fraudulent transfer. The
2 first is that to disagree with our valuation of the assets,
3 any eventual opinion might say the assets were worth much
4 more than at the time of the divisional merger then the
5 range I just spoke about, or much less, and, you know,
6 obviously, much less is the one that creates the risk.
7 Excuse me. The Court could -- you know, a critical issue is
8 this transfer of the purported secured debt. The Court
9 could just reach the opposite conclusion from the one that
10 we had, that that debt had been equitized, and then you're
11 in a very difficult world. And then finally, you know, I
12 think there's a risk a Court could just find that you can't
13 have a fraudulent transfer in a divisional merger, and it's
14 a transaction that is not amenable to analysis under
15 Bankruptcy Code or applicable state fraudulent transfer
16 laws.

17 Q What about the cost of litigation? Is that number
18 factor in the cost of litigation?

19 A It does not.

20 Q How does that impact the analysis?

21 A Reduce the value significantly of any prospective
22 avoidance award.

23 Q Why is that?

24 A This kind of litigation is extremely expensive.

25 Q Does that number factor in what the impact would be in

1 terms of time to litigate or (indiscernible).

2 A It does not, nor the time to collect the judgment if
3 you got it.

4 Q And how does that impact the number?

5 A Very significantly. In a time of relatively high
6 interest rates, you have a very significant time value of
7 money.

8 Q So, let's discuss successor liability and alter ego.
9 We've already talked briefly about investigating those
10 potential claims; do you have any understanding of the UCC's
11 view of the likelihood of success on those claims?

12 A I do.

13 Q And what is that view?

14 A I think they view that that those claims would be a
15 heavy lift to succeed.

16 Q Why is that?

17 A I think, you know, most importantly, it would require
18 a novel decision that that a transferee in a divisional
19 merger could take on liability in that fashion.

20 Q What would the potential damages be for a successor
21 liability claim?

22 MR. MOXLEY: Objection, Your Honor, I think that
23 calls for (indiscernible).

24 THE COURT: Overruled.

25 You can answer.

1 BY MR. ZLUTICKY:

2 A So, you know conceptually it's whichever is less of
3 the amount of liability to which the successor is deemed to
4 succeed, and that successor's ability to pay both that
5 liability and whatever other liabilities it has.

6 Q So, you said it's the lesser of those two things; why
7 is that?

8 A Well, you know, nobody has to pay more than the
9 liability to which they succeeded but lots of people might
10 succeed to liabilities have liabilities, including, but not
11 limited to those to which they succeed, that exceed the
12 their assets. Therefore, they're going to pay those
13 liabilities in part or perhaps not at all.

14 Q And when you're looking at successor liability claims,
15 then one of the things you're looking at is the value of the
16 enterprise, the continued enterprise, right?

17 A That's right.

18 Q And that would be CHS Texas?

19 A YesCare, whatever it goes by.

20 Q And that's the current value, not as of the divisional
21 merger, right?

22 A Right, the value as the hypothetical value as of when
23 you get this judgment or award.

24 Q So, on the fraudulent transfer claim that we were
25 focused on, it was as of the date of the transfer, right?

1 A Right.

2 Q But now we're talking about current valuation?

3 A Right, ability to pay.

4 Q What did you look at to try to see what that number
5 would be?

6 A So, we had projections. We had done a -- before our
7 DCF valuation, we had done a lot of thinking about what kind
8 of cash flow and hence value this company might have in the
9 future. We had the benefit of a few additional quarters of
10 financial data that came after the divisional merger to help
11 us sort of think about that story. And so, that's what we
12 thought about.

13 Q But those financial statements didn't include this
14 Alabama contract, right?

15 A That's right, yeah.

16 Q And so, what impact did that have on your analysis?

17 A So, our scenarios for the future of YesCare had always
18 assumed they would be winning contracts with positive gross
19 margin, and they would be ditching incumbent contracts with
20 negative gross margin. So, it's consistent.

21 Q But that isn't quite consistent with how they
22 performed historically, was it?

23 A That's right, but, you know, as I testified earlier,
24 we made the assumption that the people who took this company
25 over would be attempting to run it well.

1 Q The other of the two numbers. Right, the total amount
2 of the claims, would that mean just utilizing the amounts
3 outlined in the proofs of claim?

4 A No.

5 Q Why not?

6 A Because, you know, many proofs of claim may be
7 disallowed and many proofs of claim may be allowed in less
8 than their face amount.

9 Q Mr. Dundon, do you know if the UCC received input from
10 creditors outside the Committee during this bankruptcy case?

11 A It did.

12 Q Does that include pro se claimants?

13 A Yes.

14 Q Does that include incarcerated creditors?

15 A Yes.

16 Q Do you know if the UCC received input from creditors
17 counsel outside the Committee during this case?

18 A It did.

19 Q How do you know that?

20 A Some of that contact came through me. Some of that
21 contact I learned about in discussions among Committee
22 members and Committee professionals.

23 Q And in what form did that come in?

24 A I think it came in in all different media, phone
25 calls, emails, in person conversations in this courtroom and

1 the hallways outside this courtroom.

2 Q Was Mr. Ian Cross one such counsel?

3 A I understand so, yes.

4 Q Okay, did the UCC consider Mr. Cross's input and
5 information about his client's cases in Michigan during that
6 process?

7 A Yes.

8 Q In what way?

9 A I think, you know, it was discussed among the
10 Committee. There were various analyses and considerations
11 made.

12 Q And you've heard the discussion of we'll call it the
13 Kelly case? You're aware of that case?

14 A I have.

15 Q Did the UCC review that opinion that was entered in
16 Mr. Cross's case on behalf of William Kelly?

17 A It did.

18 Q What way did the UCC place on that opinion in
19 evaluating successor liability?

20 A Not very much.

21 Q Why not?

22 A I think the UCC's view was that it was a kind of a --

23 MR. MOXLEY: Objection, Your Honor, this
24 definitely calls for (indiscernible).

25 THE COURT: Overruled.

1 THE WITNESS: So, I think it's the UCC's view,
2 not necessarily, the UCC's view that it was a procedural and
3 preliminary decision that didn't or has not yet given rise
4 to any award of judgment or any final or definitive decision
5 that would imply that there was successor liability.

6 BY MR. ZLUTICKY:

7 Q Has the UCC analyzed the proofs of claim in this case?

8 A Yes.

9 Q In what way?

10 A The proofs of claim register was reviewed and analyzed
11 across a number of dimensions.

12 Q What kind of things were you looking for when
13 analyzing the purser claim?

14 A We were looking for who the claimants were, what they
15 were making claims for, the amounts they were asserting if
16 they were asserting any amounts, whether or not they were
17 represented by counsel, who else might be on the hook for
18 the liabilities, insurers, co-defendants.

19 Q Why did the UCC do that analysis?

20 A Important for framing an overall strategy and working
21 on a plan and other things in the management of the case.

22 Q And is that work that Dundon advisors did alone?

23 A No.

24 Q Who else worked on that process with Dundon?

25 A You and your partners, Committee counsel.

1 Q You mentioned one of the things the UCC looked for is
2 whether claimants were pro se; how did the Committee do
3 that?

4 A There are a number of indicia on a proof of claim that
5 that somebody has counsel. You know, claims can be a box
6 check on the signature block there are contact information,
7 notices of appearance.

8 Q Why was that important for the UCC to understand?

9 A I think the UCC has a view that the pro se claims are
10 more likely to be disallowed or allowed in lower amounts
11 than represented claims.

12 Q Is one of the things the UCC looked for, whether
13 certain creditors were currently incarcerated.

14 A Yes.

15 Q As of the bar date, right?

16 A Yes.

17 Q How did the UCC do that?

18 A Primarily through the return address. So, there's kind
19 of a distinctive formula with, with prisoner numbers that
20 that has to be put, and they often will list it. Prison
21 facility has the address.

22 MR. ZLUTICKY: Your Honor, I was thinking if we
23 could maybe take a five-minute break. I think I do have
24 some things I can cut out of my direct to shorten it up
25 considerably.

1 THE COURT: Okay, sure.

2 All right, it's 6:53; why don't we just say 7:00?

3 MR. ZLUTICKY: That sounds good.

4 Thank you so much, Your Honor.

5 THE CLERK: All rise.

6 (Recess taken from 6:53 p.m. to 7:01 p.m.)

7 THE CLERK: All rise.

8 THE COURT: All righty.

9 MR. ZLUTICKY: Thank you very much for the break,
10 Your Honor. I was able to, I think, cut things down so we
11 can get on.

12 THE COURT: Okay.

13 MR. ZLUTICKY: I barely have another 5 to 10
14 minutes.

15 THE COURT: Okay.

16 DIRECT EXAMINATION (CONT'D)

17 BY MR. ZLUTICKY:

18 Q Mr. Dundon, you're familiar with the settlement that's
19 the subject of the Rule 9019 motion; is that right?

20 A I am.

21 Q And I don't want to belabor the point because we've
22 already been over this with Mr. Barton, but under the
23 settlement, does the Debtor's estate give up the remaining
24 assets it owns, like employee retention tax credits, and
25 other causes of action?

1 A It does not.

2 Q Does the Debtor also have other avoidance actions
3 against non-settlement parties that it can pursue in this
4 case?

5 A It does.

6 Q Can you give me an example?

7 A Probably the most interesting are against the former
8 owner of the company, the Plaxford (phonetic).

9 Q So in addition to the money from the settlement, there
10 is potentially more money coming in in the form of tax
11 credits and avoidance actions; is that right?

12 A Yes.

13 Q Does that factor in any insurance money that might be
14 paid by insurers to the estate?

15 A No, that's even more money that might come in.

16 Q Does that factor in any insurance money that may be
17 paid to creditors who have covered claims?

18 A It does not.

19 Q Does the settlement impact creditor's rights as to the
20 Debtor's insurance?

21 A No.

22 Q Have you reviewed information regarding the Debtor's
23 professional liability insurance policies in this case?

24 A I believe I have or someone on my team has.

25 Q Do some creditors have other sources of recovery

1 outside of estate funds and insurance?

2 A They do.

3 Q What would be an example of that source?

4 A So many of the personal injury creditors and perhaps
5 some of the commercial creditors have claims on what were
6 the Debtor's clients, the State and local Corrections
7 Departments.

8 Q So you're familiar with the claim of Latricia Revelle
9 (phonetic), one of the Committee members?

10 A Yes.

11 Q And she's represented in this case by Mr. Patterson,
12 who's in the courtroom today. Do you know if Ms. Revelle
13 has asserted a claim against anyone other than Corizon?

14 A Yes.

15 Q Okay. Was that the City of New York?

16 A Right, the Department of Corrections or both.

17 Q And that's an example of another potential source of
18 funds to pay a creditor for its injury?

19 A Yes.

20 Q Does the settlement take away or waive those recovery
21 sources?

22 A No.

23 Q If anyone has a direct claim against someone other than
24 the Debtor, is that claim being released under the
25 settlement?

1 A It is not.

2 Q Does the UCC believe the settlement is a fair result
3 for creditors?

4 A Yes.

5 Q Why?

6 A That taking into account all the risks and upsides and
7 downsides, it believed that the estate causes of action that
8 are being released are being released for fair
9 consideration.

10 Q And you're aware the the Official Committee of Tort
11 Claimants, the "TCC," has objected to the settlement motion,
12 right?

13 A Yes.

14 Q And are you aware that the TCC has also filed a motion
15 to dismiss this bankruptcy case?

16 A Yes.

17 Q Through your experience on the UCC, have you formed a
18 view on whether dismissing the bankruptcy case would be a
19 good result for all creditors?

20 A I have.

21 Q What is that view.

22 A I believe it would be a bad result for creditors.

23 Q Why is that?

24 A I think it would leave them with the need -- with a
25 causes of action against likely a badly administratively

1 insolvent state, and having to chase YesCare and a lot of
2 other settling parties in lots of courts all around the
3 country for a long amount of time with a very uncertain
4 result.

5 Q And the UCC has opposed the motion to dismiss; is that
6 right?

7 A It has.

8 Q Did the UCC take into account what would happen to
9 pro se claimants if this case were dismissed when opposing
10 the motion to dismiss?

11 A I believe it did.

12 Q And what would happen?

13 A Nothing good.

14 Q Why is that?

15 A As I said, I think they would be in the position where
16 the claims they have against Tehum would likely receive no
17 recovery due to Tehum not having any money or ability to get
18 money or any businesses. And then they would basing the
19 need to chase YesCare and other Defendants, as I said, all
20 around the country, you know, for a long amount of time with
21 a very uncertain result, none of which a pro se claimant is
22 going to be in a position to do with any likely success.

23 Q And you're aware that over 100 claims filed in this
24 case are from pro se claimants?

25 A Yes. That's what the Committee's claims analysis

1 implies.

2 MR. ZLUTICKY: Your Honor, I pass the witness.

3 THE COURT: Okay. Thank you.

4 Let's go to cross-examination -- oh, I should say,
5 Mr. Kaufman, do you have any questions?

6 MR. KAUFMAN: Mr. Zluticky handled it just fine.

7 THE COURT: Okay. Any more? Anybody else have
8 direct questioning supports the motion?

9 (No audible response.)

10 THE COURT: Okay. Let's get to Cross.

11 MR. MOXLEY: Thank you, Your Honor. For the
12 Record, Cameron Moxley of Brown Rudnick for the TCC.

13 CROSS-EXAMINATION

14 BY MR. MOXLEY:

15 Q Good evening, Mr. Dundon.

16 A Good evening to you.

17 Q Mr. Dundon, you and I had a chance to meet before.
18 It's nice to see you, sir.

19 A Good to you see you again.

20 Do you have any binders for me?

21 Q Thank you. Thank you, sir.

22 A I have a bunch of binders.

23 Q Yes. I have it right here.

24 THE COURT: I haven't seen anyone just ask for
25 one, you know?

1 (Laughter)

2 THE WITNESS: I spoke. I wasn't sure. I've got a
3 lot in front of me.

4 MR. MOXLEY: May I approach, Your Honor.

5 THE COURT: Absolutely.

6 Yes, I have one, thank you.

7 BY MR. MOXLEY:

8 Q Okay. Mr. Dundon, you did not submit a written report
9 in this case, correct?

10 A Yes.

11 Q Were you asked to prepare a written report?

12 A No.

13 Q I believe you testified on Direct that the UCC
14 concluded that the value of the assets that went to YesCare
15 as a result of the divisional merger was somewhere between
16 zero and \$75 million, right?

17 A The market multiple analysis supported a range like
18 that.

19 Q Okay. When I asked you at your deposition of whether
20 or not Dundon Advisors has a writing of its market multiple
21 analysis, you were instructed not to answer that question,
22 right?

23 A I don't recall.

24 Q In your binder, sir, at Tab 1, there's your deposition
25 transcript. If you could just turn with me, please, to

1 Page 75 of that?

2 A Okay. I'm there.

3 Q And if you're on Page 75 now, sir, look with me at
4 Line 8.

5 A Okay.

6 Q See, I asked you, "Does Dundon Advisors have any
7 writing that sets forth its market multiple valuation
8 analysis." And you see Mr. Zluticky instructed you not to
9 answer the question and Mr. Kaufman for the Debtor joined
10 the objection and the instruction.

11 Do you see that?

12 A I do see that.

13 Q Okay. You were also instructed not to answer my
14 question at deposition of whether or not Dundon Advisors has
15 a writing of the DCF analysis, correct?

16 A I don't know.

17 Q Okay. Let's just check that quickly at Page 79 of your
18 deposition transcript.

19 A Yes.

20 Q And if you'd look with me at Line 14 on Page 79?

21 A Uh-huh.

22 Q You see I said -- I asked you, "Is Dundon Advisors DCF
23 analysis set forth in a writing?" You were again instructed
24 not to answer.

25 Do you see that?

1 A I do.

2 Q Okay. It's your impression, Mr. Dundon that the UCC
3 developed a general view of value of the avoidance actions,
4 but not a specific dollar figure value, right?

5 A In the aggregate, yes.

6 Q Now switching gears for a second, sir, the UCC does not
7 consider the purported assumption of secured debt by CHS
8 Texas, Inc., to have been of any value to Tehum Care
9 Services, the Debtor, because the UCC considers that debt to
10 have been equitized before the divisional merger occurred,
11 right?

12 A That was my testimony.

13 Q And when I asked you at your deposition what the basis
14 for the view is, you were cautioned not to reveal privileged
15 or mediation information and under those circumstances you
16 testified you couldn't answer my question; is that right?

17 A I recall.

18 Q Do you recall that?

19 A Yes.

20 Q Okay. You're not aware, Mr. Dundon, of the UCC
21 allocating any particular portion of the \$54 million
22 settlement amount toward the potential avoidance actions
23 arising from the divisional merger, right?

24 A Yes.

25 Q And Dundon Advisors ascribed no weight to FTI's letter

1 concerning the divisional merger transaction because
2 of -- what I think your view was -- of it's erroneous
3 assumptions, right?

4 A I think our view was that it wasn't reliable.

5 Q And it wasn't reliable because you thought there were
6 erroneous assumptions made in it, correct?

7 A Yes.

8 Q Okay. And you believe FTI's analysis wasn't reliable
9 because -- I think you said the most important concern you
10 had was that FTI had assumed that the purportedly assumed
11 debt of 100 million was valid and enforceable as secured
12 debt, and you disagreed with that, right?

13 A I don't know exactly how FTI put it, but as a general
14 matter, that appeared to be the case.

15 Q And you disagreed with that, correct?

16 A Yes.

17 Q At your deposition, you didn't think you could tell me
18 why you disagreed with that, though, without invading
19 attorney/client privilege, right?

20 A If you say I said that, I'm sure you're right.

21 Q Well, let's just check it to be sure. I don't want you
22 to be uncomfortable with it, sir. Let's turn to Page 104 of
23 your deposition transcript for the Record.

24 A Okay.

25 MR. MOXLEY: And Your Honor, I'll just note for

1 the Record that Mr. Dundon's transcript for identification
2 purposes is at TCC Exhibit 1.4.

3 THE COURT: Thank you.

4 BY MR. MOXLEY:

5 Q Mr. Dundon, if you're at Page 104 of your transcript,
6 do you see that beginning at Line -- sorry.

7 (Pause in the proceedings.)

8 BY MR. MOXLEY:

9 Q Yeah, if you look at -- sorry, if you look at Page 105.
10 I apologize, at Line 3. See my question to you was: "Okay.
11 So you mentioned that FTI assumes that the purportedly
12 assumed debt of \$100 million was valid and enforceable as
13 secured debt as an erroneous assumption. Were there any
14 other erroneous assumptions that you identified in FTI's
15 opinion?" There was an instruction or a caution and you
16 said you couldn't answer that question without invading
17 those privileges.

18 Do you see that?

19 A I do.

20 Q And then my next question to you at the bottom of
21 Page 105 was, "Mr. Dundon, why was the debt unenforceable?"
22 And you had -- you received the same cautions from counsel,
23 and your answer at Line 20 on Page 106 was, "I cannot answer
24 the question without invading those privileges."

25 Do you see that?

1 A Yes.

2 Q Now Mr. Dundon, on Direct Examination just now you
3 testified that you are familiar with -- strike that, sorry.
4 Just a second.

5 (Pause in the proceedings.)

6 MR. MOXLEY: I apologize, Mr. Dundon. I'll ask
7 you a new question, sir.

8 THE WITNESS: Okay.

9 BY MR. MOXLEY:

10 Q On Direct you testified that the UCC investigated
11 breach of fiduciary duty, and you were involved in that
12 investigation, correct?

13 A Yes.

14 Q Okay. Have you read Mr. Atkinson's Declaration?

15 A I have.

16 Q Did your investigation into breach of fiduciary duty
17 issues reveal that Corizon Health executives set up YesCare
18 Corp. and several of its operating subsidiaries, including
19 CHS Alabama, LLC, and CHS Arizona, LLC, in the months
20 leading up to the closing of the divisional merger?

21 A I don't know that our investigations revealed it, but I
22 became aware of it.

23 Q When did you become aware of that?

24 A I couldn't tell you.

25 Q Did you become aware of it when you read Mr. Atkinson's

1 Declaration?

2 A No, before.

3 Q Before that?

4 A Yes.

5 Q Did you become aware of it before the Rule 9019 motion
6 was filed?

7 A I believe I was aware of it at or before the mediation,
8 so at least one of them.

9 Q But those facts that your investigation revealed, they
10 weren't referenced in the Rule 9019 motion, were they?

11 A I don't have the 9019 motion in front of me, but so I
12 don't know if they were or were not.

13 Q Okay. Did your investigation reveal that Corizon Health
14 executives, including CEO Sarah Tershwell (phonetic), CLO
15 Scott King, and others were already pitching new RFPs under
16 at least two of those entities, CHS Alabama and CHS Arizona,
17 before the divisional merger took place?

18 A So I was aware that activity of that sort was
19 happening.

20 Q And you learned about that at the same time frame
21 before the mediation?

22 A I believe so, yes.

23 Q Were you aware that from your investigation, that
24 Corizon executives pitched the CHS entities of being
25 comprised of former Corizon Health clinical and

1 administrative employees before the divisional merger?

2 A I don't know at that level of particularity what I was
3 aware of.

4 Q In your view with the projections, the financial
5 projections that you reviewed in this case, did they take
6 into account the Alabama contract that you testified about
7 on Direct?

8 A I don't know that I reviewed any financial projections.

9 Q Okay. Did you review any financial statements at all
10 that took into account the Alabama contract that you
11 testified about on Direct?

12 A No.

13 Q Did you receive any YesCare financial statements,
14 audited or unaudited, after February of 2023?

15 A I do not believe I did.

16 Q Are you aware -- well, let me ask you: Were you in the
17 courtroom today when Mr. Barton testified?

18 A No.

19 Q Are you aware that Mr. Barton -- you know who he is,
20 yes?

21 A Yes.

22 Q Okay. Are you aware that Mr. Barton testified that he
23 does not trust the SK or the M2 parties?

24 A I don't know what he's testified to.

25 Q Okay. Has he ever talked to you about that?

1 A It's fair to say he's not a fan of them.

2 Q Okay. Okay. And are you aware that the reason that --
3 one of the reasons that Mr. Barton is not a fan of them is
4 because he has seen their fraudulent transfers and seen them
5 hide money from creditors?

6 A I don't want to characterize why he thinks what he
7 thinks.

8 Q Okay. Do you have -- do you know -- as a matter of
9 fact, do you know what informs his view that he's not a fan
10 of them?

11 MR. ZLUTICKY: Objection, Your Honor. He just
12 said he doesn't know and doesn't want to characterize what
13 other people think. This calls for speculation.

14 THE COURT: Overruled, he can answer if he knows.

15 THE WITNESS: I think he's had a lot of -- he and
16 his client or his employer had a lot of unpleasant dealings
17 with them.

18 BY MR. MOXLEY:

19 Q And the nature of those unpleasant dealings has to do
20 with fraudulent transfers and hiding money from creditors,
21 right?

22 A Among other things perhaps.

23 Q Do you disagree with Mr. Barton's view as to the
24 trustworthiness of YesCare and the M2 parties?

25 A I would say I have a very different experience of them,

1 so I don't know that my opinions can be compared to his
2 opinions.

3 Q Okay. I appreciate that answer.

4 I think my question was slightly different, though, so
5 I'm just going to reask my question, sir.

6 My question is: Do you disagree with Mr. Barton about
7 the trustworthiness of Mr. Lefkowitz and the M2 parties?

8 A I've not been -- I don't have an opinion. That's not
9 what I've been called to think about.

10 Q Okay. In your dealings with them, and in light of what
11 you have learned from your investigation, do you think
12 Mr. Lefkowitz and the M2 parties are trustworthy?

13 A I have worked -- I don't feel I need to trust them, so
14 I don't have an opinion that they are or are not
15 trustworthy. I'm trying to not make decisions that require
16 me to have such a deal.

17 Q Okay. You relied on financial information they
18 provided you, though, correct?

19 A Relied on financial information the Debtors'
20 professionals provided to us.

21 Q And you only had unaudited financial statements from
22 YesCare, correct?

23 A That's correct.

24 Q And none of those financial statements for the period
25 after 2019 were audited by an independent party, right?

1 A I don't recall seeing any audited opinions.

2 Q You testified near the end of your Direct Examination
3 by the UCC's counsel that you are familiar with the
4 settlement that is the subject of the Rule 9019 motion,
5 right?

6 A I believe I did.

7 Q Okay. What is the form of proposed Order on the
8 Rule 9019 motion that the Court is asked to rule on?

9 A I don't know that I understand that question.

10 Q Okay. Is the form of the Order that the UCC seeks the
11 Court to rule on, the form of Order that was filed with the
12 Rule 9019 motion on January 16th?

13 A No.

14 Q Is the form of Order that the UCC asked the Court to
15 rule on, the form of Order that was filed on March 5th?

16 A I don't know.

17 Q Is the form of Order that the UCC is asking the Court
18 to rule on in any way modified by the verbal proposal made
19 by counsel to the settling parties in court on Monday?

20 A I was not in court on Monday.

21 Q Do you know anything about that?

22 A I am aware that there's been some changes to the --
23 when the cash portion of the settlement is to be paid.

24 Q Are there any other changes that you're aware of?

25 A I don't know.

1 Q Have you seen the new proposed form of Order that was
2 filed on March 5th?

3 A I believe I saw that, yes.

4 Q Okay. Is it your understanding that the UCC has voted
5 to approve the March 5th form of Order?

6 MR. ZLUTICKY: Your Honor, I'm going to object.
7 The witness said he didn't know how the March 5th Order.

8 THE COURT: If he can stipulate to that, then that
9 answers the question for me.

10 Do you have any more?

11 MR. MOXLEY: I thought he -- maybe I
12 misunderstood, so let me ask him another question, Your
13 Honor?

14 THE COURT: Sure.

15 BY MR. MOXLEY:

16 Q Mr. Dundon, I'm not trying to trick you. I thought you
17 testified that you were not aware of whether or not the --
18 you know what? Let me just -- sorry.

19 My question is a simple one, sir. Do you know what
20 form of proposed Order the Court is being asked to rule on
21 on this Rule 9019 motion?

22 A I believe I understand the substance of what we're
23 asking the Court to approve.

24 Q Okay. The substance. My question is do you know what
25 form of Order, what writing is the Court asked to rule on?

1 A I think I have a general awareness, but I'm not one of
2 the Committee's lawyers.

3 Q Okay. You just don't know?

4 A I know from a business perspective what I believe our
5 clients are asking the Court to do and why.

6 Q Okay. Are you aware of whether or not there is the
7 possibility that the UCC and the Debtor may propose a new
8 proposed form of Order that is in any way different from the
9 proposed form of Order that was filed on March 5th?

10 A Anything is possible.

11 Q Are there current discussions ongoing with respect to
12 the new proposed form of Order?

13 A As I said, I'm aware that there are discussions about
14 when the cash is to be funded.

15 Q There are active discussions going on about that right
16 now?

17 A I don't know. I know that there has been evolution of
18 that.

19 Q And is it your understanding that that evolution has
20 now ended or is it continuing to evolve?

21 A I believe that the Committee supports a concept
22 about -- so it's -- I think there is a handshake or there is
23 an agreement, but once again, I'm not -- that's not
24 my -- it's specific things where the lawyers are, is not my
25 domain.

1 Q All right. So as you sit here today, you can't point
2 the Court to the specific proposed Order that the UCC is
3 asking the Court to approve; is that correct?

4 A Perhaps.

5 MR. MOXLEY: Okay. Your Honor, may I step away
6 for just a moment?

7 THE COURT: Of course.

8 (Pause in the proceedings.)

9 MR. MOXLEY: Mr. Dundon, thank you for your time.
10 I have no further questions.

11 THE COURT: Okay. Any -- let me ask anyone who
12 opposes the motion have any questions for this witness -- or
13 I should say the 9019?

14 (No audible response.)

15 THE COURT: Okay. Any Redirect?

16 REDIRECT EXAMINATION

17 BY MR. ZLUTICKY:

18 Q Mr. Dundon, you were asked about the recharacterization
19 of the M2 LoanCo debt to Equity. Do you recall that in your
20 cross-examination?

21 A I do.

22 Q Did the Stinson firm analyze that issue?

23 A I believe you did, yes.

24 Q Okay. Was the Dundon firm the one in charge of that
25 analysis?

1 A No. That was for the lawyers. Recharacterization as
2 equity is often a legal issue, yes.

3 MR. ZLUTICKY: No further questions, Your Honor.
4 Thank you.

5 THE COURT: Any other questions?

6 MR. MOXLEY: Your Honor, I have no further
7 questions.

8 After the witness steps down, we do have some
9 housekeeping.

10 THE COURT: Okay. Mr. Dundon, thank you very much
11 for your time.

12 THE WITNESS: Thank you, Your Honor.

13 (Witness steps down.)

14 THE COURT: Okay. Let me just ask: Does any
15 other side have any other witnesses for tonight to present?

16 Just in terms of witnesses.

17 MR. MOXLEY: Your Honor, we have no other
18 witnesses, but we don't want to close just yet until we do
19 those --

20 THE COURT: No, no, no, I got it. No, no. I'm
21 just talking is there anyone else we're putting on the stand
22 tonight? That's what I'm trying to figure out.

23 MR. ZLUTICKY: Not from the UCC, Your Honor.

24 THE COURT: Okay. In terms of --

25 MR. KAUFMAN: Not from the Debtor either.

1 THE COURT: I know there's a sprout issue, I
2 think, or a couple of designations that I should consider?

3 MR. ZLUTICKY: Yes, Judge.

4 THE COURT: Okay. Why don't we talk about those
5 then we'll talk housekeeping.

6 MR. ZLUTICKY: Okay, very good.

7 THE COURT: I don't want anyone to read into them.
8 If the parties agree to it, you can just tell me what they
9 are and I can read them.

10 MR. ZLUTICKY: Well, Your Honor -- sorry, go
11 ahead.

12 MS. MEYERS: Your Honor, the deposition
13 designations for Mr. Sprouse were included in our Amended
14 Witness List. Well, it was in our initial Exhibit List and
15 is in our Amended Witness and Exhibit List on -- at Docket
16 1428.

17 THE COURT: 1428.

18 MS. MEYERS: And Mr. --

19 THE COURT: Do you know what exhibit number it was
20 or 1428-dash -- I can find it but just so we're clean.

21 MS. MEYERS: We can identify that for you, Your
22 Honor.

23 THE COURT: Okay.

24 MS. MEYERS: I just want to clarify. So we are
25 only moving in Mr. Sprouse's designations, which begin on

1 Page 8. We had designated Mr. Lefkowitz' testimony in the
2 event he didn't show up, but we're not moving that.

3 THE COURT: All right.

4 MR. ZLUTICKY: As far as deposition designations,
5 there's been no evidence that YesCare witnesses unable to
6 appear, so we would object to designating YesCare's
7 testimony without some indication or some foundation to use
8 deposition transcripts is here.

9 MS. MEYERS: Your Honor, our understanding is
10 YesCare is based in Tennessee and would be outside the
11 subpoena power of this Court. We couldn't compel them to
12 show up here.

13 MR. ZLUTICKY: It's still the burden of the moving
14 party to demonstrate some inability of that witness to be
15 here today or inability to subpoena that witness. There's
16 just no foundation for that.

17 MS. MEYERS: Yeah, Your Honor, the inability to
18 subpoena the witness to appear at trial is the fact that
19 they are based in Tennessee and a subpoena to show up at a
20 court in Texas would be --

21 THE COURT: Outside of my --

22 MS. MEYERS: -- unenforceable.

23 THE COURT: I'll it under consideration.

24 What I want to know is when looking at the entire
25 and you designating -- or you're just the depo designations

1 that you have a 11428 dash -- you're going to give me a
2 number, right?

3 MS. MEYERS: We have not -- we're not moving in
4 the entire transcript. We have designated specific
5 portions, which are listed.

6 THE COURT: That's right. And that's what's
7 listed at the 1428 exhibit?

8 MS. MEYERS: Yes.

9 THE COURT: All righty.

10 MS. MEYERS: It is starting on Page 8 and it goes
11 on from there.

12 THE COURT: But do you know what -- it's 1428 dash
13 -- or is it that document 1428 itself?

14 MS. MEYERS: The Docket 1428 is our Exhibit List
15 and Witness List and we list out the designations in there.
16 I can get back to Your Honor about the --

17 THE COURT: Ah, okay. No, no, no, no, no, that's
18 perfect, that's perfect, okay.

19 MS. MEYERS: -- the transcript.

20 THE COURT: Thank you. I will take that.

21 MR. KAUFMAN: I'm so sorry, Your Honor. The
22 deposition transcript is for identification purposes at
23 TCC 343.

24 THE COURT: Got it.

25 MR. ZLUTICKY: And Your Honor, we would just -- we

1 made some objections in those excerpts. We want to preserve
2 those.

3 THE COURT: Yep. They're going to -- absolutely.

4 MR. ZLUTICKY: We'd also want an opportunity to
5 counter-designate since we didn't know that this was going
6 to be the issue. We understood that there would be some
7 foundational evidence of why YesCare couldn't be here and
8 there's not.

9 So to the extent the Court does want to consider,
10 will consider the designations, we would want an opportunity
11 to counter designate --

12 MS. MEYERS: Your Honor?

13 MR. ZLUTICKY: -- as I would imagine YesCare
14 would, as well.

15 THE COURT: YesCare is not going to do anything
16 because they're not here. They're not going to -- they're
17 not here to talk. They can speak for themselves.

18 MR. ZLUTICKY: Ms. Hayward was here, as Your Honor
19 recalls. She's unable to be here right now.

20 MS. MEYERS: Your Honor?

21 (Automatic announcement.)

22 MS. MEYERS: Your Honor, if I may briefly? I
23 apologize.

24 We included Mr. Sprouse's designations.

25 THE COURT: Yeah, I know. It's on the Witness and

1 Exhibit List. So if anybody wanted to counter designate,
2 they could counter designate --

3 MS. MEYERS: Thank you, yes.

4 THE COURT: -- based on that, so.

5 Here's what I'm going to -- let me just ask -- and
6 I'll take that under advisement. I'm going to go back and
7 read it and go over everything.

8 And I consider the evidentiary record closed.

9 MS. MEYERS: I have an additional housekeeping
10 issue on that point, Your Honor, if I may?

11 THE COURT: Okay.

12 MS. MEYERS: And just so opposing counsel is
13 aware, early in the proceeding they had identified a list of
14 exhibits that they were willing to stipulate to their
15 admission. Some of those we had listed and others we wanted
16 to see how the evidence came in and I was hoping to identify
17 a number of other exhibits we'd like to move in, based off
18 of our understanding that Debtors and the UCC did not have
19 an objection to those exhibits.

20 THE COURT: Have you-all conferred about this?

21 MR. ZLUTICKY: Not since the hearing started, no.

22 THE COURT: I'll give you a couple minutes just to
23 confer so we know what's there.

24 MS. MEYERS: Okay.

25 THE COURT: But here's what I will tell everyone

1 and you can think about this, too.

2 I'll step off for a few minutes. I can give
3 everyone an opportunity to close now. I'm not ruling
4 tonight. I'm going to take all this under advisement. It's
5 probably going to take me seven to ten days. I'm going to
6 read it on the Record. I'm not going to go back.

7 I don't want to give you a date, but it'll be
8 somewhere within the next seven to ten days to kind of -- so
9 you're looking -- I don't know, seven to ten days. I don't
10 want to do the math now, but at the time it makes sense.

11 And I'm just -- people can come back in person,
12 fine. I'm just going to read it into the Record all at one
13 time. So you can figure out whether you want to do closing
14 now or if you want to pick a time tomorrow, or -- well,
15 tomorrow would be the time. And if you want to go now, you
16 can go now. If somebody wants time to kind of organize
17 their thoughts, but if not, we're just going to go thirty
18 minutes straight up each side and then we'll be done.

19 MR. ZLUTICKY: The Debtor is ready to close. I
20 think we'd all like to close tonight. If we need to confer
21 very quickly so we can close the evidentiary record.

22 THE COURT: Okay. I'll give you five minutes,
23 then we'll go.

24 MS. MEYERS: Thank you, Your Honor.

25 THE CLERK: All rise.

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(Recess taken from 7:32 p.m. to 7:38 p.m.)

THE COURT: Counsel.

MS. MEYERS: I just conferred with Mr. Kaufman to confirm that Debtors and UCC were in agreement on the following exhibits. And so --

THE COURT: All right.

MS. MEYERS: -- I would like to move in, to the extent it's not already in, TCC 132, TCC 133, TCC, 136, --

THE COURT: Okay.

MS. MEYERS: -- TCC 137, TCC 143, --

THE COURT: Okay.

MS. MEYERS: -- TCC 156, --

THE COURT: Okay.

MS. MEYERS: -- TCC 159, --

THE COURT: Okay.

MS. MEYERS: -- TCC 160 and 161 -- yes?

MR. SPEAKER: Your Honor, can I take a picture of this in the courtroom?

THE COURT: When she's done. Don't --

MR. SPEAKER: Oh, when she's done.

THE COURT: Yeah.

MS. MEYERS: TCC 164, TCC 184, TCC 185, --

THE COURT: You can just give me the numbers.

MS. MEYERS: All right, 186, 187, 206, 207, 208, 209, 210, I believe 229 is already in evidence, but if not,

1 229.

2 And then I think we're moving on to the
3 confidential exhibits here which are 238, 239, and 239-A,
4 which I believe is the --

5 THE COURT: Yeah.

6 MS. MEYERS: -- native, 240 and 240-A, 241, 243,
7 244, 245, 246, 247, 248, 249, 250, 251, 308, 309, 310, 311,
8 312, 313, 314, and 315.

9 And I have the native files on a drive if I may
10 approach.

11 THE COURT: Yes, please, so long as it's only --
12 okay, any other exhibits?

13 MR. SPEAKER: No.

14 THE COURT: Okay. Can I consider the evidentiary
15 record closed?

16 MR. KAUFMAN: Yes, Your Honor, from the Debtor.

17 THE COURT: Okay. UCC.

18 MR. HEMENWAY: Yes, Your Honor.

19 THE COURT: Tort claims Committee.

20 MS. MEYERS: Yes.

21 THE COURT: Okay. The Record is now officially
22 closed. Let's go right to closing. Let me get my timer
23 out.

24 Do I need to give presenter roles to anyone or any
25 of that stuff before we go, Debtor's side?

1 (No audible response.)

2 Okay. Ready whenever you are.

3 CLOSING

4 BY MR. BROOKNER: Just press start. Good evening,
5 Your Honor, Jason Brookner as you know from Gray Reed for
6 the Debtor.

7 I had my whole closing prewritten before Monday.
8 And then it changed. It rewrote itself because particularly
9 one question and one answer that brought out everything that
10 the Debtor and the UCC have believed up until now.

11 And this one answer and one question prove,
12 without question, without doubt, that the TCC is doing
13 nothing other than blindly following a playbook that it's
14 used in other mass tort and divisional merger cases with no
15 independent analysis and no independent thought.

16 And here's the question and here's the answer from
17 Mr. Griffith's cross-examination. Your Honor asked him, and
18 I quote, as a fact witness here on behalf of the TCC, do you
19 have any perspective on what incarcerated pro se claimants
20 think about this settlement.

21 And the answer was, and I quote, I don't have that
22 answer.

23 So as the testimony on Monday made clear, Your
24 Honor, more than half of the TCC's constituents are
25 incarcerated pro se litigants.

1 Mr. Griffiths allegedly talked to three or four of
2 them but never asked any of them about the settlement, never
3 talked to any of them about the settlement.

4 He didn't know if anyone else had spoken to any of
5 the incarcerated pro se claimants about the settlement. And
6 he had no idea about any of their views.

7 He could not explain how or why the TCC came to
8 its conclusion that dismissal is in the creditors' best
9 interest or why the settlement should not be approved. But
10 wait, there's more.

11 Today's cross-examination of Mr. Atkinson made
12 several other very important things very clear.

13 First, he again confirmed that nobody had spoken
14 to any of the tort claimants.

15 Second, he clearly didn't offer any opinions on
16 whether dismissal is better for creditors than the
17 settlement.

18 Third, he didn't value the claims to be released
19 under the settlement.

20 Fourth, he could not opine on whether the proposed
21 settlement is good, bad, or otherwise.

22 Fifth, amazingly Province affirmatively chose not
23 to do the work. They didn't use the unaudited financials
24 with which they were provided to even attempt to come up
25 with a value for YesCare.

1 The TCC, Your Honor, has not done the work. In
2 fact, they affirmatively chose not to do the work.

3 The only thing the TCC has done in four months of
4 its existence is spend millions of dollars of creditors'
5 money to seek to dismiss a case that's nine months old at
6 the time they were appointed.

7 Now, think about that for a minute. Millions of
8 dollars have been spent in just four months after nine
9 months of investigations and negotiations simply because the
10 TCC reflexively doesn't like this settlement, but they can't
11 tell you why. And they can't validate why it's not a good
12 settlement.

13 The TCC was provided unquestionably, indisputably,
14 with hundreds of thousands of documents, over half a million
15 pages, immediately upon its formation in November of 2023.

16 But rather than hunker down, ask the hard
17 questions, meaningfully participate in the second mediation,
18 analyze the information that was provided in discovery to
19 the best of their ability, analyze the claims pool, ask for
20 more information, attempt to negotiate for a larger
21 settlement or for how the settlement proceed should be
22 divvied up, they did nothing but immediately focus all of
23 their efforts on dismissal, with zero substantive engagement
24 with the Debtor or the UCC on anything other than the
25 discovery pertaining to the motion to dismiss.

1 And the reality, Your Honor, is that the dismissal
2 effort started before the December mediation which -- with
3 Mr. Sontchi and before the TCC even authorized its counsel
4 to work on dismissal.

5 The fee statements clearly show that counsel
6 started preparing the motion to dismiss almost immediately
7 upon being hired. And, in fact, counsel was working on the
8 motion to dismiss while they were sitting in the mediation.

9 I find this personally, as a bankruptcy
10 professional and as counsel to the Debtor in this case, I
11 find this and the way things have unfolded in the last four
12 months to be astounding, a manifest waste of time and
13 resources. And it's all without any constructive dialogue.

14 And then we get to trial and what happens? Over
15 four full days, long days the TCC didn't produce one iota of
16 evidence as to why this settlement is not in creditors' best
17 interest or how dismissal is in creditors' best interest.

18 And, again, to repeat the phrase that I'm going to
19 -- you're going to hear from me over and over again in the
20 next 17 minutes, because they didn't do the work. They
21 didn't do the work.

22 And taken as a whole, Your Honor, the TCC has not
23 functioned in the way an official Committee should function.

24 It has instead acted as an intellectually
25 dishonest amalgamation of people who have now spent millions

1 of dollars in creditors' money for what's nothing more than
2 a public relations gambit. That's all that this has been.

3 Their pursuit of dismissal has nothing to do with
4 the TCC's constituents or what's in their best interest or
5 what's otherwise in the best interest of the creditor
6 constituency as a whole.

7 And they haven't done the work and, as a result,
8 they have been unable to meet their burden of proof.

9 And then on cross-examination Mr. Griffiths -- I'm
10 sorry, on direct examination, my mistake, on direct
11 Mr. Griffiths had the audacity to testify that the
12 settlement was not reached in good faith and that the
13 parties did not negotiate in good faith.

14 And you know what, Your Honor? He wasn't even in
15 the room. He wasn't at Fulbright's office in New York. He
16 was on the phone. He has no idea -- is this off on purpose?

17 Was I being too loud?

18 THE CLERK: Test it.

19 MR. BROOKNER: Okay. He has no idea what
20 happened, who was in the room, who came out of the room,
21 what was said in different rooms, or anything else.

22 And then during the cross-examination by
23 Mr. Lefkowitz, the TCC itself had the audacity to imply that
24 the only reason the Debtor and the UCC are pursuing approval
25 of this settlement is so that their professional fees can be

1 paid. We both know that neither of those things is true.

2 And I'll tell Your Honor I am personally
3 profoundly offended by that. Mr. Zluticky is profoundly
4 offended by that, that the TCC would come into this
5 courtroom without any evidence and callously and carelessly
6 throw around those kinds of allegations and make that kind
7 of innuendo about counsel, knowing full well that the public
8 is listening, that the press is on the line.

9 It's egregious. It's unprofessional. It's
10 detestable.

11 But if you take a step back and you look at what's
12 happened and you think about it, that's all they have.
13 That's all they have, because if the TCC had any real facts
14 or any real evidence, Your Honor, or any law in its favor
15 that supported its arguments, you would have heard it. But
16 you didn't.

17 And when you don't have the facts and you don't
18 have the law, you sling the mud. And that's all they have
19 done.

20 If anyone isn't acting in good faith here, if
21 anyone is not acting in good faith here, it's the TCC
22 because as we now know, they didn't do the work.

23 Let's contrast that, if you will, with the actions
24 a true fiduciary has taken in this case and how a true
25 fiduciary operates, and that's what the UCC in this case has

1 done.

2 They've done the work. They've done it. And that
3 was clear from Mr. Barton's testimony and Mr. Dundon's
4 testimony.

5 The UCC has thoughtfully and painstakingly
6 reviewed hundreds of thousands of pages of documents, taken
7 depositions, analyzed information, researched the law, asked
8 questions, talked to their own constituents, dug in and made
9 hard decisions based on the facts discovered and the law
10 that prevails.

11 They spent months getting after it. And did they
12 seek to dismiss? No. Why? Because facts matter, Your
13 Honor, facts matter.

14 And this case is distinguishable from every other
15 divisional merger case that's ever existed. The UCC
16 understood and continues to understand that the best path
17 forward for this case is reaching a value maximizing
18 consensual resolution, if possible, rather than incurring
19 the time and expense of nuclear war.

20 And as a result, the UCC came to mediation, a deal
21 was cut. And make no mistake about it, if no deal had been
22 cut, Mr. Zluticky and his team were ready to pull out the
23 litigation stops.

24 We then went back to another mediation for reasons
25 we're all familiar with, and we cut another deal. And here

1 we are.

2 And the UCC is compromised not just of trade
3 creditors, Your Honor, but also two personal injury
4 claimants who are both formally incarcerated individuals and
5 who are both pursuing claims on behalf of and alongside
6 additional incarcerated and formally incarcerated
7 individuals.

8 And collectively these plaintiffs have alleged
9 claims in excess of \$70 million.

10 The UCC and its professionals have -- and its
11 members have spoken to many of their constituents: trade
12 creditors, inmates, and others. Since the start of this
13 case they have had tons of calls and emails to and from
14 their constituents. And that includes pro se claimants.

15 If the UCC didn't believe the settlement was a
16 good deal, didn't think it was better than dismissal, and
17 otherwise thought there could be more and better recoveries
18 for constituents through alternate means, I promise you
19 Mr. Zluticky would have been here on a motion for derivative
20 standing or a motion to dismiss a long time ago.

21 The Debtor in the UCC, just as I told you on
22 opening, they want to put real dollars into the pockets of
23 real people. And that's what this settlement will allow to
24 happen.

25 And the only impediment, Your Honor, the only

1 impediment to getting it done sooner rather than later,
2 assuming of course that you approve the deal, is the TCC.

3 Make no mistake about it and no -- you nor anyone
4 else should make any mistakes about it. It's the TCC that
5 will impede distributions to creditors.

6 It's the TCC that will impair and impede putting
7 monies into people's pockets; not the Debtor, not the UCC,
8 not the settling parties, and not anybody else.

9 So now taking a step back that I've gotten that
10 out of my system, let's look at what I told you at opening.
11 Let's track through what's happened at trial.

12 The first thing I told you when I opened was that
13 this was not a bad faith filing and it was not encouraged by
14 (indiscernible) to dismiss this case.

15 It's now clear that we're not talking about bad
16 faith filings anymore, only dealing with the merits of the
17 9019 motion and whether you should then dismiss if the
18 settlement's not approved.

19 Next I told you this was not a sub rosa plan
20 because the settlement doesn't impact individual claims,
21 doesn't preclude anyone's day in court, doesn't allocate
22 consideration among creditors or classes of claims, and that
23 all it does is bring value into the estate to be divvied up
24 pursuant to a plan that needs to be negotiated and filed
25 after Your Honor approves this settlement.

1 The evidence has unquestionably borne this out,
2 along with the modifications and clarifications that we made
3 to the settlement agreement, both in the March 5th amended
4 proposed form of order, as well as the announcement made on
5 the Record by Ms. Hayward on Monday.

6 It should now be clear there are no third party
7 releases, only the estate's claims are being settled and
8 released, and the settlement stands alone, divorced from the
9 plan process.

10 Once you approve the settlement, hopefully,
11 theoretically the DIP funding will come in. And once there
12 is a final non-appealable order on the settlement, the \$40
13 million settlement payment will be made.

14 And so on that note let's talk about
15 administrative insolvency because I know Your Honor's talked
16 about that, you want to hear about it.

17 The evidence is undisputed the Debtor has \$5
18 million in DIP funding coming in once you approve, \$2
19 million of which is already sitting in escrow. We can't use
20 it until you approve the settlement.

21 There are between ten and \$20 million in the RC
22 credits that we're waiting on. There's insurance money,
23 there's the \$40 million in cash coming from the settlement.
24 And then there's some miscellaneous what I'll call cat and
25 dog litigations that may be out there, couple of million

1 dollars worth.

2 You then asked about distributable value. We gave
3 you a demonstrative, which I can hand up again if you wish,
4 on Mr. Perry's direct examination showing a range of
5 distributable value between 49 and \$62 million.

6 How far that number goes down depends almost
7 entirely on the TCC, whether they appeal your order, how far
8 up they go, and whatever other things they want to do to
9 impede the progress of this Chapter 11 case.

10 But no matter what they do, there will be more
11 than enough cash from the sources that I just described to
12 cover administrative claims and make a distribution to
13 unsecured creditors.

14 On the law, the magisterial *Jackson Brewing* case,
15 the court evaluates three factors as you know: the
16 probability of success in the litigation with due
17 consideration for the uncertainty in the fact in the law,
18 the complexity and likely duration of the litigation and the
19 attendant expense, inconvenience, and delay, and "all other
20 factors bearing on the wisdom of the compromise."

21 The Court does not conduct a mini trial on the
22 merits. And when viewed it as a whole -- when viewed as a
23 whole, at this point it should be easy for the Court to
24 determine that these matters are complex, uncertain, time-
25 consuming, and expensive.

1 No court has issued anything close to a definitive
2 merits ruling on the Texas divisional merger statute,
3 whether a divisional merger is a fraudulent conveyance,
4 whether it can be invoided (sic), whether it could be
5 unwound.

6 We all know that there is significant uncertainty
7 in the law here. And the arguments and issues are novel,
8 complex. The litigation will unquestionably be time-
9 consuming and expensive. And the outcomes are all highly
10 uncertain.

11 And the same holds true even for the more
12 straightforward claims of avoiding potentially fraudulent
13 transfers, successor liability, veil piercing, alter ego,
14 et cetera. These are never easy claims to succeed on.
15 They're always time consuming, they're always expensive to
16 prosecute.

17 Mr. Lefkowitz was clear on his examination that he
18 and the potential litigation targets will fight. They're not
19 going down easy. They're not going down without a hard and
20 vigorous defense. They think they have good defenses.

21 And Mr. Lefkowitz's exact words were that if the
22 settlement agreement is not approved, and I quote, all Hell
23 breaks loose.

24 The TCC at some point also referenced a claim for
25 misappropriate of business opportunity which we didn't hear

1 about until the testimony started and they started crossing
2 Mr. Barton.

3 But that's nothing more than a claim for breach of
4 fiduciary duty, the flavor of which is either usurpation of
5 a corporate opportunity or breach of the duty of loyalty but
6 by implication that tracks along with the other claims
7 stemming from the divisional merger.

8 And the TCC hasn't produced any evidence to show
9 you that there's no complexity, that the outcomes are
10 certain, that the litigation won't be time consuming, or
11 that the litigation won't be painfully expensive.

12 You can just look at how much has been spent in
13 the last four months on nothing more than the motion to
14 dismiss. And you can multiply that in magnitudes as to what
15 this litigation will cost if it goes forward and how long it
16 will take.

17 We then have all other factors bearing on the
18 wisdom of the compromise, *Foster Mortgage*, which tells that
19 this catchall takes account of two things.

20 First, the prime interest of -- sorry, the
21 paramount interest of creditors with deference to their
22 reasonable views, and the extent to which the product -- the
23 settlement is the product of arm's length bargaining and not
24 fraud or collusion.

25 If we take the second piece of that first, there's

1 no question there was arm's length bargaining here. And
2 there was no fraud and there was no collusion.

3 The testimony is clear that there were two
4 mediations conducted by two different mediators with all
5 constituents represented by counsel.

6 The Debtor has a chief restructuring officer who's
7 been running the show since day one. And the UCC is an
8 independent fiduciary. This is not a case of the Debtor
9 cutting a deal with itself or the sole director cutting a
10 deal with himself. Hard bargains were driven.

11 And the Debtor's sole director and CRO both
12 testified how the CRO's been running the show from day one.
13 And he has not in any way been impeded in the exercise of
14 his fiduciary duty to maximize value.

15 All right, the settlement -- have to jump because
16 I've got to give Mr. Zluticky a chance here.

17 The settlement provides closure, it provides
18 definitiveness. It's a pot of money that can be distributed
19 in due course. Once a plan is confirmed, it's tangible,
20 real, now.

21 And the only inhibitor to the timing is the TCC
22 appealing. Denying the settlement and sending people back
23 to a freefall litigation is a mistake. It's the wrong thing
24 to do. It's the wrong thing at the wrong time.

25 I have a bunch more, Your Honor. I'm going to --

1 the last thing I'm going to say is the postscript is that we
2 also have the exclusivity in DIP financing motions that are
3 up for approval that need to be dealt with. And we would
4 respectfully submit both of those motions should be granted.

5 The evidentiary predicate for those has been
6 wrapped in with everything else. And the Debtors
7 respectfully submit that the burden of proof has been met
8 and that the evidence supports granting those two motions.

9 And I apologize to Mr. Zluticky for running a
10 little bit over my allotted time.

11 THE COURT: Thank you.

12 (Pause in the proceedings.)

13 CLOSING

14 BY MR. ZLUTICKY: Good evening, Your Honor. Nick
15 Zluticky for the Official Committee of Unsecured Creditors.

16 Your Honor, in the four days we've been here on
17 this motion, the Debtor and the Committee have shown by a
18 preponderance of the evidence that the settlement is a sound
19 exercise of the Debtor's business judgment, falls well
20 within the range of reasonableness of settlement of these
21 claims, and satisfies each of the factors set forth in
22 *Jackson Brewing and Foster Mortgage*.

23 This is a settlement that should be approved.

24 I want to talk about four things this evening.
25 First, I want to go through the money that will actually be

1 available to creditors in this case as a result of the
2 settlement.

3 Your Honor was focused on this in opening, and for
4 good reason. Creditors deserve to know how much the estate
5 is getting and when the creditors will be paid.

6 THE COURT: What settlement am I approving?

7 MR. ZLUTICKY: Your Honor, you're approving a
8 settlement of the estate's claims. It's a --

9 THE COURT: No, what I'm saying, which version of
10 it?

11 MR. ZLUTICKY: So, Your Honor, it's -- it has
12 admittedly evolved. It's the March 5th order. However,
13 Ms. Hayward made a comment --

14 THE COURT: How do I view that in light of -- I'm
15 just asking Dundon said he didn't know about it. Barton
16 said he didn't know about it. Lefkowitz said he hadn't
17 focused on it. So how do I focus on that being the order?
18 How do I know that that's the deal?

19 MR. ZLUTICKY: Well, Your Honor, the March --

20 THE COURT: I know that the Debtor supports it. I
21 don't know if the Committee supports it.

22 MR. ZLUTICKY: Your Honor, the Committee does
23 support it. They would not have --

24 THE COURT: Not what they testified to. Tell me
25 what witness testified that they had read it, focused on it,

1 and supported it.

2 MR. ZLUTICKY: Well, Mr. Barton said --

3 THE COURT: Just want you to know which one.

4 MR. ZLUTICKY: I understand. Mr. Barton did say
5 that he knew about the settlement change.

6 THE COURT: Not what I asked. Tell me how the --
7 does the Committee support it? What version am I approving?
8 That's what -- I just need to know what version am I
9 approving?

10 You're -- we're talking about -- and I'm not even
11 sure -- I've got questions for them, too. I'm not even sure
12 what to do with Ms. Haywood's statements when I'm not even
13 sure Mr. Lefkowitz spoke for all the M2 parties.

14 And I don't even think he knew who the -- what
15 they were doing towards the end. And I know he didn't
16 represent one of the Perigrove entities. It may have been
17 LLC. I'm not sure what to do with that.

18 MR. ZLUTICKY: Your Honor, --

19 THE COURT: Maybe I can say I'll approve it
20 subject to everything -- everyone coming back and coming
21 back and saying something. But I don't know what version
22 I'm approving.

23 I got questions for them -- I got one question for
24 them, too. But that's the question that I've got. And I
25 had to ask it to you because your folks -- one said they

1 didn't focus on it. The other one said he didn't know about
2 it until today.

3 MR. ZLUTICKY: Your Honor, the reason why
4 Mr. Barton didn't have all that information is because we
5 followed your instruction to the letter. We did not want to
6 talk about --

7 THE COURT: I got it.

8 MR. ZLUTICKY: -- the subject of his testimony.

9 THE COURT: I got it, no, I'm not faulting anyone.
10 I'm just saying how do I approve something that I'm not sure
11 the UCC has absolutely approved? I know what counsel's
12 telling me but --

13 MR. ZLUTICKY: Yeah.

14 THE COURT: -- the witnesses, and Barton
15 certainly, doesn't look like there's been a meeting to
16 approve the amended settlement.

17 I know that there's a signed deal. What do I do
18 with that? I mean, I can -- I don't need your approval. I
19 can approve it based on what the Debtor wants. But that's
20 the question. I'm -- what does the Committee support?

21 MR. ZLUTICKY: Your Honor, the Committee supports
22 each of the versions of this settlement that's been
23 announced, including the one that was filed on March the
24 5th.

25 We did not have an official meeting. We

1 circulated the redline to all of the members. They all had
2 opportunity to comment and review and approve it.

3 This Committee has approved that deal. I have kept
4 this Committee apprised every step of the way. Their --

5 THE COURT: Well I'm sure you have.

6 MR. ZLUTICKY: -- engagement level is high.

7 THE COURT: Okay.

8 MR. ZLUTICKY: And the Committee has absolutely
9 supported this deal, I promise on -- I am certain --

10 THE COURT: Okay.

11 MR. ZLUTICKY: -- that if the Court approves this
12 deal, the Committee has signed off on it.

13 THE COURT: Okay.

14 MR. ZLUTICKY: Your Honor, I also want to go
15 through the claims being settled and what's not being
16 settled. I want to walk through each category of the claims
17 that are being settled, what the evidence showed on the
18 viability and the value.

19 And then I want to discuss why the Committee
20 believes this settlement's in the best interest of
21 creditors.

22 THE COURT: Okay.

23 MR. ZLUTICKY: And so first let's talk about the
24 money. It's \$54 million to the estate.

25 In addition, DIP liens are forgiven, which means

1 employee retention credits of between 19 and 25 million and
2 other causes of action worth up to five million are realized
3 for the estate.

4 All tolled, after administrative expenses are
5 paid, which continue to grow every day admitted, we estimate
6 that between 55 and \$65 million will be available to
7 creditors.

8 This is not theoretical. It's not illusory. It's
9 millions of dollars that can be equitably distributed to
10 creditors who have been trying to chase down money for
11 years.

12 This money is real. It is to be paid to the
13 estate once the settlement is approved. And it will provide
14 a clear path to a meaningful recovery for creditors in this
15 case. That is a good outcome for all creditors. And it is
16 far better than the alternative that TCC proposes.

17 So let's go through what's being settled. The
18 testimony from the witnesses and the plain language of the
19 agreement are clear that the settlement covers only the
20 estate's claims against the settlement parties.

21 THE COURT: What do I do about the releases?

22 MR. ZLUTICKY: Your Honor, the releases are of the
23 estate's claims. The change on March 5th --

24 THE COURT: I'm talking about the extra folks, the
25 folks who no one's talked about for the last four days.

1 MR. ZLUTICKY: The parties that are in addition to
2 the M2 parties, Your Honor, they are getting a release under
3 this agreement of the estate's causes of action against
4 them.

5 THE COURT: Right.

6 MR. ZLUTICKY: And so as we go through what is
7 being settled and what's not, we'll discuss those claims and
8 what the viability and value of -- is of those claims.

9 THE COURT: Who valued those claims?

10 MR. ZLUTICKY: So the UCC did. We looked at all
11 of them. The problem --

12 THE COURT: That's what I'm saying.

13 MR. ZLUTICKY: -- is every -- yeah.

14 THE COURT: But I got a chart and I got a DCF. I
15 don't even know what the WAC is on the DCF, don't know what
16 the discount is, don't know how it got valued because no one
17 would provide that information.

18 That was -- so I don't know what the inputs are
19 for DCF, right, which can value -- I don't know what the
20 sensitivity analysis that was done for it, I don't know what
21 to do with that. I'm being honest.

22 That's why I was asking if folks wanted to think
23 about this stuff today. I don't know what to do with a DCF
24 where I haven't seen the input.

25 I certainly -- what Mr. Patterson is saying is

1 weighing heavy because it's practical, it's straight to it,
2 the value of the claims and what people considered with no
3 paperwork, right. I got it you thought about it.

4 The range of values that were given I think is
5 there. But I don't know what to do with that.

6 MR. ZLUTICKY: Well, the range of values to us
7 represents the upside, right. What do we get if we win?

8 And then you have to look at what are the risks
9 associated with pursuing them. And when you focus on those
10 risks, this settlement is a reasonable settlement that falls
11 within --

12 THE COURT: But it keeps changing, right? That's
13 the -- right, it keeps changing from I think what Judge
14 Sontchi negotiated was money comes in at confirmation
15 period.

16 Now it's money comes in, we take the opt-out out,
17 money comes in on a final order, subject to appeal, then it
18 now shifted to money comes in upon the final order approving
19 the 9019.

20 I -- believe me, I've got questions for the other
21 side. And I think Mr. Griffiths -- I've got questions about
22 that and that's coming so you don't have to worry about
23 that.

24 I just want to know -- I get the Debtor's
25 perspective, I get the Committee's perspective. It's the

1 math that troubles me.

2 I'm -- maybe it's just that's the most money we
3 were able to get in mediation and that -- we're going to put
4 real money in people's hands. And that's --

5 MR. ZLUTICKY: Well, --

6 THE COURT: -- certainly important for sure
7 because it certainly looks like not a whole lot of people
8 spoke to pro se litigants, which is really surprising.

9 MR. ZLUTICKY: Your Honor, I did. I mean, you
10 asked me to give out my direct dial office line at a hearing
11 months ago. I did.

12 THE COURT: Oh, no, I know.

13 MR. ZLUTICKY: I've spoken with dozens of pro se
14 litigants.

15 THE COURT: I'm talking about the tort claims
16 Committee. It's coming.

17 MR. ZLUTICKY: Your Honor, the basic terms of the
18 agreement have not changed. The prior --

19 THE COURT: That's not true.

20 MR. ZLUTICKY: -- version --

21 THE COURT: That's not true. It's changed.

22 MR. ZLUTICKY: Well, Your Honor, the original
23 agreement --

24 THE COURT: Right, one was going to get paid under
25 the plan when now one's going to get paid on the 9019. But

1 we don't even know if -- that's significant. That's a
2 different deal change. One had an opt-out, one had plan
3 terms. Now the plan terms are out. The deal has changed.

4 MR. ZLUTICKY: Well, what hasn't changed --

5 THE COURT: Money hasn't changed.

6 MR. ZLUTICKY: Right. Your Honor, what hasn't
7 been changed is what is being paid and what is being
8 released.

9 THE COURT: I think that's fair.

10 MR. ZLUTICKY: It's the estate's claims that are
11 being released, and that has not changed. And it's \$54
12 million that's being paid, and that has not changed.

13 The timing of that payment, it's changed. I don't
14 think it's changed by that much. If you look at the
15 original agreement, it was to be paid on the effective date,
16 not upon plan confirmation, on the effective date.

17 There were conditions for what were required for
18 the plan to go effective. And it was certainly possible --

19 THE COURT: Someone find me the settlement
20 agreement. I know --

21 MR. ZLUTICKY: Are you talking about it's Docket
22 Number 1410-1, Your Honor.

23 THE COURT: And that was good, thank you.

24 (Pause in the proceedings.)

25 MR. ZLUTICKY: Your Honor, if you look at 9(a)

1 romanette (v), --

2 THE COURT: 1410, Exhibit 1.

3 MR. ZLUTICKY: Yeah, 1410-1.

4 THE COURT: Just pulling it up, I'm sorry. All
5 right.

6 MR. ZLUTICKY: If you go to 9(a) romanette five, --

7 THE COURT: Nine, "A," romanette (v).

8 MR. ZLUTICKY: -- this is the original agreement
9 that was filed in January, and it required exculpations,
10 plan injunctions, and required gatekeeping provisions
11 substantially similar to those that are in the current plan
12 to ensure the finality of the plan and confirmation order.

13 THE COURT: Are you looking at Paragraph 9(a)?

14 MR. ZLUTICKY: Yes. So --

15 THE COURT: I'm looking at the actual settlement
16 agreement.

17 MR. ZLUTICKY: I'm looking at the settlement
18 agreement as well, Your Honor.

19 THE COURT: I'm looking at something --

20 MR. ZLUTICKY: So I'm looking --

21 THE COURT: -- different then.

22 MR. ZLUTICKY: -- at section nine of the
23 settlement agreement.

24 THE COURT: Hold on. I'm going to put it up on
25 the screen so we can all look at it.

1 MR. ZLUTICKY: Sure. It's subsection "A,"
2 romanette five.

3 THE COURT: Hang on. I'm doing something wrong.
4 It's me. Okay, it's me. All right. Go ahead. There's
5 9(a). Am I looking at the wrong thing?

6 MR. ZLUTICKY: So, Your Honor, when we go to
7 subsection five at the very bottom of the page, --

8 THE COURT: Here?

9 MR. ZLUTICKY: Yes.

10 THE COURT: Okay.

11 MR. ZLUTICKY: So it's exculpations, plan
12 injunctions, and required gatekeeping (indiscernible)
13 substantially similar to those that are in the current plan
14 to ensure the finality of the plan and the confirmation
15 order.

16 THE COURT: Right. That's talking about
17 exculpation, injunctions, and gatekeeper provisions.

18 MR. ZLUTICKY: Right. And --

19 THE COURT: This says the agreement wasn't even
20 going to be effective. So I was going to -- you all were
21 asking me to approve a 9019 that wouldn't -- an agreement
22 that wouldn't even be effective until there was a
23 confirmation order.

24 MR. ZLUTICKY: That's correct. And there was --

25 THE COURT: Right. So that's why I -- that's what

1 made me start prompting does this look like an RSA.

2 MR. ZLUTICKY: Right. And I understand Your
3 Honor's question. We don't believe it ever was an RSA.
4 We're not talking about class treatment, we're not talking
5 about recoveries --

6 THE COURT: No, but you are asking me to approve
7 an agreement that isn't -- that's based upon something else
8 getting filed in the future and then getting confirmed, and
9 which we haven't seen, right.

10 So this is -- in other words, I will have approved
11 an agreement, but you couldn't -- not encouraging anyone to
12 appeal, but I don't know how they could appeal something
13 that may or may never go into effect, right.

14 It just floats into the night because we don't
15 know what plan confirmation looks like. We don't even know.
16 We don't know.

17 MR. ZLUTICKY: Well, Your Honor, on --

18 THE COURT: That's what this says. But I got it,
19 that's not the deal now.

20 MR. ZLUTICKY: Right. But your --

21 THE COURT: Assuming that I -- assuming that
22 Mr. Lefkowitz can speak for all the M2 parties and which
23 he's not a director of one and didn't know about the others.

24 MR. ZLUTICKY: Well, the M2 parties' counsel,
25 Melissa Hayward, does represent all of the M2 parties and

1 has consistently confirmed that since November.

2 And she spoke on their behalf and said that they
3 agreed to that provision, regardless of who Mr. Lefkowitz
4 does or does not act on behalf of.

5 THE COURT: Okay. That's helpful to know. Okay.

6 MR. ZLUTICKY: And so my view is that we were out
7 -- under the prior version of this agreement, we were going
8 to have to get a final confirmation order.

9 THE COURT: To get paid.

10 MR. ZLUTICKY: To -- in order to have the money
11 come in to go effective. So now --

12 THE COURT: Wait. It's to ensure the finality,
13 not that there was a final order. I think you all know how
14 to draft these things. And that's not what that says.

15 MR. ZLUTICKY: Okay. Well, I --

16 THE COURT: That says you got to put exculpation,
17 plan injunctions, and gatekeepers to ensure the finality of
18 the plan in the confirmation order, which means that --
19 well, that would have been an interesting question as to
20 what that meant.

21 That means to me that that's got to be in there.
22 That may not have been -- I got it. We're not in this land
23 again. That's what that would have meant to me.

24 MR. ZLUTICKY: Well, Your Honor, look, --

25 THE COURT: We're not in that land anymore.

1 But --

2 MR. ZLUTICKY: -- that's my fault.

3 THE COURT: -- it's -- no, it's an interesting
4 question.

5 MR. ZLUTICKY: I should have written it better.

6 THE COURT: It's an interesting question.

7 MR. ZLUTICKY: But the intention of the parties
8 was that things need to be final in order for the 40 million
9 to come in.

10 THE COURT: Okay. No, that's good to know.

11 MR. ZLUTICKY: And, you know, I should have done a
12 better job of --

13 THE COURT: Well, no, --

14 MR. ZLUTICKY: -- drafting the --

15 THE COURT: -- no, because in other places, final
16 order was used, right. Like --

17 MR. ZLUTICKY: Right.

18 THE COURT: -- in romanette (vi) you used the term
19 final order. Here you used finality of the order. So, you
20 know, the textualist in me said that's what this means
21 here, it doesn't mean that up there, it's got to mean
22 something different because they used different words within
23 the same paragraph.

24 MR. ZLUTICKY: I understand, Your Honor.

25 THE COURT: Okay.

1 MR. ZLUTICKY: The intention was --

2 THE COURT: No, but I got it. That was the
3 intention, that was the intention.

4 MR. ZLUTICKY: Yeah.

5 THE COURT: Okay.

6 MR. ZLUTICKY: And so the reason for the March 5th
7 change was to make it clear that they need that finality.

8 What Ms. Hayward said on the Record was that that
9 finality does not need to come in the form of a confirmation
10 order. That finality can come in the form of a final order
11 approving the 9019 that is not the subject of an appeal.

12 THE COURT: Okay.

13 MR. ZLUTICKY: And so that is the settlement that
14 the Court is being asked to approve today, is not one where
15 \$40 million comes in after plan confirmation. It is where
16 \$40 million comes in after a final, non-appealable order on
17 a 9019.

18 So if it is not appealed on the fifteenth day, the
19 money --

20 THE COURT: The money comes in.

21 MR. ZLUTICKY: Well, the money will come in
22 90 days after that 15th day, so 105 days, yes, that's
23 correct.

24 THE COURT: If you've got a binding agreement, in
25 other words, for the money to come in.

1 MR. ZLUTICKY: We have a binding agreement and
2 it's -- and the thing that was the most important to my
3 Committee is they do not get a release until every penny of
4 that money comes in. That was the thing that was most
5 critical to us when we were evaluating the terms of the
6 settlement.

7 So now that we've gone through that, Your Honor,
8 and we've confirmed that there is no opt-in, opt-out, it's a
9 straightforward compromise to release the estate's claims in
10 addition for the 54 million and waiver of more than \$30
11 million in flied claims, including the DIP lien.

12 Now, the TCC is going to tell you that the
13 settlement is a complex web of hidden releases of valuable
14 claims disguised as a straightforward compromise. They're
15 wrong.

16 The TCC continues to go back to this contrived
17 analogy of a grocery cart at the supermarket. But they're
18 forgetting what we're doing here. You have to put
19 everything on the conveyor belt to check out in Bankruptcy
20 Court.

21 The UCC identified and evaluated these claims and
22 many others. We determined which claims are the most
23 valuable based on all the legal and practical considerations
24 that go into that equation, the strength of the claims,
25 potential damages, and the cost, time, and likelihood of

1 recovery.

2 And now the TCC says it's done some of those same
3 things and it's reached a different conclusion as to which
4 claims are the most valuable.

5 But the Court doesn't have to decide who's right.
6 What we are doing here is presenting our evidence as to why
7 we believe the settlement is reasonable and in the best
8 interest of creditors.

9 The Court heard evidence from the Debtor and the
10 Committee that one category of claims, the money transferred
11 out, the fraudulent transfers was approximately 31 million.

12 These types of claims are straightforward but
13 they're not without difficulty.

14 The Court heard evidence that the transferees
15 dispute these claims and that the potential litigation will
16 be vigorously defended. The Debtor and the Committee had to
17 factor that in to a potential settlement recovery.

18 We also had to factor in the time the judgment.
19 This litigation would be constantly for the estate.

20 And even if the estate obtained a judgment, there
21 was a real risk that such judgment would beget further
22 litigation and creditors to ultimately be able to collect
23 anything.

24 These settlement decisions are not made in a
25 vacuum. In reaching the settlement, the Committee members

1 were keenly aware of just how long litigation could take and
2 how expensive it would be because prior to February 13th,
3 2023, the Committee members each was living through this
4 same type of litigation against these same parties.

5 Mr. Barton testified it's been five years. And
6 all they have is a motion for summary judgment pending after
7 five years.

8 There's no reason to expect that litigation now
9 against those same parties would be any less expensive or
10 take any less time.

11 Once the Debtor and the Committee took into
12 account all of those factors, it's clear that the discount
13 that we had to apply in mediation in a settlement was
14 consequential.

15 And these are the claims, these transfers, these
16 31 million, they're the claims that on their face have the
17 most merit, the claims that would be the easiest to prove
18 and pursue.

19 So that takes us to the second category of claims,
20 the claims arising out of the divisional merger. And I go
21 back to something Your Honor said during opening. This case
22 is not a referendum on divisional mergers under Texas law.
23 We agree.

24 The job of the Debtor and the UCC in this case was
25 to focus not on divisional mergers as a concept but on this

1 divisional merger and apply the facts of this divisional
2 merger to the law to reach a conclusion on the viability of
3 those claims.

4 This is not a mini trial on these claims. That is
5 not what is required to approve a 9019. But let me be
6 clear, these are complex claims that largely assert legal
7 theories that to the extent they exist under Texas law at
8 all have not been applied to divisional mergers.

9 In short, when it comes to all of these divisional
10 merger claims, we're in uncharted waters. That is why this
11 Committee focused its efforts on applying well-established
12 law to the facts of this divisional merger by attacking it
13 as fraudulent transfer.

14 All bankruptcy courts have extensive experience
15 with fraudulent transfers and evaluating those claims. And
16 the Committee believes that the Debtor's valuable
17 operational assets were transferred to CHS Texas for less
18 than reasonably equivalent value and with the intent to
19 hinder, delay, and defraud the Debtor's creditors.

20 In evaluating those claims, though, it was
21 important for the Committee to understand the value of what
22 was allocated to CHS Texas in the divisional merger, so the
23 value of Corizon at the time of the divisional merger.

24 And it was the Committee's goal in mediation to
25 make that number the highest number it could possibly be.

1 But there were two significant hurdles to clear.

2 First, --

3 THE COURT: You got two minutes.

4 MR. ZLUTICKY: Thank you, Your Honor.

5 We're dealing with a company that itself was on
6 the verge of a bankruptcy liquidation December 2021. It was
7 in dire financial straits before the divisional merger.

8 And the evidence showed that in the months leading
9 up to the divisional merger, the Debtor operated with
10 negative cash flows and negative EBITDA.

11 We reviewed the financials of the Debtor and
12 YesCare, and it showed that the divisional merger allowed
13 YesCare to not have these professional liability claims.
14 But it didn't turn an unprofitable company into a profitable
15 one. YesCare was simply not worth \$100 million.

16 And remember this assumes a victory on the
17 recharacterization issue which is not a slam dunk. The
18 Debtor doesn't even agree with us on that. We would have to
19 win on that before we even get to the value of a fraudulent
20 transfer claim.

21 The other claims, successor liability, alter ego,
22 they're better understood as potential remedies arising out
23 of or relating to the divisional merger because under Texas
24 law, they're not independent causes of action. They're
25 remedies that are enforced only in very limited

1 circumstances.

2 Now, the TCC is going to tell you that these
3 claims are a slam dunk and that they're worth somewhere
4 between 136 and \$187 million. And they're wrong. It's the
5 value of the potential damages of the lesser of the amount
6 of the liabilities or the value of the successor.

7 And here, the successor is not valuable. And
8 here, that may -- and in other cases that may not have
9 mattered. Where Johnson and Johnson has \$160 billion market
10 cap, the amount of its liabilities are the measure.

11 But here, this Debtor, what was transferred the
12 successor simply isn't worth that much.

13 Absent a settlement, the Debtor and the Committee
14 would be the test case for all of these theories of
15 liability, unchartered waters. And in the face of a \$54
16 million settlement, it would be irresponsible to throw that
17 away for a series of lottery tickets.

18 We do not gamble with creditors' recoveries.
19 Instead, we investigate, we litigate, and when circumstance
20 are right, sometimes we settle.

21 And make no mistake, if we didn't settle, this
22 Committee was coming. We were fully prepared to seek
23 standing to pursue any and all claims and causes of action.
24 And it would have been expensive and it would have taken
25 years.

1 And I don't know if we would win. But we would
2 have done it anyway. You want to know why? Because that's
3 the right thing to do. And that's our mandate, to maximize
4 recovery for creditors.

5 We believe this settlement does that. It's
6 supported by *Jackson Brewing*.

7 (Automated operator interrupts.)

8 MR. ZLUTICKY: It's supported by *Foster Mortgage*.

9 And --

10 THE COURT: Thank you very much.

11 MR. ZLUTICKY: Yes, thank you, Your Honor.

12 MR. PATTERSON: Judge, can I -- I know I may be
13 aside or not but I don't know if I'm allocated. I'm not --
14 I don't need 30 minutes.

15 THE COURT: I'll give you a few minutes,
16 Mr. Patterson.

17 MR. PATTERSON: Thank you, Judge.

18 But as a -- as an individual creditor, Judge, I've
19 got a couple of things to say.

20 One, is this a great deal? No, it's not a great
21 deal. And am I overjoyed with this deal? No, not really.

22 But like I said -- and I think really what the
23 evidence showed you was, look, we were given really two
24 choices by the Court, by the circumstances. Do we want this
25 case dismissed or would we take this settlement?

1 I think if nothing else the evidence has showed
2 you the dismissal is not the -- dismissal does not treat the
3 creditor body better than a continuation of this bankruptcy
4 case.

5 I think if nothing else came out of the evidence
6 over the days, I think the Court can make that finding, that
7 it's not in the best interest of really anyone except maybe
8 the lawyers to dismiss this case.

9 The settlement -- again, and I think you got it.
10 I look at it really for my clients in a much simpler manner.
11 I appreciate the detail and I appreciate the technicality of
12 what we're going through. And it's important. And if we're
13 going to do it, it needs to be done right.

14 But I'm looking at it for my client's in a much
15 broader perspective, like we started, and I think like the
16 evidence showed you that is it close to a hundred? No. Is
17 it close to 60 or 50 percent? Yeah, I think so, you know.

18 And is that what I can get for my clients? Yeah,
19 that's probably pretty close, you know. I'm going to go and
20 they're going to pay their contingency fee, and maybe I hit
21 a homerun. Maybe I suck and maybe it's a terrible jury.
22 All of those things have to be taken into consideration.

23 And overall we have to support it because the
24 alternative is a dismissal. And, quite frankly, personally
25 I've got -- I can't -- I cannot advocate for a process that

1 leaves 70 or 60 percent of the creditor body in essence with
2 nothing.

3 And we know that. We know that the incarcerated
4 pro se litigants are going to get probably zero if this case
5 is dismissed. Zero. Or a thousand dollars, maybe.

6 The frustration for me is along those same lines
7 is that we have a Committee that supposedly represents these
8 people.

9 I haven't been that active for the very reason is
10 my -- our clients -- my clients don't have the kind of money
11 to spend for me to continue to do this and monitor
12 everything. I think I've hit the high points.

13 But we have a group of really good lawyers, some
14 of the best lawyers in the country billing outrageous
15 amounts of money, probably earned outrageous amounts of
16 money.

17 But they can't tell us anything about these folks,
18 about these people that maybe they're frivolous claims,
19 maybe some of them are.

20 But from what I've heard and the people I've
21 talked to, they're some people that really need
22 representation.

23 They could really benefit from these group of
24 lawyers, really benefit, like from potentially getting
25 nothing to maybe getting 50 percent of a real value of a

1 claim, to someone listen to them, look at their claim.

2 And it's not being done. That's -- I guess that's
3 the frustrating part of this settlement. I don't know if
4 they end up getting left behind in the end anyway if our
5 Committee doesn't even talk to them. And so I'm off field.

6 We support it, Judge. It's not a great deal. But
7 I think given the alternative, it's pretty good, and we
8 would support it.

9 THE COURT: Thank you.

10 Mr. Nguyen, just given me -- are you in support or
11 opposed?

12 MR. NGUYEN: I oppose, Your Honor.

13 THE COURT: Okay. If you just give me two
14 minutes, I just got to just check on something just to make
15 sure that --

16 MR. NGUYEN: Sure.

17 THE COURT: -- folks know that they're going to
18 let us out. Just give me two minutes and I'll come right
19 back.

20 THE CLERK: All rise.

21 (Recess taken from 8:30 a.m. to 8:33 a.m.)

22 THE COURT: Okay. Yes, counsel.

23 MR. HAMM: Yes, Your Honor. My client filed a
24 joinder in favor. Can I just have one minute?

25 THE COURT: Yeah, absolutely.

1 MR. HAMM: Thank you, Your Honor.

2 CLOSING

3 BY MR. HAMM: So my client is Saint Alphonsus.
4 They're a healthcare system from Idaho, have a \$15 million
5 unsecured claim in the case, and we're a member of the
6 Committee.

7 There are two sets of numbers that haven't changed
8 that convinced my client to vote in favor of settlement,
9 okay. And those sets of numbers are zero to 75 million and
10 13 to 35 million.

11 The uncontroverted evidence that was given in
12 these sets of hearings regarding number one, the value of
13 the money changed at the time of divisional merger, but more
14 importantly to us, the value of YesCare now.

15 When that hard, bitter pill was delivered to my
16 client, it changed our perspective.

17 At the beginning of the case we were just like
18 them. We wanted it dismissed. Been chasing them for years,
19 and we were angry, and we had big eyes.

20 But, again, what the Court heard is the same thing
21 we heard, and that's the value of what we're chasing.

22 And given the circumstances of this case and that
23 we're not talking about asking for more money, we're talking
24 about getting this or dismissal, Saint Alphonsus
25 respectfully requests that you deny the motion to dismiss

1 and approve the 9019.

2 THE COURT: Thank you.

3 MR. SPEAKER: Thank you.

4 MS. JONES: Your Honor, I'll ask for 30 seconds.

5 It won't be past a couple minutes.

6 THE COURT: You got it.

7 CLOSING

8 BY MS. JONES: Erin Jones for Capital Region
9 Medical Center and The Curators of the University of
10 Missouri wanting to remind Your Honor that we're here.

11 I had this case and another lawyer asking
12 questions or spending a lot of time in the courtroom. But
13 I've attended and appeared and listened to all four days of
14 the hearing.

15 I wanted the Court to know that my clients support
16 the settlement. We heard Mr. Lefkowitz testify that this
17 case is in bankruptcy because a receiver was about to be
18 appointed over YesCare. Those were my clients.

19 So they might do well outside of bankruptcy. They
20 were doing well outside of bankruptcy. And they're still
21 here, they're still supporting this settlement, they still
22 believe it's a better deal for the estate.

23 We've heard a lot of threats of delay. This
24 settlement's not going to be good because we can delay it
25 and we can keep money out of the hands of creditors.

1 I don't think that goes to prove or to meet the
2 burden of dismissal. And it certainly doesn't take away
3 from whether the settlement should be approved by the Court.

4 So we ask the Court to deny the notion to dismiss
5 and approve the settlement.

6 THE COURT: Thank you. Mr. Nguyen.

7 MR. NGUYEN: Your Honor, the U.S. Trustee filed an
8 objection. We didn't file a joinder so --

9 THE COURT: Yes.

10 MR. NGUYEN: -- I'm going to ask for a little bit
11 more than one minute. My side of the table have graciously
12 said --

13 THE COURT: All righty.

14 MR. NGUYEN: -- that they would share about five
15 minutes with me. And I think that should be enough.

16 CLOSING

17 BY MR. NGUYEN: Your Honor, we made a lot of
18 points and legal arguments in our objection.

19 I actually don't know what -- which order and
20 which settlement is going to get entered so, Your Honor, we
21 do still stand on all of the arguments that we made in our
22 objection to the 9019.

23 I haven't seen a new proposed order. It can
24 change tomorrow. I have no idea.

25 THE COURT: I hope not.

1 MR. NGUYEN: But I do want to highlight some
2 points that concerns the U.S. Trustee with the 9019. And
3 now -- the one point I wanted to highlight is the question
4 that Your Honor asked, what exactly does this settlement
5 lock in?

6 From the testimony of Mr. Lefkowitz and Mr. Perry,
7 what they make clear is that you are locking in the
8 releases. Under the 9019, you will be ruling that the
9 releases meet the 9019 standard, it's a fair compromise,
10 there's consideration, and the releases to the non-Debtor
11 relate to the bankruptcy administration.

12 If Your Honor makes that finding, collateral
13 estoppel will prevent us from challenging these releases at
14 confirmation.

15 Also, Your Honor, there's an element of a
16 nonconsensual third-party release here which I will explain
17 in a second. But let's talk about the releases that are in
18 this settlement that you're asked to grant today.

19 We don't even have information as to which party
20 is contributing to the settlement and why certain
21 individuals or entities are getting a release.

22 For example, did the Court hear anything about DG
23 Realty Management, LLC? Who are the officers and directors
24 of DGL Realty Management, LLC. Their attorneys for DJ
25 Realty Management under the release you're going to be

1 signing will also get a release.

2 Who is Jennifer Lenae Finger (phonetic)? Who is
3 Beverly Michelle Rice (phonetic)? What are these parties
4 contributing to the settlement and why are they entitled to
5 a release?

6 What is -- Isaac Lefkowitz, he was on the witness
7 stand. What is he contributing to the settlement to get a
8 release? What Mr. Lefkowitz testified is he's going to be
9 contributing between ten and \$40 million. He doesn't know.

10 But would Your Honor just sign it, give us the
11 release? We'll figure it out later.

12 Again, Judge, I just wanted to point out -- and I
13 think Your Honor points this out. And I think Mr. Lefkowitz
14 confirmed that -- confirmed it in his testimony.

15 These are not mutual releases. These parties from
16 the version that we have seen, Mr. Lefkowitz can turn around
17 and sue these parties who are giving him the release.

18 And really I struggle with this one, Your Honor,
19 and thinking about the 9019 standard. How can you possibly
20 know that this settlement, which contains dozens, if not
21 hundreds, of releases for parties that you have no idea it's
22 within their -- the realm of reasonableness?

23 How can you approve that? You don't know what
24 causes of actions that certain -- the Debtor has or certain
25 third party has. There's just no evidence of why these

1 parties are entitled to release.

2 And I think that's very problematic because the
3 releases, as Mr. Lefkowitz explained on the witness stand,
4 is they're material.

5 If he doesn't get a release, you don't get no --
6 any money. If you get money, you have to release them,
7 everyone goes home. That -- those were his words.

8 But let's talk about this nonconsensual third
9 party release aspect of the settlement. It's a little bit
10 confusing. It took me a little while to understand it. But
11 Mr. Perry and Mr. Lefkowitz and -- testified at length as to
12 the four buckets.

13 I think it's the infamous Paragraph 27, which is
14 the -- and I want to focus on the last bucket: potential
15 avoidance action arising out of the May, 2022 divisional
16 merger.

17 Mr. Perry testified that this includes successor
18 liability and alter ego claims which I believe testimony was
19 that he believed that there was little value to these claims
20 because the theories are novel and would require a court to
21 disregard the Texas Business Organizational Code.

22 Because of the use of the divisive merger in this
23 case, claims of successor liabilities and alter egos are
24 extraordinarily valuable to the individual tort claimants in
25 this case.

1 You know that from Mr. Barton's testimony today.
2 The very next day after the bankruptcy case they went and
3 amended their complaints to add successor liability as far
4 as their complaint.

5 If a tort claimant has a pre-divisional merger
6 claim, that claim must pass through to YesCare in order for
7 that tort claimant to be fully compensated for his injury.

8 You sign this release, Your Honor, you're taking
9 away those successor liability and you're essentially
10 telling these tort claimants, yeah, you have the right to
11 sue, but you're going to be suing a shell company that
12 YesCare and other parties that were part of the divisional
13 merger that took assets from here.

14 And you will be precluding these tort claimants
15 from pursuing the parties responsible for the shell company
16 that exists before you.

17 For example, you heard about -- a lot about
18 Michael Kelly and Ian Cross who -- throughout these
19 hearings. I think Mr. Lefkowitz described Ian Cross as a
20 crook and an ambulance chaser. But he represents a tort
21 claimant by the name of William Kelly.

22 Mr. Kelly, according to the Debtor's own risk
23 management, this is not a pro se Debtor writing on a napkin
24 of what he thinks his claim is worth.

25 This is from Sigma Risk Management that analyzes

1 claims against Corizon. And they say his injuries, the
2 floor is about 750,000, we saw the chart, with the high end
3 being several million dollars.

4 If Your Honor signed this settlement over the
5 objection of Mr. Kelly, which he did file an objection to,
6 you would be absolving YesCare and other non-Debtor parties
7 listed as release party of Mr. Kelly's claim on successor
8 liability or alter ego.

9 Mr. Kelly would be enjoined from bringing this
10 successor liability claim. And how do we know that he would
11 be enjoined? Says it right there on the proposed order.

12 Every creditor shall be enjoined from pursuing any
13 and all claims and causes of actions against the release
14 party that are property of the Debtor's estate released
15 under Paragraph 7 of this agreement.

16 That by definition, Your Honor, is a nonconsensual
17 third-party release.

18 The Supreme Court may tell you that you might have
19 some authority to do that. But that's not the state of the
20 law today.

21 In the Fifth Circuit, nonconsensual third-party
22 release are not allowed. There's no option for tort
23 claimants like Mr. Kelly or other tort claimants. Both say
24 tort claim.

25 Your Honor, if you look at your Docket, I think

1 there are a lot of letters from pro se claimants. You can
2 read those letters. You can --

3 THE COURT: I've read them all.

4 MR. NGUYEN: Yes, Your Honor. And I don't stand
5 up here and pretend to be a civil rights lawyer. I don't
6 pretend to know what's in the best interest of pro se
7 creditors.

8 But I think if you read those letters, you'll hear
9 from those incarcerated creditors and what they think about
10 this case and their views on the settlement. Those in the
11 letters.

12 And in addition, Your Honor, I think I had many
13 discussion with the ACLU and other nonprofits throughout
14 this case. These people work with pro se creditors all the
15 time. I think Your Honor should, if Your Honor hasn't
16 already, take a look at their amicus brief.

17 THE COURT: I've read them.

18 MR. NGUYEN: Yeah, thank you, Your Honor.

19 So let's go back. I'm going to finish up here.
20 Nonconsensual third-party release are not allowed here.
21 There's no option for people like Mr. Kelly to opt-out or
22 say, hey, I don't want to be part of this deal, I want to
23 keep my successor claims against Corizon, YesCare, or
24 whatever the successor entity is.

25 Your Honor, tort claimants have substantive due

1 process rights, constitutional rights to seek compensation
2 for injuries before a jury. And by signing this order, you
3 would be taking a critical piece of that from tort claimants
4 like Mr. Kelly to be fully compensated for their injuries.

5 You're going to be telling Mr. Kelly, yeah, you
6 still have the right to sue but go ahead and just sue the
7 shell company that YesCare, who just purchased your
8 successor liability claim, you can't go after.

9 I think that's really problematic given the 28 USC
10 I think 157(b)(2)(B), which limits your authority with
11 respect to personal injury and wrongful death claims by
12 extinguishing or severely limiting the recovery of these
13 claims through the signing of this settlement which contains
14 these nonconsensual third party releases.

15 Your Honor would be exceeding your -- the scope of
16 your authority as given by Congress as well.

17 And briefly I just want to make some observation.
18 During the opening, the testimony from the witnesses, you
19 heard about this litigation black hole or litigation chaos.
20 I think Mr. Brookner put up a illustration of black hole to
21 demonstrate what is out there.

22 I candidly don't understand this usage. I know
23 there was -- it's not a litigation black hole. It's the
24 American justice system. Is it perfect? No. But that's
25 what we have in this country for tort claimants to seek

1 redress for their injury.

2 I don't think it's a litigation black hole.
3 That's just simply the American justice system. And that's
4 the system we have for people who have injuries, and that's
5 how they get redress and compensation for their injuries.

6 From the TCC side, in a lot of the letters you've
7 seen on your Docket from pro se claimants, the nonprofit
8 groups that work with these people, that's where they're
9 asking you to let them go back.

10 They're -- they know the American justice system,
11 it's not perfect. But that's where they want to be. And we
12 shouldn't be the one that tells them that -- tell them that
13 we know better.

14 And also I --

15 THE COURT: But aren't you at least a little
16 troubled that it's unclear whether any of them, folks who
17 wrote the letters, like may not even know that there's a
18 settlement on the table?

19 MR. NGUYEN: Absolutely, Your Honor. And that's
20 why then the --

21 THE COURT: Like the folks who wrote letters on
22 the Docket may not actually know that someone could
23 potentially put, I don't know, some bucks in the -- yeah, I
24 got it they want to go back.

25 MR. NGUYEN: There are --

1 THE COURT: I'm just, you know, and I'm not saying
2 that the settlement should be approved or not. I got to --

3 MR. NGUYEN: Right.

4 THE COURT: -- sit back and think about
5 everything. And there are depo designations I haven't read.
6 I'm going to consider everything. Just -- I'm just
7 concerned about a lot.

8 MR. NGUYEN: Yes, Your Honor. And --

9 THE COURT: You know, including, --

10 MR. NGUYEN: -- like everyone --

11 THE COURT: -- you know, Mr. Mr. Lefkowitz's
12 perspective on who they are as well. I don't think anyone
13 really -- I think, you know, because they were pro se, they
14 were really described I'd say in a demeaning way. And that
15 troubled me as well. So I'm troubled on some end.

16 I'm troubled that, you know, they were deemed, you
17 know, folks who write stuff on the back of napkins and
18 toilet paper and treated and discussed in that way.

19 But I wanted to hear how people really felt, and
20 sometimes it's just best to stay quiet and let people tell
21 you what they really think.

22 I don't know if that approves the settlement or
23 not. And I know that's going outside the bounds of where
24 you're going. But I -- you know, it's still a creditor.

25 MR. NGUYEN: Correct, Your Honor.

1 THE COURT: You know, --

2 MR. NGUYEN: It is deeply -- and I will share,
3 Your Honor, I've written to correction facilities because an
4 inmate's mother called me because he wanted to participate
5 at a 341 meeting. I wrote to the corrections facility.

6 And the response I got back was, you know, you
7 don't wear a black robe, you know, you really can't tell the
8 correction facility what to do, so we're not going to allow
9 this incarcerated creditor to participate in a 341 meeting.

10 Those are the problems that exist within this
11 case. I know there some -- I mean, --

12 THE COURT: Yeah.

13 MR. NGUYEN: -- it exists within the bankruptcy
14 case and exists outside the bankruptcy case. I'm sure there
15 are several pro se claimants that missed the bar date don't
16 understand the appropriate form to file claims. These
17 problem -- it --

18 THE COURT: Happens.

19 MR. NGUYEN: -- happens inside and outside of the
20 bankruptcy.

21 But I just want to go back to that phrase,
22 litigation chaos, all Hell breaking loose, which is
23 Mr. Lefkowitz's word.

24 But chaos for who? Because chaos for YesCare?
25 YesCare isn't a Debtor in this case, Your Honor. Tehum is

1 the Debtor. Tehum has no operation, no employee.

2 It was a product of a divisive merger orchestrated
3 by the same parties that are asking you to give them broad
4 and nonconsensual third-party releases. I don't think
5 there's litigation chaos for the Debtor.

6 There may be litigation chaos for YesCare and all
7 their individual and entities under I guess the release
8 party.

9 But I candidly don't think it's appropriate for
10 this Court to go out of its way to provide relief for a non-
11 Debtor. There's a place for YesCare in the bankruptcy
12 system, of course there is. But YesCare must come in and
13 put all of its assets on the table, not orchestrate a
14 divisive merger scheme and --

15 THE COURT: I don't think divisive mergers are
16 schemes, but I got it.

17 MR. NGUYEN: Yes. So if YesCare comes in, you
18 know, we can talk about their appropriate use of bankruptcy.

19 There is a grand bargain in bankruptcy, and I
20 think I mentioned it at the opening. These non-Debtor
21 parties should not get the benefit of the system without the
22 burden.

23 And lastly, Your Honor, with respect to dismissal,
24 I think this is the third try. A lot of money have been
25 spent in this case. The --

1 THE COURT: No, I got it, I got --

2 MR. NGUYEN: -- burn rate is high.

3 THE COURT: I got it.

4 MR. NGUYEN: The --

5 THE COURT: And let me just say, I --

6 MR. NGUYEN: Yes.

7 THE COURT: -- divisive mergers can be done for
8 different reasons. And there are a bunch of different cases
9 going on. I am not commenting on any other case, --

10 MR. NGUYEN: Understood.

11 THE COURT: -- only commenting on the facts here.
12 I just this one I -- you know, people -- it -- hard for me
13 to -- well, I'll let people tell me otherwise. But divisive
14 merger that was done a year before and then, you know, files
15 for bankruptcy I think is in different shoes.

16 And that doesn't mean that people -- that all
17 divisive mergers are done for right reasons or for wrong
18 reasons. I just -- I didn't wear the robe on any of those
19 other cases. I wore the robe for this case. And so that's
20 the -- those are the facts in front of me.

21 I'm just saying so that it's said.

22 MR. NGUYEN: Understood, Your Honor.

23 THE COURT: I think when people think about
24 divisive mergers, they -- you know, it gets into a policy
25 fight. But that's not what I do.

1 MR. NGUYEN: Correct, Your Honor. But I think
2 under the facts and circumstances of --

3 THE COURT: No, I got --

4 MR. NGUYEN: -- this case, you --

5 THE COURT: -- what you're doing. I got what
6 you're doing.

7 MR. NGUYEN: You can't ignore those facts. It is
8 a transaction between insiders through the use of divisive
9 merger. I think it's all relevant to your consideration of
10 the 9019.

11 THE COURT: I think that's fair.

12 MR. NGUYEN: Your Honor, lastly, I think the
13 administrative burden on this is too high. We're at the
14 third try. We don't believe that the settlement should be
15 approved. Your Honor should stop the bleeding now, allow --

16 THE COURT: But if I dismiss, what does dismissal
17 look like?

18 MR. NGUYEN: Your Honor, it's a straight
19 dismissal, no structure dismissal, the U.S. Trustee doesn't
20 support a structure dismissal.

21 I think the TCC would be appropriate with
22 dismissal. This case is dismissed, appear Judge Lopez,
23 signed. That's all it is.

24 THE COURT: Okay. Thank you.

25 MR. NGUYEN: Thank you, Your Honor.

1 (Pause in the proceedings.)

2 THE COURT: Good evening.

3 MR. GOODMAN: Good evening, Your Honor. I want
4 the water.

5 Three ways I could go about this. First, I would
6 like to ask the Court if you have any questions for me. I
7 do have a closing argument prepared. But your questions
8 are --

9 THE COURT: No, go ahead --

10 MR. GOODMAN: -- the most important thing to me.

11 THE COURT: -- and make your closing argument. I
12 do have a couple of questions but I -- you probably heard a
13 few of them already out there.

14 I'll let you address it as you see fit. I should
15 stay quiet and listen to you and then ask questions at the
16 end.

17 MR. GOODMAN: Very good. Thank you, Your Honor.

18 CLOSING

19 BY MR. GOODMAN: Eric Goodman for the Official
20 Committee of Tort Claimants in this case.

21 Your Honor, the word is a more malleable place
22 than people car to think. We have choices, and the choices
23 that we make are important.

24 When we walk into a new mass tort case, whether it
25 involves defective airbags, wildfires in California, the

1 opioid crisis, decades of sexual abuse, asbestos cancer, or
2 here, cruel and unusual punishment, we know that our job is
3 to try to find the best outcome for the victims, all of the
4 victims, whether they're represented by counsel or whether
5 they're pro se.

6 And that is what we have tried to do here by
7 moving for dismissal of this case and by objecting to the
8 proposed settlement.

9 I know Your Honor is focused on the Rule 9019
10 factors so I want to talk about those first. First, we know
11 that this is an insider settlement.

12 You heard Mr. Lefkowitz testify. Even without the
13 benefit of his testimony, you can already see his name on
14 all of the relevant documents. He is behind every entity,
15 including almost all of the released parties.

16 Mr. Lefkowitz is trying to control both the
17 plaintiff and the Debtor and defendant in litigation, so
18 this is an insider deal that should be evaluated as such.

19 We, TCC, do not view Mr. Perry as an independent
20 fiduciary. He was selected by Mr. Lefkowitz. And under
21 Mr. Perry's watch, tax credits that are apparently now worth
22 nearly \$25 million were handed over to the commercial
23 claimants.

24 What Mr. Perry cares about, based on the testimony
25 that he gave before Your Honor, is that the tort victims are

1 barred from pursuing their claims against YesCare and
2 Mr. Lefkowitz because without that, there is no settlement
3 here.

4 We do -- also do not view the UCC as having served
5 as a fair broker either. We have heard that apparently they
6 are ones who did orchestrate and at one time advocated for a
7 settlement that effectively sells the pain and suffering of
8 our constituency and then uses the proceeds of that sale to
9 pay the commercial creditors.

10 The Court knows we offered to suspend all
11 litigation back in January and return to mediation. And the
12 UCC and the Debtor both said no.

13 I found out today from Mr. Barton that he didn't
14 even know that we had asked to begin mediation back in
15 January after the pleadings were filed. And I found that to
16 be very concerning.

17 But if the Court does cap the amount that
18 Mr. Lefkowitz must pay for finality in this case and all of
19 the litigation against him and Corizon and YesCare and all
20 of those entities, I don't see how there could possibly be
21 enough money in this case to satisfy the demands of just the
22 tort victims.

23 Next, we know that the Debtor is a manufactured
24 entity. There is no business to reorganize. This is not a
25 mass tort case where the tortfeasor submits itself and its

1 assets to the Bankruptcy Court's jurisdiction; just the
2 opposite, Your Honor.

3 Mr. Lefkowitz was clear that the non-Debtor
4 released parties are the ones seeking a discharge.

5 As I said a few weeks ago, the Debtor here does
6 not even own a leasehold interest in the McDonald's. It's
7 only assets are the estate causes of action that
8 Mr. Lefkowitz is trying to control and settle.

9 Mr. Lefkowitz even testified that the Debtor, in
10 his view, was not insolvent and is not in financial
11 distress. And I don't know that there was even contrary
12 evidence on that issue.

13 What do the creditors think? The tort claimants
14 are the largest creditor group in this case. And I would
15 submit they're what this case is and has always been about.

16 They are the largest group in terms of number and
17 amount. Mr. Lefkowitz could settle with the commercial
18 creditors tomorrow if this case is dismissed.

19 In fact, I think some have already indicated here
20 that they're willing to waive the flag of surrender and
21 settle for lower amounts. In fact, I think Mr. Barton said
22 that he is tired of pursuing defendants that commit fraud.

23 But in our view, the Court really needs to pay
24 careful attention to the views of the tort victims in this
25 case.

1 THE COURT: Which ones?

2 MR. GOODMAN: All of them, every single one.

3 THE COURT: I haven't heard about pro se's. I had
4 a plaintiff's lawyer stand up here and tell me he wants to
5 go back to State Court. That's what Mr. Griffiths testified
6 really about. So I don't know what to think about other
7 tort victims because I didn't hear from them.

8 MR. GOODMAN: Your Honor, you have heard from the
9 ones who have filed joinders --

10 THE COURT: I did.

11 MR. GOODMAN: -- in this case.

12 THE COURT: That's true.

13 MR. GOODMAN: I will let the Court know that we do
14 receive a lot of phone calls from them. Mr. Zimmerman, co-
15 counsel here, is responsible as the primary point of contact
16 for handling those.

17 But I would also say this, Your Honor, --

18 THE COURT: How could I feel about going out
19 there? And I got it, he's not on the Committee, right?
20 He's the lawyer for someone for the Committee but is not
21 really a Committee member.

22 But to say that you spoke to three to four people
23 and like didn't even mention that there was like a potential
24 settlement on the table, I don't know who's being heard.

25 And I'm not -- and clearly I'm not questioning the

1 work of the Equity Committee or who they've spoken to or
2 not.

3 I just know in terms of the Record that I have in
4 front of me, I'm concerned. I don't know how to value a
5 settlement.

6 I got it, the plaintiffs folks want to go back
7 because that's what they do. They want to go back to State
8 Court. And when I asked why you want to go back to State
9 Court, because he said he can go cut a deal.

10 Maybe he's worried about his contingency fee. I
11 don't know why it is. But I know -- I just know what he
12 said.

13 I've already expressed my views at this counter
14 that I don't think plaintiff's lawyers are just ambulance
15 chasers, and people in prison don't write -- aren't folks
16 who just write stuff on toilet paper. So I'm conflicted
17 about everything in this case.

18 The one question I do have for you -- just give me
19 a minute -- connection with your motion to dismiss. It did
20 come to mind. I was looking at my notes. I knew I had one
21 for you.

22 MR. GOODMAN: Wonderful.

23 THE COURT: Here's the question. I can certainly
24 appreciate that the tort claims Committee got formed when it
25 got formed, right. So it didn't -- wasn't here like, you

1 know, first two weeks of the case kind of stuff, right.

2 So that -- let's -- you know, that's -- this case
3 has been around for a lot of -- little -- well, over a year
4 now. Well, no, yes, wow, a year, over a year.

5 But those tort claimants have been here. Some of
6 them have been represented by counsel. Not one of them
7 filed a motion to dismiss the case on bad faith.

8 How do I weigh a motion to dismiss at this stage
9 when the underlying people who formed the Committee, some of
10 them have been here the entire time and represented by
11 counsel, and not one of them filed a motion either remotely
12 questioning that I should dismiss this case for bad faith?

13 You know, do I -- in other words, do I just look
14 at what happened in the past or do I have to then now think
15 about the nine months that happened, the nine, ten months
16 that occurred between then and now when no one questioned --
17 you know, I got it, the Committee got formed.

18 But does that mean that the underlying people can
19 now come in and ask for something they didn't ask for ten
20 months ago? That's the question. And I'm wondering as I've
21 been thinking about a lot of different stuff.

22 MR. GOODMAN: Yes. And I'll tell you why.

23 Tort claimants and our Committee wanted to move to
24 dismiss this case instantly. In fact, we had to convince
25 that we wanted to go to the mediation and at least hear

1 these guys out before we took that step. That was the first
2 thing that came to your -- their mind.

3 And I will say this, Your Honor, if you think
4 about the victims here and their attorneys, right, you and I
5 are bankruptcy specialists, right. I've been doing this
6 over 20 years.

7 I know that you are a very good bankruptcy judge
8 and had a ton of experience before you took the bench. We
9 know bankruptcy. We know what tools you can use.

10 We know how to object to plans, Disclosure
11 Statements. We know how to file motions to dismiss because
12 that's the world that we live in.

13 That is not the world that a pro se claimant lives
14 in. That's not the world that Scott Griffiths lives in.
15 He's not a bankruptcy lawyer.

16 THE COURT: You're right.

17 MR. GOODMAN: Most of the lawyers who have been
18 out chasing Corizon representing inmates, representing
19 people who have been harmed, families who lost their
20 children, who lost their parents, they don't know all the
21 levers that you pull in a bankruptcy case.

22 And when this case got filed, they didn't really
23 understand what was going on, right? I mean, you think
24 about how much information came out between the different
25 Disclosure Statements that were filed in this case. You

1 think about how little information, how little transparency
2 there was.

3 I mean, they -- think about this for a moment,
4 Your Honor. You're a tort victim, right. You've lost your
5 daughter because of malpractice, right. She's dead.

6 You hire a lawyer to represent you. They're not a
7 bankruptcy expert. They're in this -- the State Court
8 system, that's where they spend their life.

9 I'm sure if I came into their courts I would be
10 just as lost as they would be in this court, right?

11 And they know, they hear about a divisive merger,
12 they hear that the entity that they had been litigating
13 against for a significant period of time, right, has just
14 said we're going to assign all the liabilities over here,
15 we're going to put all the assets over here, and, you know,
16 the bankruptcy proceeding, you know, follows after that.

17 I have to give Mr. Cross a lot of props in terms
18 of, you know, figuring out to amend his, you know, complaint
19 against Corizon, you know, to add CHS Texas in that
20 litigation. That was a smart litigation move on his part to
21 do that.

22 But then to find out that there's a bankruptcy
23 proceeding and now it's all stayed, right.

24 Again, I live in this world. I understand it, I
25 get it, right. But I know that others don't.

1 And our job is to represent them in this case.
2 And I just -- I look at the case, I look at what it's about,
3 I look at the fundamental issue.

4 And I know, Your Honor, you said you don't want to
5 deal with the policy issue. I've heard you say it several
6 times now. I think you said, you know, this is a policy
7 fight, the Texas Two-Step, not where you want to go. And I
8 get it, okay.

9 But you can't avoid this, right. This has been
10 brought to you. And whether you want to deal with it or
11 not, I don't think --

12 THE COURT: No, and I --

13 MR. GOODMAN: -- you have the choice.

14 THE COURT: -- should be clear about what I mean
15 by that. In other words, the -- there are some people who
16 favor them, there are some folks who just don't favor them
17 point blank.

18 You know, you can read the literature about this
19 stuff and you go -- I -- that's not my job is to pick a side
20 and say all divisional mergers, if one shows up on my door
21 then immediately it's bad and those who did it are bad, too.
22 That's what I mean by that. And that's -- and I hope -- if
23 I wasn't really clear about that, I hope I am now.

24 It's I got it, it's at my door, I've got to deal
25 with it.

1 But the fact that it's here doesn't mean that the
2 people who did it are automatically -- they may prove
3 themselves to be not one way or the other.

4 But the fact that there's a case that's in front
5 of me that's that way, I've got to deal with the facts that
6 I've got on and not just say, this by, you know, on its own,
7 on its face equals bad. That's what I mean. And I --
8 that's all I meant by that.

9 MR. GOODMAN: And, Your Honor, I think I basically
10 did a fall down on Monday of this week. I told you, right,
11 I don't quarrel with the Texas divisional merger statute.

12 THE COURT: Yeah. I mean but I'm saying that's
13 all I meant by that. And I --

14 MR. GOODMAN: But I will say this. And I think,
15 you know, attorney for the U.S. Trustee gave one of the best
16 closing arguments I've seen in some time because he hit on
17 what is really the central issue, what is what I would say
18 in some ways the policy issue.

19 And I couldn't tell from your comment if you
20 wanted to confront it or not, but I don't think you can
21 avoid it. And the question really is this, right.

22 Can a tortfeasor, any tortfeasor -- and here it's
23 Corizon Health. But can any tortfeasor undertake a
24 divisional merger that is fraudulent, right, just
25 fraudulent, then file a bankruptcy and then use that

1 bankruptcy proceeding to settle and forever bar victims from
2 having access to our justice system?

3 When they say, approve the settlement, approve the
4 settlement, bird in hand, bird in hand, think about what
5 you'd be doing, right?

6 Under there view of what is a State cause of
7 action, right, every remedy, every recourse that the victims
8 would have on account of their injury, on account of the
9 death of their daughter is taken away from them.

10 The doors of our U.S. court system would be welded
11 shut. Not a single one of them could go before a court and
12 seek justice for what happened to them. How can you do
13 that?

14 I just -- I can't. I don't understand how a
15 Bankruptcy Court could say to victims, people who have gone
16 through this, that I'm just going to say you can't go to
17 court, you can't sue the Debtor anymore, right, because
18 like, you know, they're the Debtor, they're gone.

19 You can't sue Mr. Lefkowitz, you can't sue
20 YesCare, you can't sue CHS Texas, you can't sue every single
21 released party, known or unknown, right, to seek
22 compensation for that injury.

23 What's left? There's nothing left. There's
24 nowhere for them to go. They get to go to a trust, right,
25 with whatever happens to be there, and that's it, that's the

1 only remedy you have. How can that be a legitimate use of a
2 bankruptcy?

3 I don't get it. I just don't get it. I don't
4 understand how a bankruptcy proceeding could be used in that
5 manner. It's just contrary to everything that I have ever
6 learned about bankruptcy process, restructuring.

7 And, you know, this is coming from someone -- I
8 love bankruptcy. Like, I mean, I grew up in a Bankruptcy
9 Court. I finished law school, I was clueless. I was taken
10 under the wing of a bankruptcy judge in Youngstown, Ohio.

11 And, you know, he used to tell me, you know, we
12 work late, we work this late, right. If a steel company
13 comes in the door and says, filing for bankruptcy, we need
14 first day relief because we've got to pay our employees
15 tomorrow, right, we did everything that it took, right.

16 That was a bankruptcy where you had a company that
17 needed help. It was a real company, right, was in financial
18 distress.

19 I spent significant time working on automotive
20 cases, right, employees who were scared, they want to know
21 am I losing my job or not, right.

22 And the bankruptcy system, to me, to the extent
23 that it tries to breathe life into companies that are in
24 distress, that's great.

25 THE COURT: How do I --

1 MR. GOODMAN: But that's not what this is.

2 THE COURT: Yeah, but let me just contrast that.

3 There is nothing I can tell someone who has been victimized
4 in a tort just in -- period, okay.

5 And I'm going to ask you a separate question, but
6 no one should read that I'm comparing "X" to "Y." I'm just
7 talking about bankruptcy.

8 Automotive case, union, someone who's been working
9 for a union 30 years and believe they're going to -- right,
10 some automotive company files for bankruptcy, seeks to do
11 something to a collective bargaining agreement.

12 And all of a sudden what they've been thinking
13 they're going to be entitled to, someone comes into court,
14 how do you tell them -- how do you tell somebody who's been
15 in a mine for 25 years that all of a sudden their contract
16 is going to be, you know, the deal that they thought they
17 had, some person in a robe can sign an order and change all
18 that?

19 How do you tell somebody who's invested their
20 401(k) in something and all of a sudden they find out it's a
21 Ponzi scheme and now all of a sudden the few dollars that
22 they got in connection with the Ponzi scheme they now have
23 to give back, the offense of now having to give back money
24 when after they lost everything, and the few bucks that they
25 did get they now have to give back?

1 How do you tell somebody who invested their entire
2 401(k) in a deal and now -- well, forget the -- let's just
3 say they invested all their life savings in a company and
4 now that company goes to bankruptcy, and now because of the
5 priority of the Bankruptcy Code, they don't receive a dollar
6 before everybody else gets something, they're going to get
7 wiped out in the case?

8 How do you tell somebody -- like those questions
9 are really hard. And they weigh on bankruptcy judges every
10 day. And I don't mean the physical and the emotional pain
11 that a tort victim has gone through. I don't even have the
12 words.

13 And I'm not trying to compare it. I'm just trying
14 to say, you know, I get what you're saying. The question is
15 not the pain, just the creditor position, does it put them
16 in any different place, you know?

17 They don't get to sue anyone either. None of
18 these folks who I've described get to sue anyone. And I'm
19 sure they'd like to.

20 How do I distinguish between -- that's what -- am
21 I back to just saying, divisional mergers no, but if you're
22 -- you know, Wes Moreland, yes, you know? That's the
23 question that I've got.

24 And I don't have good answers for it. I'm just
25 thinking out loud with you since you're raising the policy

1 and what bankruptcy is for and whether it's good or bad.
2 That's -- these are the questions that run through my mind
3 as I --

4 MR. GOODMAN: Yeah.

5 THE COURT: -- right.

6 MR. GOODMAN: I mean, I think when I was working --

7 THE COURT: Because it may not just be a
8 divisional merger case. Next time it can be, you know, I
9 didn't have some of these other cases that didn't involve
10 divisional mergers but they were really serious stuff was
11 going on and really serious allegations going on. And those
12 cases are continuing, what do I do?

13 You know, it's -- and there's no consoling any of
14 those folks as well. And I don't want to name cases but you
15 know which ones I'm talking about that are still going. How
16 do you balance that with what we're talking about today?

17 MR. GOODMAN: I think you and I know a real Debtor
18 when we see one.

19 THE COURT: Okay.

20 MR. GOODMAN: I think when I was working on Dana
21 (phonetic), I think you were working on *Enron* from what you
22 just said.

23 Look, I mean, if a company comes into bankruptcy,
24 right, and it submits itself and its assets to the
25 jurisdiction of a Bankruptcy Court, right, there is an

1 adjustment of the creditor, you know, company relationship.
2 That's Bankruptcy Code, that's how it works, right.

3 You have a real company that files, put all their
4 assets before the Court. YesCare didn't file for
5 bankruptcy. YesCare's financial statements are a mystery to
6 this day.

7 Mr. Lefkowitz didn't file for bankruptcy.

8 Think of all the released parties in this case,
9 right. This case is nothing other than releasing people
10 from tort liability. That's the entire purpose of the case,
11 right.

12 I mean, when you file a company and they come to
13 you and they say, I have no business to reorganize, right, I
14 have virtually no assets -- look at the letter that they --
15 that Tehum sent to United States Senate.

16 Remember that, the first sentence or really our
17 only -- really only assets are the estate causes of action,
18 right.

19 Estate causes of auction, what does that mean?
20 Well, we don't know. Right, you couldn't know it from
21 reading the 9019 motion.

22 You know, the pro se claimants who have been, you
23 know, doing their best to follow along and understand what's
24 going on in this case, I don't think any of them when they
25 read the 9019 motion thought my claim for my pain and

1 suffering against all of the parties that I could think to
2 hold responsible and actually recover something is what's
3 being sold.

4 I mean, I can't fathom how any of them could have
5 read that in a 9019 -- and they're really smart bankruptcy
6 lawyers who I think would have read that 9019 motion and not
7 figured it out, right.

8 But now we know, right. You heard Mr. Perry,
9 right. They kind of finally came clean during this
10 proceeding, right.

11 This case is a hundred percent about making sure
12 that the people who were harmed, people who were injured
13 can't seek justice in the U.S. court system, right.

14 Mr. Lefkowitz just flat out said, I'm here to get
15 a discharge.

16 But you know what? He's not a Debtor, right.

17 All the cases that I worked on before I got
18 involved in my first Texas Two-Step were, in my view,
19 bankruptcy proceedings along the lines what I've just kind
20 of always known, right. It was steel companies, it was
21 automotive companies, it was, you know, Takata manufactured
22 airbags.

23 I mean, when Takata was trying to figure out, you
24 know, who in the entity could file for bankruptcy, they were
25 like, we've got to check every box. We're going to put

1 everyone into bankruptcy we can because we need the
2 protection of the U.S. court system.

3 We need the Bankruptcy Court to authorize the sale
4 transaction so we can preserve these jobs and keep making
5 these products because, unfortunately, when you make
6 defective airbags, you've got to replace all the ones that
7 you made, right, and continue to make new ones.

8 Working on the PG and E case in California, again,
9 there was no one there who was trying to avoid being in
10 bankruptcy, you know. That was a company that, you know,
11 mismanagement problems, wildfires, families dead, right.
12 Horrible, horrible case. But the whole company filed for
13 bankruptcy. They made all of the disclosures, right.

14 The folks who are here are seeking a discharge.
15 And look at the settlement, look at the releases. It's a
16 discharge for hundreds of people, right.

17 And not a single one of them has taken on the
18 benefits or burdens of a bankruptcy case. I don't know how
19 to process that. It's so foreign from every other
20 bankruptcy proceeding that I've ever worked on or even read
21 about. It's just different.

22 And it's not right. It's just not right.

23 THE COURT: Thank you.

24 MR. GOODMAN: Thank you.

25 THE COURT: All right, folks. Given me all plenty

1 to think about. I very much appreciate the time and the
2 effort that went into this. These are very difficult
3 issues.

4 My hope is to try to get you something within the
5 next ten days. But I -- what I won't do -- well, I guess
6 what I will do is I will -- I don't know if I'll file
7 something but I will let you know kind of when -- give me
8 about a week or so. I'll know if I still need to take some
9 more time and think about it.

10 But I'm not going to spend -- I'm going to read it
11 into the Record whatever I do. And I -- you know, you're
12 farm more concerned about an answer than whether I blue-
13 booked correctly on a case or something so -- but I will
14 read cases. It'll be a full decision into the Record on
15 both.

16 Folks, I don't have many -- you -- if -- I know
17 that we're going to be leaving tonight. You're welcome to
18 just leave your stuff on the side.

19 I've got a couple of case tomorrow. But as long
20 as you kind of put them in an area if somebody needs to come
21 tomorrow and to come pick stuff up.

22 I thank every one, and I wish everyone a good day.
23 Thank you.

24 THE CLERK: All rise.

25 THE COURT: Everyone's excused. I'm just going to

1 completely log off and get my stuff. Thank you.

2 (Hearing adjourned at 9:17 p.m.)

3 * * * * *

4 I certify that the foregoing is a correct
5 transcript to the best of my ability due to the condition of
6 the electronic sound recording of the ZOOM/video/telephonic
7 proceedings in the above-entitled matter.

8 /S/ MARY D. HENRY

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13 DATE FILED: APRIL 7, 2024

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Exhibit B-5

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

IN RE: § CASE NO. 23-90086-11
§ HOUSTON, TEXAS
TEHUM CARE SERVICES, INC., § THURSDAY,
§ APRIL 11, 2024
DEBTOR. § 2:01 P.M. TO 2:49 P.M.

**ORAL RULING ON MOTION TO APPROVE
THE SETTLEMENT AGREEMENT (VIRTUAL ONLY)**

BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE ELECTRONIC APPEARANCES
ELECTRONIC RECORDING OFFICER: ZILDE COMPEAN
CASE MANAGER: ROSARIO SALDANA

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1 **HOUSTON, TEXAS; THURSDAY, APRIL 11, 2024; 2:01 P.M.**

2 THE COURT: Okay. Good afternoon, everyone. This
3 is Judge Lopez. Today is April the 11th. I'm going to call
4 Case No. 23-90086 here in the Tehum case. I'm going to ask
5 everyone to please make your appearances electronically.

6 I'm just going to read a decision into the Record
7 with respect to the motions filed at Docket No. 1259 and
8 1260. So that's all I'll be doing today. And so, let me
9 just do one thing.

10 Mr. Kaufman, I see you there. Could you just give
11 me a thumbs up that you can hear me?

12 Perfect. Okay.

13 All righty, folks. Here we go:

14 Tehum and the Official Committee of Unsecured
15 Creditors, who I'll refer to as the "UCC," filed a joint
16 motion seeking approval of a Settlement Agreement under
17 Federal Rule of Bankruptcy Procedure 9019.

18 A 9019 motion is supported by several parties who
19 assert tort claims against Tehum, the Official Committee of
20 Tort Claimants, who I will refer to as the "Tort Committee,"
21 along with some individual tort claimants oppose the
22 Settlement Agreement. So does the Office of the United
23 States Trustee.

24 The Tort Committee also filed a separate motion to
25 dismiss this Chapter 11 case. Tehum and the UCC opposed

1 dismissal.

2 The Court has jurisdiction under 28 U.S.C. 1334,
3 and this is a core proceeding under 28 U.S.C. 157(b). After
4 providing some background, I will address the 9019 motion
5 first. Then I'll turn to the motion to dismiss.

6 The history of Tehum and how it was formed are
7 well documented. Pre-petition, Corizon Health, Inc.
8 conducted a divisional merger under Texas law that created
9 two companies.

10 Tehum, the Debtor here, took on lots of pre-
11 divisional merger legacy tort liabilities. The other, CHS
12 TX, Inc., took on Corizon operating assets and related
13 liabilities, and operated as a going concern. CHS operates
14 under the name YesCare.

15 Tehum's Chapter 11 case started in February of
16 2023. In March of 2023, the United States Trustee appointed
17 the UCC. In May of 2023, this Court entered a stipulation
18 and agreed order appointing a mediator.

19 Tehum participated in three separate mediations
20 under this Order. The first mediation was conducted in July
21 of 2023, and it involved some insurance issues.

22 The second mediation was in August of 2023. It
23 lasted three days and involved Tehum, UCC, YesCare, its
24 wholly owned subsidiaries, Geneva, Perigrove 1018,
25 Perigrove, M2 Hold Co, M2 Loan Co, and Pharmacore.

1 This mediation focused on resolving the estate's
2 claims against Tehum's affiliate entities and certain
3 related parties and individuals, and included claims
4 relating to the divisional merger. This mediation led to a
5 proposed global settlement of claims.

6 The third mediation occurred in September of '23,
7 involved Tehum, the UCC, and another insurance company. In
8 that month in September of '23, Tehum and the UCC also filed
9 a Chapter 11 Plan incorporating the deal reached in
10 mediation and a Disclosure Statement in support of the Plan.

11 The documents were later amended in October of
12 2023. To date, this Court has not considered that
13 Disclosure Statement or the related Plan.

14 November of 2023, the Court entered an order
15 approving appointment of a second mediator. That same
16 month, the United States Trustee appointed the Tort
17 Committee.

18 Parties from the first global mediation, this time
19 with the Tort Committee, participated in another mediation.
20 Tehum, the UCC, and the settlement parties reached the terms
21 of a revised Settlement Agreement. The Tort Committee
22 didn't sign onto the deal.

23 The Debtor and the UCC are the Movants of the 9019
24 seeking approval of the settlement. They believe the
25 settlement is reasonable; and if granted, the Movants intend

1 to file another amended joint Chapter 11 Plan incorporating
2 the settlement.

3 The settlement reached in mediation, and it's
4 attached to the 9019 motion, is not necessarily the one
5 Movants want the Court to approve. It's actually unclear.
6 That's because the goal posts moved during the hearings on
7 the 9019 motion.

8 But the key terms of the Settlement Agreement
9 attached to the 9019 motion are the settlement parties agree
10 to advance 5 million to Tehum under a fifth interim DIP
11 financing order that would be entered with the order
12 approving the Settlement Agreement.

13 Tehum would propose this new Chapter 11 Plan
14 incorporating the Settlement Agreement. On the plan
15 effective date, the settlement parties would release and
16 waive all claims against Tehum's estate, including M2 Loan
17 Co's claims under DIP financing orders, and proofs of claim
18 filed by Geneva Consulting and M2 Loan Co, LLC.

19 On the plan effective date, the settlement parties
20 would also pay or cause to be paid to Tehum or its
21 successor-in-interest an additional 40 million.

22 Upon payment in full of the 5 million additional
23 financing, and the 40 million settlement payment, the M2
24 parties would provide releases, including to Tehum, Russell
25 Perry, Tehum's Chief Restructuring Officer, the UCC and its

1 members, any Trustees appointed under the Chapter 11 Plan.

2 And Tehum, its estate, and the UCC release a
3 larger group of what are defined as the "Release Parties,"
4 as well as each released party's current and former
5 directors, managers, employees, agents, attorneys, and other
6 professional advisers.

7 The broader group defined as the Released Parties
8 are what is defined as the M2 parties -- M2 Equity Co LLC;
9 Valitas Intermediate Holding Inc.; Valitas Health Services
10 Inc.; M2 Pharmacore Equity Holdings, LLC; Pharmacore, M2
11 LLC; Pharmacore Holdings, LLC; and Dever Distribution, LLC;
12 YesCare Holdings, LLC; Sigma RM, LLC; DG Realty Management,
13 LLC; Scarcore or Scorsore, LLC; Mr. Isaac Lefkowitz;
14 Ms. Sarah Tirschwell (phonetic); Ayodeji Olawale Ladele,
15 spelled A-Y-O-D-E-J-I, O-L-A-W-A-L-E, L-A-D-E-L-E; Beverly
16 Rice; Jeffrey King; Jennifer Finger; Frank Sholey,
17 S-H-O-L-E-Y; FTI Capital Advisors, LLC.

18 And for each of those parties that I mentioned
19 above, each of their current and former officers, directors,
20 employees, managers, attorneys, professional advisers, and
21 agents, but excluding a few folks -- James Gassenheimer,
22 G-A-S-S-E-N-H-E-I-M-E-R; Charles Gassenheimer; James Hyman,
23 H-Y-M-A-N; and Michael Flacks, F-L-A-C-K-S.

24 So, the Released Parties get released, but only
25 the M2 parties, which is a subset of the Released Parties,

1 are releasing on the Creditor side so far.

2 But upon confirmation and the occurrence of the
3 Plan effective date, and upon payment in full of the
4 settlement payment, there would also be deemed mutual
5 releases by and among the Released Parties and Creditors
6 that do not opt out of the third-party releases in the
7 original-filed Plan.

8 The settlement added some more flavor in
9 paragraph 9, and it says that effectiveness of the
10 Settlement Agreement was conditioned upon entry of a Court
11 Order in form and substance acceptable to the M2 parties
12 approving the agreement and the entry of a Court Order
13 confirming a Chapter 11 Plan that would contain as much as
14 the law allows these provisions.

15 All Creditors would be enjoined from pursuing any
16 claims or causes of action against the Released Parties in
17 accordance with the scope of the releases.

18 Parties who opt out of the settlement of the Plan
19 would not be authorized to receive distributions from the
20 settlement payments or pursue claims or causes of action
21 against the Released Parties unless they first seek
22 authority from the Court and get an Order from the Court
23 finding that their claims and cause of action were not
24 released or otherwise enjoined under the Plan.

25 There had to be approval of releases substantially

1 like the ones in the current Plan for the Released Parties
2 by all Creditors that don't opt out of the settlement. Then
3 there'd have to be exculpation planning junctions and
4 required gatekeeping provisions substantially like those
5 that are on the currently filed Plan to ensure the finality
6 of the Plan and the Confirmation Order.

7 There's also a finding that contracts that were
8 not allocated to YesCare Corp and its wholly owned
9 subsidiaries under the May 2022 divisional merger, but under
10 which YesCare is still operating post-divisional merger are
11 not executory contracts of Tehum or that, to the extent that
12 they are determined to be executory by a Final Order of the
13 Court, the contract counterparty must file a proof of claim
14 within 30 days of the later of the effective date or the
15 entry of the Final Order.

16 Thus, the effectiveness of the settlement was also
17 conditioned on the Court approving a Chapter 11 Plan with
18 each of the requirements in paragraph 9.

19 As I mentioned a few moments ago, things got
20 interesting during the hearings. Because one day, after
21 some questions no doubt from me and some Creditors opposing
22 the motion, Movants filed a revised proposed Order approving
23 the Settlement Agreement.

24 This new order changed paragraph 9 in the
25 Settlement Agreement, and that's the one with all the

1 requirements that had to be in a Plan.

2 Paragraph 9 would now provide that the
3 effectiveness of the settlement was conditioned on entry of
4 a Court Order approving the 9019 settlement and entry of a
5 final Court Order not subject to appeal confirming a
6 Chapter 11 Plan, including provisions that:

7 One, every Creditor would be enjoined from
8 pursuing all claims and causes of action against the
9 Released Parties that are property of Tehum's estate that
10 were released; and if there's a dispute about that, then the
11 Creditor is prohibited from pursuing the claim or cause of
12 action unless the Creditor first seeks authority from the
13 Court and secures a Final Order that's not subject to
14 appeal.

15 And then it also says that nothing was intended to
16 preclude or affect any direct claims against third parties
17 arising on or after the May 2022 divisional merger, or
18 claims that were allocated to CHS TX through the divisional
19 merger and as to which as a result, Tehum no longer has any
20 liability -- Tehum no longer has any liability.

21 There are two important changes proposed by
22 Movants in the proposed Order.

23 First, the effectiveness of the agreement was
24 conditioned on confirmation of a Plan. Now it's final, non-
25 appealable Order confirming the Plan. It was argued by a

1 witness for the Movant that these terms are functionally the
2 same. But now, it means that the 40 million settlement is
3 not required until all potential appeals are resolved.

4 The second change was the removal of the Plan term
5 requirements like the opt out. I would note for the Record
6 that an Order confirming a Plan is certainly different on
7 the textual basis from a final non-appealable Order, but the
8 parties may have understood that functionally, that was the
9 same.

10 During the hearing, the Court still had questions
11 about the settlement payment hinging on a Final Order
12 approving confirmation of a Plan that had not been filed
13 yet, and whether the Court was being asked to actually or
14 implicitly preapprove Chapter 11 terms now.

15 The Court asked questions like whether the
16 settlement was more like a Restructuring Support Agreement
17 where a Debtor and a creditor agree on the terms of a
18 proposed Chapter 11 Plan.

19 For the Record, this Court generally does not
20 approve Restructuring Support Agreements. I have not done
21 so yet to date. But Debtors are certainly encouraged to
22 resolve disputes through entry into an RSA, which is often
23 good.

24 RSA's solidify a deal and parties to a deal,
25 right? And it focuses parties on a consensual resolution.

1 I just think it's best to approve Chapter 11 Plan terms in
2 connection with Plan Confirmation. Movants told me it
3 wasn't like an RSA. And we'll just agree to disagree on
4 that point.

5 Later, things even got more interesting. Counsel
6 for the M2 parties orally informed the Court that they would
7 be okay paying the 40 million settlement payment upon entry
8 of a Final Order approving the 9019 motion that wasn't
9 subject to any further appeal.

10 The Tort Committee and the US Trustee filed
11 oppositions to the 9019 motion. The Tort Committee argues
12 that the settlement is unfair, fails to meet the
13 requirements for approval under 9019, and strips tort
14 claimants of their rights through the release it
15 contemplates.

16 The U.S. Trustee argues that the settlement is not
17 in the best interest of the estate and its Creditors, and
18 that it constitutes an impermissible sub rosa Plan.

19 Bankruptcy Rule 9019 governs the procedural
20 requirements to be followed before a settlement may be
21 approved. Bankruptcy Rule 9019 provides that on motion by
22 the Trustee, and after a notice and a hearing, the Court may
23 approve a compromise and a settlement.

24 In deciding whether a settlement of litigation,
25 potential litigation, is fair and equitable, a judge in

1 bankruptcy must make a well-informed decision comparing the
2 terms of the compromise with the likely rewards of
3 litigation.

4 And for that, I am citing the *In Re Cajun Electric*
5 *Power Co-Op*, case 119 F.3d 349, pincite 356 (5th Cir. 1997)
6 case. I'm not citing internal citations.

7 The standard for approval of a bankruptcy 9019
8 settlement Order is whether the proposed settlement is fair,
9 equitable, and in the best interests of the estate. I'm
10 citing now *Official Committee of Unsecured Creditors v.*
11 *Moeller*, otherwise known as *In Re Age Ref, Inc.*, 801 F.3d
12 530, 540 (5th Cir. 2015) case.

13 In determining whether a settlement is fair and
14 equitable, this Court should consider the probability of
15 success in litigating the claim subject to the settlement
16 with due consideration for the uncertainty and fact in law;
17 the complexity and the likely duration of litigation and any
18 attendant expense; inconvenience and delay; all other
19 factors bearing on the wisdom of the compromise, including
20 the best interest of creditors with proper deference to
21 their reasonable views, and to the extent to which the
22 settlement is truly the product of an arm's length
23 bargaining and not a fraud or collusion. Same case.

24 The Movants conducted in-depth investigations of
25 claims and causes of action belonging to Tehum's bankruptcy

1 estate. Both stressed their negotiations and investigations
2 were independent and tenuous.

3 Movants' investigations included independent
4 review of many documents, many third-party subpoenas,
5 multiple depositions, and witness interviews. The record,
6 including testimony from representatives from Tehum and the
7 UCC supports this contention.

8 Witnesses testified that the investigations reveal
9 that the estate may have meritorious claims against
10 Perigrove 18, LLC, M2 Loan Co, LLC, Geneva Consulting, LLC,
11 directors or officers and other transferees or beneficiaries
12 of avoidable, fraudulent transfers in connection with the
13 divisional merger.

14 They also testified that avoiding the divisional
15 merger as a fraudulent transfer presents a significant
16 impediment. Other than the cash removed from certain of
17 Tehum's bank accounts, their research concluded that Tehum's
18 value as of the May 5, 2022 divisional merger date was
19 limited.

20 The company's financials didn't improve by the
21 time the divisional merger was effective. Movants recognize
22 that the entity that emerged with the active contracts --
23 which that's CHS TX, YesCare -- benefitted from removing
24 liability off its books, but they say it also had limited or
25 low value or no value, excuse me, based on low margins on

1 many of those contracts.

2 UCC and Tehum also evaluate the viability of
3 potential claims against CHS TX, YesCare based on the
4 divisional merger under theories based on or derivative of
5 successor liability.

6 They believe recovery under successor liability
7 would present additional challenges beyond those the estate
8 would encounter by simply challenging the divisional merger
9 as a fraudulent transfer.

10 Tehum, the M2 parties, and the UCC and some of the
11 parties that support it, claimed this deal was also the best
12 opportunity to get money in the hands of tort claimants
13 soon. There could be a meaningful distribution with over
14 40 million cash plus additional tax refunds.

15 And Movants highlight that one half of tort
16 claimants who filed proofs of claim in this case are pro se
17 parties, many of whom are incarcerated. Remember, Tehum's
18 predecessor pre-divisional merger was in the prison
19 healthcare business.

20 Curators for the University of Missouri who have
21 been litigating in State Court moved to appoint a receiver
22 against Tehum before it filed for bankruptcy. And they
23 support the settlement.

24 The settlement is also supported by incarcerated
25 tort claimants who claim to be the victim of horrible attack

1 in prison.

2 Neither like Tehum or the divisional merger, to be
3 clear, but both believe that this deal is worth taking.

4 Both want to end the litigation and get money in the hands
5 of claimants, including pro se claimants, who likely won't
6 fair well being represented outside of court, or I should
7 say outside of bankruptcy and unrepresented in State Court.

8 The Court takes these positions and concerns of
9 the parties very seriously, but the Court also considers the
10 procedure and other terms of the settlement.

11 And after carefully considering the settlement, it
12 is denied. There are several material reasons to do so.

13 First, it's unclear which settlement is before the
14 Court. The original Settlement Agreement is signed by the
15 settlement parties. But then Movants filed an amended
16 proposed Order.

17 The UCC rep who testified was the head of the UCC.
18 He had not seen it or voted on it. He was also unaware of
19 its terms. And I was told it was because the witness
20 started testimony on one day, and the proposed Order was
21 filed before he finished his testimony, and they didn't want
22 to -- took my words seriously to not talk to anyone about
23 your testimony.

24 But it doesn't change the fact that the head of
25 the UCC testifying witness could not make a credible case to

1 support a pleading he had not seen before.

2 Making matters worse, Mr. Lefkowitz, Isaac
3 Lefkowitz, who testified on behalf of the M2 settling
4 parties, testified he hadn't seen it either. So the UCC and
5 the settling party witnesses had not seen or approved the
6 Amended Order.

7 And if they didn't consider the amendment, they
8 also didn't consider M2 counsel's oral representation about
9 paying only upon a Final 9019 Order. Lefkowitz testified
10 that he hadn't seen it, and he represents the M2 parties.
11 Right?

12 So it's one thing that the Debtors still approve
13 it, and maybe they didn't need the approval of the UCC to go
14 along with it. But certainly, Mr. Lefkowitz, who is a
15 significant party in all of the M2 entities, had not seen
16 it.

17 I note no party interestingly amended the original
18 signed Settlement Agreement either. So which one does the
19 Court consider? I think the only one actually before the
20 Court supported by the evidence is the signed Settlement
21 Agreement attached to the motion, and not the Amended Order,
22 or the oral agreement during trial.

23 It turns out, however, it doesn't matter if the
24 others are operative anyway. Each fails to meet the
25 standards set by the Fifth Circuit.

1 This is a settlement purporting to sell estate
2 causes of action to a purchaser, but it functions like a
3 Restructuring Support Agreement. Forty million doesn't come
4 into the estate until there's an Order either confirming a
5 Plan, if it's the original settlement; or a non-appealable
6 order approving the 9019 and the Plan if it's the Amended
7 Order; or a final non-appealable approving the 9019 if it's
8 the oral representation.

9 In the original signed Settlement Agreement, the
10 Plan must include certain terms concerning things like
11 distribution under a Plan that go beyond a simple settlement
12 payment in exchange for a release.

13 Think about this, too. If approved, what would a
14 9019 Order require the settlement parties to do?

15 First, the estate would receive an additional
16 5 million in financing it appears. But 40 million either
17 requires Plan Confirmation or a final non-appealable Order
18 approving the Settlement Agreement.

19 Based on the evidence, whether it's a change to
20 the original settlement or not, Mr. Lefkowitz was clear in
21 his testimony that the 40 million payment is for finality.
22 And that 40 million will not be funded at Plan Confirmation
23 without finality.

24 That means no estate causes of action until a Plan
25 effective date, not subject to any further appeal.

1 The original Settlement Agreement also contained
2 many provisions that would be required in a Plan.
3 Implicating Section 1129 on the Bankruptcy Code, including
4 opt-out requirements in a Plan that, if exercised, would
5 preclude a tort claimant from receiving anything under the
6 Settlement Agreement.

7 So a Bankruptcy Court, me, would be approving in a
8 9019 deal that a tort claimant won't receive any portion of
9 a settlement payment under a Chapter 11 Plan by opting out,
10 and I would do that under a 9019 Order.

11 All of this approved, and I suppose the Debtor
12 would draft a Plan arguably confident that it would satisfy
13 the 1129 standards. If Lopez approved the 9019 Order,
14 likely going to have to approve the Plan Confirmation
15 standards.

16 The original settlement was in substance a
17 Restructuring Support Agreement where parties agree on a
18 proposed Chapter 11 Plan.

19 A 9019 Order I sign today, for example, would not
20 prevent a third party from starting or continuing a State
21 Court lawsuit against a proposed released party. That's
22 because the releases and payments depend on confirmation of
23 a Chapter 11 Plan with all the terms of the settlement in
24 it.

25 And if the Court found that a proposed settlement

1 term violated a section of the plan, there's no obligation
2 to fund the 40 million.

3 Mr. Lefkowitz' testimony also concerned the Court
4 because it left unclear which released party would be
5 putting up the money or where the money was coming from. He
6 didn't either know the answer or was intent on not revealing
7 the source of the funds.

8 So basically, the 9019 sets the parameters of a
9 Chapter 11 Plan, and an Order approving the settlement binds
10 the parties to pursue their settlement by proposing a 9019
11 that reflects the deal.

12 It's not in the best interest of the estate in a
13 highly contentious case to agree to a settlement payment
14 that may not occur for years or that's based on the Court
15 blessing the terms of a Plan in a 9019 motion.

16 If I approve the Amended Order, it would also
17 require the Court to enjoin parties from litigating in State
18 Court against third parties, and potentially for some time
19 if there are appeals.

20 That doesn't mean that the threat of appeals
21 controls. Parties assess risk, real or threatened, whether
22 it's hold-up value or if it's real, all the time. But in a
23 highly litigious case, you can't act like it doesn't exist.

24 The amended Form of Order conditions payment upon
25 the conclusion of that process.

1 Even more troubling to the Court are the proposed
2 releases in the settlement. Releases in 9019s are often
3 provided in exchange for finality, but there's usually
4 agreement between two or more parties to resolve a specific
5 dispute.

6 And typically, a settlement requires a payment to
7 be made shortly after entry of an Order in exchange for
8 mutual releases for claims and causes of action related to
9 the settled matter, and not usually for some uncertain date
10 into the future.

11 Here parties agree to provide broad releases for
12 multiple related parties and there's little to no evidence
13 supporting the release. Take, for example, the M2 parties
14 which is comprised of a group of related entities.

15 M2 parties and their current and former directors
16 and officers would be released. Mr. Lefkowitz is the
17 director of all the M2 parties except Perigrove LLC, which
18 he apparently stopped serving as a director not too long
19 ago.

20 Again, Mr. Lefkowitz testified on behalf of the
21 settling parties, but he couldn't identify directors of
22 YesCare, Perigrove, or any other M2 party. Why not seek
23 releases from claims for non-Debtors like this in a Plan
24 that's subject to a Disclosure Statement, and every creditor
25 gets to read about the deal, and then they get to vote on

1 it.

2 Not every creditor will know about this settlement
3 or the proposed release of potential claims and causes of
4 action which they may or may not hold, or which they may
5 have to come into court to argue about.

6 This Court is particularly concerned about the
7 YesCare/CHS release, too. Movants certainly investigated
8 the claims against Yes in the divisional merger for sure,
9 and they got some financial information from YesCare.

10 But there was some testimony in hearings that
11 CHS TX was awarded a substantial -- upwards towards of a
12 billion dollar contract in Alabama. Parties requested
13 financial information, but it really wasn't provided.

14 It doesn't appear not even to the Movants. No
15 financials for the period after the divisional merger were
16 provided to the Tort Committee, nor audited financial
17 either.

18 So let me get this straight. CHS is going to get
19 a broad release under a settlement, but didn't provide very
20 meaningful information about a large contract obtained post-
21 divisional merger? Not today, and certainly not by this
22 Court.

23 This Court cannot make a well-informed judgment
24 whether the proposed settlement is in the best interests of
25 the estate.

1 To be clear, today's ruling doesn't require future
2 settling parties to reveal all information. But here, there
3 was a divisional merger that gave this Debtor significant
4 tort liabilities, and later CHS gets all the operating
5 contracts and recently approved for a significant deal.

6 And if that's what Movants want to get approved in
7 a Plan, then put it in a Plan, and let creditors vote on it.
8 Or rework the settlement to work on a one-off basis with
9 those who are willing to settle all of their claims now.

10 Some are definitely interested in a settlement,
11 including some pro se parties. Some parties are interested.
12 But this Court finds itself with a lack of clarity about
13 whether the proposed settlement amount is sufficient because
14 of the decision to withhold key information coupled with
15 uncertainty on timing of the 40 million and preapproval of
16 the Chapter 11 Plan terms and release conditions.

17 And recall if the original settlement is the
18 operative deal, then the Court would be potentially pre-
19 approving terms of a Plan providing that creditors who vote
20 on a plan will receive no distribution without considering
21 Bankruptcy Code sections dealing with Plan Confirmations.

22 And arguably, the Court would have to then later
23 enter another Order binding third parties from pursuing
24 anything while the Debtors pursue this Plan.

25 All of this is a bridge too far. The Court

1 cannot, based on these facts, find that the Settlement
2 Agreement is in the best interests of the estate, and that
3 this settlement could stand on its own without pre-Court
4 approval of key Plan terms today. The motion is denied.

5 Now let's turn to the motion filed by the Tort
6 Committee and certain tort claimants to dismiss the case.
7 The Tort Committee and the tort claimants consider the pre-
8 petition divisional merger to be a tactic designed to
9 suppress tort claim values and facilitate a transfer of
10 millions of dollars from victims to equity.

11 Tehum and the UCC disagree strongly. The motion,
12 and quite frankly, this case highlights a feature of mass
13 tort-type cases. When these types of cases are filed,
14 battle lines are drawn.

15 The honest but unfortunate Debtor that's so often
16 referenced in bankruptcy cases in my experience usually lies
17 in the eye of the beholder. In mass tort cases, victims and
18 family members who may have been affected don't like the
19 Debtor.

20 I don't see them too honest but unfortunate. And
21 sometimes, that's for good reasons. Same goes for mass
22 fraud cases. These are all tough cases, but the Bankruptcy
23 Code says they can be Debtors, right?

24 Bankruptcy Code 301 says that a voluntary
25 Chapter 11 case may be commenced by the filing of a petition

1 filed by an entity that may be a Debtor. So who can be a
2 Debtor? Bankruptcy Code says that a Debtor is a person, and
3 person, the definition of person includes corporations, is a
4 person who resides or has a domicile, principal place of
5 business or property in the United States.

6 Tehum's domicile is the state of incorporation,
7 and that's Texas. So that means it's eligible to seek
8 relief as a Chapter 11 Debtor. And as a Debtor, it's
9 entitled to all the protections under the Bankruptcy Code.
10 But once a Debtor files, parties-in-interests have their
11 right to seek dismissal of the case, and that's what we have
12 here.

13 The Tort Committee in its pleadings says that in a
14 traditional scenario, a Debtor seeking to reorganize has the
15 incentive to negotiate in good faith and reach settlements
16 with victims that will result in a Plan acceptable to them.

17 The Tort Committee also says that in a Texas two-
18 step -- that's the catchy phrase used for divisional mergers
19 -- the incentives are far different and indeed perverse.
20 GoodCo, as it called it, can operate its business, conduct
21 further corporate transactions, and upstream profits to
22 shareholders without Court oversight while claimants are
23 stuck in bankruptcy anchored by a Debtor that has no need to
24 exit bankruptcy and cannot liquidate or obtain compensation
25 for their claims.

1 By contrast, they identify that there's a TortCo.
2 Primary objective is to stay in bankruptcy for as long as
3 possible and to prevent claimants from liquidating their
4 claims to judgment.

5 Tort Committee wants this claim dismissed because
6 it's a divisional merger case. That's the reason. They
7 think all divisional merger cases should be dismissed as
8 bad-faith filings.

9 The Tort Committee's members, if not the
10 constituents they represent, are mostly represented by
11 Plaintiff's lawyers who want to be in State Court where they
12 can pursue litigation, cut deals, and potentially achieve
13 their contingency fees.

14 The Tort Committee's witness made that abundantly
15 clear. The Tort Committee wants the Court to dismiss the
16 case, but to do it structurally, which involves granting the
17 Tort Committee standing to pursue estate causes of action
18 that constitute remedies that Creditors could bring outside
19 of bankruptcy in aid of their efforts to hold YesCare and
20 non-Debtors and insiders responsible for their conduct.

21 So in essence, dismiss the case. But before you
22 do so, Lopez, give us the right under an Order that can be
23 only done in bankruptcy to sue these folks.

24 Now let's turn to bankruptcy law on the case
25 dismissal. Section 1112(b) requires a Bankruptcy Court to

1 convert a case to one under Chapter 7 or to dismiss the case
2 for cause unless the Court determines that appointment of a
3 Trustee or Examiner is in the best interests of creditors
4 and the estate.

5 The Bankruptcy Code provides a non-exclusive list
6 of examples that constitute cause under Section 1112. The
7 Fifth Circuit has held that the term "cause" -- and I'm
8 using cause in quotes if you can imagine that -- affords
9 flexibilities to Bankruptcy Courts and can include a finding
10 that the Debtors filing for relief is not in good faith.

11 For that, we turn to the infamous *In Re Little*
12 *Creek Development Company*, 779 F.2d 1068, pincite 1072, 1073
13 (5th Cir. 1986). Lack of good faith is one of -- is not --
14 excuse me. Lack of good faith is not one of the enumerated
15 examples in Section 1112(b).

16 Little Creek says that many Courts have held that
17 the lack of good faith is appropriate cause for dismissal
18 under that section. Indeed, Judge Edith Jones wrote, "Every
19 bankruptcy statute since 1898 has incorporated literally or
20 by judicial interpretation a standard of good faith for the
21 commencement, prosecution, and confirmation of bankruptcy
22 proceedings."

23 The Court is instructed to consider the good faith
24 of Tehum's filings based on the totality of the
25 circumstances requiring a, quote, "On-the-spot evaluation of

1 the Debtors' financial condition, motives, and the local
2 financial realities." That's Little Creek.

3 Little Creek was a single-asset real estate, so
4 all the factors considered in that case don't exactly fit in
5 this fact pattern, but some do. For example, the Debtor has
6 no employees and little to no cash flow. But there are
7 factors that the Debtor in Little Creek lacked that this
8 Debtor has, such as cash to fund a potential Chapter 11 Plan
9 and many Creditors.

10 And one should focus too much on Little Creek -- I
11 think people focus too much on Little Creek as a single-
12 asset real estate. To me, the Fifth Circuit's guidance
13 there is to focus on the -- to conduct an on-the-spot
14 evaluation.

15 I should also note that the United States Supreme
16 Court in the famous *Bank of America v. 203 North LaSalle*,
17 526 U.S. 434 (1999) case said that preserving going concerns
18 and maximizing property available to creditors for valid
19 bankruptcy purpose.

20 I agree with courts holding that a good-faith
21 Debtor tries to preserve or create some value using tools of
22 bankruptcy as a good-faith Debtor. It's not bad faith to
23 use the tools of bankruptcy afforded by Congress in
24 bankruptcy.

25 For example, rejection of executory contracts and

1 unexpired leasing under Section 365 were using Section 506
2 of the Bankruptcy Code to value secured claims or proposing
3 Chapter 11 Plans that are crammed down on dissenting
4 classes.

5 You may not find the folks who are on the other
6 side of that to be too happy, but Congress afforded Debtors
7 those tools, and that's what Congress wrote, and Debtors are
8 not in bad faith for using those kinds of tools or seeking
9 settlements in bankruptcy.

10 Further, I'd note that there's no insolvency
11 requirement for Chapter 11 Debtors. Again, liquidating, I'd
12 also note, through a Chapter 11 Plan, through a Court-
13 approved plan, is also expressly contemplated by the
14 statute. So not every Chapter 11 Debtor rehabilitates.
15 Many liquidate and create trusts to benefit creditors.

16 In LTL, the Third Circuit dismissed the first
17 Chapter 11 case of LTL Management, LLC, which was a
18 divisional merger of the pharmaceutical giant Johnson and
19 Johnson. That case is 58 F.4th 738 (3rd Cir. 2023). The
20 Third Circuit said the theme is clear. Absent financial
21 distress, there's no reason for Chapter 11 and no valid
22 bankruptcy purpose.

23 The financial distress standard is not binding on
24 this Court. And again, insolvency's not a requirement to be
25 a Chapter 11 Debtor. I do think it could be a factor to

1 consider as part of the Little Creek, on-the-spot evaluation
2 though. It just depends on the facts and circumstances of
3 the case.

4 The text of the statute itself sets up a burden-
5 shifting framework to establish cause. On the request of a
6 party at interest, the Bankruptcy Court must dismiss for
7 cause, unless the Debtor shows to the Court that there are
8 unusual circumstances warranting denying the relief sought.

9 So party-in-interest has to establish cause, and
10 the Debtor or another party-in-interest has to show, if you
11 can get over the cause hump, then the other party has to
12 show that there are unusual circumstances warranting denying
13 the relief sought.

14 And then 1112(b)(2) states that the Court may
15 dismiss, and specifically, if the Court finds and
16 specifically identifies unusual circumstances establishing
17 that dismissing the case is not in the best interests of
18 creditors in the estate and the Debtor and of the other
19 parties and interests established that there's a reasonable
20 likelihood that a Plan will be confirmed within the
21 timeframes established in Sections 1121(e) and 1129 of the
22 Bankruptcy Code.

23 And the grounds for dismissing the case include an
24 act or omission for which the Debtor -- there's a reasonable
25 justification for the act of omission, and that will likely

1 be cured.

2 Let me just note for the start, a motion to
3 dismiss this case was filed at a far different stage than
4 any other divisional merger cases. I'm not going to sit
5 here and recount all of the divisional merger cases that
6 have certainly garnered much press.

7 This Chapter 11 case was filed in February of
8 2023. The Tort Committee was appointed in November of 2023.
9 Right? About nine months into the case. A motion to
10 dismiss was filed in January of 2024.

11 So why did Tehum actually file for bankruptcy?
12 For that, we turn to Mr. Lefkowitz' testimony. Tehum's
13 divisional merger occurred over a year before the bankruptcy
14 case was filed.

15 Mr. Lefkowitz testified that Tehum filed because
16 there was a receivership motion filed by a hospital in
17 Missouri. That testimony is uncontroverted.

18 Mr. Lefkowitz also testified that he tried to get
19 some contracts for Tehum post-divisional merger. According
20 to him, the goal was to have CHS serve prisons and Tehum to
21 serve jails.

22 Tehum filed Chapter 11 because there was a threat
23 of a receivership, not because of the tort liability, which
24 Lefkowitz' testimony, according to him, he views as part and
25 parcel of the business expenses of operating a prison

1 healthcare system. In other words, you're going to be sued
2 in a prison healthcare system type of business.

3 On the other hand, there are facts that support
4 dismissal. Tehum at the filing had no employees or
5 operating business. Lefkowitz also testified that Tehum has
6 enough resources to pay all Creditors and that Tehum is not
7 in financial distress.

8 He also testified that he's the one who can tell
9 which claims are legitimate or not just by looking at them.
10 The prisoners write claims on the back of paper and consider
11 them legitimate. And some of the Plaintiffs' lawyers are
12 crooks, and that even one of them held by a party who
13 actually supported the settlement is not a legitimate claim.

14 Lefkowitz believed Tehum has all the money to pay
15 all the claims in full because he thinks these claims are
16 illegitimate and their lawyer is a crook who just want to
17 settle and make money.

18 But his jaded view doesn't mean that this Court
19 should discount the validity of properly-filed claims
20 alleging serious matters.

21 A better testimony to rely on is from Tehum's CRO
22 and the UCC witness who actually tried to value these claims
23 based on the strength of the legal arguments. The Tort
24 Committee's witness was a Plaintiff's lawyer who represented
25 a tort claimant.

1 He said that he had actually spoken with several
2 pro se parties or tort claimants. He never mentioned to
3 them that there was a proposed settlement. The Tort
4 Committee produced no evidence that pro se tort claimants
5 who represent over one-half of the filed claims were
6 informed about a potential settlement.

7 No meaningful evidence for that case, or that a
8 Tort Committee seriously considered the uniquely-positioned
9 views of incarcerated pro se claimants. The Tort Committee
10 formed and its members dug their trenches with a mindset on
11 dismissal.

12 The witnesses testified that the pro se claimants
13 will not fare better outside of bankruptcy, but they can
14 hire lawyers and settle, too. It's interesting what people
15 actually say on the stand compared to the arguments that are
16 in academia and pleadings about mass tort cases.

17 I'm not saying it's all the case; I'm just saying what
18 was interesting what was said in this case.

19 This case is also different than others than cases
20 that people mentioned in court. Those cases involved motion
21 to dismiss raised early in the proceedings. Here we have
22 the opposite.

23 Parties waited over nine months -- months -- to
24 bring the motion to dismiss. To be clear, parties have a
25 right under the Bankruptcy Code to raise that issue at any

1 time. But it doesn't mean that the Court has to turn a
2 blind eye to the work of Tehum and the UCC.

3 I also note that the members of the Tort Committee
4 have independent counsel. And many other tort claimants
5 received notice about this case and filed proofs of claim
6 before the Tort Committee was formed. None of them wanted
7 this filed motion seeking dismissal of the case.

8 And it doesn't matter that they're not bankruptcy
9 lawyers. That isn't an excuse in any other Chapter 11 case.
10 In fact, in this case, if the cause is the divisional
11 merger, the Plaintiff's lawyers are in a fine position to
12 know the facts pertaining to it.

13 And one can't overlook that an active UCC has
14 worked hard in this case pushing where appropriate. We
15 aren't going to act here like the UCC doesn't care about
16 tort claimants and didn't consider their views.

17 A tort claim is on the UCC, and counsel stressed
18 to me they've spoken many times to pro se parties. In any
19 case, let's actually see what's taken place during the case.

20 Tehum obtained Debtor in possession financing with
21 active involvement from the UCC who fought to preserve many
22 claims on behalf of the estate. Right. Tehum participated
23 in four mediations. Tehum and the UCC have filed an
24 original and amended joint Chapter 11 Plans.

25 During the case, Tehum and its professionals have

1 been acting like any other Debtor in trying to work on a
2 plan. Tehum, its CRO, professionals have worked with the
3 UCC for months. And again, the UCC has tort claimants on
4 its committee.

5 Tehum also filed a Chapter 11 Plan and a 9019
6 motion supported by an Official Committee of Unsecured
7 Creditor. This is evidence of valid bankruptcy purposes.
8 This is far from the TortCo described by the Tort Committee
9 in its pleadings that is motivated to stay in bankruptcy as
10 long as possible.

11 This Debtor has been trying to cut deals for
12 months. This is not a case that should be dismissed as a
13 bad-faith filing. How does a Debtor working with a UCC in
14 good faith get dismissed on facts like these?

15 To be clear, I've got no issues with professionals
16 who worked on this case, on any of them, including the CRO.
17 They've all worked hard to fulfill their duties faithfully.
18 I'm making no policy statement about whether all divisional
19 mergers and those Debtors are fraudulent transfers are good
20 or bad-faith debts, or whether the bankruptcy is better than
21 other forms of litigation like State Court individual cases,
22 class actions, MDLs.

23 My job today is to decide cases before me based on
24 the facts and the law. The question before me right now is
25 whether to dismiss this case under Section 1112(b). Little

1 Creek tells me to conduct an on-the-spot evaluation of the
2 Debtor's financial condition and motives.

3 Here, my on-the-spot evaluation comes about a year
4 into the case. Based upon the Record before this Court,
5 this case should not be dismissed for cause under Section
6 1112(b).

7 I'm also going to find that there are unique
8 circumstances because of the state in which we find
9 ourselves, and a reasonable likelihood of confirming a
10 Chapter 11 Plan. It's just not the one currently on file.

11 I'm not approving the settlement. We can't act
12 like there wasn't over 40 million in real money on the table
13 to settle claims. The settling parties wanted finality.
14 The Settlement Agreement as proposed didn't work for the
15 reasons I've already stated. Tehum still has millions to
16 potentially distribute. Some tort claimants may want a deal
17 to get paid now.

18 So where does this leave everything? I don't
19 know. The stay I imposed earlier in this case stopped
20 litigation involving some third parties. That expired on
21 its own.

22 And it's obvious that this case needs to end
23 really soon. My sincere hope is that the Tort Committee,
24 the UCC, and Tehum talk constructively now to find a way to
25 bring finality to this case in the most cost-effective way.

1 Don't leave it in my hands to potentially take
2 action without considering the work done by everyone. There
3 could be an Agreed Plan or potential settlements if they're
4 willing, pro se and other represented tort claimants, and if
5 the YesCare/M2 parties want some finality for some
6 litigation along the way. Maybe they want that. Maybe they
7 don't want that. I don't know.

8 It's not for me to ask today. I want to give the
9 parties some time to talk in good faith. I'm going to set a
10 status conference soon, maybe in two to three weeks. I know
11 that you-all have filed other motions. I'm not taking up
12 any of them. It's time to stop fighting about those kinds
13 of things, and I want you to focus on talking about motions
14 that were denied today and where this case goes.

15 I'm going to set a status conference in the next
16 two to three weeks. I thank everyone for their time.
17 That's my ruling. I'm not taking any comments. I will
18 enter two very short Orders denying both motions for the
19 reliefs, the reasons I've stated on the Record. I thank
20 everyone.

21 I'm going to pick up on my 1:00 p.m. case in about
22 five minutes. Everyone in Tehum is dismissed.

23 Thank you.

24 (Proceeding adjourned at 2:49 p.m.)

25 * * * * *

1 I certify that the foregoing is a correct
2 transcript to the best of my ability produced from the
3 electronic sound recording of the ZOOM/telephonic
4 proceedings in the above-entitled matter.

5 /S/ MARY D. HENRY

6 CERTIFIED BY THE AMERICAN ASSOCIATION OF
7 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**337
8 JUDICIAL TRANSCRIBERS OF TEXAS, LLC
9 JTT TRANSCRIPT #68529
10 DATE FILED: April 15, 2024

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Exhibit C-1



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DALLAS | HOUSTON | WACO

CONFIDENTIAL TREATMENT REQUESTED

November 15, 2023

The Honorable Elizabeth Warren
United States Senate
309 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Richard J. Durbin
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mazie Hirono
United States Senate
109 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Jeffrey A. Merkley
United States Senate
531 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Richard Blumenthal
United States Senate
706 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, D.C., 20510

The Honorable Bernard Sanders
United States Senate
332 Dirksen Senate Office Building,
Washington, D.C. 20510

The Honorable Peter Welch
United States Senate
SR-124 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Cory A. Booker
United States Senate
717 Hart Senate Office Building
Washington, D.C. 20510

Re: October 24, 2023, Letter to YesCare Corporation and Tehum Care Services, Inc.

Dear Senator Warren, Senator Durbin, Senator Hirono, Senator Merkley, Senator Blumenthal, Senator Wyden, Senator Sanders, Senator Welch, and Senator Booker:

On behalf of Tehum Care Services, Inc. (“TCS,” “Tehum,” or the “Debtor”), this letter responds to yours of October 24, 2023 (the “Letter”), in which you raised questions relating to

Senators Warren, Durbin, Hirono, Merkley, Blumenthal,
Wyden, Sanders, Welch, and Booker
November 15, 2023
Page 2

Corizon Health, Inc.'s 2022 divisional merger and TCS's subsequent chapter 11 filing. We provide information herein responsive to your Letter to the extent such is available to TCS. Our understanding is that YesCare will be submitting its own response to your Letter (via counsel) that provides additional information specific to YesCare.

As you know, TCS filed for chapter 11 on February 13, 2023, in the U.S. Bankruptcy Court for the Southern District of Texas Houston Division (the "Bankruptcy Court"), under Case No. 23-90086 (the "Chapter 11 Case"). The Honorable Christopher M. López is presiding over the Chapter 11 Case.

The Office of the United States Trustee (the "U.S. Trustee"), an arm of the Department of Justice, appointed an Official Committee of Unsecured Creditors (the "Committee") in the Chapter 11 Case. An official committee's charge is to act as a fiduciary and represent the interests of all unsecured creditors in a chapter 11 case. Here, the Committee's membership is diverse and includes two individuals who assert personal injury claims based on alleged inadequate care provided by Corizon prior to the divisional merger.

On October 27, 2023, TCS and the Committee filed their Second Amended Disclosure Statement [Chapter 11 Case Docket No. 1071] (the "Disclosure Statement") accompanying their Second Amended Joint Chapter 11 Plan [Chapter 11 Case Docket No. 1072] (the "Joint Plan"), which embody a global settlement reached at mediation over three days in August 2023 (the "Global Settlement"). For your convenience and reference, a copy of the Disclosure Statement (to which the Joint Plan is an exhibit) is enclosed herewith. The docket of the Chapter 11 Case and two related adversary proceedings are also available for free at our claims agent's website (<https://www.kccllc.net/Tehum>) should you wish to peruse the filings in the Chapter 11 Case. Although many of the questions in your Letter are answered in the Disclosure Statement, we nonetheless attempt herein to provide fulsome responses to your inquiries.

Before answering your specific questions directly, we want to address the introductory paragraphs of your Letter. First, as will be discussed more fully below, all creditors and potential creditors have received (among other things) notice of the Chapter 11 Case and notice of the last date to file claims against TCS. Following approval of the Disclosure Statement, all creditors will also receive a copy of the Disclosure Statement, the Joint Plan and—if appropriate under the terms of our Joint Plan—a Ballot and and/or an Opt-Out Form. Such notice will be provided as required by Bankruptcy Rules 2002 and 3017. TCS has abided, and will continue to abide, by its duties as a debtor in possession and has complied, and will continue to comply, with each applicable Bankruptcy Rule and each applicable provision of the Bankruptcy Code. And if there is any lapse in compliance (which there has not been and which we do not anticipate will be the case), then either the Committee, the U.S. Trustee, the active creditors in the case, or a combination of those parties, will bring the matter to the Debtor's attention and as necessary, to the attention of the Bankruptcy Court.

Second, TCS believes it is using the bankruptcy process exactly for its intended purpose: to marshal and liquidate the Debtor's available assets and causes of action against third parties, maximize the value of such assets and causes of action, and ratably and equitably distribute the

Senators Warren, Durbin, Hirono, Merkley, Blumenthal,
Wyden, Sanders, Welch, and Booker
November 15, 2023
Page 3

proceeds of such assets and causes of action to creditors holding valid claims against TCS. Outside of chapter 11, as you know, each creditor (many of whom are incarcerated and without easy access to counsel or the court systems) would be left to his or her own devices in the proverbial “race to the courthouse,” facing years of expensive litigation with an uncertain outcome, and potentially with conflicting, varying and inconsistent results among various federal and state courts throughout the country. The collective nature of the chapter 11 process is the best mechanism to centralize all claims and disputes against TCS, through oversight by the Bankruptcy Court, review by the U.S. Trustee, and the participation and input of the Committee and all other creditors, many of whom have been active throughout the chapter 11 process, individually and through counsel.

The job of a committee in chapter 11 is to act as a fiduciary for all unsecured creditors and represent their collective interests as a group. Here, the Committee’s composition of seven creditors is a cross-section of claim holders: five Committee members are trade creditors, and two Committee members are formerly incarcerated personal injury claimants. The Committee and its counsel have been extremely active in the Chapter 11 Case and, in tandem with counsel to TCS, have spent several months investigating TCS, YesCare, other entities, and the circumstances surrounding the divisional merger. After months of investigations and a subsequent mediation sanctioned by the Bankruptcy Court, the parties reached an agreement to resolve the bankruptcy estate’s claims against various third parties (including YesCare). The Global Settlement has been incorporated into—and forms the basis for—the Joint Plan. The initial three-day mediation in August was conducted by Judge David R. Jones, who has since resigned his position.

We are aware of the concerns that have been raised in the Chapter 11 Case due to the undisclosed relationship between Judge Jones and the Houston attorney who had been representing YesCare. As a result, in order to maintain the integrity of the process and ensure no questions remain looming over the Global Settlement, the Debtor, the Committee, and the other settling parties are preparing to embark upon a second mediation on November 27, 2023, with former Chief U.S. Bankruptcy Judge Christopher S. Sontchi (Bankr. D. Del.) as mediator. A copy of the stipulation that was just signed today appointing Judge Sontchi [Chapter 11 Case Docket No. 1109], is also enclosed for your convenience.

Finally, it is worth noting the TCS case is manifestly different from the other pending divisional merger chapter 11 cases, such as 3M, Johnson & Johnson and others: unlike those cases where there are tens of thousands of claimants and MDL panels for the various personal injury lawsuits, here there are only several hundred pending lawsuits and no singular MDL or similar forum in which to pursue recoveries against TCS. Unlike the other divisional merger cases, where illness from direct or indirect exposure to asbestos or talc or other substances could take years or decades to manifest, the claims here are for medical malpractice or insufficient treatment or the like and presumably now—more than 18 months after Corizon ceased operating—are all known. Unlike the other divisional merger cases where there is a funding agreement and other assets that are sufficient to pay claims in full, the funding agreement here was limited to \$15 million and has been exhausted. There are also other differences between the TCS Chapter 11 Case and the mass tort divisional merger cases, placing the TCS case in a far different category.

Senators Warren, Durbin, Hirono, Merkley, Blumenthal,
Wyden, Sanders, Welch, and Booker
November 15, 2023
Page 4

General Background and History

The Debtor was formerly known as Corizon Health, Inc. and will be referred to as “Corizon” for events occurring prior to the May 5, 2022, divisional merger (the “Divisional Merger”).

Corizon was a nationwide provider of correctional healthcare, providing services in multiple states across the United States. In the ordinary course of its business, Corizon entered into agreements with various (typically governmental) entities under which Corizon would provide, or arrange for the provision of, healthcare services to certain inmates or detainees of the contract counterparty.

For most of its history until the mid-2010s, Corizon’s business was financially successful. Near the end of the decade, however, the company began to struggle due to the loss of key customer contracts and mounting liabilities, largely driven by claims asserted by incarcerated individuals alleging mistreatment or inadequate healthcare. As a result of Corizon’s dramatic decline in revenues, increase in asserted tort liabilities, and the impending maturity of its secured debt, it began to market itself for potential acquisition by companies interested in “distressed” investments.

In June 2020, the Flacks Group acquired Corizon. Upon information and belief, the Flacks Group acquired Corizon’s operations and its existing debt for approximately \$10 million. For the sake of clarity, the Debtor and the Committee do not believe, based on their extensive investigations, that there is any relationship or connection between the Flacks Group and Perigrove (discussed below).

The Flacks Group was unsuccessful in its efforts to improve the company’s financial performance or prevent its further decline. By the third quarter of 2021, Corizon’s business was struggling even more than when the Flacks Group had acquired it. The company had lost its three largest contracts and was facing millions of dollars in tort and contract liabilities stemming from alleged inadequate care at the facilities it served and the impact of its dwindling revenues on performance of obligations.

Although Corizon’s revenues had continued to decline, the Flacks Group seemed to view Corizon’s pharmacy subsidiary—an entity called PharmaCorr, LLC (“PharmaCorr”)—as a potentially profitable standalone business. The Flacks Group effectuated a series of transactions designed to split off and sell PharmaCorr, then file bankruptcy cases for Corizon and its related entities.¹ In late November and early December 2021, just a few weeks before the Flacks Group had planned to file those bankruptcy cases, members of the Flacks Group were introduced to Isaac Lefkowitz and other investors as potential buyers for PharmaCorr.

¹ The Committee believes the Debtor’s estate may have claims against the Flacks Group and Michael Flacks related to its spin-off of PharmaCorr. Those claims, if any, are not intended to be released as part of the Global Settlement or the Joint Plan.

Senators Warren, Durbin, Hirono, Merkley, Blumenthal,
Wyden, Sanders, Welch, and Booker
November 15, 2023
Page 5

After approximately a week of negotiations, Mr. Lefkowitz and the other investors in an entity called Perigrove 1018, LLC ("Perigrove 1018"), acquired the entire portfolio of companies from the Flacks Group. Rather than directly acquiring the operating companies or M2 LoanCo and M2 HoldCo, Perigrove 1018 acquired the entirety of the Corizon operation.

As of December 7, 2021, Perigrove 1018 owned or controlled Corizon and all its owners and affiliates, including: (1) M2 HoldCo, LLC, which itself owned M2 EquityCo, LLC and M2 LoanCo, LLC (2) Valitas Intermediate Holdings, Inc., which itself owned Valitas Health Services, Inc., Corizon Health, Inc., Corizon Health of New Jersey, LLC, and Corizon, LLC; and (3) M2/PharmaCorr Holdings, LLC, which owned PharmaCorr.

In May 2022, the Debtor and several affiliates, including Corizon, LLC, Valitas Health, and Corizon Health of New Jersey, LLC (collectively, the "Merger Entities") executed a corporate reorganization through two merger transactions under the Texas Business and Organization Code ("TBOC"): first, a combination merger, whereby the Merger Entities merged in a combination merger, and then the Divisional Merger whereby CHS TX, Inc. ("CHS") was formed and various assets and liabilities were allocated to CHS on the one hand and TCS on the other. In connection with the Divisional Merger, M2 LoanCo and TCS agreed to a funding agreement (the "Funding Agreement") pursuant to which M2 LoanCo would pay or cause to be paid funding to TCS up to an aggregate cap of \$15 million for payment of TCS's costs of operations and certain liabilities that arose prior to the Divisional Merger.

Pursuant to the Divisional Merger, TCS remained in existence and was allocated and remained vested with all inactive and expired customer contracts, as well as all historical liabilities related to such contracts. In return, TCS was released from its secured debt obligations to M2 LoanCo, which were allocated to the entity that became YesCare. As part of the Divisional Merger, TCS was also allocated \$1 million in cash, as well as the right to draw on the \$15 million Funding Agreement.

Upon the Divisional Merger, TCS ceased to be an operating entity with active contracts or medical service providers. Though TCS had been allocated cash, rights under the Funding Agreement, and rights under available insurance policies, its liabilities exceeded these assets. Between May 2022 and February 2023, TCS attempted to wind down its remaining business and resolve its liabilities out of court.

The Debtor and the Committee each investigated whether TCS received the full benefit of the \$15 million allocated to it under the Funding Agreement to satisfy claims. The Debtor and Committee have reviewed extensive documentation produced in the litigation to verify these payments. According to these records, the Debtor and the Committee have confirmed that M2 LoanCo advanced at least \$15 million to legitimate third party creditors to satisfy liabilities allocated to TCS under the Divisional Merger. M2 LoanCo asserts that it advanced a total of \$39 million, leaving an outstanding balance of approximately \$24 million owing back to M2 LoanCo.

Despite the above, amounts available under the Funding Agreement or otherwise advanced by M2 LoanCo proved insufficient for TCS to satisfy its liabilities under the Divisional Merger.

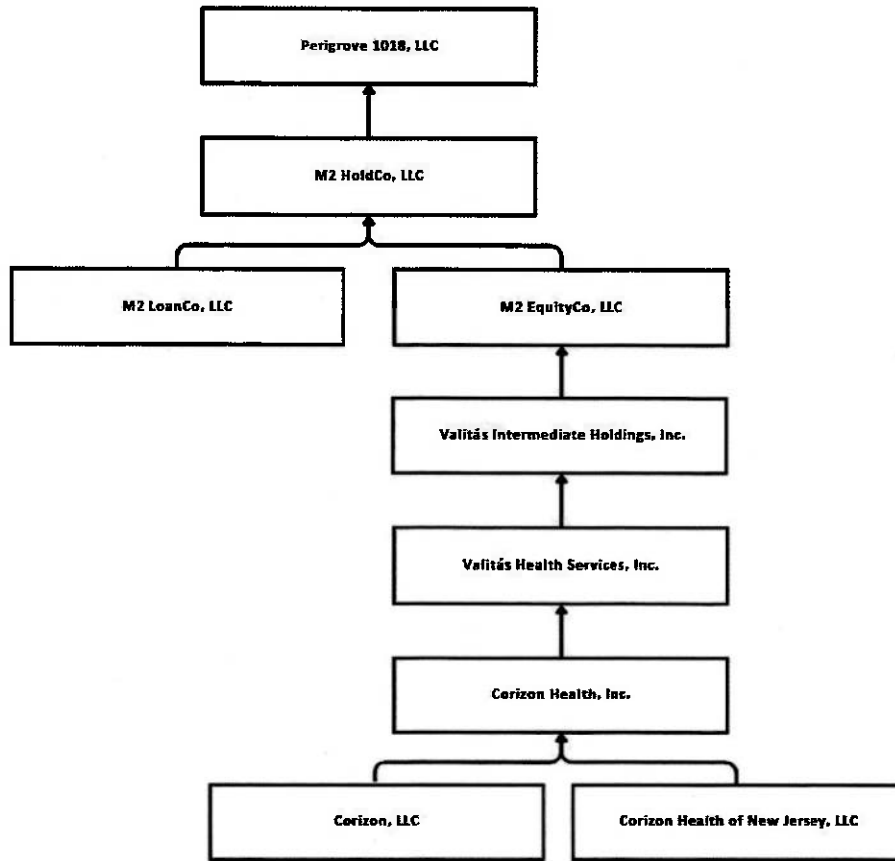
Senators Warren, Durbin, Hirono, Merkley, Blumenthal,
 Wyden, Sanders, Welch, and Booker
 November 15, 2023
 Page 6

Thus, TCS concluded a chapter 11 process was necessary to effectuate a more equitable distribution of its remaining assets. The Chapter 11 Case was commenced on February 13, 2023.

Responses to Specific Inquiries

1. Please provide a full description of YesCare and Tehum’s leadership and stakeholder structure, as well as the leadership and ownership of all of the entities’ parent companies, and YesCare’s latest corporate governance plan. In your response, please include the identities of each natural person that directly or indirectly holds an equity interest in Perigrove 1018 LLC and/or YesCare Holdings LLC, and the size of the membership interest(s) held by that natural person.

A corporate structure chart showing Corizon’s ownership pre-Divisional Merger is as follows:



This organizational chart remained unchanged following the Divisional Merger, other than the Merger Entities (i.e., Corizon, LLC, Valitás Health, and Corizon Health of New Jersey, LLC) merged into Corizon Health, Inc., and that entity was renamed TCS.

Senators Warren, Durbin, Hirono, Merkley, Blumenthal,
Wyden, Sanders, Welch, and Booker
November 15, 2023
Page 7

Following the Divisional Merger, Isaac Lefkowitz became the sole director of TCS, and TCS had no officers until February 13, 2023, when Russell Perry of Ankura Consulting Group LLC was appointed as Chief Restructuring Officer. Pursuant to the corporate resolutions attached to TCS's chapter 11 bankruptcy petition (also enclosed for convenience), Mr. Perry has sole decision-making authority over all restructuring matters, and any matters where Mr. Lefkowitz has a conflict of interest (which includes all matters involving the Divisional Merger, YesCare, Perigrove 1018 or the other related entities).

We believe that Perigrove 1018, LLC is a private equity fund owned by several individuals, none of whom owns more than 10% of the company. Isaac Lefkowitz is one of the investors in Perigrove 1018. Additional information regarding Perigrove 1018's ownership structure is not publicly available.

YesCare is the proper party to provide information regarding its leadership and stakeholder structure.

2. In a 2023 deposition, Tehum director Isaac Lefkowitz admitted to owning a stake in Perigrove, the private equity firm that took over Tehum. What role does Mr. Lefkowitz currently play within YesCare, Tehum, or any entities related to YesCare or Tehum?

As stated above, Mr. Lefkowitz serves as the sole director of the Debtor. According to Mr. Lefkowitz, following Perigrove's 1018's December 2021 acquisition of Corizon (now TCS), and until TCS's bankruptcy filing on February 13, 2023, he oversaw every aspect of Corizon's operations and finances. As also stated above, Russell Perry of Ankura Consulting Group LLC serves as the Debtor's Chief Restructuring Officer, with sole authority for all restructuring matters and any matters where a conflict of interest may exist.²

YesCare is the proper party to provide information regarding Mr. Lefkowitz's at YesCare.

3. How many claims against Corizon, Tehum, YesCare, or any affiliated entities were enjoined following Tehum's motion to extend and enforce the automatic stay?

On March 3, 2023, the Bankruptcy Court entered its *Order Regarding Debtor's Emergency Motion to Extend and Enforce the Automatic Stay* [Chapter 11 Case Docket No. 118] (the "March 3 Stay Order"). According Exhibit 1 to the March 3 Stay Order, the extended stay applied to 39 separate lawsuits through May 18, 2023.³ On March 23, 2023, the Debtor commenced Adversary Proceeding No. 23-3049 in the Bankruptcy Court (the "Adversary") and filed an emergency motion in the Adversary seeking to further extend the stay previously granted by the Bankruptcy Court.⁴ On May 18, 2023, the Bankruptcy Court entered an order extending the stay as to 34

² See Tehum Care Services Bankruptcy Petition [Chapter 11 Case Docket No. 1]; see also Disclosure Statement, Schedule 4 (pages 78–79 of 177).

³ The list includes claims that were not yet lawsuits, as well as singular claims filed in multiple venues.

⁴ See *Complaint Seeking (I)(A) a Declaratory Judgment that the Automatic Stay Applies to Certain Claims and Causes of Action Asserted Against Certain Non-Debtors and (B) an Extension of the Automatic Stay to Certain Non-Debtors*,

Senators Warren, Durbin, Hirono, Merkley, Blumenthal,
Wyden, Sanders, Welch, and Booker
November 15, 2023
Page 8

lawsuits until August 10, 2023.⁵ The Debtor subsequently entered into stipulations with certain plaintiffs, allowing them to proceed with their litigation under the circumstances set forth in the stipulations.⁶

a. ***The estimated number of claims that will be affected by Tehum's bankruptcy filing.***

The various prepetition lawsuits and claims asserted against TCS generally fall into three categories: (a) vendor and service provider lawsuits or obligations, typically asserting breach of contract claims for unpaid invoices; (b) professional liability lawsuits or obligations, typically asserting medical malpractice and related claims; and (c) employment lawsuits or obligations, asserting employment discrimination or similar claims.

The Debtor's claims and noticing agent maintains a website (<https://www.kccllc.net/Tehum>), which shows that 742 claims have been filed against the Debtor, many of which are duplicates. We have conducted a preliminary analysis of these claims in order to classify them for treatment under the Joint Plan, which has revealed that about half (approximately 220 claims) are "Class 4 Non-Personal Injury Claims" and the other half (approximately 224 claims) are "Class 5 Personal Injury Claims."

The Joint Plan is attached as an exhibit to the Disclosure Statement. As required by the Bankruptcy Code and prevailing case law, the Disclosure Statement (among other things) summarizes the Joint Plan, the treatment of each class of claims thereunder and the expected/potential recoveries to each class of claims. The Disclosure Statement further contains a liquidation analysis (pursuant to section 1129(a)(7) of the Bankruptcy Code, also known as the "best interests test") to show that the Joint Plan will provide a greater distribution to creditors than they would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code.

The best interests test is discussed at page 4 of the Disclosure Statement, and the liquidation analysis is annexed to the Disclosure Statement as Schedule 1. Pages iv and v of the Disclosure Statement also summarize the options afforded to holders of personal injury claims and general unsecured claims. As reflected therein, the Debtor and the Committee estimate that holders of non-personal injury claims could receive a recovery of between 19.9% and 35.3% on their claims under the Joint Plan, depending upon the final amount of all claims that are ultimately allowed. The Debtor and the Committee also estimate that personal injury claimants could receive a

or in the Alternative, (II) a Preliminary Injunction Related to Such Actions, In re Tehum Care Services, Inc. [Adversary Docket No. 1]; and *Debtor's Motion for an Order (I)(A) Declaring that the Automatic Stay Applies to Certain Claims and Causes of Action Asserted Against Certain Non-Debtors and (B) Extending the Automatic Stay to Certain Non-Debtors, or in the Alternative, (II) Preliminarily Enjoining Such Actions, In re Tehum Care Services, Inc.* [Adversary Docket No. 2].

⁵ *Order (I)(A) Declaring that the Automatic Stay Applies to Certain Claims and Causes of Action Asserted Against Certain Non-Debtors and (B) Extending the Automatic Stay to Certain Non-Debtors, or in the Alternative, (II) Preliminarily Enjoining Such Actions, In re Tehum Care Services, Inc.* [Adversary Docket No. 43].

⁶ See, e.g., Chapter 11 Case Docket Nos. 237, 463 & 578; Adversary Docket Nos. 41 & 68.

Senators Warren, Durbin, Hirono, Merkley, Blumenthal,
Wyden, Sanders, Welch, and Booker
November 15, 2023
Page 9

recovery of between 18.1% and 37.7% on their claims under the Joint Plan, depending on ERC funding, insurance payouts and potential payments from third parties.

The Joint Plan contains seven classes of claims and interests, which are discussed in greater detail in Section IV of the Disclosure Statement (pages 23-28), but can be summarized as follows:

- Holders of claims in Classes 1 are priority creditors and will be paid in full upon the allowance of such claims. Pursuant to the Bankruptcy Code, these creditors do not get to vote to accept or reject the Joint Plan because they are unimpaired and deemed to accept the Joint Plan.
- Holders of claims in Class 2 are secured creditors and will be paid in full upon the allowance of such claims. Pursuant to the Bankruptcy Code, these creditors do not get to vote to accept or reject the Joint Plan because they are unimpaired and deemed to accept the Joint Plan.
- Holders of claims in Classes 3 are “Convenience Claims” in the amount of \$5,000 or less, and the Joint Plan will pay these claims in full within 30 days of the Joint Plan becoming effective. While these creditors will be made whole, they are still impaired under the Bankruptcy Code, and so such creditors may cast votes to accept or reject the Joint Plan.
- Classes 4 and 5 are impaired by the Joint Plan and will be allowed to vote to accept or reject the Joint Plan. The recoveries to creditors in these classes is discussed above.
- Holders of claims in Class 6 are “Indemnification Claims,” which include co-defendants and other third parties who claim a right to reimbursement or indemnification from the Debtor. These claims are impaired and entitled to vote to accept or reject the Joint Plan. Claims in this will be treated either as personal injury or non-personal injury claims, depending upon the underlying claim from which the indemnification claim arose, subject to the requirements of section 509 of the Bankruptcy Code, and as described more fully at page 27 of the Disclosure Statement.
- Class 7 is comprised of equity interests in the Debtor, which will be cancelled upon the effective date of the Joint Plan. Pursuant to the Bankruptcy Code, because holders of equity interests will neither receive nor retain any property under the Joint Plan, they are deemed to reject the plan and are not entitled to vote to accept or reject the Joint Plan.

The Joint Plan also offers creditors in Classes 4 and 5 the option for a one-time settlement and immediate distribution of \$5,000.00 in full and final satisfaction of the claim in question. This mechanism is described more fully at pages iv–v and 26–27 of the Disclosure Statement. It is the Debtor and the Committee’s belief that a significant number of claimants will choose to accept this

Senators Warren, Durbin, Hirono, Merkley, Blumenthal,
Wyden, Sanders, Welch, and Booker
November 15, 2023
Page 10

offer. To be clear, however, claimants have sole discretion to accept (or not) the \$5,000.00 settlement offer. Claim holders who wish to negotiate for a higher settlement amount or have their day in court may do so but must follow the procedures set forth in the Joint Plan.

The Disclosure Statement contains a user-friendly flow chart at Schedule 3 that summarizes the choices available to creditors.

- b. ***The number of claims related to each of the following categories and the aggregate settlement amount for each: medical malpractice, employment, and contract breach.***

The answer to this request is contained within the other responses herein.

- c. ***A list of all claims by creditors and the status of those claims.***

The claims register is available at our claims agent's website, here: <https://www.kccllc.net/tehum/register>. The Debtor has not yet begun to object to claims; instead, objections to claims will be the province of either the Personal Injury Trustee or the Liquidation Trustee under the Joint Plan, following the Joint Plan's effective date.

4. ***Please provide a list of the entities and individuals that were involved in negotiating the global settlement filed September 29, 2023. In addition, please describe the role of Elizabeth Freeman in the negotiations, and list the individuals at YesCare and Tehum that were aware of Ms. Freeman's romantic relationship with Judge David Jones, who mediated the negotiations.***

The following entities and individuals attended the August 2023 mediation that resulted in the Global Settlement:

- **The Debtor**
 - The Debtor's Chief Restructuring Officer, Russell Perry of Ankura Consulting Group, and certain other Ankura representatives; and
 - Counsel to the Debtor, Gray Reed, through Jason Brookner, Amber Carson, Aaron Kaufman, and Lydia Webb.
- **YesCare**
 - Former counsel for YesCare Corp., Elizabeth Freeman;
 - [REDACTED]
- **The Official Committee of Unsecured Creditors**
 - The Committee members are: Rachell Garwood (as a representative of a putative class), Latricia Revell, St. Luke's Health System, Ltd., Capital Region Medical Center, Maxim Healthcare Staffing Serv., Inc., Saint Alphonsus Health System, Inc., and Truman Medical Center, Inc. The members attended the

Senators Warren, Durbin, Hirono, Merkley, Blumenthal,
Wyden, Sanders, Welch, and Booker
November 15, 2023
Page 11

- mediation virtually other than Committee Chair, David Barton, who attended the mediation in person;
 - o Counsel to the Committee, Stinson LLP, through Nicholas Zluticky and Zachary Hemenway; and
 - o Dundon Advisors as financial advisor to the Committee, through Matthew Dudon and Heather Barlow.
- M2 LoanCo, LLC; M2 Holdco, LLC; Perigrove 1018, LLC; Perigrove LLC; Geneva Consulting, LLC; and PharmaCorr, LLC
 - o Melissa S. Hayward as counsel to each of the listed entities; and
 - o Isaac Lefkowitz as a representative of each of the listed entities.

YesCare's involvement in the mediation (through its above-listed former counsel and business representatives) was minimal. YesCare merely provided information to the Debtor or Judge Jones upon request, and otherwise did not participate in any substantive mediation discussions. Further, none of the mediation parties were aware of Judge Jones's relationship with Ms. Freeman until after the filing of the initial Joint Plan on September 29, 2023.

The primary participants over the three days of hard-fought negotiations were: (a) the Committee, the Debtor, and their respective counsel, on one side; and (b) Mr. Lefkowitz and Ms. Hayward, for the other mediation parties, on the other side. YesCare's counsel did not represent Mr. Lefkowitz or the other Settlement Parties, which (as stated above) were represented by separate counsel. Judge Jones, as mediator, pushed both sides aggressively and eventually, the Global Settlement was agreed to by all parties. While disappointed by the lack of disclosure regarding their relationship, neither the Debtor nor the Committee believe that any potential conflict associated with the relationship between Judge Jones and Ms. Freeman impacted the negotiations or the Global Settlement in any way.⁷ Nevertheless, as discussed above, in the interest of removing any uncertainty, the parties have agreed to re-mediate all issues before Judge Sontchi. Neither Judge Jones nor Ms. Freeman will participate in the second mediation.

5. *With regard to Corizon's use of the divisional merger process to separate its assets from its liabilities:*

- a. ***What was the rationale for determining which assets it would transfer or assign to Tehum and which it would shield from the reach of creditors through YesCare?***

This is a matter appropriately addressed by YesCare.

⁷ See also Disclosure Statement at 19.

Senators Warren, Durbin, Hirono, Merkley, Blumenthal,
Wyden, Sanders, Welch, and Booker
November 15, 2023
Page 12

b. *What was the total value of Corizon's assets at the time of the divisional merger?*

As discussed above, before the transaction between the Flacks Group and Perigrove 1018 to transfer ownership of Corizon, management for the company was contemplating a chapter 11 bankruptcy filing. Although the company did not secure a formal valuation of its assets prior to this December 2021 transaction or the subsequent May 2022 Divisional Merger, the circumstances leading up to both transactions demonstrate that Corizon was likely insolvent by a significant margin.

As discussed in greater detail in the Disclosure Statement and above, the Flacks Group acquired Corizon as a distressed asset in June 2020. At the time of the Flacks Group's acquisition, the company was obligated to third party institutional lenders for over \$100 million on account of secured funded debt dating back to at least 2017.⁸ The Flacks Group failed to improve Corizon's financial position prior to December 2021, when it decided to transfer ownership to Perigrove 1018 rather than filing for bankruptcy. During this intervening period from June 2020 through December 2021, Corizon lost its three major customers and was facing increasing tort liabilities.

c. *Please list all of the assets that were transferred to YesCare/CHS TX, Inc. and their cumulative value (excluding any liens on the assets).*

YesCare is the proper part to address this inquiry.

d. *Please list all of the liabilities that were transferred to Corizon, later Tehum, and their cumulative value.*

The Divisional Merger documents are a matter of public record and were attached to the Debtor's Schedules of Assets in the Chapter 11 Case. As set forth therein, the following liabilities remained with the Debtor upon consummation of the Divisional Merger: (i) any lawsuits, claims, liabilities, costs, expenses or losses arising from, related to, or in connection with the contracts remaining at Corizon or the services provided thereunder whether arising prior to, at or after the effective date of the merger; (ii) any deferred payment obligations, lawsuits, claims, liabilities, costs, expenses or losses arising from, related to, or in connection with any employee, contractor or consultant terminated by any entity involved in the divisional merger prior to the merger's effective date, in each case, including severance and similar obligations, except for Corizon's obligations under the 401k plan or COBRA health insurance; (iii) obligations under any long term incentive plans of Corizon; (iv) any liabilities, costs, expenses or losses arising from, related to, or in connection with any person's or entity's lawsuits or claims in connection with the merger or related transactions, including any alleged breach of duties by the board or managers of any entity involved in the divisional merger; (v) all liabilities and obligations of every kind and character to the extent arising from, related to or in connection with assets of the remaining Corizon entity, whether arising before, at or after the effective date of the merger; (vi) all liabilities and obligations of every kind and character owed to any vendor or service provider in connection with any assets

⁸ See Disclosure Statement at 5.

Senators Warren, Durbin, Hirono, Merkley, Blumenthal,
 Wyden, Sanders, Welch, and Booker
 November 15, 2023
 Page 13

of the remaining Corizon entity or YesCare, in each case, arising prior to the effective date of the merger; (vii) all liabilities of Corizon not allocated to YesCare; (viii) all liabilities and obligations under the AZ Policies and NewCo Insurance Policies for deductibles, retentions, premium adjustments, retroactively rated premiums or other self-insurance features incurred or paid on account of any liabilities or assets of the remaining Corizon entity; and (ix) any settlement payment obligations of Corizon relating to lawsuits, claims, liabilities, costs, expenses, relating to or in connection with the contracts remaining with Corizon.

6. *Please list all of the assets that were transferred to affiliated entities other than YesCare/CHS TX, Inc. between December 1, 2021 and the date of Tehum's bankruptcy filing.*

As detailed in Section III.B.2 of the Disclosure Statement (pages 15-17), the Debtor and the Committee identified approximately \$31 million in funds transferred to entities affiliated with Perigrove 1018 and/or YesCare prior to the bankruptcy filing:

Transfers to M2 LoanCo

| | |
|---------------------------|------------------------|
| 12/29/2021 | \$10,000,000.00 |
| 12/30/2021 | \$5,000,000.00 |
| 1/4/2022 | \$2,300,000.00 |
| 1/5/2022 | \$600,000.00 |
| 1/31/2022 | \$5,000,000.00 |
| 2/18/2022 | \$600,000.00 |
| 3/8/2022 | \$10,000,000.00 |
| 3/9/2022 | (\$10,000,000.00) |
| 5/17/2022 | \$1,000,000.00 |
| 11/14/2022 | \$25,572.19 |
| 11/14/2022 | \$12,583.00 |
| Total to M2 LoanCo | \$24,538,155.19 |

Transfers to Geneva Consulting

| | |
|------------------------|-----------------------|
| 12/9/2021 | \$3,000,000.00 |
| 1/11/2022 | \$500,000.00 |
| 2/7/2022 | \$500,000.00 |
| 3/1/2022 | \$500,000.00 |
| 4/1/2022 | \$500,000.00 |
| 5/2/2022 | \$500,000.00 |
| Total to Geneva | \$5,500,000.00 |

Senators Warren, Durbin, Hirono, Merkley, Blumenthal,
Wyden, Sanders, Welch, and Booker
November 15, 2023
Page 14

**Transfers to Amerisource Bergen to
Benefit PharmaCorr and Perigrove 1018 Related Parties**

In addition to the \$30 million identified above, the Debtor and the Committee identified additional sums, totaling approximately \$956,700, paid to Amerisource Bergen, which they believe may have satisfied obligations of PharmaCorr. PharmaCorr and Perigrove 1018 dispute this characterization.

| | |
|------------------------------------|---------------------|
| 1/31/2022 | \$500,000.00 |
| 2/15/2022 | \$456,707.08 |
| Total to Amerisource Bergen | \$956,707.08 |

7. *What is the total value of YesCare's current assets?*

TCS is not the proper party to address this inquiry.

8. *What is the total value of Tehum's current assets? Please include a full accounting of any funding agreement, lump sum payment, or other revenue stream provided to Tehum following the divisional merger process.*

The only real assets the Debtor has are potential causes of action against third parties. As set forth at pages 14-21 of the Disclosure Statement, the Debtor and the Committee believe that the Global Settlement amount of \$37 million is a reasonable and appropriate settlement of such causes of action that is in the best interests of creditors. The Debtor also potentially has so-called "chapter 5 causes of action" against the Flacks Group and a variety of third parties for prepetition transfers that are not otherwise covered by the Global Settlement. These include causes of action for preferential transfers under section 547 of the Bankruptcy Code. These potential causes of action, which the Committee believes could generate up to an additional \$3 million in recoveries, will be transferred to the Liquidating Trust pursuant to the terms of the Joint Plan.

9. *Please describe in detail all actions taken to provide notice of Tehum's bankruptcy filing to known and potential creditors.*

The Debtor has provided all required notices to all required parties in interest pursuant to the provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of Texas. This includes mailing and publication notices of the claims bar date, proof claim forms, notice of the Disclosure Statement hearing and the time to object. The Master Service List in the Chapter 11 Case is available here: <https://www.kccllc.net/tehum/document/noticelist/1>

The Debtor provided *actual notice* of the claims bar date and proof of claim forms via mail to all known creditors. See Chapter 11 Case Docket Nos. 558, 609, 625, 626, 651, 673, 674, 698, 701, 767, 771, 794, 861, 929, 972, 1005. In addition to direct mailings to known creditors, the

Senators Warren, Durbin, Hirono, Merkley, Blumenthal,
Wyden, Sanders, Welch, and Booker
November 15, 2023
Page 15

Debtor also provided publication notices in the *New York Times*, the *Wall Street Journal* and *Prison Legal News*. See Chapter 11 Case Docket Nos. 610 and 658. The form, manner and timing of these notices was provided after consultation with the Committee.

Although the Disclosure Statement has not yet been approved by the Bankruptcy Court for dissemination to creditors, the Debtor intends to provide the required notice pursuant to Bankruptcy Rules 2002 and 3017, and further proposes to give the same publication notice as outlined above. Moreover, although the Bankruptcy Code requires only 28-day notice to creditors before pursuing confirmation of a plan, the Debtor and the Committee are proposing to provide **60-day notice** to creditors so that all incarcerated persons and *pro se* claimants have an expanded time period to cast ballots and object to the Joint Plan.

Under the circumstances, we feel we have gone above and beyond to ensure that creditors have notice of the Chapter 11 Case and an opportunity to participate.

This response letter contains sensitive data and information—including confidential and potentially proprietary information, and information that was otherwise marked “Confidential” or “Attorneys Eyes Only” as part of discovery in the Chapter 11 Case. As a result, the Debtor respectfully requests that such information be treated accordingly, and that it not be released to any third parties. Production of this information and data is not intended to constitute a waiver of the attorney-client, work product, or any other applicable rights or privileges in this or any other forum, and the Debtor reserves all rights in this regard.

Thank you for the opportunity to respond to your inquiries. If you have any further questions, or if you desire any further information, please let us know and we will do our best to respond in a timely and complete manner.

Respectfully submitted,



Jason S. Brookner

JSB/sg
Encls

cc: Russell Perry (Chief Restructuring Officer)

Exhibit C-2

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rprober@akingump.com

CONFIDENTIAL TREATMENT REQUESTED

November 15, 2023

The Honorable Elizabeth Warren
United States Senate
309 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Richard J. Durbin
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mazie K. Hirono
United States Senate
109 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Jeffrey A. Merkley
United States Senate
531 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Richard Blumenthal
United States Senate
706 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, D.C., 20510

The Honorable Bernard Sanders
United States Senate
332 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Peter Welch
United States Senate
SR-124 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Cory A. Booker
United States Senate
717 Hart Senate Office Building
Washington, D.C. 20510

Re: October 24, 2023 Letter to YesCare Corp. and Tehum Care Services, Inc.

Dear Senator Warren, Senator Durbin, Senator Hirono, Senator Merkley, Senator Blumenthal, Senator Wyden, Senator Sanders, Senator Welch and Senator Booker:

On behalf of YesCare Corp. ("YesCare"), and as discussed with staff, I write in response to your letter dated October 24, 2023 (the "Letter"), in which you raised questions related to the



November 15, 2023

Page 2

divisional merger transaction completed by Corizon Health, Inc. (“Corizon”) and certain of its affiliates in 2022, and the subsequent chapter 11 filing by Tehum Care Services, Inc (“Tehum”). In this letter, we are providing responsive information to the extent information is available to YesCare. As discussed with staff, we understand that Tehum’s counsel plans to submit a separate response that provides additional information specific to Tehum.

In the years leading up to the divisional merger transaction discussed in the Letter, Corizon’s financial position had deteriorated due to a confluence of factors, including declining revenue, compressed margins driven by increased healthcare delivery costs resulting from the COVID-19 pandemic, substantial debt obligations, and continued exposure to liability extending from pending lawsuits. By late 2021, Corizon’s financial situation had become dire. In May 2022, in an effort to create a viable ongoing (albeit, smaller) business that continued to provide critical services to its continuing clients and employing thousands of healthcare professionals while winding down the larger business structure that was associated with the legacy Corizon business, Corizon effectuated the divisional merger transaction, as permitted by Texas law. Pursuant to that merger transaction, Corizon (now, Tehum) retained its expired and inactive customer contracts as well as certain liabilities specified in the merger agreement, the majority of which related to the expired and inactive customer contracts. But Corizon also received certain benefits and assets in the transaction, including the release of nearly \$100 million in secured debt obligations that were allocated to CHS TX, Inc. (which was subsequently acquired by YesCare), the right to draw on a \$15 million funding agreement, and \$1 million in cash. CHS TX, Inc. (now, YesCare) also was allocated certain assets and liabilities related to employees and continuing customer contracts along with the nearly \$100 million in secured debt of Corizon, in the transaction.

While Tehum initially worked towards an out-of-court wind down of its business following the divisional merger, the liability it faced in several hundred pending lawsuits made doing so impossible. On February 13, 2023, Tehum filed its chapter 11 petition. The alternative would have produced inequitable results: those claimants who were able to obtain judgments and recover damages quickly would have depleted Tehum’s assets, leaving other creditors unable to recover. Tehum’s bankruptcy filing prevented that outcome by providing a single forum in which Tehum and its creditor constituencies could negotiate a fair settlement that maximized the recoveries available to all creditors, including individual litigation claimants. Under the settlement currently proposed by the *Debtor and Official Committee of Unsecured Creditors’ Second Amended Joint Chapter 11 Plan* (the “Plan”)—which is supported by both Tehum and the Official Committee of Unsecured Creditors (the “Committee”), a fiduciary to all Tehum’s unsecured creditors—the unsecured creditors will recover significantly more than they would have recovered in a liquidation scenario. Nonetheless, the unsecured creditors (including the holders of litigation claims against Tehum) are entitled to vote on the Plan and proposed



November 15, 2023

Page 3

settlement embodied therein. Those claimants also have the option of opting out of the settlement and continuing to pursue their claims against Tehum independent of the bankruptcy settlement.

Responses to Senate Questions

1. *Please provide a full description of YesCare and Tehum's leadership and stakeholder structure, as well as the leadership and ownership of all of the entities' parent companies, and YesCare's latest corporate governance plan. In your response, please include the identities of each natural person that directly or indirectly holds an equity interest in Perigrove 1018 LLC and/or YesCare Holdings LLC, and the size of the membership interest(s) held by that natural person.*

YesCare's executive leadership team includes the following individuals: Jeffrey Sholey, Chief Executive Officer; Jimmy Sprouse, Chief Financial Officer; Bill Carr, Chief Operating Officer; Scott King, Chief Legal Officer; Dr. Gregory Ladele, Chief Medical Officer. YesCare's clinical, operations, client services, and corporate field services departments include a number of individuals in leadership positions. YesCare's Bylaws, which cover matters related to YesCare's corporate governance, are attached hereto as **Exhibit A**.

YesCare is wholly owned by YesCare Holdings, LLC. The ownership structure of YesCare Holdings, LLC is not information that is publicly available or known to YesCare.

Tehum is the appropriate party to provide information regarding its leadership and stakeholder structure.

2. *In a 2023 deposition, Tehum director Isaac Lefkowitz admitted to owning a stake in Perigrove, the private equity firm that took over Tehum. What role does Mr. Lefkowitz currently play within YesCare, Tehum, or any entities related to YesCare or Tehum?*

Isaac Lefkowitz serves as a director of YesCare but has no role at any other entities within YesCare's corporate structure. Mr. Lefkowitz also serves as a director of various entities with which YesCare has solely contractual relationships.

Tehum is the appropriate party to address Mr. Lefkowitz's role with Tehum and any of its related parties.

3. *How many claims against Corizon, Tehum, YesCare, or any affiliated entities were enjoined following Tehum's motion to extend and enforce the automatic stay?*



November 15, 2023

Page 4

- a. *The estimated number of claims that will be affected by Tehum's bankruptcy filing.*
- b. *The number of claims related to each of the following categories and the aggregate settlement amount for each: medical malpractice, employment, and contract breach.*

Tehum is the appropriate party to address these questions with respect to claims against Tehum and/or Corizon. Pursuant to the Bankruptcy Court for the Southern District of Texas's order dated May 18, 2023, 15 lawsuits that name YesCare as a co-defendant were stayed.¹ YesCare is a non-debtor indemnified party in each of these lawsuits, which include various claims that are categorized in Exhibit 1 to the Bankruptcy Court's order.² One such lawsuit—*Hyman v. YesCare Corp.*, No. 3:22-cv-01081 (M.D. Tenn.)—has since been resolved and was voluntarily dismissed.

- c. *A list of all claims by creditors and the status of those claims.*

The claims register is available online, here: <https://www.kccllc.net/tehum/register>. The status of all the claims depends upon whether or not the Plan is confirmed and whether or not claimants opt out of the settlement and releases embodied therein. Tehum is the appropriate party to provide additional details regarding the status of claims filed in its chapter 11 case.

4. *Please provide a list of the entities and individuals that were involved in negotiating the global settlement filed September 29, 2023. In addition, please describe the role of Elizabeth Freeman in the negotiations, and list the individuals at YesCare and Tehum that were aware of Ms. Freeman's romantic relationship with Judge David Jones, who mediated the negotiations.*

YesCare's involvement in settlement discussions was limited to negotiations around the release provisions that affect YesCare and its officers and directors. The following entities and individuals were involved in negotiating the global settlement filed on September 29, 2023:

- Tehum Care Services, Inc.


¹ Order (I)(A) Declaring that the Automatic Stay Applies to Certain Claims and Causes of Action Asserted Against Certain Non-Debtors and (B) Extending the Automatic Stay to Certain Non-Debtors, or in the Alternative, (II) Preliminarily Enjoining Such Actions, *In re Tehum Care Services, Inc.*, Adv. Pro. No. 23-03049, Docket No. 43.

² *Id.* at Ex. 1.



November 15, 2023

Page 5

- Tehum's independent director, Russell Perry of Ankura Consulting Group, LLP, participated in the mediation.
- Gray Reed serves as bankruptcy counsel for Tehum. Gray Reed Partners Jason Brookner, Amber Carson, Aaron Kaufman, and Lydia Webb all participated in the mediation.
- The Official Committee of Unsecured Creditors
 - The Committee members are: Rachell Garwood (as a representative of a putative class), Latricia Revell, St. Luke's Health System, Ltd., Capital Region Medical Center, Maxim Healthcare Staffing Serv., Inc., Saint Alphonsus Health System, Inc., and Truman Medical Center, Inc. The members attended the mediation virtually. The Committee Chair, David Barton, participated in the mediation in person as the Committee representative.
 - Counsel to the Committee, Nicholas Zluticky and Zachary Hemenway, participated in the mediation.
- YesCare
 - Former counsel for YesCare, Elizabeth C. Freeman, participated in the mediation.
 - 
- M2 LoanCo, LLC, M2 Holdco, LLC, Perigrove 1018, LLC, Perigrove, LLC, Geneva Consulting, LLC, PharmaCorr, LLC
 - Melissa S. Hayward participated in the mediation as counsel for each of the foregoing entities.
 - Isaac Lefkowitz participated in the mediation as a representative of each of the foregoing entities.

Elizabeth Freeman's involvement in the mediation was minimal. No individuals from YesCare were aware of her referenced relationship with the mediator.

5. *With regard to Corizon's use of the divisional merger process to separate its assets from its liabilities:*



November 15, 2023

Page 6

- a. *What was the rationale for determining which assets it would transfer or assign to Tehum and which it would shield from the reach of creditors through YesCare?*

Pursuant to the divisional merger, Tehum was allocated certain assets that were not necessary to sustain a going concern business. The assets allocated to YesCare were related to its operation on a go-forward basis.

- b. *What was the total value of Corizon's assets at the time of the divisional merger?*

Tehum is the appropriate party to address the value of Corizon's assets at the time of the divisional merger.

- c. *Please list all of the assets that were transferred to YesCare/CHS TX, Inc. and their cumulative value (excluding any liens on the assets).*

The following assets were transferred to YesCare in connection with the divisional merger transaction: (i) 100% of the membership interests in the entity Corizon Health of New Mexico, LLC; (ii) various contracts, agreements, and leases of Corizon; (iii) all services agreements with any professional corporations or professional associations that correspond to any of the transferred agreements; (iv) any and all furniture, fixtures, equipment, inventory and all other assets (whether tangible or intangible) used in, or necessary to, the conduct of the business of Corizon, or the service of any transferred contracts (excluding contracts that remained with Corizon); (v) all assets of employee benefit plans of Corizon; (vi) all cash in Corizon's bank accounts, less \$1 million that remained in a Corizon, LLC bank account; (vii) all but two bank accounts; (viii) all trademarks, tradenames, domain names, trade secrets and other intellectual property relating to Corizon or Corizon Health of New Mexico, LLC; (ix) all receivables and other current assets of Corizon except to the extent such receivables and other current assets relate to assets to remain with Corizon; (x) copies of all books and records of Corizon to the extent relating to YesCare assets or liabilities; (xi) any owned real estate asset of Corizon; (xii) all claims or counterclaims against third parties to the extent relating to YesCare assets or liabilities; (xiii) all permits and licenses from the following regulatory agencies required or used to conduct the operations of Corizon in connection with the YesCare assets, including permits or licenses issued by EEOC, OSHA, State Boards of Pharmacy, DEA, NLRB, EPA, State Departments of Insurance, OCR, CLIA and DOL; (xiv) except for certain Arizona insurance policies (the "AZ Policies"), all insurance policies issued to Corizon or any of its affiliates and any other insurance policies under which Corizon or any of its affiliates are or may be entitled to rights or benefits as a named insured, insured, additional insured, successor, beneficiary or otherwise, and all rights to make claims under or in respect of such insurance



November 15, 2023

Page 7

policies, subject to certain exceptions; (xv) any recovery under the foregoing insurance policies of insurance proceeds for any YesCare liabilities or assets, net of any costs of recovery (including any legal fees or expenses), deductibles, retentions, premium adjustments, retroactively rated premiums or other self-insurance features paid by the remaining Corizon entity; (xvi) all rights to make claims under or in respect of the AZ Policies, subject to certain exceptions; (xvii) all cash collateral held by AIG for Corizon's workers' compensation program, which totaled approximately \$17,500,000 as of the effective date of the merger; and (xviii) all of Corizon's rights and interests in and with respect to Corizon Health Political Action Committee.

In exchange for these assets, YesCare also was transferred certain liabilities, including (i) a nearly \$100 million secured debt obligation; (ii) all lawsuits claims, liabilities, costs, expenses or losses arising from, related to, or in connection with the contracts YesCare received; (iii) any lawsuits, claims, liabilities, costs, expenses or losses arising from, related to, or in connection with employee benefits plans (including 401k plans and health insurance plans, but excluding any long term incentive plans) of Corizon; (iv) any lawsuits, claims, liabilities, costs, expenses or losses arising from, related to, or in connection with the employment of any officers or other employees YesCare, excluding under any long term incentive plans; (v) all other liabilities and obligations of every kind and character to the extent arising from, related to or in connection with the YesCare assets, whether arising before, at or after the merger's effective date, but excluding any liabilities to remain with Corizon; (vi) all liabilities and obligations under the AZ Policies and insurance policies transferred to YesCare for deductibles, retentions, premium adjustments, retroactively rated premiums or other self-insurance features incurred or paid on account of any YesCare liabilities or assets; and (vii) any settlement payment obligations of Corizon relating to lawsuits, claims, liabilities, costs, expenses, relating to or in connection with the contracts transferred to YesCare.

The cumulative value of these assets is not information that is publicly available.

- d. *Please list all of the liabilities that were transferred to Corizon, later Tehum, and their cumulative value.*

Tehum is the appropriate party to provide this information.

6. *Please list all of the assets that were transferred to affiliated entities other than YesCare/CHS TX, Inc. between December 1, 2021 and the date of Tehum's bankruptcy filing.*

Tehum is the appropriate party to provide this information.



November 15, 2023

Page 8

7. *What is the total value of YesCare's current assets?*

The total value of YesCare's current assets is not information that is publicly available.

8. *What is the total value of Tehum's current assets? Please include a full accounting of any funding agreement, lump sum payment, or other revenue stream provided to Tehum following the divisional merger process.*

Tehum is the appropriate party to provide information related to the value of its assets and an accounting of the funding agreement and any other revenue streams it received in connection with the divisional merger.

9. *Please describe in detail all actions taken to provide notice of Tehum's bankruptcy filing to known and potential creditors.*

It is our understanding that Tehum provided the required notices to all its creditors and parties in interest pursuant to the procedures prescribed by the Bankruptcy Code and Federal Rules of Bankruptcy Procedure. This includes mailing and publication notices of the claims bar date, proof claim forms, notice of the disclosure statement and amended disclosure statement, and notice of all applicable hearings to date. The Master Service List in Tehum's chapter 11 case is available here: <https://www.kccllc.net/tehum/document/noticelist/1>

Tehum is the appropriate party to provide additional details regarding all actions taken to provide notice of Tehum's bankruptcy filing to known and potential creditors.

The information and data included in this response contains sensitive information—including confidential and proprietary information—and YesCare requests that such information be treated accordingly and that it not be released to any third parties. Production of this information and data is not intended to constitute a waiver of the attorney-client, attorney work product, or any other applicable rights or privileges in this or any other forum, and YesCare expressly reserves its rights in this regard.

Please let me know if you have any questions.

Akin

November 15, 2023

Page 9

Sincerely,

A handwritten signature in black ink, appearing to read 'R.A. Prober', written in a cursive style.

Raphael A. Prober
Counsel for YesCare

Exhibit A

**BYLAWS
OF
YESCARE CORP.**

**ARTICLE I
OFFICES**

Section 1.01 REGISTERED OFFICE AND AGENT. The registered office and registered agent of the Corporation shall be as set forth in the Corporation's Certificate of Formation. The registered office or registered agent may be changed by resolution of the Board of Directors, upon making the appropriate filing with the Secretary of State.

Section 1.02 PRINCIPAL OFFICE. The principal office of the Corporation shall be located at such place within or without the State of Texas as shall be fixed from time to time by the Board of Directors.

Section 1.03 OTHER OFFICES. The Corporation may also have other offices at any places, within or without the State of Texas, as the Board of Directors may designate, or as the business of the Corporation may require or as may be desirable.

Section 1.04 BOOKS AND RECORDS. All records maintained by the Corporation in the regular course of its business, including its share transfer ledger, books of account, and minute books, may be maintained in written paper form or another form capable of being converted to written paper form within a reasonable time. The Corporation shall convert any records so kept upon the request of any person entitled to inspect the records pursuant to applicable law.

**ARTICLE II
SHAREHOLDERS**

Section 2.01 PLACE OF MEETING. All meetings of the shareholders shall be held either at the principal office of the Corporation or at any other place, either within or without the State of Texas, as shall be designated in the notice of the meeting or duly executed waiver of notice. The meeting may be held solely by means of remote communication as set out in Section 2.02 below.

Section 2.02 MEETINGS OF SHAREHOLDERS BY REMOTE COMMUNICATION. Subject to any guidelines and procedures adopted by the Board of Directors, shareholders not physically present at a shareholders' meeting may participate in the meeting by means of remote communication and may be considered present in person and may vote at the meeting, whether held at a designated place or solely by means of remote communication, subject to the conditions imposed by applicable law.

Section 2.03 ANNUAL MEETING. An annual meeting of shareholders shall be held on the date and time set by the Board of Directors and stated in the notice of the meeting for the

purpose of electing directors and transacting any other business as may be brought properly before the meeting.

Failure to hold the annual meeting at the designated time does not result in the winding up or termination of the Corporation. If the Board of Directors fails to call the annual meeting, any shareholder may make written demand to any officer of the Corporation that an annual meeting be held.

Section 2.04 SPECIAL SHAREHOLDERS' MEETINGS. Special meetings of the shareholders may be called by the President, the Board of Directors, or by the holders of at least ten percent (10%) of all the shares entitled to vote at the proposed special meeting. The record date for determining shareholders entitled to call a special meeting is the date the first shareholder signs the notice of that meeting. Only business within the purpose or purposes described in the notice or executed waiver of notice may be conducted at a special meeting of the shareholders.

Section 2.05 QUORUM OF SHAREHOLDERS. The presence in person or by proxy of the holders of a majority of the shares entitled to vote constitutes a quorum for a meeting of the shareholders. Unless otherwise required by the Texas Business Organizations Code, the Certificate of Formation, or these Bylaws:

(a) The affirmative vote of the holders of a majority of the shares represented at a meeting at which a quorum is present shall be the act of the shareholders.

(b) The shareholders represented in person or by proxy at a meeting at which a quorum is present may conduct any business properly brought before the meeting until adjournment, and the subsequent withdrawal from the meeting of any shareholder or the refusal of any shareholder represented in person or by proxy to vote shall not affect the presence of a quorum at the meeting.

If a quorum is not present, the shareholders represented in person or by proxy may adjourn the meeting until a time and place determined by a vote of the holders of a majority of the shares represented in person or by proxy at that meeting. At such adjourned meeting at which the required number of voting shares shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

Section 2.06 CONDUCT OF MEETINGS. The Board of Directors may adopt by resolution rules and regulations for the conduct of meetings of the shareholders as it shall deem appropriate. At every meeting of the shareholders, the President, or in his or her absence or inability to act, the Vice President, or, in his or her absence or inability to act, a director or officer designated by the Board of Directors, shall act as chairman of, and preside at, the meeting. The Secretary or, in his or her absence or inability to act, the person whom the chairman of the meeting shall appoint secretary of the meeting, shall act as secretary of the meeting and keep the minutes thereof.

Section 2.07 VOTING OF SHARES. Each outstanding share, regardless of class or series, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the Certificate of Formation provides for more or less than one vote per share or limits or denies voting rights to the holders of the shares of any class or series. Unless

otherwise required by the Texas Business Organizations Code, the Certificate of Formation, or these Bylaws, any matter, other than the election of directors, brought before any meeting of shareholders at which a quorum is present shall be decided by the affirmative vote of the holders of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the matter.

Unless otherwise required by the Certificate of Formation, the election of directors shall be decided by a plurality of the votes cast by the holders of shares entitled to vote in the election at a meeting of the shareholders at which a quorum is present.

Shareholders are prohibited from cumulating their votes in any election of directors of the Corporation.

Any vote may be taken by voice or show of hands unless a shareholder entitled to vote, either in person or by proxy, objects, in which case written ballots shall be used.

Section 2.08 WRITTEN CONSENT OF SHAREHOLDERS WITHOUT A MEETING. Any action required by the Texas Business Organizations Code to be taken at any annual or special meeting of shareholders, or any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take the action at a meeting at which holders of all shares entitled to vote on the action were present and voted. Prompt notice of the taking of any action by shareholders without a meeting by less than unanimous written consent shall be given to those shareholders who did not consent in writing to the action.

ARTICLE III DIRECTORS

Section 3.01 BOARD OF DIRECTORS. The business and affairs of the Corporation shall be managed under the direction of the Board of Directors of the Corporation. Directors need not be residents of the State of Texas or shareholders of the Corporation.

Section 3.02 NUMBER OF DIRECTORS. The number of directors shall be one (1), provided that the number may be increased or decreased from time to time by an amendment to these Bylaws or by resolution adopted by the Board of Directors. No decrease in the number of Directors shall have the effect of shortening the term of any incumbent director.

Section 3.03 TERM OF OFFICE. At the first annual meeting of shareholders and at each annual meeting thereafter, the holders of shares entitled to vote in the election of directors shall elect directors, each of whom shall hold office until a successor is duly elected and qualified or until the director's earlier death, resignation, disqualification, or removal.

Section 3.04 VACANCIES AND NEWLY CREATED DIRECTORSHIPS. Any vacancy occurring in the Board of Directors may be filled by election at an annual or special meeting of shareholders called for that purpose, or may be filled by the affirmative vote of a

majority of the remaining directors even when the majority of the remaining directors is less than a quorum of the total number of directors specified in the Certificate of Formation or the Bylaws. A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office.

A directorship to be filled by reason of an increase in the number of directors may be filled by election at an annual or special meeting of shareholders called for that purpose, or may be filled by the Board of Directors for a term of office continuing only until the next election of one or more directors by the shareholders; provided that the Board of Directors may not fill more than two (2) directorships during the period between any two (2) successive annual meetings of shareholders.

Section 3.05 REMOVAL. Any director or the entire Board of Directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of the director or directors, at any meeting of shareholders called expressly for that purpose.

Section 3.06 RESIGNATION. A director may resign by providing written notice to the Corporation. The resignation shall be effective upon the later of the date of receipt of the notice of resignation or the effective date specified in the notice. Acceptance of the resignation shall not be required to make the resignation effective.

Section 3.07 REGULAR MEETINGS OF DIRECTORS. A regular meeting of the newly-elected Board of Directors shall be held without other notice immediately following each annual meeting of shareholders, at which the board shall elect officers and transact any other business as shall come before the meeting. The board may designate a time and place for additional regular meetings, by resolution, without notice other than the resolution.

Section 3.08 SPECIAL MEETINGS OF DIRECTORS. The Chairman may call a special meeting of the Board of Directors at a time or place determined by the Chairman. The Chairman shall call a special meeting at the written request of two (2) or more directors.

Section 3.09 NOTICE OF DIRECTORS' MEETINGS. All special meetings of the Board of Directors shall be held upon not less than three (3) days' written notice stating the date, place, hour, and purpose of the meeting delivered to each director either personally or by mail. Notice of a regular or special meeting of the Board of Directors may be provided to a director by electronic transmission on consent of the director. The director may specify the form of electronic transmission to be used to communicate notice.

A written waiver of the required notice signed by a director entitled to the notice, before or after the meeting, is the equivalent of giving notice to the director who signs the waiver. A director's attendance at any meeting shall constitute a waiver of notice of the meeting, except where the directors attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

Section 3.10 QUORUM AND ACTION BY DIRECTORS. A majority of the number of directors shall constitute a quorum for the transaction of business. The act of the majority of the directors present at a meeting at which a quorum is present at the time of the act shall be the act of the Board of Directors, unless the act of a greater number is required by law, the Certificate of

Formation, or these Bylaws. The directors at a meeting for which a quorum is not present may adjourn the meeting until a time and place as may be determined by a vote of the directors present at that meeting.

Section 3.11 COMPENSATION. Directors, as such, shall not receive any stated salary for their services, but by resolution of the Board of Directors a fixed sum and expenses of attendance, if any, may be allowed for attendance at any meeting of the Board of Directors or committee thereof. A director shall not be precluded from serving the Corporation in any other capacity and receiving compensation for services in that capacity.

Section 3.12 ACTION BY DIRECTORS WITHOUT A MEETING. Unless otherwise restricted by the Certificate of Formation or these Bylaws, any action required or permitted to be taken at a meeting of the Board of Directors or any committee may be taken without a meeting if all members of the Board of Directors or committee consent in writing or by electronic transmission and the writings or electronic transmissions are filed with the minutes of the proceedings of the Board of Directors.

ARTICLE IV OFFICERS

Section 4.01 POSITIONS AND ELECTION. The officers of the Corporation shall be elected by the Board of Directors and shall be a President and a Secretary and any other officers, including assistant officers and agents, as may be deemed necessary by the Board of Directors. Any two (2) or more offices may be held by the same person.

Each officer shall serve until a successor is elected and qualified or until the earlier death, resignation, or removal of that officer. Vacancies or new offices shall be filled at the next regular or special meeting of the Board of Directors.

Section 4.02 REMOVAL. Any officer elected or appointed by the Board of Directors may be removed with or without cause by the affirmative vote of the majority of the Board of Directors. Removal shall be without prejudice to the contract rights, if any, of the officer so removed.

Section 4.03 POWERS AND DUTIES OF OFFICERS. The powers and duties of the officers of the Corporation shall be as provided from time to time by resolution of the Board of Directors or by direction of an officer authorized by the Board of Directors to prescribe the duties of other officers. In the absence of such resolution, the respective officers shall have the powers and shall discharge the duties customarily and usually held and performed by like officers of corporations similar in organization and business purposes to the Corporation, subject to the control of the Board of Directors.

Section 4.04 AUTHORITY TO EXECUTE AGREEMENTS. All agreements of the Corporation shall be executed on behalf of the Corporation by (a) the President or any Vice President, (b) such other officer or employee of the Corporation authorized in writing by the President, with such limitations or restrictions on such authority as the President deems appropriate or (c) such other person as may be authorized by the Board of Directors.

**ARTICLE V
SHARE CERTIFICATES AND TRANSFER**

Section 5.01 CERTIFICATES REPRESENTING SHARES NOT REQUIRED.

The Corporation shall not be required to deliver certificates representing all shares to which shareholders are entitled, and any uncertificated shares may be evidenced by a book-entry system maintained by the registrar of the shares.

The Corporation shall, after the issuance or transfer of uncertificated shares, send to the registered owner of uncertificated shares a written notice containing the information required to be set forth or stated on certificates pursuant to the Texas Business Organizations Code. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical. No share shall be issued until the consideration therefor, fixed as provided by law, has been fully paid.

Section 5.02 TRANSFERS OF SHARES. Shares of the Corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of shares shall be made on the books of the Corporation only by the holder of record thereof or by such other person as may under law be authorized to endorse such shares for transfer or by such shareholder's attorney lawfully constituted in writing. No transfer of shares shall be valid as against the Corporation for any purpose until it shall have been entered in the share transfer records of the Corporation by an entry showing from and to what person those shares were transferred.

Section 5.03 REGISTERED SHAREHOLDERS. The Corporation shall be entitled to treat the holder of record of any shares issued by the Corporation as the holder in fact thereof for all purposes, including voting those shares, receiving dividends or distributions thereon or notices in respect thereof, transferring those shares, exercising rights of dissent with respect to those shares, exercising or waiving any preemptive right with respect to those shares, entering into agreements with respect to those shares in accordance with Texas law, or giving proxies with respect to those shares.

Neither the Corporation nor any of its officers, directors, employees, or agents shall be liable for regarding that person as the owner of those shares at that time for those purposes, regardless of whether that person possesses a certificate for those shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice of such claim or interest, except as otherwise provided by Texas law.

**ARTICLE VI
INDEMNIFICATION**

Section 6.01 INDEMNIFICATION OF EXISTING AND FORMER DIRECTORS AND OFFICERS. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or other proceeding (whether civil, criminal, administrative, arbitrative, or investigative), including any appeal thereof,

or any inquiry or investigation that could lead to such an action or proceeding (any of the foregoing to be referred to hereafter as a "**proceeding**") by reason of the fact that the person (1) is or was a director or officer of the Corporation; or (2) while a director of the Corporation, is or was serving at the request of the Corporation as a partner, director, officer, venturer, proprietor, trustee, employee, administrator, or agent of another entity, organization, or an employee benefit plan (each such person in (2) to be referred to hereafter as a "**delegate**" and, together with each such person in (1), a "**covered person**") to the fullest extent permitted by the Texas Business Organizations Code (as the same now exists or may hereafter be amended, substituted, or replaced, the "**BOC**"), but, if the BOC is amended, substituted, or replaced, only to the extent that such amendment, substitution, or replacement permits the Corporation to provide broader indemnification rights than the BOC permitted the Corporation to provide prior to such amendment, substitution, or replacement, against all judgments (including arbitration awards), court costs, penalties, settlements, fines, excise, and other similar taxes and reasonable attorneys' fees (all of the foregoing to be referred to hereafter as "**expenses**") actually incurred by the covered person in connection with such proceeding. The right to indemnification in this Section 6.01 shall continue as to a covered person who has ceased to be a director, officer, or delegate and shall inure to his or her heirs, executors, or administrators.

Section 6.02 ADVANCEMENT OF EXPENSES. The Corporation shall pay or reimburse reasonable expenses incurred by a covered person currently serving as a director, officer, or delegate of the Corporation who was or is a party or is threatened to be made a party to any proceeding in advance of the final disposition of the proceeding, without any determination as to the covered person's entitlement to indemnification, if the Corporation receives the following before any such advancement of expenses:

(a) A written affirmation by the covered person of the covered person's good faith belief that he or she has met the standard of conduct necessary for indemnification under the BOC.

(b) A written undertaking by or on behalf of the covered person to repay the amount so advanced if the final determination is that the covered person has not met the required standard of conduct set forth in the BOC or that indemnification is prohibited by the BOC.

Section 6.03 INDEMNIFICATION OF AND ADVANCEMENT OF EXPENSES TO OTHER PERSONS. Notwithstanding any other provision of this ARTICLE VI, the Corporation may indemnify and advance expenses to persons other than covered persons, including advisory directors, non-executive officers, employees, and agents of the Corporation, to the extent and in the manner provided by the BOC and these Bylaws.

Section 6.04 INDEMNIFICATION RIGHTS NOT EXCLUSIVE. The rights provided pursuant to this ARTICLE VI shall not be exclusive of any other rights to which a person may be entitled by applicable law, the Corporation's Certificate of Formation, action or resolution of the Corporation's shareholders or disinterested directors, or contract.

Section 6.05 INSURANCE. The Corporation may purchase and maintain insurance or another arrangement to indemnify any covered person against any liability asserted against and

incurred by the covered person in that capacity or arising out of the covered person's status in that capacity, regardless of whether the Corporation would have the power to indemnify the covered person against that liability under applicable law.

Section 6.06 REPORTS OF INDEMNIFICATION AND ADVANCES. No later than one (1) year from the date that the Corporation indemnifies or advances expenses to a director, it shall give a written report of such indemnification or advancement to the shareholders, which report must be made with or before the notice or waiver of notice of the next shareholders' meeting or the next submission to the shareholders of a written consent without a meeting.

ARTICLE VII MISCELLANEOUS

Section 7.01 SEAL. The Corporation may adopt a corporate seal in a form approved by the Board of Directors. The Corporation shall not be required to use the corporate seal and the lack of the corporate seal shall not affect an otherwise valid contract or other instrument executed by the Corporation.

Section 7.02 CHECKS, DRAFTS, ETC. All checks, drafts, or other instruments for payment of money or notes of the Corporation shall be signed by an officer or officers or any other person or persons as shall be determined from time to time by resolution of the Board of Directors.

Section 7.03 FISCAL YEAR. The fiscal year of the Corporation shall be as determined by the Board of Directors.

Section 7.04 INVALID PROVISIONS. If any one or more of the provisions of these Bylaws, or the applicability of any provision to a specific situation, shall be held invalid or unenforceable, the provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of these Bylaws and all other applications of any provision shall not be affected thereby.

Section 7.05 CONFLICT WITH APPLICABLE LAW OR CERTIFICATE OF FORMATION. These Bylaws are adopted subject to any applicable law and the Certificate of Formation. Whenever these Bylaws may conflict with any applicable law or the Certificate of Formation, such conflict shall be resolved in favor of such law or the Certificate of Formation.

ARTICLE VIII AMENDMENT OF BYLAWS

Section 8.01 AMENDMENT OF BYLAWS. The Board of Directors may amend, alter, change, and repeal these Bylaws or adopt new bylaws. The shareholders may make additional bylaws and may alter and repeal any bylaws whether such bylaws were originally adopted by them or otherwise.

Exhibit C-3

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
ARMED SERVICES
FINANCE
SPECIAL COMMITTEE ON AGING

United States Senate

2400 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
P: 617-565-3170

1550 MAIN STREET
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January 31, 2024

Tara Twomey
Director, Executive Office for United States
Trustees
U.S. Department of Justice
441 G Street, NW, Suite 6150
Washington, D.C. 20530

Kevin M. Epstein
U.S. Trustee for the Southern and Western
Districts of Texas
Office of the United States Trustee
515 Rusk Street, Suite 3516
Houston, TX 77002

Dear Director Twomey and Mr. Epstein:

I am writing regarding the Chapter 11 bankruptcy proceedings of Tehum Care Services (Tehum), a company that was formerly part of the prison health care servicer Corizon Health (Corizon). Corizon has used the Texas Two-Step maneuver explicitly to evade its liabilities owed to its many creditors. On January 16, 2024, Corizon announced an agreement on a new bankruptcy plan that, if confirmed, will deny Corizon's creditors, including incarcerated individuals, adequate restitution for the company's serious harms.¹

I was encouraged to see the U.S. Trustee for the Southern District of Texas file an objection to the debtor's prior disclosure statement and bankruptcy plan.² The objection rightly challenged many troubling elements of the plan put forward, including:

- the expedited nature of the plan,³
- the improper relationship between the mediator of bankruptcy plan negotiations and the attorney representing YesCare Corporation (YesCare),⁴
- the lack of adequate justification for the plan (e.g., inadequate legal justification for third-party releases, reduction of claims),⁵
- the coercive third-party releases,⁶ and
- the gate-keeper and injunction provisions included in the plan, which shift jurisdiction of potential criminal complaints against YesCare and Tehum to bankruptcy court.⁷

¹ Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, pp. 19-21, <https://www.kccllc.net/tehum/document/2390086240116000000000004>.

² Objection of the United States Trustee to Joint Emergency Motion, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), October 13, 2023, <https://www.kccllc.net/tehum/document/2390086231013000000000001>.

³ *Id.*, pp. 4-5.

⁴ *Id.*, p. 5.

⁵ *Id.*, pp. 7-8.

⁶ *Id.*, pp. 10-11, 13-16.

⁷ *Id.*, pp. 10-13.

I thank you for your efforts thus far, and encourage you to continue to fulfill the mission of the U.S. Trustee's Office to promote the integrity of the bankruptcy system. To do so, I ask that you (1) promptly assess the merits of joining the motion for structured dismissal filed by the Tort Claimants' Committee (TCC);⁸ (2) oppose the new bankruptcy plan on the basis that it provides plainly insufficient recovery for victims and includes nonconsensual non-debtor releases (among other issues); and (3) continue to ensure victims are adequately represented and provided proper notice.

The U.S. Trustee Should Assess the Merits of Joining the TCC's Motion for Structured Dismissal of the Bankruptcy

On January 16, 2024, the TCC filed a motion to dismiss Corizon's bankruptcy as a bad-faith attempt to defraud creditors, many of whom faced serious injury or death due to Corizon's services.⁹ I encourage you to promptly review the motion and join it if you find the motion meritorious. The TCC's motion argues persuasively that bankruptcy is not the appropriate venue for dealing with Corizon's harms, and that the purpose of the bankruptcy is not to fairly compensate all creditors but to transfer value from victims to investors.¹⁰

Corizon has expressly used this bankruptcy to evade liability. On October 25, 2023, Senator Durbin and I, along with a number of our colleagues, wrote to YesCare and Tehum seeking information on the financial actions taken by Corizon leadership before filing for bankruptcy and expressing concern that Corizon knowingly has used the "Texas Two-Step" maneuver to attempt to evade the countless wrongful death, medical malpractice, and other tort claims against it — principally to the detriment of incarcerated creditors harmed by Corizon.¹¹ Indeed, evading liability appears to have been Corizon's goal from the moment it came under new ownership in December 2021.¹² Isaac Lefkowitz was an owner of the private equity firm that took over Corizon,¹³ and is reported to have mentioned the Texas Two-Step to Corizon's lawyers as a way to "force plaintiffs into accepting lower settlements."¹⁴

⁸ Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, <https://www.kccllc.net/tehum/document/239008624011600000000005>.

⁹ *Id.*, pp. 2-3.

¹⁰ *Id.*, p. 2.

¹¹ Letter from Senator Elizabeth Warren, Senator Dick Durbin, and colleagues to Corizon Health Inc. (YesCare Corp. and Tehum Care Services, Inc.), October 24, 2023, <https://www.warren.senate.gov/oversight/letters/senators-warren-durbin-lawmakers-call-on-corizon-health-inc-to-answer-for-abuse-of-bankruptcy-system-evasion-of-liability-after-years-of-corporate-wrongdoing>.

¹² Business Insider, "Hidden investors took over Corizon Health, a leading prison healthcare company. Then they deployed the Texas Two-Step," Nicole Einbinder and Dakin Campbell, August 21, 2023, <https://www.businessinsider.com/corizon-health-bankruptcy-yescare-texas-two-step-law-2023-8>.

¹³ Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p. 7, <https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf>.

¹⁴ Wall Street Journal, "Prison Health Contractor Expands Texas Two-Step Bankruptcy Tactic," Andrew Scurria and Akiko Matsuda, September 19, 2023, <https://www.wsj.com/articles/prison-health-contractor-expands-texas-two-step-bankruptcy-tactic-acac4928>.

Facing mounting debts and liabilities stemming from inadequate provisions of health care services and mismanagement, Corizon reincorporated the company from Delaware to Texas on April 28, 2022 and executed a divisional merger just five days later, splitting assets and liabilities between two new companies: (1) CHX TX, with the assets and revenue of Corizon, existing today under the name “YesCare”; and (2) Corizon, a shell company holding most of the original company’s liabilities, later becoming “Tehum.”¹⁵ Unsurprisingly, the limited assets transferred to Tehum “proved insufficient for [the company] to satisfy its liabilities,” and Tehum filed for bankruptcy less than one year later, on February 13, 2023.¹⁶

Between Lefkowitz’s takeover of Corizon and the bankruptcy filing, Corizon ensured Tehum kept all of Corizon’s lawsuits, claims, liabilities, costs, expenses, and losses arising prior to, at, or after the date of the two-step — including liabilities related to any lawsuits in connection to the two-step or any settlement, as well as debts owed to any vendor or service provider.¹⁷ Meanwhile, YesCare received the company’s assets, including: almost all of the cash in Corizon’s bank accounts; all of Corizon’s real estate assets, leases, equipment, and inventory; all of Corizon’s insurance policies under which Corizon may be entitled to rights or benefits; all assets from employee benefit plans and \$17.5 million in cash collateral for worker compensation programs; and all of Corizon’s trademarks and other intellectual property (among other assets).¹⁸ In sum, more than \$170 million went to YesCare,¹⁹ and at least \$30 million went to entities affiliated with Lefkowitz’s private equity firm (including M2 LoanCo and Geneva Consulting).²⁰ All in all, Corizon transferred at least \$200 million to YesCare and to entities affiliated with its private equity owner prior to declaring bankruptcy.²¹

¹⁵ Business Insider, “Hidden investors took over Corizon Health, a leading prison healthcare company. Then they deployed the Texas Two-Step,” Nicole Einbinder and Dakin Campbell, August 21, 2023, <https://www.businessinsider.com/corizon-health-bankruptcy-yescare-texas-two-step-law-2023-8>.

¹⁶ Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, pp. 5-6, <https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf>.

¹⁷ *Id.*, pp. 12-13.

¹⁸ Letter from YesCare Corp. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, pp. 6-7, <https://www.warren.senate.gov/imo/media/doc/2023.11.15%20YesCare%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf>.

¹⁹ USA Today, “A prison medical company faced lawsuits from incarcerated people. Then it went ‘bankrupt,’” Beth Schwartzapfel, September 19, 2023, <https://www.usatoday.com/story/news/nation/2023/09/19/corizon-yescare-private-prison-healthcare-bankruptcy/70892593007/>.

²⁰ Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p.13, <https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf>.

²¹ USA Today, “A prison medical company faced lawsuits from incarcerated people. Then it went ‘bankrupt,’” Beth Schwartzapfel, September 19, 2023, <https://www.usatoday.com/story/news/nation/2023/09/19/corizon-yescare-private-prison-healthcare-bankruptcy/70892593007/>; Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p. 13, <https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf>.

Federal bankruptcy law states that a bankruptcy trustee may avoid any transfer of an interest of the debtor in property that was made within two years before the date of the filing of the bankruptcy petition if the debtor (a) made such transfer with intent to hinder, delay, or defraud potential creditors, or (b) “received less than a reasonably equivalent value in exchange for such transfer or obligation” and met one or more other characteristics.²² State law additionally provides a mechanism to challenge fraudulent transfers made within four years of the bankruptcy filing.²³ The transfers from Corizon to YesCare and other entities, which Corizon appears to have used to shield assets from victims’ reach, warrant serious examination under 11 U.S.C. 548 and other fraudulent transfer provisions.

In addition, key details about Corizon’s assets and corporate ownership have never been disclosed. As noted above, in October 2023, Senator Durbin and I wrote to Tehum and YesCare seeking information about the bankruptcy and about the companies’ structure and ownership.²⁴ The companies’ responses failed to answer key questions about the bankruptcy.²⁵

I encourage you to work to uncover the key facts needed to understand the bankruptcy filing. For example, the identity of other investors in the private equity firm that acquired Corizon in December 2021 is still not publicly known, as is whether they or their affiliated companies received assets prior to the bankruptcy filing.²⁶ Also unknown is the ownership structure of YesCare, which YesCare inexplicably claims is unknown even to the company itself.²⁷ This is concerning given YesCare’s involvement in negotiating Tehum’s bankruptcy plan, which includes generous releases of YesCare from liability.²⁸ If Tehum’s owner, Mr. Lefkowitz, is also a partial or full owner of YesCare, his dual ownership of both Corizon’s bankrupt and financially healthy

²² 11 U.S.C. 548.

²³ Tex. Bus. & Comm. Code 24.005; Tex. Bus. & Comm. Code 24.010.

²⁴ Letter from Senator Elizabeth Warren, Senator Dick Durbin, and colleagues to Corizon Health Inc. (YesCare Corp. and Tehum Care Services, Inc.), October 24, 2023, <https://www.warren.senate.gov/oversight/letters/senators-warren-durbin-lawmakers-call-on-corizon-health-inc-to-answer-for-abuse-of-bankruptcy-system-evasion-of-liability-after-years-of-corporate-wrongdoing>.

²⁵ Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf>; Letter from YesCare Corp. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.11.15%20YesCare%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf>.

²⁶ Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p. 7, <https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf>.

²⁷ Letter from YesCare Corp. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p. 3, <https://www.warren.senate.gov/imo/media/doc/2023.11.15%20YesCare%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf>.

²⁸ Audio Recording from Status Conference, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), December 18, 2023, <https://www.kccllc.net/tehum/document/239008623121800000000002>; Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, Exhibit 1, pp. 4-5, <https://www.kccllc.net/tehum/document/239008624011600000000004>.

halves bolster the case that the companies are not in fact distinct and that Tehum “is a legal fiction created to perpetrate an obvious fraud.”²⁹

The companies’ ownership structures are significantly related to the question of whether Tehum fraudulently transferred assets to YesCare and whether the company should be in bankruptcy at all. Tehum has alleged the company is in financial distress, even while there are indications that YesCare and Tehum are under common ownership: the holding companies that own YesCare and Tehum share the same business address, and Mr. Lefkowitz and other individuals have held significant positions or otherwise been affiliated with both companies.³⁰ Further, YesCare has claimed Corizon’s operating history to assert to prospective clients that YesCare, a company formed less than two years ago, has “40 years of experience as the leading provider of correctional healthcare.”³¹ As I wrote to Tehum and YesCare,³² the assurances of “corporate separateness” between YesCare and Tehum³³ are a plainly unconvincing attempt to shelter assets and avoid adequately compensating victims. Even a federal judge in the Eastern District of Michigan has found that YesCare’s subsidiary “CHS TX is a mere continuation of pre-division Corizon Evidently, CHS TX picked up right where Corizon left off. Indeed, CHS TX holds itself out to clients as Corizon’s successor.”³⁴

Corizon’s bankruptcy is premised on the fact that it does not have sufficient resources to pay victims and other creditors. The links between Corizon and YesCare accentuate questions about whether the company should even be in bankruptcy proceedings, and further highlight the insufficiency of the bankruptcy plan’s proposed offer to victims.

From the time Corizon executed its division merger to today, this bankruptcy plan has served no legitimate reorganizational purpose. By design, Tehum will not return to being a prison health care provider and will not be able to give victims the restitution they deserve. As argued in the TCC’s motion for structured dismissal, victims’ most direct path to meaningful recovery is through the tort system, after dismissal of this bankruptcy case.³⁵ That way, victims would be able to “assert

²⁹ Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, p. 2, <https://www.kccllc.net/tehum/document/239008624011600000000005>.

³⁰ Business Insider, “Hidden investors took over Corizon Health, a leading prison healthcare company. Then they deployed the Texas Two-Step,” Nicole Einbinder and Dakin Campbell, Aug. 21, 2023, <https://www.businessinsider.com/corizon-health-bankruptcy-yescare-texas-two-step-law-2023-8>.

³¹ Business Insider, “Hidden investors took over Corizon Health, a leading prison healthcare company. Then they deployed the Texas Two-Step,” Nicole Einbinder and Dakin Campbell, Aug. 21, 2023, <https://www.businessinsider.com/corizon-health-bankruptcy-yescare-texas-two-step-law-2023-8>; YesCare Corp., “About YesCare,” <https://www.yescarecorp.com/about>.

³² Letter from Senator Elizabeth Warren, Senator Dick Durbin, and colleagues to Corizon Health Inc. (YesCare Corp. and Tehum Care Services, Inc.), October 24, 2023, p. 4, <https://www.warren.senate.gov/oversight/letters/senators-warren-durbin-lawmakers-call-on-corizon-health-inc-to-answer-for-abuse-of-bankruptcy-system-evasion-of-liability-after-years-of-corporate-wrongdoing>.

³³ Response in Opposition to Plaintiff’s Motion, Kelly v. Corizon Health, Inc., No. 2:22-cv-10589-MAG-DRG, 2022 WL 16575763 (E.D. Mich.), August 17, 2022, p. 24, <https://s3.documentcloud.org/documents/23919673/yescare-corp-and-chs-tx-incs-response.pdf>.

³⁴ Kelly v. Corizon Health Inc., No. 2:22-cv-10589, 2022 WL 16575763 (E.D. Mich.), November 1, 2022, p. *13, <https://1.next.westlaw.com/Document/I9ae768f05a9411edbf39cf32a4dcbebd/View/FullText.html>.

³⁵ Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, pp. 23-26, <https://www.kccllc.net/tehum/document/239008624011600000000005>.

claims against governmental entities and other parties who are co-liable with [Tehum and YesCare].”³⁶ The U.S. Trustee should carefully consider the merits of the TCC’s motion for structured dismissal and support it if it agrees with the conclusions presented. YesCare and Mr. Lefkowitz do not deserve to reap the benefits of bankruptcy — including the “litigation holiday,” — without actually filing for bankruptcy.³⁷ They must “return[] to the tort system [and] face[] the reality of litigation.”³⁸

The U.S. Trustee Should Challenge Any Plan that Includes Insufficient Recovery for Victims and Nonconsensual Non-Debtor Releases

The new plan provides plainly insufficient recovery for victims

The initial bankruptcy plan, mediated by Texas-based bankruptcy judge David Jones, proposed that YesCare and its backers pay a paltry \$37 million to individuals and entities with claims against Corizon.³⁹ After Judge Jones resigned from his position following the exposure of his secret relationship with an attorney for YesCare, the parties agreed to restart the mediation and renegotiate the plan.⁴⁰ According to a motion filed under Rule 9019, this mediation has resulted in a new plan that would provide \$54 million to victims, state agencies, and other creditors.⁴¹ This number remains plainly insufficient to satisfy the thousands of debts against the company. Tehum currently owes \$82 million to more than 1,000 creditors, and hundreds of victims seek more than \$775 million in claims for alleged personal injury and wrongful death claims.⁴²

The plan ensures that no creditor — whether a state agency, private company, or family member of a loved one who died in Corizon’s care — would receive the full amount it is owed. Further, \$54 million is a small fraction of the at least \$200 million that Corizon transferred to YesCare and to entities affiliated with its private equity owner prior to declaring bankruptcy.⁴³

The new plan contains unlawful nonconsensual non-debtor releases

³⁶ *Id.*, p. 26.

³⁷ *Id.*, p. 23.

³⁸ *Id.*, p. 9.

³⁹ Reuters, “Prison healthcare company restarts mediation after bankruptcy judge Jones quits,” Dietrich Knauth, November 14, 2023, <https://www.reuters.com/business/healthcare-pharmaceuticals/prison-healthcare-company-restarts-mediation-after-bankruptcy-judge-jones-quits-2023-11-15/>.

⁴⁰ *Id.*

⁴¹ Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, p. 3, <https://www.kccllc.net/tehum/document/2390086240116000000000004>.

⁴² USA Today, “A prison medical company faced lawsuits from incarcerated people. Then it went ‘bankrupt,’” Beth Schwartzapfel, September 19, 2023, <https://www.usatoday.com/story/news/nation/2023/09/19/corizon-yescare-private-prison-healthcare-bankruptcy/70892593007/>; Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, p. 20, <https://www.kccllc.net/tehum/document/2390086240116000000000005>.

⁴³ USA Today, “A prison medical company faced lawsuits from incarcerated people. Then it went ‘bankrupt,’” Beth Schwartzapfel, September 19, 2023, <https://www.usatoday.com/story/news/nation/2023/09/19/corizon-yescare-private-prison-healthcare-bankruptcy/70892593007/>; Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p. 13, <https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf>.

The new plan retains a coercive provision that pushes victims — including families of individuals who died in Corizon’s care — to release from liability not just Corizon/Tehum but also several individuals and entities not party to the bankruptcy, including YesCare and Mr. Lefkowitz, in exchange for a small fraction of what they are owed.⁴⁴ The plan states that, in exchange for the \$54 million collective payout, creditors would have to release from liability not only Tehum but also YesCare, M2 LoanCo, Geneva Consulting, and “certain related entities, directors, and employees,” including Mr. Lefkowitz.⁴⁵ This does not afford creditors the opportunity to provide the “unambiguous and freely-given consent” required for provisions releasing non-debtors of liability.⁴⁶ As you noted in your earlier objection, this option to accept limited funds in exchange for sacrificing claims that could lead to true recovery is “no real choice, particularly in the context of the vulnerable creditor body in this case.”⁴⁷

Further, the broad releases of YesCare, Mr. Lefkowitz, and other non-debtor third parties from future liability likely violate bankruptcy law and Fifth Circuit precedent as nonconsensual non-debtor releases. As noted in the U.S. Trustee’s objections to the September 2023 plan, which appears to contain non-debtor releases that are substantially similar to those in the January 2024 plan, “a bankruptcy court may not confirm a plan that provides non-consensual non-debtor releases.”⁴⁸ By depriving victims and other creditors of a meaningful choice, YesCare and Mr. Lefkowitz are attempting to unlawfully shield themselves from liability and keep victims from exercising their legal rights. As a result of this and other harmful provisions, the U.S. Trustee concluded that the September 2023 plan was “patently unconfirmable” and must be rejected.⁴⁹ This recognition by the U.S. Trustee is consistent with the Trustee Program’s efforts to fight similar nonconsensual non-debtor provisions in the Purdue Pharma bankruptcy plan.⁵⁰ Based on the details of the plan shared in the Joint Motion filed on January 16, 2024,⁵¹ the new plan remains patently unconfirmable.

I was encouraged by your acknowledgment that the September 2023 plan was “patently unconfirmable” due in part to its attempt to coerce victims into accepting a minor one-time payment in exchange for signing away their legal rights.⁵² The new plan’s non-debtor releases

⁴⁴ Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, Exhibit 1, pp. 4-5, <https://www.kccllc.net/tehum/document/239008624011600000000004>.

⁴⁵ Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, pp. 3, 8-10, and 21.

⁴⁶ Objection of the United States Trustee to Joint Emergency Motion, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), October 13, 2023, p. 13, <https://www.kccllc.net/tehum/document/2390086231013000000000001>.

⁴⁷ *Id.*, p. 14.

⁴⁸ *Id.*

⁴⁹ *Id.*, pp. 10-11.

⁵⁰ CBS News, “Purdue Pharma bankruptcy plan that shields Sackler family faces Supreme Court arguments,” Melissa Quinn, December 4, 2023, <https://www.cbsnews.com/news/purdue-pharma-bankruptcy-supreme-court/>.

⁵¹ Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, <https://www.kccllc.net/tehum/document/239008624011600000000004>.

⁵² Objection of the United States Trustee to Joint Emergency Motion, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), October 13, 2023, p. 3, <https://www.kccllc.net/tehum/document/2390086231013000000000001>.

raise the same concerns.⁵³ I urge you to continue challenging these issues until they are completely resolved.

The U.S. Trustee Should Ensure Victims Are Adequately Represented & Given Sufficient Notice

The U.S. Trustee has been instrumental in this bankruptcy in protecting the rights of under-resourced victims and their families, including individuals currently incarcerated. In November 2023, you announced the formation of a six-member tort claimants' committee to ensure victims' interests are adequately represented.⁵⁴ This was a necessary step: the UCC's support for the deeply flawed initial bankruptcy plan has cast doubt on whether the UCC is adequately representing the interests of victims. The tort committee's motion requests the dismissal of Corizon's bankruptcy on the grounds that the bankruptcy was "a fraud from its inception,"⁵⁵ noting that victims "will recover substantially more in the tort system than YesCare . . . would ever contribute to this case."⁵⁶ It appears, therefore, that the tort committee is off to a promising start powerfully representing the victims of Corizon's alleged wrongdoing. I am optimistic about the tort committee's formation, but urge that you to remain vigilant to make sure victims' interests are properly represented. As the U.S. Trustee has observed,⁵⁷ incarcerated individuals without legal representation are inordinately vulnerable in these proceedings already — they lack access to up-to-date information on the bankruptcy and face unique barriers in participating in the proceedings. Should a settlement eventually be reached, I hope you continue to advocate that information disseminated to creditors be in language that is easy to understand.⁵⁸

Relatedly, I encourage you to join the TCC in pushing for adequate notice to be provided to creditors, particularly vulnerable incarcerated creditors. The lack of sufficient notice (whether actual or constructive) exacerbates the existing issues with the proposed bankruptcy plan.

The U.S. Trustee is in a Unique Position to Safeguard the Bankruptcy System from Abuse

Americans rely on the U.S. Trustee Program to "promote the integrity and efficiency of the bankruptcy system for the benefit of *all* stakeholders."⁵⁹ The Trustee Program has the responsibility and power to view the bankruptcy system as a whole, assess systemic trends, and take forceful action in the interest of justice. Rarely is such action more important than when

⁵³ Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, Exhibit 1, pp. 5-6, <https://www.kccllc.net/tehum/document/239008624011600000000004>.

⁵⁴ Bloomberg Law, "Prisoner Plaintiffs Get Committee in Medical Provider Bankruptcy," Alex Wolf, November 21, 2023, <https://news.bloomberglaw.com/bankruptcy-law/prisoner-plaintiffs-get-committee-in-medical-provider-bankruptcy>.

⁵⁵ Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, p. 35, <https://www.kccllc.net/tehum/document/239008624011600000000005>.

⁵⁶ *Id.*, p. 47.

⁵⁷ Objection of the United States Trustee to Joint Emergency Motion, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), Sept. 29, 2023, pp. 2 and 5, <https://www.kccllc.net/tehum/document/239008623101300000000001>.

⁵⁸ *Id.*, p. 10.

⁵⁹ U.S. Department of Justice, "Executive Office for United States Trustees," <https://www.justice.gov/doj/executive-office-united-states-trustees> (emphasis added).

powerful corporations with well-resourced backers try to corrupt the bankruptcy process to deprive thousands of victims of the ability to achieve justice.

As the tort committee noted, “[t]his case gives bankruptcy a bad name.”⁶⁰ I have no doubt that other corporations are watching to see whether Corizon and its allies will be able to successfully deploy the Texas Two-Step to shield their assets from the myriad legitimate claims they face. The U.S. Trustee’s actions, together with those of the bankruptcy judge, are of crucial importance not just for this case but also for the future of the bankruptcy system. For these reasons, and as detailed above, I urge you to (1) promptly assess the merits of joining the motion for structured dismissal filed by the TCC; (2) oppose the new bankruptcy plan on the basis that it provides plainly insufficient recovery for victims and includes nonconsensual non-debtor releases; and (3) continue to ensure victims are adequately represented and provided proper notice.

In addition, to assist my office’s oversight of Tehum’s Chapter 11 bankruptcy, please answer the following questions by February 14, 2024:

1. How does the U.S. Trustee plan to monitor whether the UCC or tort committee is adequately representing the interests of incarcerated victims?
 - a. Given Tehum’s looming administrative insolvency and restrictions on the debtor-in-possession loan,⁶¹ are there sufficient funds to pay the fees of TCC professionals?
2. Does the U.S. Trustee plan to challenge the new bankruptcy plan, consistent with its position against nonconsensual non-debtor releases?⁶²
 - a. If the U.S. Trustee does challenge the plan and the plan is nevertheless approved, does the U.S. Trustee plan to appeal that decision?
3. What actions will the U.S. Trustee take to determine the full ownership of Tehum and YesCare?
 - a. What actions will the U.S. Trustee take to ascertain the role of Isaac Lefkowitz in the ownership of Tehum and YesCare?
4. If information about Tehum and YesCare’s ownership continues to cast doubts upon claims of corporate separateness between Tehum and YesCare, under what circumstances would the U.S. Trustee move to:
 - a. Dismiss Tehum’s bankruptcy filing?
 - b. Challenge the pre-bankruptcy transfers of funds from Tehum/Corizon to YesCare and other entities as fraudulent?
5. What actions will the U.S. Trustee take to determine Corizon’s value at the time of the divisional merger?

⁶⁰ Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, p. 2, <https://www.kccllc.net/tehum/document/23900862401160000000000005>.

⁶¹ *Id.*, pp. 17 (“Without the DIP loan, there is no funding for this case and no funding to pay professional fees”), 18 (“The DIP loan denies funding for any committee or estate party that challenges any of the prepetition transfers”), and 33 (“The Debtor has no means to generate positive cash flow and is now facing administrative insolvency”).

⁶² *See, e.g.*, Brief for the Petitioner, *Harrington v. Purdue Pharma L.P.*, No. 23-124 (U.S.), September 20, 2023, pp. 19-48, https://www.supremecourt.gov/DocketPDF/23/23-124/280102/20230920205320537_23-124tsUnitedStates.pdf.

Thank you for your ongoing oversight of Corizon's bankruptcy on behalf of the public. I urge you to continue to closely scrutinize the developments in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Warren", with a long, sweeping underline.

Elizabeth Warren
United States Senator

Exhibit D

1 APPEARANCES (via Teams continued):

2 For Debtor/Defendant, Jones Day
DBMP LLC: BY: GREGORY M. GORDON, ESQ.
3 2727 North Harwood St., Suite 500
Dallas, Texas 75201

4 For Plaintiff, ACC: Robinson & Cole LLP
5 BY: NATALIE RAMSEY, ESQ.
1201 N. Market Street, Suite 1406
6 Wilmington, DE 19801

7 Robinson & Cole LLP
8 BY: KATHERINE M. FIX, ESQ.
1650 Market Street, Suite 3600
Philadelphia, PA 19103

9 Caplin & Drysdale, Chartered
10 BY: TODD E. PHILLIPS, ESQ.
One Thomas Circle, N.W.,
11 Washington, DC 20005

12 Winston & Strawn LLP
13 BY: CARRIE V. HARDMAN, ESQ.
DAVID NEIER, ESQ.
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14 New York, NY 10166-4193

15 Hamilton Stephens
16 BY: GLENN THOMPSON, ESQ.
525 North Tryon St., Suite 1400
Charlotte, NC 28202

17 For Plaintiff, Future
18 Claimants' Representative, Young Conaway
Sander L. Esserman: BY: SHARON ZIEG, ESQ.
EDWIN HARRON, ESQ.
19 SEAN GREECHER, ESQ.
ROBERT S. BRADY, ESQ.
20 1000 North King Street
Wilmington, DE 19801

21 Alexander Ricks PLLC
22 BY: FELTON E. PARRISH, ESQ.
1420 E. 7th Street, Suite 100
23 Charlotte, NC 28204

24

25

1 APPEARANCES (via Teams continued):

2 For Defendants, CertainTeed Rayburn Cooper & Durham, P.A.
3 LLC, et al.: BY: JOHN R. MILLER, JR., ESQ.
4 227 West Trade Street, Suite 1200
5 Charlotte, NC 28202

6 Goodwin Procter LLP
7 BY: HOWARD S. STEEL, ESQ.
8 MICHAEL H. GOLDSTEIN, ESQ.
9 620 Eighth Avenue
10 New York, NY 10018

11 ALSO PRESENT (via telephone): SANDER L. ESSERMAN
12 Future Claimants' Representative
13 2323 Bryan Street, Suite 2200
14 Dallas, TX 75201-2689

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1 behalf of the debtor. Also with me is Jim Jones from Jones Day
2 and Jeff Ellman from Jones Day.

3 THE COURT: Very good.

4 MR. GORDON: Thank you.

5 THE COURT: Anyone else for the debtor, local counsel
6 or otherwise?

7 MR. WORF: Good morning, your Honor. Richard Worf
8 from Robinson Bradshaw for the debtor this morning.

9 THE COURT: Okay.

10 Anyone else?

11 (No response)

12 THE COURT: All right. Affiliates?

13 MR. STEEL: Morning, your Honor. Howard Steel at
14 Goodwin on behalf of CertainTeed LLC, CertainTeed Holding
15 Corp., and Saint-Gobain Corp. With me is my partner, Michael
16 Goldstein, and Jack Miller of Rayburn Cooper.

17 THE COURT: Thank you.

18 Anyone else on, on the affiliates' side needing to
19 announce?

20 (No response)

21 THE COURT: How about the ACC, then? Better unmute.

22 MS. RAMSEY: Apologies, your Honor. I'm rusty.

23 Good morning, your Honor.

24 THE COURT: Good morning.

25 MS. RAMSEY: Natalie Ramsey from Robinson & Cole on

1 behalf of the Committee, along with my colleague, Katherine Fix
2 from Robinson & Cole. Also appearing for the Committee are
3 Todd Phillips from Caplin & Drysdale, David Neier and Carrie
4 Hardman from Winston & Strawn, and Glenn Thompson from Hamilton
5 Stephens.

6 THE COURT: Okay, very good.

7 MS. RAMSEY: Thank you.

8 THE COURT: Anyone else on behalf of the ACC?

9 (No response)

10 THE COURT: FCR, then. Ms. Zieg?

11 MS. ZIEG: Good morning, your Honor. Sharon Zieg from
12 Young Conaway Stargatt & Taylor on behalf of the Future
13 Claimants' Representative. Mr. Esserman is on the phone this
14 afternoon as well, this morning as well. And we also have Ed
15 Harron, Robert Brady, and Sean Greecher from Young Conaway and
16 North Carolina counsel, Felton Parrish.

17 Thank you.

18 THE COURT: All right, very good.

19 Any, anyone else needing to announce?

20 (No response)

21 THE COURT: That got it?

22 (No response)

23 THE COURT: Okay.

24 There's a filed agenda in the base case -- it's, I
25 guess, Docket No. 1495 -- that explains what's before the Court

1 this morning.

2 Let me ask first. It's traditional to get case
3 updates before we start.

4 Anything on the debtor's end?

5 MR. GORDON: Good morning, your Honor. It's Greg
6 Gordon again. Just a very short list of things and I'll start
7 with the one that's maybe a little mystifying to us.

8 I, I think we reported at the last hearing that we had
9 a ruling in Virginia on a motion to transfer.

10 THE COURT: Uh-huh (indicating an affirmative
11 response).

12 MR. GORDON: And there you may recall there was a
13 motion to quash filed by matching claimants. The debtor filed
14 a motion to transfer. That motion was granted. And nothing's
15 appeared in the docket of either the Virginia court or this
16 Court and we're puzzled by that because we just found out that
17 according to Virginia, they actually transferred the matter on
18 June the 1st.

19 THE COURT: Hmm.

20 MR. GORDON: And so we don't know whether it somehow
21 got lost in transit or is lost somewhere in North Carolina, but
22 that's something that I guess we need to follow up on and I'd
23 appreciate any guidance your Honor might have in terms of how
24 to do that.

25 THE COURT: Well, I think the simplest way on our end

1 would be for me to ask the clerk to see if they have anything
2 and then we'll send you an e-mail either way. Beyond that, I
3 don't know that I've got much influence with the Virginia
4 court, but, or the post office, for that matter, but I'm not
5 sure how they transferred this. I assume they did it by paper
6 means.

7 MR. GORDON: Yeah. I, I don't know if we know the
8 answer to that. Jeff Ellman's on.

9 Jeff, do you know what the means of transfer were?

10 MR. ELLMAN: I, I do not. I'm sure we could find out.
11 We, we had talked to the, the clerk this morning just to get an
12 update and, and they said it was transferred the normal way.
13 We didn't, we didn't inquire.

14 THE COURT: Okay.

15 MR. ELLMAN: I, I would assume it could be electronic,
16 but I really don't know, your Honor.

17 THE COURT: If --

18 THE COURTROOM DEPUTY: Electronic, we'll get it like
19 right away.

20 THE COURT: Right.

21 THE COURTROOM DEPUTY: What we --

22 THE COURT: Well, we'll go back and, and check. I
23 don't think we've got anything in a SPAM folder, but who knows.
24 If y'all will work on your end, though, and try to talk to the
25 Virginia clerk and see if they can ascertain how it was

1 transmitted, that would be helpful.

2 Anyone else got an interest in that? Need to say
3 anything?

4 (No response)

5 THE COURT: Okay.

6 Any other updates, Mr. Gordon?

7 MR. GORDON: Yes. And, and I would say with respect
8 to that particular matter, the Virginia transfer, we would like
9 to, to get that motion to quash up for hearing in August in
10 this court, assuming that we can track down the paperwork on
11 that. So just --

12 THE COURT: Okay. That would be helpful.

13 MR. GORDON: Yeah. I'm just advising your Honor and
14 the other parties --

15 THE COURT: Okay.

16 MR. GORDON: -- that would be our intention.

17 And then otherwise, your Honor may recall there was
18 also a motion to quash filed in Delaware --

19 THE COURT: Uh-huh (indicating an affirmative
20 response).

21 MR. GORDON: -- by the trusts and certain matching
22 claimants and that matter is still pending. We haven't heard
23 anything on that at this point.

24 THE COURT: Okay.

25 MR. GORDON: Otherwise, we are intending to have a

1 meet and confer with the Committee and the FCR about discovery
2 matters --

3 THE COURT: Uh-huh (indicating an affirmative
4 response).

5 MR. GORDON: -- in the pending adversary proceedings
6 and also, we're intending to have a meet and confer with the
7 Committee and the FCR on their request for product-related
8 information.

9 THE COURT: Uh-huh (indicating an affirmative
10 response).

11 MR. GORDON: And in fact, that's scheduled, actually,
12 for later today.

13 THE COURT: Okay.

14 MR. GORDON: I think, your Honor, that's, that's all
15 I've got. Otherwise, we obviously have the status conference
16 today on privilege log matters, but Mr. Jones will handle that
17 when that matter comes up.

18 THE COURT: Okay.

19 Anything on behalf of --

20 MR. GORDON: Thank you.

21 THE COURT: -- the ACC? Ms. Ramsey?

22 MS. RAMSEY: Apologies, your Honor, again, for the
23 delay.

24 No, nothing for us, your Honor.

25 THE COURT: How about the FCR, then?

1 Was it Control 6?

2 MS. ZIEG: Nothing else, your Honor.

3 THE COURT: Okay, very good.

4 Okay. Ready to move on, then, I suppose.

5 We've got one status matter and then two

6 announcements. I don't know how y'all prefer to approach this.

7 Why don't we talk briefly about the, what is denominated as

8 Exhibit, as No. 3, the case management order in the adversaries

9 with regard to the negotiations and the updates to the

10 privilege log and the status of, of next steps.

11 MR. JONES: Thank you, your Honor. This is Jim Jones
12 at Jones Day for the debtor.

13 THE COURT: Okay.

14 MR. JONES: And I believe -- and I see Ms. Hardman --
15 and we exchanged e-mails last evening or yesterday afternoon,
16 last evening, on this topic. So with, with Carrie's
17 permission, I, I will give what I understand to be the status
18 and then she can weigh in and let me know what I got sideways.

19 THE COURT: Okay, very good.

20 MR. JONES: I believe, your Honor, that status is
21 this, that is, the debtor, as it had committed, revised,
22 reviewed and revised its previously served privilege log, which
23 at last count numbered roughly 4,000 entries, and that log had
24 been served as a part of the adversary proceeding on the
25 preliminary injunction early in the case.

1 THE COURT: Uh-huh (indicating an affirmative
2 response).

3 MR. JONES: That process was undertaken after the
4 debtor received the February 4 letter from, 2022, letter from
5 the ACC and the FCR about what they considered to be concerns
6 and challenges with the log. So we undertook that, as we
7 committed we would, the review and revision process and served
8 the revised log when we said we would, on June 17, 2022. And
9 with that log we provided a cover letter that explained the re-
10 review and revision process in fairly short form, addressed at
11 least certain of the concerns that weren't themselves directed
12 to log entries but to privilege matters more generally in that
13 cover letter, which was dated June 17 as well, and then we also
14 produced that same day a relative few number of documents that
15 upon the re-review were deemed to be not privileged. I think
16 the total was 110 documents, 64 in whole, 46 in redacted form.

17 And then we waited for some period of time for
18 reaction or response from the ACC and the FCR -- it's, it's
19 4,000 entries. So it, it would take some time to review -- and
20 reached out thereafter, which I think was maybe Tuesday
21 afternoon, to the ACC and the FCR via e-mail and asked if they
22 were still in process of reviewing, as we expected they might
23 be, and if they would like to gather and meet and confer about
24 the revised log. We heard from Ms. Hardman yesterday
25 afternoon, I believe, that they were indeed still reviewing

1 and, yes, they still had some concerns and would like to meet
2 and confer.

3 And then the last bit of status, I think, is my
4 response last evening that we're happy to and I batted up some
5 times next week when that could be accomplished.

6 THE COURT: Okay.

7 MR. JONES: So I think that is status as of now.

8 And I believe privilege-related matters on the go
9 forward would include these. After the review of the log, I
10 believe it is incumbent upon the ACC and the FCR to identify up
11 to 50 documents off the log that they would like your Honor to
12 review in camera and up to 25 privilege assertions that they
13 think were inappropriate during the PI and that would occur, I
14 think it's scheduled to occur within 30 days of service of the
15 log. So 30 days from June 17.

16 THE COURT: Uh-huh (indicating an affirmative
17 response).

18 MR. JONES: We're to respond with anything that we
19 wish your Honor to review by way of counterdesignations 14 days
20 thereafter which, if everybody took the maximum amount of time,
21 I think would get us to, roughly, the end of July. And then
22 there is a, a submission date that is, that the debtor is, I
23 believe, obliged to provide to your Honor that which has been
24 designated for in-camera review on, five days after the last
25 identification. So if everybody took all their time, that

1 would come the first week of August.

2 And then, I think the only other thing in the CMO that
3 addresses or is directed, rather, to these matters is a status
4 conference after your Honor has had a chance to receive,
5 review, and consider whatever he wishes to receive and review
6 and consider which I think is the, will be the balance of
7 whatever is submitted.

8 So I think that is, to the best of my ability, an
9 update for your Honor.

10 THE COURT: All right.

11 Ms. Hardman, where do you think matters lie?

12 MS. HARDMAN: I echo -- Carrie Hardman from Winston &
13 Strawn on behalf of the Committee.

14 I echo a lot of what Mr. Jones has said. So I will
15 not, will try my best not to repeat them.

16 The only, I think, issues I wanted to raise were, or
17 points to make were simply that I think we might have received
18 a few more documents than, than Mr. Jones had on his number.
19 We had 185 in terms of the documents we received, but, you
20 know, a hundred versus 185, I don't know that that makes a huge
21 practical difference for, for these purposes. Some of the
22 documents we received which we reviewed initially certainly
23 provide some relevant information from those that were de-
24 designated from the log --

25 THE COURT: Uh-huh (indicating an affirmative

1 response) .

2 MS. HARDMAN: -- and are providing a lot of the detail
3 that we thought we would have questions about and we've been
4 trying to understand relative to privileged communications
5 documents that we think were otherwise subject to claims of
6 privilege.

7 And we certainly appreciate the efforts of the debtor
8 to review and revise the log and provide those limited
9 documents to the estate representatives. We are, as Mr. Jones
10 said, continuing to review those 4,000 entries because nearly
11 all of them were edited in some manner. So we just simply need
12 to get through them. As you may suspect, there will likely be
13 additional issues that we will work through with the parties,
14 or endeavor to, and if we cannot, we will be before your Honor.
15 At this point we've identified a number of issues that do
16 continue to permeate the log initially and remain unanswered
17 from our perspective with respect to that February 4th letter
18 that we sent. Those include sufficiency of description,
19 including the claims of common interest which permeate 90, more
20 than 95 percent of the log, and the fact that there are still
21 no subject matter lines in the log at all. And those are
22 issues that we'll talk about with Mr. Jones and his colleagues
23 in the coming days and weeks. We look forward to addressing
24 those issues in further detail on those calls.

25 And in the meantime, Mr. Jones is right. We do have a

1 deadline of providing those 50 documents and 25 instructions
2 not to answer to your Honor from our perspective. And that
3 deadline is coming up and the 30-day window runs July 17th --

4 THE COURT: Uh-huh (indicating an affirmative
5 response).

6 MS. HARDMAN: -- which is a Sunday.

7 While we certainly appreciate the Court's dedication
8 to these cases, we thought if it was okay with the debtor and
9 non-debtor affiliates and with the Court, that we would provide
10 those to you on July 18th, which is a Monday, instead.

11 THE COURT: Uh-huh (indicating an affirmative
12 response).

13 MS. HARDMAN: That way, the response deadline for
14 Mr. Jones as well will be on a business day and we don't have
15 to deal with any practical or mechanical concerns that the
16 parties may have in submitting documents under seal or
17 identifying information on, that would need to be under seal on
18 a Sunday. It's just an odd, something I'd offer if --

19 THE COURT: Uh-huh (indicating an affirmative
20 response).

21 MS. HARDMAN: -- the parties were amenable to it and
22 the Court was as well.

23 THE COURT: Does the FCR have a stake in any of this?
24 Do they need to be heard?

25 (No response)

1 THE COURT: Well, I'm glad you said "mechanical" and
2 "practical" because I have one to add. Since we've moved out
3 this far, on the 21st of July I have to have an arthroscopic
4 procedure on my ankle. That means I'm going to be out of the
5 office for three or four days afterwards and it will be
6 practically difficult for me to -- well, I could review them,
7 but if I, to the extent I'm on pain meds for a few of those
8 days, it might not be a fruitful exercise for anyone.

9 But I would like to back up just a week or so so that
10 I will have the opportunity to review those documents. I plan
11 to be back here -- we've got an Aldrich hearing on the 28th and
12 I'm planning to do that hearing. So if we could get those --
13 if we can back all the deadlines up so that the production is
14 August the 1st, I think that would behoove all of us.

15 MR. JONES: Your, your Honor, this is Jim Jones for
16 the debtor.

17 The production itself doesn't happen until August 5 --

18 THE COURT: Okay.

19 MR. JONES: -- under the current deadline. So the
20 identifications come first.

21 THE COURT: Okay.

22 MR. JONES: You won't be seeing, you won't be seeing
23 documents for in-camera inspection until the first week of
24 August --

25 THE COURT: Okay.

1 MR. JONES: -- at the soonest.

2 MS. HARDMAN: I -- for what it's worth, your Honor, I
3 agree with Mr. Jones. This was simply to not file publicly
4 information that maybe Mr. Jones or his colleagues believe is
5 privileged. And so if we are identifying things that he would
6 like to remain redacted --

7 THE COURT: Okay.

8 MS. HARDMAN: -- I just simply didn't want to do that
9 on a Sunday.

10 THE COURT: All right.

11 MS. HARDMAN: It's not about submission of the
12 documents to you until, until August.

13 THE COURT: I misunderstood what you were saying,
14 then.

15 So that, that works fine. We've got a pretty full
16 week the week after the 5th, but I'll try to get something back
17 to you, some kind of reaction. I would suggest that we --
18 gracious. We go all the way to September the 15th before we
19 have another hearing after that. If I get them on the 5th, I'm
20 unlikely to be able to give you a feedback on the 11th of
21 August. So I think we're talking about September, then.

22 So that's not ideal, but we'll do what we can.

23 Does anyone see a major --

24 MS. HARDMAN: Understood, your Honor.

25 THE COURT: -- headache there?

1 (No response)

2 THE COURT: Okay.

3 MR. JONES: Not, not for the debtor, your Honor.

4 THE COURT: Okay.

5 MR. JONES: And September 18 or, rather, July 18 is,
6 the Monday, is perfectly fine with us.

7 And one quick footnote for Ms. Hardman. In the 185
8 document versus 110 document difference, Carrie, I believe is
9 and, and I'm informed is a consequence of stuff you already
10 have. It's -- we, we produced on June 17 with family members.
11 So there will be documents that were not withheld before that
12 are attached to the now newly produced documents.

13 So the diff, the delta there of whatever it is, 75,
14 should be stuff you already have.

15 THE COURT: Okay, very good.

16 All right. So -- well, let's just aim for the, unless
17 something else goes awry, I'll try to give you my reactions to
18 those on the 15th of September, okay, at that omnibus hearing
19 day.

20 MS. HARDMAN: Thank you, your Honor.

21 THE COURT: Okay. Anything else there? No other --

22 MS. ZIEG: Your Honor, Sharon Zieg from Young Conaway.

23 I just want to let you know that we're working with
24 the Committee. I was a little late to the, turning on the
25 camera and the --

1 THE COURT: Okay.

2 MS. ZIEG: -- off the mute button when you asked if we
3 had anything to add.

4 THE COURT: So that's got it?

5 (No response)

6 THE COURT: All right, very good.

7 Okay. Well, we'll move on.

8 We had two different things that I needed to announce
9 and it was regarding the case management order and the motion
10 to dismiss. I don't know if the parties have a preference on
11 which order to take those. I don't know that -- well, I think
12 to a certain extent we may have more to talk about with regard
13 to the case management matters.

14 So unless y'all have a decided preference -- and I'm
15 asking at this point if you do -- I would just propose that we
16 talk about the motion to dismiss next.

17 Anyone got a reason to think we go in another order?

18 Okay.

19 MS. HARDMAN: no, your Honor.

20 MR. GORDON: No preference from the debtor, your
21 Honor.

22 THE COURT: All right.

23 Okay. We're picking up in the Adversary 22-3000,
24 Madam Clerk, with the motion of the defendants to dismiss the
25 case.

1 I'm going to be short and succinct about this. I
2 could talk in, at length, but y'all've already said just about
3 everything there is to be said about these matters in the
4 briefs. I will say that, at least at this point in time, on a
5 motion to dismiss I believe we've got a lawsuit and we've got a
6 complaint that adequately states claims. Whether they prove
7 out is something else and who knows at this juncture, but the
8 bottom line is in the main, I agree with the plaintiffs'
9 committee reps, future rep, and believe that there is a
10 fraudulent conveyance lawsuit, etc., here and would deny the
11 motion to dismiss.

12 I'm not going to say a lot about that, but at least
13 for present thinking, subject to being, having that thinking
14 changed, I generally agree with the position that the reps have
15 been taking that, essentially, you can look at this two
16 different ways. You can say this is, these are potential
17 fraudulent conveyances because these would be assets of the
18 debtor had they not been transferred and that the divisional
19 merger effectively sticking one company, the debtor company,
20 with all of the asbestos liabilities where the assets went
21 otherwise, that effectively, you could make that the fraudulent
22 conveyance seen through the debtor's eyes, or, alternatively, I
23 think, given the, the way the Texas statute is constructed, you
24 can alternatively view this as a fraudulent conveyance
25 effectively by Old CertainTeed with the present debtor standing

1 in the shoes of the old company. Because to do otherwise, it
2 would never be raised. We all know the Texas statute
3 contemplates that divisive mergers are not going to be
4 prejudicial to creditors and we know that they retain their
5 remedies if they, if the mergers were.

6 If the company, if you will for present purposes the
7 bad company, the company with the, the asbestos liabilities and
8 fewer assets as compared to the good company, the sibling that
9 was created that has most of the assets, operations, and
10 employees, if the bad company can't be seen to be standing in
11 the shoes of the Old CertainTeed, then I don't know how anyone
12 can challenge, as the Texas statute contemplates that a party
13 would be able to challenge. It -- the bottom line is the good
14 company would never have reason to challenge the divisive
15 merger and the bad company, effectively, is, for fraudulent
16 conveyance purposes, standing as the old company. I think you
17 can look at it both ways, but the bottom line is the way this
18 was structured -- and it was done so intentionally -- otherwise
19 with a bankruptcy following the divisive merger, then no one
20 gets to challenge the divisive merger and the allocations.

21 So I think either way at this point in time -- and I'm
22 subject to having my mind changed later on -- I think that
23 we've got standing here and there are transfers within the
24 Bankruptcy Code. I'm fully sensitive to the plain meaning
25 argument of what the Bankruptcy Code says that can be avoided,

1 but plain meaning is subject to absurd results and that's the
2 exception to plain meaning. If we take this in the very narrow
3 way that the movants are asking me to, then effectively, you
4 end up with the possibility that someone could engineer -- and
5 I'm not saying that's what happened here. That's to be decided
6 -- but if someone was craven and wanted to divide an otherwise
7 profitable company just to get rid of certain liabilities that
8 you just as soon not pay and you put all of the assets in a
9 good company and all of the liabilities in a bad company, if
10 the bad company cannot sue for that harm or the creditors of
11 that bad company can't sue with a bankruptcy being filed
12 immediately after, there's, the door is wide open to wholesale
13 fraud and that cannot be, as Mr. Huff has opined after the
14 fact, in his mind, was not what the Texas merger statute was
15 designed to do. There's no indication. It's supposed to be
16 neutral for debtor-creditor purposes.

17 So that just can't be the way it is. And again, if
18 you are taking it at plain meaning likewise on the obligation
19 side, the suggestion is, well, if there are obligations to be
20 avoided, then those are the obligations that the, the debtor,
21 DBMP, could avoid the obligations that were, it was saddled
22 with, meaning the asbestos liabilities, and if you avoided
23 those, then DBMP wouldn't owe the liabilities, but so, too, the
24 new company under the wording of the Texas statute wouldn't be
25 liable for those liabilities and Old CT has been dissolved as a

1 result of the merger. Again, you end up with no recourse
2 whatsoever and that's contrary to the stated intention of the
3 Texas statute and it would be totally contrary to all Anglo-
4 American notions of fraudulent conveyance law.

5 So bottom line is I, I think that part, we don't need
6 to get there.

7 The other thing I wanted to mention. I, I generally
8 agree with most of the arguments for present purposes made by
9 the plaintiffs, but I did want to talk about in, intentions.
10 One of the things our Circuit, like most, takes the view of is
11 courts should be hesitant to dismiss complaints under Rule 9
12 where the defendant's been made aware of the circumstances
13 which it will have to prepare a defense and which the plaintiff
14 has substantial pre-discovery evidence of the facts. Those all
15 come out of the Harrison case.

16 And in this instance we're in a very different
17 situation than most parties, defendant parties in a lawsuit.
18 We've been in this bankruptcy for a couple years now. We have
19 fought a multi-day evidentiary personal, preliminary injunction
20 fight after a year's worth of discovery and there can be no
21 question by anyone as to what this complaint is about. It's
22 detailed. But also, we have the backdrop of knowing what it's
23 about and what the contentions are, generally, by the plaintiff
24 group in this case.

25 So between the two, I think we've got an adequate

1 complaint here. It's a little bit short on, at least in stated
2 language, on whether or not for constructive trust purposes
3 whether we have insolvency adequately pled or lack of
4 reasonably equivalent value. As to that, I thought about that
5 and wondered whether I, I would require a further amendment to
6 just state what the liabilities were that were assumed in the,
7 in the divisive merger, the asbestos liabilities, so that they
8 could be compared as against the assets received. I decided
9 after looking through the four corners of the complaint -- and
10 again, knowing what we all know about this case -- that it's
11 adequate. It's not superlative, but it's adequate. And we all
12 know that, generally, reasonably equivalent value and
13 insolvency tends to be fact issues at the end of the day.

14 We also know why this debtor was designed the way it
15 was. It was intentionally set up so that it couldn't be too
16 solvent because otherwise, there would be no need for the
17 affiliates to come to the rescue, much like the calvary, to
18 provide funding so that a 524(g) relief could be afforded to
19 them.

20 So I think just by the structure itself, it is, it
21 would defy logic for it to be a solvent entity.

22 We also know that we have the history of the tort
23 litigation that's described in the complaint and we know the
24 sums based on the debtor's informational briefs that the debtor
25 has paid out over the years and we all know asbestos

1 liabilities, you folks more than, than anyone. So we wouldn't
2 be fighting all the facts that we're having at the present time
3 or even having fraudulent conveyance litigation if all
4 concerned didn't think that there was a substantial likelihood
5 that this debtor was insolvent at the time that, based on the
6 allocations or had reasonably equivalent value, lack of that.

7 So for pleading purposes, we'll fight about where we
8 come out on insolvency and the like later on, but I think for
9 pleading purposes it's sufficient. The same, too, for the
10 other counts.

11 The one thing I do have a nit with. I'm not at all
12 certain when it comes to remedies that punitive damages are,
13 are possible in a fraudulent conveyance lawsuit. I'll keep an
14 open mind about that, but I don't think I have to decide it for
15 present purposes. Remedies aren't failure to state a claim.
16 It's just some of the remedies you may ask for that claim
17 aren't available to you. So we'll see where that goes.

18 But otherwise, I believe that the motion should be
19 dismissed largely for the reasons that have been described by
20 the plaintiffs in the action.

21 And would call upon the plaintiffs for a short order
22 to that effect. Run it by the, the defendants for their
23 comments and we'll go from there, okay?

24 Anybody got anything or are we ready to move on?

25 (No response)

1 THE COURT: Okay. Silence, so I assume that we're
2 ready to move on.

3 Ms. Hardman, did you want to say something?

4 MS. HARDMAN: Just confirming we will submit an order
5 to your Honor.

6 THE COURT: Okay.

7 MS. HARDMAN: That's all.

8 THE COURT: Thank you.

9 MS. HARDMAN: Thank you.

10 THE COURT: All right. Okay. Now we'll get into the
11 ethereal part of the morning.

12 The CMOs. I think this would have been difficult
13 under the best of circumstances. I think, given the short time
14 period between when this was heard and when the Aldrich/Murray
15 matters were heard last week and the fact that there was
16 movement being had in Aldrich/Murray on negotiations between
17 the, the relatively same parties, the ACC there and the debtors
18 on what was going into the estimation case management orders,
19 I'm not even sure I'm totally certain as to what the agreements
20 are there and where the points of disagreement lie in that
21 case.

22 My first question to you in this case -- and, and then
23 the fact is what's been described in that case, or those cases
24 and this one are not entirely the same, even though the cases
25 are very similar. So I'm not sure I've got all of this and it,

1 I'm a little reluctant to get too far in the weeds about
2 resolving individual details. We may have to, but I would
3 prefer not to.

4 My first question to you is has there been any
5 movement since we were last arguing about this with regard to
6 the CMOs and the discovery plan? Any resolutions whatsoever?
7 Nothing like what's been in Aldrich or Murray.

8 MS. ZIEG: No, your Honor.

9 THE COURT: Okay.

10 MS. RAMSEY: Your Honor, we have a meet and confer
11 immediately following this call with respect to one issue that
12 might be relevant to the case management order on estimation
13 and that is the issue of, I'll call it, sort of upfront
14 discovery with respect to product --

15 THE COURT: Right.

16 MS. RAMSEY: -- product information and the like --

17 THE COURT: Uh-huh (indicating an affirmative
18 response).

19 MS. RAMSEY: -- distribution information. Otherwise,
20 that, that is correct. Ms. Zieg is correct. We, we have not.

21 THE COURT: Okay.

22 Everyone good, then?

23 (No response)

24 THE COURT: Okay. Well, to the extent that I can do
25 this, I'm going to try my best. I have tried to do a

1 comparison between your motions and your proposed orders and I
2 have tried to compare them to the Bestwall CMO and to come up
3 with some general thoughts about all of this and what I think
4 I'm going to have to do, at least for, at the moment, is to
5 give you the broad-brush impressions of the Court and then ask
6 you to go back and talk some more about the, the way this would
7 play out and what we do when and the dates and, and the like.

8 Let me just say -- if I can get my notes here -- at
9 the outset that I am -- there we go. Now we're ready.

10 Let me say at the outset that I think part of our
11 problem in all of this is the breadth and reach of the
12 discovery that we all contemplate here that is going to be
13 necessary in estimation and on a global level I would just like
14 to say at the start here that it strikes me that a lot of the
15 trouble is because the parties are not proposing, at least on
16 their own behalfs, to sample and the parties are desiring to,
17 to do some very broad discovery that is going to involve a
18 great deal of discovery being occasioned on lawyers. That's
19 going to cause a bunch of privilege problems. No surprise to
20 any of you on that.

21 I would say on the first hand that as a general
22 principle I'm not a big fan nor are the Rules on doing
23 discovery on lawyers. You know what those Rules are, but the
24 bottom line is that it, it quickly brings us into a morass of
25 what is privileged and what is not privileged and a great deal

1 of expense. And y'all've been telling me about Bestwall and
2 how we started with a half a million, a million and a half
3 documents being sought by the, the claimants in Bestwall and
4 working that down to a mere half million documents that were
5 subject to privilege claims. And now what? And all the
6 problems that have been sued from then. And about, you know,
7 that's not surprising to me at all if you're going to try to
8 ask for every document that the claimants have. Similarly, if
9 the debtor is contemplating a similar effort on the tort
10 lawyers, we're going to have those problems all over again.

11 I would just at this point in time without ruling urge
12 that we need some reasonableness here, folks. I see these
13 cases grinding down and not moving anywhere other than
14 spreading out into interminable discovery fights. Bestwall,
15 these, I suspect the same is going on in front of Judge Kaplan
16 in, in the LTL case, but the bottom line is that I don't know
17 that that works to anyone's benefit and I would suggest to you
18 that, that let's go back and all read Rule 1 of the Federal
19 Rules. We're here "to secure the just, speedy, and inexpensive
20 determination of every action." The action here is an
21 estimation hearing, not even an actual adjudication of the
22 claims.

23 So I would suggest to you that we need to have some
24 perspective about what we're doing. And bear in mind that, if
25 they are to be taken at their word, the claimants aren't going

1 to vote for the plan even after I estimate. In Garlock, Judge
2 Hodges came in at a low number, \$125 million, for the aggregate
3 liabilities. The claimants, as I recall, were asserting a \$1.6
4 billion number. The ACC -- the FCR, I think, was a little
5 lower at, maybe, 1.2 and we ended up with the case resolving
6 itself not based on the estimation ruling, but two or three
7 years later after a great deal of fighting and you settled for
8 5, 600 million.

9 So let's put this in perspective. Estimation is
10 supposed to avoid the delays and expense of a full
11 adjudication. If we're going to be just as gnarly as what,
12 what's going to be done in a full adjudication, we are hardly
13 doing ourselves any good with estimating. So the bottom line
14 is that I would encourage reasonableness, negotiation,
15 sampling. I would encourage you to work on, together, on
16 privilege logs and the like.

17 So that -- that's the -- that's my preaching to the
18 choir, I guess, in this case. I'll, I'll go on with what we
19 talk about.

20 I want to hit the general topics and if we have to get
21 into the details, we will. But as I said, I don't think
22 that -- that's likely to be perilous. If I start telling you
23 what the deadline are, you got to bear in mind it's been 28
24 years since I practiced law. I never practiced asbestos law.
25 I never had the, a fight of the, discovery fight of the

1 magnitude that y'all are about to embark upon.

2 So it would be much better and a better result for all
3 concerned if you can work out the details after I tell you what
4 I think about the large principles.

5 The first one, of course, is that we have a
6 fundamental disagreement as to when written discovery is
7 supposed to end, or at least when the deadlines all expire with
8 the debtors wanting me to effectively say that we don't get to
9 those points until they're satisfied with the PIQ responses
10 and, and trust discovery. They've got to get all of that
11 before we end anything. So the debtor's dates are all keyed to
12 a, an event that none of us can say with any certainty as to
13 when that is. Conversely, the reps, on the other hand, want
14 specific dates and deadlines that are hard deadlines and
15 effectively say that PIQ compliance isn't going to -- you're
16 not really directly saying this -- but that putting PIQ
17 compliance off to the side so it doesn't affect the estimation
18 discovery.

19 I read both of those alternatives as an infringement
20 on the function of the Court. The bottom line is -- I'm not
21 accusing you of bad things. I understand why you want to do it
22 -- but the bottom line is we're here to decide when y'all can't
23 decide and to make adjustments when they're necessary and where
24 cause is shown.

25 So I agree with the reps. I think we need some dates,

1 date-driven deadlines, but I think the deadlines have to be
2 subject to being moved upon a showing of cause. They're a
3 little more than guideposts, but they're, they're certainly not
4 like statutes of limitations, which are immutable.

5 So the bottom line is that I think we should go with
6 the representatives' thoughts that we set the deadlines and I
7 don't mind, in terms of trying to reach a, a Fall of 2024
8 estimation hearing. We've got some young folks in the
9 courtroom listening and they might be shocked that we're
10 talking about a two-year path to get to a motion hearing, but
11 that's, that's what we're talking about. But the bottom line
12 is that I don't think we can say now that we're going to set
13 those dates and they're not going to be moved.

14 We're talking in the other case, Aldrich and Murray,
15 about setting dates to take us through written discovery and
16 then having a further pre-trial conference or a further pre-
17 trial order to set the follow-on dates that supersede that. I
18 see some wisdom in that and I would encourage you to consider
19 it. If y'all want me to give you dates all the way through,
20 then I'm inclined to, to do it here, but the reality is it's
21 such a long period of time, the, the subject matter of the
22 discovery is so broad, and what might come up between here and
23 the, and an estimation hearing is so uncertain that I think any
24 dates we put are, are going to be more like mileposts instead
25 of anything else. They're, they will keep us at least more or

1 less on tact, intact on following the path, but I can't think
2 that we're going to be able to set them without some movement
3 and adjustment as we go along and circumstances dictate.

4 I understand the debtor's desire to make sure that it
5 gets the PIQs, the personal injury questionnaires, and the
6 trust discovery before any deadlines run and before things move
7 along. I agreed early on that the, with the debtors that that
8 was general information in the case and not specifically tied
9 to the adversary proceedings. I'm going to stick with that
10 idea, but I recognize, also, that that information will be very
11 important to the debtors, at least in their minds, on their
12 theory of how we estimate and that that infor, they're going to
13 be at a disadvantage if they don't get that information and the
14 trust discovery before the rest of the discovery deadlines run.

15 So the bottom line is I hear you. I am certainly not
16 going to reward obstreperous behavior. I'm not going to be
17 very friendly if folks are willfully ignoring court orders and
18 I certainly think that information should be provided because,
19 otherwise, I wouldn't have ordered it.

20 So I'm keeping the PIQs and the trust discovery out of
21 what we're talking about now, but telling you that I see that
22 if there are failures to make discovery there that are
23 wholesale or otherwise materially impairing the ability of the
24 debtors to prepare for the estimation hearing, I'm going to
25 make adjustments to the schedule and the estimation hearing.

1 So word to the wise there.

2 But I do agree with the representatives that we ought
3 to go ahead and set firm dates so that we know what we're
4 talking about and then adjust from there as need.

5 Now that's one place where I want to send y'all back
6 to the drawing board because it is perilous for me to start
7 setting those dates. I would only tell you that when it comes
8 to these dates -- and I've gone through all of them in
9 detail -- there's a knowledge that you need of what is being
10 attempted here before you can really set them and know what's
11 doable or workable. I'm not planning to cut anyone off at the
12 knees with dates that aren't workable and I would suggest that
13 you not do so, either.

14 So the bottom line is I want y'all to work on, on what
15 these dates have to be and also consider do we need to go any
16 farther than Aldrich and Murray are proposing in setting
17 written discovery dates or should we do those, get them out of
18 the way, get the disputes resolved, and then along towards the
19 end of that you start negotiating as to what other dates would
20 be usable and then if you can't agree, come back and talk about
21 that maybe about a year down the road from here.

22 I'll leave that to your discretion. If you want, I'll
23 set the dates all the way through. It just seems to me that
24 once you get past about a year out or once you get past the
25 written discovery period, whichever is longer, that it starts

1 becoming fairly ethereal and the likelihood that those dates
2 are going to stick is quite in doubt. But that's, that's where
3 I want you to go back and talk first.

4 Second thing, initial disclosures. Obviously, the
5 representatives want a, a broad amount of information from the
6 debtor in the form of initial discovery, initial disclosures
7 which, essentially, is the Court ordering the debtor to produce
8 things. As in most things, you'll find that I want to follow
9 the Federal Rules as much as I possibly can. And so I don't
10 think Rule 26 really contemplates that sort of thing. I don't
11 want to rewrite the Rules of Procedure based on, you know, a
12 party's belief that it's at a disadvantage, especially in the
13 case of the reps, the ACC particularly, where it's comprised of
14 leading plaintiffs' firms in the country and they have access
15 to quite a bit of information. But as to basic product
16 information, the debtor's already agreed to give that and it
17 was ordered in Bestwall and it doesn't seem to have caused any
18 problems there.

19 So there, there's a good bit of information there that
20 I think can be provided and call it initial disclosures,
21 whatever you want, without causing anyone any heartburn.

22 Now under the ACC's draft or -- excuse me -- the reps'
23 draft of this order in Document 1460 it wanted some more
24 information that gets us off into contested discovery, in my
25 mind. For example, the, the sites and locations of the

1 products, the serial numbers, the photographs, the identifying
2 information, the names of all distributors and installers,
3 copies of all purchase and sales records, and all testing
4 records. I think you need to ask those things in
5 interrogatories and then we'll see where we are about doing
6 that. I know there are questions about burden. There are
7 questions about whether it's even possible, whether the debtor
8 has that information, questions of proportionality. I want to
9 use the discovery rules and the protections that exist there to
10 address those.

11 There was also an initial disclosure request wanting
12 to know, basically, the names of custodians and noncustodians
13 with discoverable information. That was in the Bestwall ruling
14 as well and I'm inclined to allow that. The number of the
15 parties, we, we're fighting over whether for custodians we'd
16 get 30 or 20 or 15 or 10. Bottom line -- maybe not 10 -- the
17 bottom line there is I think we ought to start at a reasonable
18 number, like 20, and then if there's, if there are fewer
19 custodians or noncustodians with that information, then, okay,
20 fine. Give what you can identify. If there are more, we're
21 going to need to adjust at some point. But the bottom line,
22 for starters here I think we ought to just go with the, with
23 the 20 that, that had been identified earlier.

24 There was also a question about -- let me see if I can
25 find the part in the ACC that was -- hang on a moment -- shared

1 repositories and drives. I saw that in the Bestwall order, the
2 debtor identifying those shared databases and drives likely to
3 have discoverable information. That's close enough, in my
4 mind, to a Rule 26 request to, to allow it. Bestwall had it.
5 Again, I don't know what problems might have come out of that,
6 but I hadn't, I'm not aware of any.

7 So those things, I think, in initial disclosures are
8 fine. The bottom line, though, is I think the rest, once we
9 start getting into other things, that -- and -- then I think we
10 ought to use the discovery rules. Everybody needs to be, rest
11 assured that I'm not going to move into an estimation hearing
12 until everyone's had an, a fair opportunity to obtain discovery
13 that they reasonably need with emphasis on the word "reasonably
14 need" there. So bottom line, we'll do that.

15 As to the deadlines themselves, I don't mind us aiming
16 for an October of '24 date for the estimation hearing and
17 working back on, on deadlines if you want to go all the way
18 there. I do think we ought to set the interim deadlines there.

19 Categorical privilege logs. Chances are with, if
20 we're going to do discovery as broadly as what everyone
21 foresees, we're going to need some of that. I don't think I
22 have any business dictating it on the frontend, though. I
23 don't think the law contemplates it in that fashion. The, the
24 discovery's propounded to the debtor, the debtor reviews it,
25 and the debtor tries to answer. If there's privilege logs, it

1 falls to the debtor first, assuming the debtor is the party on
2 which discovery is being sought, to do the privilege logs.

3 I would say, though, that it makes a lot of sense for
4 y'all to work those issues out and save yourselves some time
5 and trouble later on and a great deal of expense. I'm aware of
6 what happened in Bestwall. I'm aware that neither the
7 claimants nor Judge Beyer were satisfied with what was
8 initially produced. I fully agree that, that there needs to be
9 sufficient detail, as the Rules require, so that you can
10 evaluate the privilege. And the bottom line is if we can't
11 tell from categorical logs, then we're going to be talking
12 about going back and doing document-by-document. Let's save
13 ourselves some time and trouble there and try to work together
14 on, on the idea of what we could agree to if we're going to use
15 categorical logs and what we can agree to if we're not using
16 categorical logs as to the, the categories, the standards, the
17 basic information to be provided.

18 But the bottom line is to the extent you can agree, I
19 think we have to go through the process. You may be assured
20 that if Judge Beyer found it to be insufficient, I'm likely to
21 find it insufficient as well. So I would suggest to all
22 parties who are going to be claiming privilege in the
23 estimation process, give us as much information as you possibly
24 can. As we've already discussed in the adversary context, even
25 with 4,000 documents at issue it's not practicable to expect

1 the Court to do in-camera reviews of all that. If you're at a
2 half million documents, then entirely impossible.

3 So we need to come up with a process here and I'm open
4 for ideas of whether we need to have sampling on these
5 documents. It would -- as a person who's not an expert in this
6 field, it would seem to me that if you have a half million
7 dollar privilege, half million privilege logged documents, that
8 it is very likely that they're going to fall into set
9 categories and that if you sample those documents, that you're
10 probably going to end up with the same events that, that you
11 would expect if you looked at all of them.

12 So I, I strongly suggest that you work on the basic
13 contours of a privilege log for use in, in the estimation
14 hearing in advance. The debtor has started with a proposal
15 about what they would give with categories, plus metadata. The
16 ACC's got some other thoughts, or the, the reps have other
17 thoughts as to other information. I think you've, you're on a
18 start there and I would strongly encourage you to work on that.

19 As to the timing of those privilege logs, we have a
20 dispute as to when they should be provided, whether after every
21 document production or whether after it was substantially
22 complete. I think the latter makes more sense to me.

23 So I'd say that, let's say if you're at 80 percent of
24 the documents, that probably is the time to do this. We don't
25 need to do this two or three times because of the repetition

1 between individual productions.

2 I think I told you at the last hearing when we're
3 moving on to the expedited discovery motions and briefs, the
4 ACC and FCR were proposing cutting down those deadlines to a
5 14-day motion, 5-day response, 2-day replies, and as I told you
6 before, you folks are, for a judge that, in a two-judge court,
7 you're taking up a lot of time now -- and I've got
8 Aldrich/Murray as well -- I don't think I can accommodate any
9 further reductions except in the case of emergencies and still
10 get all your stuff read.

11 So I want you to stick with what the, the time periods
12 we already have in our Local Rules.

13 The other thing I would say in that regard is not
14 something y'all argued about, but which I need to mention. I'm
15 seeing way too many briefs in these cases that exceed the 25-
16 page page limits and what's happening in most is the parties
17 file a 50 or 60 or 70-page brief and then file a motion to
18 permit the, exceeding the, the time periods [sic]. Those are
19 too long. The bottom line is if you want me to focus on the
20 important stuff, you don't need to repeat all the extraneous
21 things and all of the prior case history. And there's just a
22 limit to what we can use.

23 So I don't want to start striking pleadings, but I'm
24 telling you on the frontend you need to, to either adhere to
25 the 25-page rule, or, if you need to get an exception, ask in

1 advance of filing your brief and explain why it's not possible
2 to live with that.

3 Now I've also noticed a tendency in these two cases
4 for parties to start using their motion as their brief and,
5 therefore, try to get out from under the page limits. I would
6 discourage that. We're going to end up with the same thing
7 going on. I understand we're fighting over some broad ground
8 and where there's a need, when we get something as broad as,
9 for example, the motions to dismiss the adversary that we just
10 talked about, I'm going to give you the extra ground.

11 But otherwise, for routine and mundane case motions,
12 don't try to have 50 or 60 pages instead of 25. It's, it's
13 counterproductive to you because I'm going to be less inclined
14 to, to pay attention to what you have and if I start telling
15 you to rewrite your briefs, you're going to be in a real
16 disadvantage there. So that's just an extraneous thought by
17 me.

18 There was a request by the reps for a 502(d) order. I
19 agree with the debtor here. The Court cannot mandate that.
20 That would be a wholesale evisceration of attorney-client
21 privilege and work product protections. On the other hand, I
22 agree, especially if you're going to have discovery as broad as
23 what we're talking about, that it would be a good thing to have
24 some of that, particularly if we're talking about sampled
25 items.

1 In making those rulings, I would also note that the
2 representatives would like to see this case dismissed, been
3 very vocal about it from Day 1. If I gave you under 502(d) all
4 of the documents of all of the plaintiffs' defense attorneys
5 from the tort system actions and then the case got dismissed,
6 where does that leave the, the debtor or Old, New CertainTeed
7 in defending those tort claims? You've then given the entirety
8 of the other side's file.

9 So it just can't work that way. On the other hand, I
10 think that we can start identifying common issues and come up
11 with some examples and some, some sampling and maybe make good
12 use of the 502(d) to illustrate issues and problems that need
13 to be resolved.

14 Finally, the joint discovery plan. The ACC has taken
15 the Bestwall plan and made what it considers to be minor
16 modifications. The debtor wants to use the negotiated
17 adversary discovery plan. I've looked at the various plans and
18 while I'm hardly a tech person, absent agreement, I think we
19 ought to just stick with what's been done in the Bestwall plan.
20 That's kind of a halfway point between the two sides and we'll
21 need to modify it based on the comments I've just made here, or
22 whatever else you can work out. But that's basically it.

23 Now there were a lot of details about when we do what
24 in this. If we are absolutely pressed to do that, I suppose I
25 could go through, but, as I said, I'm reluctant to do so. I've

1 probably caused enough disruption in what y'all've got intended
2 by what I've said so far. I think the best thing to do would
3 be for y'all to take what I've, I've given you as preliminary
4 rulings and go back and see if you can't make this thing work a
5 little better with deadlines that work for all of you.

6 But if you think there are other things we need to
7 talk about, now's the time to sing out.

8 Anyone?

9 MR. GORDON: It's Greg Gordon, your Honor, on behalf
10 of the debtor. Mr. Ellman may want to join in, too.

11 But no, I don't think there's anything else
12 specifically we would raise. We very much appreciate your
13 Honor's guidance. We recognize that that was a lot for the
14 Court to work its way through and we appreciate the effort.

15 We will certainly get back together with the other
16 side and, you know, with guidance we've been given and
17 hopefully, reach a full agreement on everything and, if not, I
18 guess we would ask your Honor's indulgence to come back one
19 more time if there are any lingering issues. But I'm hopeful
20 that that won't happen.

21 THE COURT: Ms. Ramsey.

22 MS. RAMSEY: Your Honor, I, I agree. I think that the
23 Court's guidance was very helpful and, and I think we can
24 probably resolve most of the issues through negotiation.
25 Hopefully, we won't have to come back to the Court, but it

1 could happen.

2 THE COURT: Ms. Zieg, feel differently?

3 Anyone --

4 MS. ZIEG: No, I agree, your Honor. I think, I think
5 with your guidance we can and move forward and see what issues
6 we can resolve and, and most of them should be. I think the
7 only issue that, that may lead to some, some dispute will be
8 timing.

9 THE COURT: Okay, very good.

10 Well, you've all made my day by saying that. I, I've
11 detailed notes and I tried to, a comparison of your CMOs and
12 those are the easy parts as compared to looking through the
13 discovery orders. But I think that will probably serve you
14 well. I had intended that if, to the extent we still had
15 lingering disputes, that we talk about them at the next
16 hearing, which is, what, August the 11th.

17 So that work for everyone?

18 MS. ZIEG: That makes sense to me, your Honor.

19 THE COURT: Okay, very good.

20 MR. GORDON: Yes. And that works for the debtor as
21 well. Thank you.

22 THE COURT: All right.

23 Any other matters?

24 MR. ELLMAN: Your Honor, this is, this is Jeffrey
25 Ellman on behalf of the debtors.

1 I, I do have one update on the report we gave earlier
2 about the Eastern District of Virginia. While we were on this
3 call, I had a, a colleague reach out to the clerk's office
4 there.

5 I can, I can tell you a couple things. One, what they
6 do is they mail in regular mail the order --

7 THE COURT: Right.

8 MR. ELLMAN: -- that transferred the matter to this
9 court.

10 THE COURT: Okay.

11 MR. ELLMAN: They don't (audio skips). They just
12 mailed it to Clerk, U. S. Bankruptcy Court, not address any
13 person in particular, And it was just the order. So they,
14 they don't send any of the other pleadings, like the motion to
15 quash, the responses, all that stuff.

16 So somehow --

17 THE COURT: Hmm.

18 MR. ELLMAN: -- once we get it on your Honor's docket,
19 I guess we'll have to find a way to, to refile those papers or
20 have the parties submit them somehow. So it seems like we need
21 to figure out how this should work.

22 But to the extent it did get to the court there in
23 North Carolina, it would have come in regular mail some,
24 somehow.

25 THE COURT: Okay. If we have it, I'm not aware of it.

1 But for those of you who are LTL veterans, when we
2 sent the case to New Jersey, I think our electronic docket went
3 to the bankruptcy court there. Now whether -- if you're
4 talking about a district court you can send something, I have
5 no idea. I'm the least tech savvy person in this room.

6 But the -- it would seem to me that we can get those
7 documents filed in the appropriate spot. I will just go double
8 check with my office and make sure they don't have anything and
9 speak to IT.

10 Is there someone in particular on each party's side
11 that should be the contact person for us to have our clerk's
12 office respond to? Anyone?

13 MR. ELLMAN: Well, I mean, I'm happy to do that on
14 behalf of the debtor. I, I can't really speak for the, the
15 matching claimants, who, I don't think, are really even
16 represented here today. But we, we could certainly send to the
17 Court copy parties as to who we, who we know has appeared in,
18 in the Eastern District of Virginia.

19 THE COURT: Okay.

20 MR. ELLMAN: But that's all we could really -- I think
21 that's probably the best we could do at this point.

22 THE COURT: Well, this is, to my mind, a ministerial
23 function. I just want to know who to have my tech people call
24 to try to figure out where these things are and, and to know
25 who you've been speaking to in Virginia, so. Okay?

1 MR. ELLMAN: Oh. Oh, your Honor, I can certainly talk
2 to my colleague about who we've talked to at the clerk's office
3 there and let the Court know that.

4 THE COURT: Okay, very good.

5 All right. My law clerk is out of the office at the
6 moment. She's taking vacation this week. So I would
7 suggest --

8 Mr. Bender, do you mind if we send that to you? Okay.

9 Kollin Bender, many of you know from our other cases,
10 is our other law clerk --

11 MR. ELLMAN: Okay.

12 THE COURT: -- and he's sitting in with us today.

13 K-O-L-L-I-N; B-E-N-D-E-R, with all the uscourts.gov
14 information.

15 So if you'll send that to him, I think that'll --
16 that'll -- we'll try to get some IT people to take a look and
17 see what we might have and how we can get that information from
18 Virginia, okay?

19 MR. ELLMAN: We will do that, your Honor. Thank you.

20 THE COURT: All right.

21 Anything else?

22 (No response)

23 THE COURT: Okay. We'll stand down until 2:00 when we
24 do much of the same thing in the other cases.

25 All right. Thank you all.

1 MR. ELLMAN: Thank you, your Honor.
 2 MS. ZIEG: Thank you, your Honor.
 3 MR. ELLMAN: Thank you, your Honor.
 4 MR. GORDON: Thank you.
 5 MS. RAMSEY: Thank you.

6 (Proceedings concluded at 10:38 a.m.)

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CERTIFICATE

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I, court approved transcriber, certify that the
 foregoing is a correct transcript from the official electronic
 sound recording of the proceedings in the above-entitled
 matter.

/s/ Janice Russell

July 11, 2022

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Janice Russell, Transcriber

Date

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