Docket #0289 Date Filed: 4/6/2026

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

IN RE:	.	Case No. 26-60110-5-wak
	.	
VANDERBILT	.	James M. Hanley U.S.
MINERALS, LLC,	.	Courthouse and Federal Bldg.
	.	100 S. Clinton Street
	.	Syracuse, NY 13261
Debtor.	.	
	.	March 18, 2026
. . . . .	.	2:08 p.m.

TRANSCRIPT OF:

MOTION OF THE DEBTOR AND DEBTOR IN POSSESSION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) APPROVING THE CONTINUED USE OF THE DEBTOR'S CASH MANAGEMENT SYSTEM AND (II) GRANTING RELATED RELIEF. FILED BY VANDERBILT MINERALS, LLC (DOC. NO. 9)

MOTION OF THE DEBTOR AND DEBTOR IN POSSESSION FOR AUTHORIZATION TO PAY PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS, LIEN CLAIMANTS AND 503(B)(9) CLAIMANTS. FILED BY VANDERBILT MINERALS, LLC (DOC. NO. 12)

MOTION TO SELL PROPERTY FREE AND CLEAR OF LIENS UNDER SECTION 363(F) (MOTION OF THE DEBTOR AND DEBTOR IN POSSESSION FOR ENTRY OF ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, (B) AUTHORIZING THE DEBTOR TO ENTER INTO THE STALKING HORSE AGREEMENT AND TO PROVIDE BIDDING PROTECTIONS THEREUNDER, (C) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, (E) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF AND (F) GRANTING RELATED RELIEF; AND (II)(A) APPROVING THE SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (C) GRANTING RELATED RELIEF). FILED BY VANDERBILT MINERALS, LLC (DOC. NO. 16)

MOTION TO OBTAIN CREDIT UNDER SECTION 364(B),RULE 4001 (C), (D), MOTION FOR RELIEF FROM STAY (MOTION OF THE DEBTOR AND DEBTOR IN POSSESSION PURSUANT TO SECTIONS 105, 362, 363, 503, 507 AND 552 OF THE BANKRUPTCY CODE, BANKRUPTCY RULES 2002, 4001, 6004 AND 9014 AND LOCAL RULES 2002-1, 4001-2 AND 9013-1 FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION FINANCING, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) MODIFYING THE AUTOMATIC STAY, (IV) SCHEDULING A FINAL HEARING AND (V) GRANTING RELATED RELIEF). FEE AMOUNT $199. FILED BY VANDERBILT MINERALS, LLC (DOC. NO. 17)

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MOTION (SUPPLEMENT TO MOTION OF THE DEBTOR AND DEBTOR IN POSSESSION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTOR TO PAY PREPETITION EMPLOYEE WAGES, BENEFITS AND RELATED ITEMS AND (II) GRANTING CERTAIN RELATED RELIEF). FILED BY VANDERBILT MINERALS, LLC (DOC. NO. 108)

MOTION TO SEAL DOCUMENT (RE: RELATED DOCUMENT(S) 191 OBJECTION). FILED BY OFFICIAL COMMITTEE OF UNSECURED CREDITORS (DOC. NO. 196)

BEFORE THE HONORABLE WENDY A. KINSELLA
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For Debtor:	Jones Day By: HEATHER LENNOX, ESQ. 250 Vesey Street New York, NY 14614 Bond, Schoeneck & King, PLLC By: CHARLES J. SULLIVAN, ESQ. GRAYSON WALTER, ESQ. One Lincoln Center Syracuse, NY 13202-1355 Jones Day By: T. DANIEL REYNOLDS, ESQ. NICHOLAS BUCHTA, ESQ. 901 Lakeside Avenue Cleveland, OH 44114 Jones Day By: MATTHEW C. CORCORAN, ESQ. 325 John H. McConnell Boulevard Suite 600 Cleveland, OH 44114
For the Official Committee of Unsecured Creditors:	Brown Rudnick, LLP By: JEFFERY L. JONAS, ESQ. DAVID MOLTON, ESQ. CAMERON MOXLEY, ESQ. 7 Times Square New York, NY 10036 Caplin & Drysdale By: KEVIN DAVIS, ESQ. LUCAS SELF, ESQ. One Thomas Circle NW Suite #1100 Washington, D.C. 20005

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For R.T. Vanderbilt Holding Company, Inc.:	Vinson & Elkins By: GEORGE R. HOWARD, ESQ. 1114 Avenue of the Americas, 32nd Fl. New York, NY 10036
For Independent Manager and Sole Member of the Independent Special Committee:	Katten Muchin Rosenman LLP By: DAN BARNOWSKI, ESQ. 1919 Pennsylvania Ave., N.W., Ste 800 Washington, DC 20006-3404
For Pacific Indemnity Company:	Plevin & Turner LLP By: JACOB C. COHN, ESQ. 132 W. 31st St. Suite 9th Floor 10001 New York, NY 10001
For United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union:	Cohen, Weiss and Simon LLP By: K. Jeff Wang, Esq. 909 Third Avenue, 12th Floor New York, NY 10022

APPEARANCES (CONT'D):

For Linda Weaver:	Belluck & Fox By: JOSEPH BELLUCK, ESQ. 546 5th Avenue 4th Floor New York, NY 10036
For Donna Franklin, Unsecured Creditor:	The Gori Law Firm By: CHRISTOPHER GUINN, ESQ. 122 E 42nd Street Suite 4700 New York, NY 10168
For Kathleen Dahl, Unsecured Creditor:	Weitz & Luxenberg P.C. By: ADAM DREKSLER, ESQ. 700 Broadway New York, NY 10003
ECRO:	Darcy Davis

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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(Proceedings commence at 2:08 p.m.)

THE CLERK: Continuing with the 2 p.m. calendar, Case Number 26-60110, Vanderbilt Minerals, LLC. We have several matters on.

Docket Number 108, supplement motion of the Debtor and Debtor in Possession for interim and final orders, authorizing the Debtor to pay pre-petition employee wages, benefits, and related items, and granting certain related relief.

Docket Number 12, motion for authorization to pay pre-petition claims of certain critical vendors, lien claimants, and 503B9 claimants. Docket Number 9, motion for entry of interim and final orders approving the continued use of the Debtors' cash management system.

Docket Number 16, motion to sell property free and clear of liens and related relief. And Docket Number 196, motion to seal document.

Please note your appearance for the record.

THE COURT: Why don't we start with counsel for the Debtor?

MS. LENNOX: Good afternoon, Your Honor. Heather Lennox of Jones Day proposed counsel for the Debtors, and with me from Jones Day are my partners, Matthew Corcoran and Dan Reynolds, and my colleague, Nick Buchta.

THE COURT: Good afternoon.

MS. LENNOX: Good afternoon.

THE COURT: Local counsel?

MR. SULLIVAN: Your Honor, Charles Sullivan and Grayson Walter, Bond Schoeneck and King, proposed co-counsel to the Debtor.

THE COURT: Good afternoon, again.

Counsel for the Committee?

MR. JONAS: Good afternoon, Your Honor. Jeff Jonas from Brown Rudnick on behalf of the Official Committee of Unsecured Creditors. Pleasure to be here again. With me are David Molton and Cameron Moxley of my firm and Kevin Davis and Lucas Self of Caplin Drysdale, our co-counsel.

Also, Your Honor, I see his picture on the screen. We have at least one member of the Creditors' Committee, Mr. Frank Richard Krasinski, who suffers from mesothelioma resulting from asbestos exposure.

There may be other members. I haven't seen them, but I just wanted to let you know that he was on as well. Thank you.

THE COURT: Thank you. I appreciate that, Mr. Jonas. Thank you.

Good afternoon. U.S. Trustee's Office?

MS. CHAMPION: Good afternoon, Your Honor. Erin Champion on behalf of the United States Trustee, and with me in

the courtroom is Paula Barbaruolo.

THE COURT: Good afternoon. Good afternoon.

Counsel for Commodore?

MR. AGAY: Good afternoon, Your Honor. David Agay from McDonald Hopkins. It's just me.

THE COURT: Good afternoon.

Any counsel for Twin City Fire Insurance Company?

MR. WEINBERG: Good afternoon, Your Honor. This is Joshua Weinberg on behalf of Twin City Fire Insurance Company and First State Insurance Company.

THE COURT: Good afternoon.

Counsel for R.T. Vanderbilt Holding Company?

MR. HOWARD: Good afternoon, Your Honor. It's George Howard, Vincent and Elkins on behalf of R.T. Vanderbilt Holding Company and the other non-debtor affiliates. Thank you.

THE COURT: Good afternoon.

Counsel for the Debtor's Independent Manager?

MR. BARNOWSKI: Good afternoon, Your Honor. Dan Barnowski of Katten & Muchin on behalf of Ben Pickering as Independent Manager and sole member of the Special Committee.

THE COURT: Good afternoon.

Counsel for Pacific Indemnity and Century?

MR. COHN: Jacob Cohn. Good afternoon, Your Honor.

THE COURT: Good afternoon.

Counsel for the United Steel Paper and Forestry

International Union?

I'm hearing none.

MR. WANG: Good afternoon, Your Honor. This is Jeff Wang from Cohen, Weiss and Simon on behalf of United Steel Workers Union.

THE COURT: Good afternoon.

Let's see. Do we have -- does any counsel for Talc Claimants wish to note their appearance?

Anyone else who I --

MR. BELLUCK: Yes, Your Honor. Joseph Belluck. Joseph Belluck, Belluck Law, appearing on behalf of Linda Weaver, State Representative for (indiscernible).

THE COURT: Good afternoon.

MR. GUINN: Good afternoon, Your Honor. This is Chris Guinn with The Gori Law firm, tort counsel for Donna Franklin, who is also on the hearing today.

THE COURT: Good afternoon, Counselor.

MR. GUINN: Good afternoon.

THE COURT: Anyone else by --

MR. DREKSLER: Hi, Your Honor. Adam --

THE COURT: -- go ahead.

MR. DREKSLER: Hi, Your Honor. Adam Dreksler from Weitz and Luxenberg on behalf of Kathleen Dahl and the Creditors Committee.

THE COURT: Good afternoon.

Any other appearances by video? Hearing none.

Any other appearances in the courtroom?

Okay. Hearing none, why don't we start with the Debtors' motions. And we'll figure out what the roadmap is from here.

MS. LENNOX: May it please, Your Honor, I think I'll address that again. Heather Lennox of Jones Day, proposed counsel for the Debtors.

I believe we have three trailing first day motions for final hearing today; the cash management motion, the critical vendors' motion, and then the supplement to the employee wages' motion.

Then we have, of course, the DIP financing motion to be heard on a final basis and the bidding procedures motion. When we get to each of those motions, my colleagues will address those items in more detail. But I wanted to take very, very short opportunity, if I may, Your Honor, to make clear what we are proposing to do in this case and what we are not because it will bear on the arguments today.

And I think there's been serious confusion created over the last couple of weeks by positions and arguments promulgated by the Committee that are not accurate. And if Your Honor will indulge me, I promise to be very, very brief.

THE COURT: Certainly, Ms. Lennox.

MS. LENNOX: As I indicated on the first day of the

hearing, there are three legs, you've seen this in the papers, to this proposed case stool. It may not be the only case stool, but the proposal for the case stool that we had when we came in had three legs to it.

First is financing for the case. The second is the sale of our Debtor assets. And the third is a settlement with our non-debtor affiliates that does really just two basic things.

One, it resolves estate causes of action against the non-debtor affiliates; and the other thing is that it permits certain non-debtor assets that our buyers wish to purchase to be available for purchase.

These are three legs, but each is separate. It's a separate and distinct leg, and each has its own legal standards that have to be evaluated for that leg to pass judicial muster in front of Your Honor.

And the first of those is to be heard today, the financing motion on a final basis. At the Committee's request, the second two legs, the actual sale of the assets and the settlement motion, are not being heard today. They're being heard on April 16th. So, we believe the Court should not countenance any testimony or argument related to those matters today.

And finally, I want to reiterate what Mr. Reynolds and I have made clear in prior hearings, because, again, there

seems to be some confusion in the pleadings. I don't know why.

This is not a Section 524G case, nor is this a case where the Debtor is seeking to have third parties, tort claimants, for instance, release the Debtor's affiliates. Purdue has no bearing here.

The Debtor is not seeking to have any direct claims that any tort claimant might have against its affiliates released. Frankly, Your Honor, the Debtor's affiliates have never been found liable for any direct liability to any tort Plaintiff. But even if they had, this case is not seeking to relieve them of it. Again, this is not Purdue. Frankly, it's more like Avon. Avon, only easier, because the proposed buyer of our assets is not an insider. It's an unrelated private equity fund.

So, when we're talking about, when Your Honor hears about releases and when other parties in interest hear about releases, they are only Debtor releases. And, of course, it's black-letter law that when a bankruptcy case is filed, certain collective causes of action that outside of bankruptcy could have been brought into the -- that could have been brought by creditors now belong to the Debtor, because their resolution must benefit all creditors.

Those are things like alter ego, piercing the veil, fraudulent transfer; and it's those actions that belong to the Debtor and the Debtor only that are the subject of the

settlement motion, again, to be heard on April 16th, not today.

And, frankly, when they come before Your Honor, the Special Committee understands that they have to explain them and justify the settlement to Your Honor under applicable standards, and Your Honor will tell us what you think about that.

So, I just wanted to be clear, Your Honor, because it's easy to use loose language and conflate these concepts for relief, which we believe is only generating unnecessary confusion. We're only addressing today a small subset of the motions that have been filed to date.

And so, with that, Your Honor, we would propose that the roadmap for today is that Mr. Buchta address the three remaining what we're calling carryover first day motions, the critical vendor motion at Docket Number 12, the supplemental employee wages motion at Docket Number 108, and the cash management motion at Docket Number 9.

Then, in anticipation of the Court hearing the bidding procedures motion and the DIP financing motion, we would propose that we go through the evidentiary presentations, the Debtor's evidence, and then the Committee's evidence so that the evidentiary record is set prior to argument, and close with argument.

So, if that's acceptable to Your Honor, we could proceed in that fashion?

THE COURT: All right. Does counsel want to weigh in on that? That makes sense to the Court.

UNIDENTIFIED SPEAKER: No objection, Your Honor.

THE COURT: Thank you.

MS. LENNOX: So, that would be everything I had to say, except I did want to alert, Your Honor, that Mr. Bernowski of Katten Muchin had one preliminary matter that he'd like to address with the Court before we begin.

THE COURT: Certainly.

MR. BERNOWSKI: Thank you, Your Honor. As you know, I represent Ben Pickering, the independent manager and sole member of the Special Committee. We do not have any requests before Your Honor today. We have nothing on today's agenda, and because of that, I was not planning to speak today, and I will be quiet as a church mouse after I speak right now.

But despite having nothing on the agenda, Mr. Pickering, the Special Committee, keep taking stray shots from the UCC, both in open Court last week, in a motion to dismiss, and now in a filing this week. He's been repeatedly characterized as a quote-unquote so-called independent manager. He's been repeatedly attacked for violating his fiduciary duties.

And now, on three different occasions, it's been stated in Court and in filings, without any support whatsoever, that Mr. Pickering did not bother to value the alter ego and

veil-piercing claims in agreeing to the proposed settlement.

I ignored those statements before. I plan to ignore them this week. But when they were made in another filing, we concluded that we have to respond to them for the simple reason that we do not want the repeated repetition of a falsehood to create any sense that they might be true. They are not.

We understand we will have an opportunity on April 16th and 17th to put evidence in the record to support that statement. But I would just like to state in Court today that Mr. Pickering has no history with the company before his appointment as an independent manager here. None.

And he took his fiduciary responsibilities as an independent manager very seriously. Moreover, it is absolutely false to assert, and there is no evidence to support the assertion, that he did not consider or value the veil-piercing claims and the alter ego claims before agreeing to the proposed settlement.

He considered them carefully. He considered their likelihood of success. And he considered the amount that could potentially be collected on them before agreeing to the settlement.

The Special Committee looks forward to the opportunity to put that evidence into the record in April, and I apologize for having to take up valuable Court time to address it now. But again, we were concerned that the Court

might take the repeated repetition and our silence in response as somehow confirmation that these false statements might be true. They are not. Thank you, Your Honor.

THE COURT: Thank you, Mr. Bernowski.

And just so the record is clear, the Court will wait to hear from the testimony and does not take any of those inflammatory or other allegations for face value until they are presented in an evidentiary matter before the Court.

So, the Court does appreciate your comments today. Thank you.

MR. BUCHTA: Good afternoon, Your Honor. For the record, Nick Buchta with Jones Day, proposed counsel to Debtor and Debtor in Possession.

Your Honor, as Ms. Lennox previewed, I will be taking you through what we're calling the carryover first day pleadings today. And I'd like to start by turning your attention to the supplement that the Debtor filed to the Employee Wages and Benefits Motion. That supplement was filed at Docket Number 108.

Your Honor previously entered a final order approving the Employee Wages and Benefits Motion at Docket Number 136. Just prior to the entry of that order, on March 2nd, we had filed a supplement and an accompanying motion to shorten with respect to the Employee Benefits and Wages Motion which Your Honor granted that motion to shorten at Docket Number 112.

Your Honor, as I previewed with you at the March 4th hearing, this supplement covers limited additional relief that relates to our employee's motion where post-petition, the Debtor completed its employee review for the 2025 year, finding that there were two of its mines which had no safety incidents occur during that calendar year.

Pursuant to the company's ordinary course safety bonus program, the employees at those mines where no safety incidents occurred were entitled to $100 bonuses, and we would like to request authority pursuant to that supplement to pay those employees the $100 benefit -- bonuses, which in the aggregate will equal less than $7,500.

We did not receive any comments or objections to the motion, Your Honor, and so with that, we would respectfully request that Your Honor authorize us to give these supplemental bonus payments.

THE COURT: Thank you. The Court notes there is no objection on the record.

Mr. Jonas, did you want to weigh in on this?

MR. JONAS: No objection.

THE COURT: No objection. The Court will grant your motion and we'll look to you for an order.

MR. BUCHTA: Thank you, Your Honor.

THE COURT: Thank you.

MR. BUCHTA: Your Honor, next I'd like to take you

through the critical vendors motion. This was filed at Docket Number 12, and Your Honor previously entered orders approving the critical vendors motion on an interim basis at Docket Numbers 43 and 94.

Your honor, the Debtor seeks today on a final basis authority to pay critical vendor claims in an amount not to exceed $425,000, lien claims in an amount not to exceed $75,000, and section 503b9 claims in an amount not to exceed $200,000. That is an aggregate total of $700,000, which is only an incremental increase of $175,000 over what Your Honor has already approved on an interim basis.

I will also note for Your Honor that following the discussions of the first day hearing with yourself and with the United States Trustee, that is a reduction of over $300,000 from what we had initially requested on a final basis from Your Honor.

Your Honor, the United States Trustee did previously file an objection to the critical vendors motion at Docket Number 81. We did subsequently engage with Ms. Champion in conversations and walked her through the parties that we proposed to pay. I understand that the United States Trustees, with respect to the critical vendors motion, have been addressed, but I did want to pause to give Ms. Champion an opportunity to speak to the extent that that is incorrect.

THE COURT: Thank you.

MS. CHAMPION: Your Honor, those representations are correct and we have no objection at this point to critical vendors. Thanks.

THE COURT: Thank you. The Court will grant your motion and will look to you for an order.

MR. BUCHTA: Great. Thank you, Your Honor.

Your Honor, finally, I will take you through the Debtors' cash management motion, which was filed at Docket Number 9. Your Honor did also previously enter interim orders with respect to the cash management motion found at Docket Numbers 48, 95, and 134.

Your Honor, we did receive a limited objection to the cash management motion, which was filed by the Office of the United States Trustee at Docket Number 188. As I've discussed with Your Honor before, the only relief that is in dispute under the cash management motion, and which we are here to discuss today, is the Debtor's request for a waiver of the requirements under Section 345B of the Bankruptcy Code, and that is solely with respect to the Debtor's money market account that is used to hold the Debtor's cash collateral relating to its letter of credit obligations.

As I previously noted to Your Honor at the March 4th hearing, the use of this account is somewhat different than your typical money market account. I want to stress that this is not operational cash of the Debtor, and the Debtor does not

deposit or withdraw funds from this account, except to ensure that statutorily required minimum amounts are on deposit.

This account only holds cash that is used to cash collateralize the Debtor's obligations under letters of credit relating to reclamation and other regulatory obligations, in addition to a de minimis interest that is generated on the account over time.

Given the underlying letter of credit obligations, it would be procedurally challenging to move the cash collateral into another account. We would request that Your Honor overrule the United States Trustee's objection and allow the Debtor to continue utilizing this account post-petition, which again, does not hold operational cash to the Debtor, and which cash will not be available, if ever, to the Debtor's creditors until the underlying regulatory obligations are resolved.

With that, Your Honor, unless Your Honor has any questions for me, I cede the podium to Ms. Champion.

THE COURT: Thank you.

Ms. Champion?

MS. CHAMPION: Your Honor, I'll be brief. I know the Court has a lot of other substantive matters to get to, but this is an important issue for the United States Trustee, obviously. And, you know, the issue is just with respect to the money market account because it's not covered under the UDA agreement with the United States Trustee.

And the United States Trustee's position was that the motion filed by the Debtor did not establish cause and would therefore not be entitled to the waiver of the protections of Section 345 of the Bankruptcy Code.

And I'd just also note, Your Honor, that in the cash management motion, it did make the representation that the money market account is actually overseen by a non-debtor entity, which also raises concern by the United States Trustee.

And we would ask the Court to consider that in sustaining the United States Trustee's objection and not allow, or, you know, adjourning it to allow the Debtor an opportunity to either come up with some other alternative or provide more information to the United States Trustee.

THE COURT: So, I'm sorry, Ms. Champion. I wasn't clear from what you said that this was dictated by a non-debtor affiliate?

MS. CHAMPION: Yeah. In the motion papers, Your Honor, it says that the account is actually overseen by a non-debtor affiliate. So, that raised some concern with the United States Trustee and maybe just perhaps some more dialogue on that.

You know, I think we were all focused on other matters. But, you know, the bottom line is, Your Honor, I'm not going to be able to consent to a waiver in any circumstance unless they are willing to move that fund. So, our position is

what it is. The Court can obviously grant the waiver over our objection, but we don't really have much room on that.

THE COURT: Thank you, Ms. Champion.

MS. CHAMPION: Thanks.

THE COURT: And is the Court's understanding correct that that's the J.P. Morgan letter of credit around $1 million and the money market has about 1.1 in it? Is that based on the schedules that were recently filed? Is that ballpark the numbers?

MR. BUCHTA: Yes, that's right, Your Honor. And just to be clear, Your Honor, with respect to Ms. Champion's comment about the account being overseen by a non-debtor; the Debtor, through one of its intercompany services agreements, does have a non-debtor affiliate that it outsources much of its treasury functions to.

However, the authorized parties that actually have control over the account are Debtor employees including Mr. Vomero, our chief restructuring officer. So, the actual mechanics of our treasury system for all of our accounts, not just the cash collateral account, is overseen by a non-debtor affiliate, but the actual authority over those accounts sits with the Debtor.

THE COURT: Thank you.

Based on that record before it, the Court is going to grant the waiver for cause. It does not want to see this

Debtor disrupting any of its relationships with the regulatory authorities and the bonds and reclamation obligations of the Debtor, and we will look to you for that order.

MR. BUCHTA: Great. Thank you very much, Your Honor. And with that, I will cede the podium to Mr. Corcoran.

THE COURT: Thank you.

Mr. Corcoran?

MR. CORCORAN: Good afternoon, Your Honor. Matt Corcoran with Jones Day, proposed counsel on behalf of the Debtor.

I'm going to call the Debtor's first witness. One thing that we haven't discussed with the Committee, but they have some of our witnesses on their exhibit list, and I think it makes sense for efficiency purposes to put the witnesses up once and let you do your direct when -- okay.

MR. JONAS: No objection, Your Honor.

THE COURT: Before we continue that, Mr. Corcoran, does it make sense for the Court to entertain the motion to seal and redact in the first instance? Are we going to have a dispute about what's been proposed in terms of the exhibits and the --

MR. CORCORAN: Your Honor, I did not plan to use any of the exhibits, but I'm more than happy to allow that to go forward first. We don't have any objection to the sealing request.

THE COURT: Okay. Well, that certainly makes things a lot easier. I wasn't sure if there was attorney confidential information.

Mr. Jonas, did you want to --

MR. JONAS: I'm going to turn that over to Mr. Self.

THE COURT: Sure. And then, I didn't mean to interrupt you, Mr. Corcoran, just from the Court's perspective, it seemed like that was something that we needed a record of before we turn to the witnesses.

MR. CORCORAN: Understood, Your Honor.

THE COURT: Thank you.

MR. SELF: Thank you, Your Honor. Lucas Self on behalf of the Creditor's Counsel to the Official Committee of Unsecured Creditors. Thank you for granting our motion to shorten notice on this.

I'm here today on our motion to seal, which was filed at Docket 196. Just so that the record is clear, we are seeking permission to file our objection to the DIP financing motion and certain exhibits. Those exhibits are Exhibits 3 to 10. We filed redacted versions of all of them at Docket 191 and 191-3 is where our redacted exhibits are.

As explained in our motion to seal, these documents were produced to us on a professional eyes only designation. And while we negotiate a protective order, and in order to abide by that agreement, we're seeking to seal the documents,

and as stated in our motion, the basis of this is 107B and the case law in this Circuit.

Unless the Court has any questions, I'm happy to rely on our papers.

THE COURT: Now, does anyone else wish to be heard?

UNIDENTIFIED SPEAKER: Yes, Your Honor. Just a procedural clarification.

THE COURT: Yes?

UNIDENTIFIED SPEAKER: I believe the Committee filed an amended exhibit list about 15 minutes ago and added two exhibits that would fall under the same category as 3 through 10 and would ask that the relief being requested be extended to those two exhibits.

MR. SELF: Your Honor, that's fine. And we can submit a proposed order that would seal everything on our exhibit list and what was filed with the DIP objection, if that's fine with the Court.

THE COURT: Thank you. The Court is in receipt of the amended witness and exhibit list at Docket 201 and will grant your motion to extend it to that as well.

And I would ask that you, please, when you submit the order, when you upload the order, also provide Chambers with a Word copy because there was some additional language the Clerk of the Court needed to add to make sure that their instructions were clear for that.

MR. SELF: Sure. Thank you, Your Honor.

THE COURT: Thank you.

MR. CORCORAN: Your Honor, Matt Corcoran with Jones Day again. The Debtors call Mr. Eric Mendelsohn as the first witness.

THE COURT: Thank you.

Mr. Mendelsohn?

Oh, yes. Pursuant to administrative orders, the Court needs to discontinue the video and the audio for live witness testimony. And we'll mute, so we'll mute both of those.

And then, when oral argument comes back online, then the Court will open those, both of those methods up again.

THE COURT CLERK: Please raise your right hand. State your full name and spell your last.

MR. Mendelsohn: Eric Mendelsohn, M-E-N-D-E-L-S-O-H-N.

THE COURT CLERK: Do you solemnly swear that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth?

MR. MENDELSOHN: Yes, I do.

MR. CORCORAN: May I proceed, Your Honor?

THE COURT: You may.

DIRECT EXAMINATION

BY MR. CORCORAN:

Q Can you reacquaint yourself with the Court?

A Sure. My name is Eric Mendelsohn. I am a managing director and co-head of financing advisory and restructuring at Greenhill and serve as the company's investment banker.

Q When was Greenhill first retained by the Debtor?

A In August of 2025.

Q What entity or entities retained Greenhill in August 2025?

A Vanderbilt Minerals.

Q Prior to August 2025, had the Debtor ever retained Greenhill?

A No.

Q Are you aware that the Debtor has a parent and other affiliates?

A Yes.

Q Did the Debtor's parent ever retain Greenhill?

A No.

Q Did any of the Debtor's other affiliates ever retain Greenhill?

A No.

Q Does Greenhill's engagement letter with the Debtor give Greenhill the authority to separately market any assets owned by the Debtor's parent?

A No.

Q Does Greenhill's engagement letter with the Debtor give Greenhill the authority to separately market any assets owned

by the Debtor's other affiliates?

A No.

Q As part of Greenhill's engagement by the Debtor, did you familiarize yourself with the Debtor's assets and business?

A Yes.

Q Is one of the Debtor's business lines the VEEGUM Family Division?

A Yes, it is.

Q And what does the VEEGUM Family Division do?

A Sure. It's a series of products what are used to aid in end products separation of different ingredients. If you think about a bottle of shampoo with a lot of different ingredients, their products help it from separating when it's sitting on your countertop.

And the products, the VEEGUM products, also help if you're pouring out that shampoo, it comes out in a sort of gel that works and doesn't just fall all over the place. So, it's important for the aesthetics and also the utility of those end products.

Q Does the Debtor own all of the assets necessary to run the VEEGUM Family business?

A They do not.

Q What are the principal assets that are necessary to run the VEEGUM Family Division that are not owned by the Debtor?

A There are mineral rights in the Lyles Mine, and then there

is a processing facility in Murray, Kentucky that processes all the raw materials into the VEEGUM Family products.

Q And who owns the Murray processing facility?

A A non-debtor.

Q And who owns the mineral rights at Lyles Mine?

A Also a non-debtor.

Q And are those non-debtors you reference affiliates of the Debtor?

A Yes, they are.

Q Why is the Murray processing plant necessary to run the VEEGUM Family Division?

A It is the processing plant. So, you have the raw materials, and the processing plant is used to turn those raw materials into the VEEGUM family of products. So, it's an important part of the value chain, taking raw materials and turning them into the final product.

Q Why is the Lyles Mine necessary to run the VEEGUM Family Division?

A It is a supply of saponite, which is one of the ingredients that goes into VEEGUM. And the mineral rights, again, associated with that mine, are owned by the non-debtor.

Q Does the Debtor have an arrangement with Vanderbilt Chemicals that allows the Debtor to use those assets in the Debtor's VEEGUM Family Division?

A Yes, it does.

Q As part of its engagement by the Debtor, did Greenhill run a process to raise debtor-in-possession financing?

A Yes, we did.

Q Did Greenhill prepare marketing materials for the DIP in connection with that process?

A Yes, we did.

Q Did the DIP marketing materials provide information about the Murray processing plant?

A It did.

Q Did those marketing materials state that the Murray processing plant was an asset of the Debtor?

A No.

Q Did those marketing materials state that the Murray processing plant would become an asset of the Debtor?

A No.

Q Why did the DIP marketing materials provide information about the Murray processing plant?

A Because it’s an important part, again, it’s an important part of the value chain of getting from the raw materials to the product that Minerals can sell into the marketplace.

So, whether you’re a DIP lender or a buyer, it’s important to understand how those raw materials, without a lot of value, become a very value-added product in the form of VEEGUM and that processing plant is the key to creating those materials into VEEGUM.

So, it was very important that these counterparties would understand that step of the chain.

Q Did the DIP marketing materials provide information about the Lyles Mine?

A It did.

Q Did the marketing materials state that the Lyles Mine was an asset of the Debtor?

A No.

Q Did those marketing materials state that Lyles Mine would become an asset of the Debtor?

A No.

Q Why did the marketing materials provide information about the Lyles Mine?

A For the same reason that there were, if a DIP lender is looking to collateral and wants to understand what the assets are within the estate, we wanted to make sure they understood that the mineral rights at the Lyles facility were not actually owned by the estate.

Q As part of its engagement by the Debtor, did Greenhill also run a sale process for the Debtor's assets?

A Yes, we did.

Q Did Greenhill prepare marketing materials in connection with that sale process?

A Yes, we did.

Q Did the sale marketing materials provide information about

the Murray processing plant?

A Yes, they did.

Q Did those marketing materials state that the Debtor owned the Murray processing plant?

A No.

Q Did those marketing materials state that the Murray processing plant was for sale?

A No.

Q Did those marketing materials ask for a bid on the Murray processing plant?

A No.

Q Why did the sale marketing materials provide information about the Murray processing plant?

A It's really the same answers for the DIP lenders, because of the importance of that processing facility to transitioning the raw materials into the final product.

Q Did the sale marketing materials provide information about the Lyles Mine?

A Yes.

Q Did the sale marketing materials say that the Debtor owned Lyles Mine?

A No.

Q Did those marketing materials state that the Lyles Mine was for sale?

A No.

Q Did those marketing materials ask for a bid on the Lyles Mine?

A No.

Q And why did the sale marketing materials provide information about Lyle's Mine?

A Well, the Debtors actually operate Lyle's, so we described the operations, but we also wanted to make clear that they didn't own the mineral rights.

Q Did the sale marketing materials include a business model?

A Yes, they did.

Q Did that business model make assumptions about whether the Debtor did or did not own the Murray processing plant or the Lyle's Mine?

A Yes, it did.

Q What assumptions did the business model make about the Debtors owning or not owning the Murray processing plant and the Lyle's Mine?

A Sure. The business plan assumed that the non-debtor assets remained non-debtor assets and assumed the status quo operations.

Q In order to get access to the Debtors' marketing and diligence materials, did potential bidders have to enter into an NDA with the Debtors?

A Yes, they did.

Q Is there detailed diligence materials about the Murray

processing plant in the data room?

A Yes, there is.

Q Were potential bidders provided access to the detailed diligence materials about the Murray processing plant upon entering an NDA with the Debtors?

A No.

Q Okay. How did bidders get access to the detailed diligence materials about the Murray processing plant?

A Sure. In about November, mid-November, when some of the bidders expressed that they wanted more information about Murray and Lyle's in conjunction with their interest in potentially acquiring those assets, we added information into the data room, which was subject to a second NDA between potential purchasers and the parent company.

Q And when did bidders first sign NDAs with the parent company to get access to that information?

A Approximately mid-November.

Q Did Greenhill seek bids for substantially all the Debtors' assets without the Murray processing plant and the Lyle's Mine?

A Yes.

Q Did Greenhill receive any bids for substantially all the Debtors' assets without the Murray processing plant and the Lyle's Mine?

A No.

Q Would Greenhill have considered any such bids if Greenhill

had received them?

A Absolutely.

Q Does Greenhill have the authority to market the Murray processing plant on a stand-alone basis?

A No.

Q Does Greenhill have the authority to market the Lyle's Mine on a stand-alone basis?

A No.

Q Do you believe that requiring bidders who make a combined bid for the Debtor and non-debtor assets to allocate their bid between those assets, is a good idea?

A I do not.

Q Why not?

A I think when you're asking a bidder to allocate value between different assets, there are a lot of different considerations the bidder has to take into mind, one of which is usually allocations are driven by tax planning, future accounting, and appreciation.

So, any bidder that's thinking about allocation has to be thinking ahead to what are the implications if I own this asset, and I don't believe that an allocation, a theoretical allocation, is an appropriate marker of fair market value.

Q And why do you not believe that a theoretical allocation is not an appropriate marker to fair market value?

A Because I believe that the appropriate marker of fair

market value would be willing buyer-willing seller of a specific subset of assets, and if such bidder were on the hook to actually purchase that subset of assets, or both subsets of assets, based off of separate purchase prices, if you want to call that an allocation, then I would say that's a reasonable estimate of the fair market value of that subset of assets.

But absent that requirement that the bidder put their money where their mouth is, I don't think you can trust an allocation from a third party as a theoretical allocation, as a true marker of value.

Q Are you aware that Michael Atkinson provided a declaration for today's hearing?

A Yes, I am.

Q Have you reviewed that declaration?

A Yes, I have.

MR. CORCORAN: Your Honor, I have a copy of that declaration, which was filed at Docket 190. May I approach the witness?

THE COURT: You may.

Q Mr. Mendelsohn, is this a copy of the Atkinson declaration that you've reviewed?

A Yes, it is.

Q Can you turn to paragraph 11, please? Do you see where Mr. Atkinson states that, quote, it is my opinion that the Debtors' proposed bidding procedures will discourage

competitive bidding and will not maximize the value of the assets to be included in the proposed sale, close quote?

A Yes, I see that.

Q Do you agree with that opinion?

A I do not.

Q Why not?

A Proposed bidding procedures, two important aspects. One is the schedule with respect to -- and the other is how bids can be applied, whether it's subsets of assets or just the whole.

With respect to the schedule, we started soliciting DIP financing back in October of 2025 and went out to buyers in early November of 2025. So, these assets have been marketed for a lengthy period of time.

So, I believe -- and I believe that the calendar within the DIP procedures is pretty standard as held up to my experience and my review of precedents. I would also note that no bidders have come to us and said they haven't had enough time to assess the company's assets.

With respect to what parties can actually bid on, we've been very clear, not just the original marketing materials that we were selling the Debtors' assets, but as that morphed over time, we made very clear in the bidding procedures that parties can bid for subsets of the assets and not just the whole.

Q Can you next look at paragraph 14?

A Yes.

Q Do you see it? In the middle of the first line, Mr. Atkinson writes, quote, bidding could be chilled and value not maximized because of the uncertainty over assets that will ultimately be available for purchase?

A Yes, I do see that.

Q Do you agree with that statement?

A I do not.

Q Why not?

A It's become clear that buyers wanted more information about Murray and Lyle's, in any event. Obviously, all the bids that we had received have included those assets but even if, hypothetically, someone was interested in operating the company and keeping those assets outside the perimeter, I think they would want to understand how those operations run.

So, we have provided those diligence materials now, again, with a separate NDA with the parent to the parties in interest. I believe that it has been very clear, abundantly clear, that we do not control whether or not these assets are sold; that they are not assets of the estate.

So, therefore, every bidder has entered this process with that understanding. We have not had a single bidder back out because they said, this is too complex, or I don't know what the asset perimeter is, because the settlement hearing hasn't happened yet. Not a single bidder has said that.

Q Can you next look at paragraph 16?
A Yes.
Q All right. Do you see, he says, Mr. Atkinson states, quote, potential purchasers, in my opinion, could be less interested in performing fulsome and expensive due diligence until there is certainty what assets will be included in the sale. Do you see that?
A I do see that.
Q All right. Do you agree with that opinion?
A I don't. It's a very similar answer to what I just provided, which is the potential buyers are doing diligence on the non-debtor assets. And in my mind, that's important, whether they own those non-debtor assets or didn't want to own those non-debtor assets.

So, in my mind, they are doing that diligence anyway. And nobody has come to us and said, we are not willing to spend the time or incur the expense of doing that diligence because we're not sure whether they are in the perimeter.

Q Can you now turn to paragraph 18?
A Yes.
Q In the second line, do you see where it says, quote, it is my opinion that prospective bidders are not being encouraged to diligence and to submit a bid for only the Debtor assets, close quote?
A I do see that.

Q Do you agree with that opinion?

A I don't agree.

Q Why not?

A Again, we went to market, very clearly, with the Debtors' assets. That is what we went to market with. We came back with bids for the broader asset base, as is well substantiated now.

In terms of where we're going back out to the market now, with this next stage of the option, the bid procedures are quite clear that have been filed, that we will accept proposals on subsets of the Debtors' assets, including the stalking horse assets, but also subsets of the assets.

Q Can you now turn to paragraph 21?

A Yes.

Q Do you see where Mr. Atkinson writes, quote, the Debtor is not proposing a Section 524G plan, without which will chill bidding and thus not maximize value, close quote?

A Yes.

Q Do you agree that not proposing a Section 524G plan will chill bidding in this case?

A No.

Q Why not?

A Not a single bidder, that I can recall, has mentioned the word, 524G plan. Every bidder that we've talked to has been comfortable running the sale process through a 360

(indiscernible).

Q Can you turn to paragraph 24 now? Do you see at the start of the fourth line where Mr. Atkinson writes, quote, the Debtor has stated that it received multiple indications of interest from a subset, or I'm sorry, for a subset of Debtor assets pre-petition?

A Yes, I see that.

Q Can you describe generally for the Court what those indications of interest were?

A Sure. We received three letters for a subset of the Debtor assets. They were discrete. One was one of the operations and a certain location. A second one was for IP associated with a separate location. And the third one was for land that was part of the first situation I described, sorry I'm not using names purposely, I hope it doesn't confuse the Court.

But for the first situation, that first location, the third party wanted some of the land at that location.

Q And approximately how much consideration in total was offered under those three indications of interest?

A In aggregate, approximately 10 percent of the stalking horse purchase price.

Q Were any of those indications of interest for substantially all of the Debtors' assets?

A No.

Q Mr. Mendelsohn, is -- in your experience, are some financing partners not interested in pursuing smaller loans?
A Sure.
Q Okay. Did you do anything in the DIP process to mitigate the risk that you might not get offers from some lenders because the DIP was small?
A Yes.
Q What did you do to mitigate that risk?
A We went out to 70 potential DIP lenders, which in my experience is a very large number of parties to go to for a potential DIP loan.
Q Did anyone other than Commodore make a proposal to be a stalking horse bidder?
A Yes.
Q How many parties made proposals to be a stalking horse bidder?
A I'd say there were in total, including Commodore, three parties that we had conversations with about being a stalking horse bidder.
Q And did all of those parties make a proposal to be a stalking horse bidder?
A Yes. I want to caveat that one of them eventually had to withdraw because they could not be a stalking horse bidder based on their own situation.
Q Did all those parties ask for bid protections as part of

their bid?

A Certainly, I can recall the two parties that were negotiating in earnest to be the stalking horse bidder did require bid protections, yes.

Q Mr. Mendelsohn, did you provide a declaration in support of the DIP motion and bidding procedures motion?

A Yes, I did.

MR. CORCORAN: Your Honor, I have a copy of that declaration, filed at Docket Number 18. I'd like to hand a copy to the witness. May I approach?

THE COURT: You may.

MR. CORCORAN: Thank you.

Q Mr. Mendelsohn, is this a copy of your declaration in support of the DIP motion and bidding procedures motion?

A Yes, it is.

Q Was it true and correct to the best of your belief at the time you gave this declaration?

A Yes.

MR. CORCORAN: Your Honor, I move to admit Mr. Mendelsohn's declaration into evidence at Docket Number 18, subject to any cross.

THE COURT: Thank you.

MR. JONAS: No objection, Your Honor.

THE COURT: Thank you. Admitted.

MR. CORCORAN: I'm sorry, Your Honor, I didn't --

THE COURT: Admitted. So admitted.

MR. CORCORAN: Thank you, Your Honor.

THE COURT: Thank you.

Q Thank you, Mr. Mendelsohn.

MR. CORCORAN: Subject to any redirect, I have no further questions.

THE COURT: Thank you.

MR. JONAS: May I proceed, Your Honor?

THE COURT: You may. Thank you.

CROSS-EXAMINATION

BY MR. JONAS:

Q Good afternoon, Mr. Mendelsohn.

A Good afternoon.

Q A few questions for you today. The stalking horse bid provides for the sale of both Debtor assets and non-debtor assets, correct?

A That is correct.

Q And the non-debtor assets are assets of the Debtor's parent, RT Holding Co., right?

A I actually don't know exactly which entity they belong to.

Q Okay. Do you have any reason to disagree with me if I tell you that the Murray and the other related assets are at least substantially owned by RT Holding Co.?

A I have no reason to not believe you.

Q Okay. And let me ask you, other than here, as an

investment banker, have you ever noticed up a bankruptcy sale where the Debtor didn't own the assets being sold?

A I don't recall specifically that scenario. I'm not saying it's never happened, but I can't recall one that I've worked on where I was selling a non-debtor asset.

Q Okay. So, as you sit here today, you cannot recall any sale transaction that you've worked on where a Debtor in bankruptcy, where you're the investment banker, where you've tried to sell assets that the Debtor didn't own, correct?

A I don't recall having done that. I would note that the assets in question are to become assets in the estate prior to the closing of the sale.

Q Okay. Mr. Mendelsohn, this is important, so I want you to listen to my question and try and give me an answer to my question. You've never noticed up a bankruptcy sale for a Debtor where you've tried to sell assets which the Debtor did not own, correct? Yes or no?

A I don't recall having done so.

Q Okay. Now, you've been doing this almost 30 years, right?

A That is correct.

Q And you've done more than 50 distressed bankruptcy-type transactions, right?

A That is correct.

Q So, today is the first time in your vast experience that you're asking a Bankruptcy Court to approve bid procedures for

a sale of non-debtor assets, correct?

A As best as I can recall.

Q Well, do you think you'd remember if you ever were trying to sell non-debtor assets in bankruptcy?

A I'm not sure. I've been doing this 30 years, so I'm not sure if I would.

Q Well, you'd admit it would be pretty unusual, wouldn't it?

A What I can say is, based on my recollection, I have not worked on such a case.

Q Well, let me ask you. Have you ever heard of a Debtor in bankruptcy trying to sell assets that it didn't own?

A I haven't. Personally, I've not come across it. That doesn't mean it hasn't (indiscernible).

Q So, you're asking this Court to do something that, as far as you know, has never been done in bankruptcy in the history of bankruptcy, right?

A I don't think that's what I said.

Q Okay. Well, I'm asking you, do you agree with me today as I'm asking you a question that, as far as you know, in the history of bankruptcy in the United States, no Debtor has ever asked a Bankruptcy Court, this Judge right up there, to approve a sale of non-debtor assets, yes or no?

A I don't think it's a yes or no question. I can only answer to my experience.

Q What's your experience?

A I've already described, my experience is that I have not, to my recollection, I have not worked on such a case.

Q Okay. So, you have no experience in running a sale where you're trying to sell, a bankruptcy sale, where you're trying to sell non-debtor assets in bankruptcy, right?

A Yeah. I can't recall an instance where I have sold a non-debtor asset in a bankruptcy.

Q You have no experience, that's my question, where you have tried to sell or tried to run a sale and to sell a non-debtor's asset, right? No experience whatsoever?

A Right; I have not, to my knowledge, sold non-debtor assets through a Chapter 11.

Q Okay. So, you have no experience to inform your judgment, your testimony, your expert testimony that this sale will maximize value, right?

A I don't agree with that.

Q Okay. Excuse me. The Debtor has stated that it can't compel its parent or affiliates to sell the non-debtor assets, correct?

A I believe that is what has been stated, yes.

Q Okay. And the parent here, Holdings, will only sell the non-debtor assets or only allow the sale of non-debtor assets as part of the global settlement that's being proposed, correct?

A That's my understanding.

Q And the parent is saying, tell me if I have this right, because you're much closer to it than I. The parent is saying it will only sell the non-debtor assets if it gets a broad release, including from talc liability, right?

A I was not part of the negotiation around these points and the intercompany settlement, so I'm relying on the same information you have to draw whatever inferences you could.

Q Okay. Well, let me say my understanding, I want to know if you agree with me. My understanding, based on what I know of the situation, having read the papers and what we're being told, and we've only been in this case for a couple weeks, you've been in for a lot longer, is the parent is saying it will not allow the sale of its -- which are non-debtor assets, unless it gets a broad release, including from talc liability; do you agree with me, yes or no?

A I think you're asking questions that are -- I don't speak for the parent, and I did not negotiate that settlement. So, I don't feel that I'm qualified to answer about the -- and characterize what those releases are.

Q Do you think it's important for you as the person charged with selling this bundle of assets to know on what terms the parent is or isn't going to allow sale of certain assets that you're charged with selling?

A My goal is to maximize value of the estate, and to maximize the value of the sale proceeds. And through our

process, it was clear that the bidders wanted to own those assets. So, we found a way to market those assets and include them in order to maximize value.

Q Well, let me ask you, did you ever ask the parent, hey, if you don't -- if the global settlement doesn't happen, you don't get a release, can I still sell your assets? Did you ask them that?

A I don't recall me being involved in any of that kind of conversation.

Q Well, wouldn't it maximize, to use your words, wouldn't it maximize value if you had at least found out, and maybe they said, yeah, sure, go ahead, sell those assets; do a good job; we don't care about the release; we'll do that -- we'll deal with that later; we don't need that; we're a non-debtor; if we want a release, we'll file bankruptcy.

You don't think that's important to maximizing value in this case?

A Again, I'm not saying it's not important. What I'm telling you is that's not a work stream that I was involved in. There are other professionals, other parties that were negotiating with the parent the terms under which the parent would release those assets.

Q So, you put your blinders on. You stayed right in your lane. You didn't ask any questions. You did what you were told, right?

A I didn't say I did what I was told or stayed in a lane. What I'm telling you is I was retained for a certain purpose, and that was to go and sell the Debtor's assets, and through that process, it was very clear the buyers wanted certain non-debtor assets as well.

Q And you think it's reasonable that you never asked the Debtor on what conditions they let you sell their, the non-debtor, the parent, on what conditions they let you sell those assets?

A Again, I don't recall specifically asking that question of the non-debtor and the negotiations between the Debtor and the non-debtor were through other parties (indiscernible).

Q What other parties? Excuse me, I'm sorry. I'll let you finish.

A Yeah. Greenhill was not a party to those negotiations.

Q Okay. Well, who did those negotiations?

A My understanding is it was the independent director at the Debtors together with their advisor.

Q Well, the parent assets that you proposed to sell, they were once owned by this Debtor, right?

A I don't know the full corporate history. I know that back in, I think, 2013 there was a split of assets, but I don't have a lot of knowledge around that transaction.

Q You don't know when the Debtor -- I'm sorry. You don't know -- strike that, I'm sorry.

Do you know if this Debtor, my Debtor in this case, ever owned the assets which the non-debtor parent is now, is under certain terms and conditions, willing to give back or let sold for the Debtor? Do you know the answer to that question?

A My understanding is that assets in the (indiscernible) were split in 2013, and that is the, as much information as I have to try to be responsive to your question.

Q Okay. So, just so I understand, whether it was 2013 or maybe sometime later, and we'll find another witness to tell us when that happened, I hope, maybe Mr. Vomero.

But now, the non-parent -- the non-debtor parent in connection with the sale that you're running is willing to give back assets to the Debtor in this case, which this Debtor once owned, but it's only willing to do that if it gets a broad release. Is that your understanding?

A Again, I don't know the exact corporate and legal history of the company back in 2013. I'm not involved. So, when I got involved in 2025, the assets separately sat.

Q You didn't think it was important to investigate that so you had an understanding of where the, who owned the assets and where they came from in connection with doing your sale effort?

A I'm not sure that's critically important to doing a sale.

Q If the settlement is not approved, the Debtor will have to pay the stalking horse bidder $3 million, correct?

A There's a $2 million breakup fee, and then there's $1

million of expense reimbursement.

Q Okay. So, it could be, it'll be $2 million; it could be up to another million dollars that if the settlement is not approved in a few weeks that this Debtor is going to have to pay the stalking horse bidder, right?

A It could be up to $3 million.

Q Okay. And that's about, what percentage is that of the DIP? The DIP's $15 million? So, it's 20 percent of the DIP loan, which the stalking horse bidder pays, slash, DIP lender is lending is going to have to be paid back to it as part of the break-up fee, or expense reimbursement?

A Okay.

Q Well, let me get to it. The stalking horse bidder is also the DIP lender, right?

A Yes.

Q Okay. And the DIP loan is secured by a senior lien against substantially all of the Debtor's assets, right?

A I believe so, yes.

Q And if the settlement is not approved, the Debtor will be in default under the DIP loan, correct?

A I believe that is correct.

Q And as a result, the DIP lender can terminate the DIP loan, correct?

A That is correct.

Q And the DIP lender could accelerate and demand repayment

of the DIP loan, correct?

A I believe that is correct.

Q And the DIP lender could foreclose and take substantially all of the Debtor's assets, correct?

A The exact legal remedies, and what would require Court intervention, I think that calls for some legal -- legal (indiscernible).

Q And if that happens, admin, administrative creditors, and unsecured creditors likely would get zero in this case, right?

A I don't know that to be true.

Q Well, I'm asking; you have broad experience, vast experience as an investment banker in bankruptcy cases, correct?

A I do.

Q Okay. So, I'm asking you, based on that experience, if the settlement isn't approved and the DIP lender terminates the DIP loan, which it has the right to do, and it accelerates and demands the repayment of the DIP loan, which it has the right to do, and it forecloses and takes back or takes all of the Debtor's assets, it's likely, is it not, that administrative and unsecured creditors in this case will get zero?

A I think that's hypothetical, and there's a lot of other aspects I'd want to take into consideration, so I don't think I can answer that question.

Q Like what? What other aspects would you have to take into

consideration?
A I don't know what other claims or assets the estate might hold, other than the hard assets.
Q Really? You're the investment banker charged with selling substantially all the Debtor's assets, you don't know what other assets the -- you don't know the whole array of the Debtor's assets?
A Well, there's insurance policies. I don't -- I'm just saying, you're giving me a hypothetical, and you're giving me a very narrow lane to try to respond to you. I don't know what happens with all those assets, if those assets are worth more than the DIP loan. What happens to the residual? This is a hypothetical, and I can't answer the question with the information given without speculation.
Q Was it your idea to notice up a sale of assets which the Debtor doesn't own?
A We're noticing up a sale of the assets that are the stalking horse assets. Those are the assets that are for sale, which include non-debtor assets. And through our process, there was no bid for substantially all of the Debtor assets. So, was it my idea? I don't think you can say it was my idea.
Q Well, you weren't compelled to come before the Court and have the Debtor file a motion seeking to sell non-debtor assets. You could have waited until maybe the settlement's approved. You could have done lots of things but instead, I

assume the Debtor relied on you as its investment banker and made a decision to file a motion to sell assets which it doesn't own.

And my question is, I'll repeat it, whose idea was it to file a motion and notice a motion and seek bid protections in connection with trying to sell assets which this Debtor doesn't own, which has never been done, as far as you know, in the history of bankruptcy? Whose idea was that?

A Okay. I don't agree with some of the points you just stated. The Debtor -- I am not the principal. I am an advisor. I'm an investment banker. The Debtor has a CRO. The Debtor has a Jones Day. There are a lot of very well-experienced Chapter 11 practitioners that are advising the Debtor on how to proceed in front of the Court, which is a legal form, and I am not aware of it.

Q Okay. Did you advise the Debtor, let's notice up a sale with respect to assets we don't own? That's my question.

A Sorry, can you repeat the question?

Q Did you advise the Debtor, as its investment banker, that we should go ahead and notice up a sale of assets we don't own?

A I certainly was supportive of putting forth bidding procedures that included the assets in the perimeter of the sale which does include non-debtor assets.

Q Okay. Okay. Did you negotiate with the stalking horse bidder to have the bid procedures heard by the Court after the

global settlement was considered and heard by the Court? I know that's not what's before the Court. I just want to know, while this was all happening, did you suggest or try and negotiate on behalf of the Debtor that the stalking horse bidder not have the bid procedures heard until after the settlement is heard?

A I actually don't recall.

Q You don't -- when did these negotiations begin, temporally?

A With the stalking horse bidder?

Q Yeah.

A I mean, we received our first letter from them, I think it was late October. They were just one of many parties we were talking to. In terms of, you know, I can't recall exactly when stalking horse aspects of bid procedures came into negotiation. Certainly, some of them were discussed over time, but became much more fulsome as we got closer to the filing date.

So, I don't recall exactly when we would have talked about the days for a settlement hearing versus bid procedures hearing versus a DIP hearing. I don't recall.

Q Okay. Let me try it this way. You'd agree with me, would you not, that it would be beneficial for this estate and for creditors of this estate if the bid procedures was heard after the settlement is heard, correct?

A Sorry, just give me a second. I have to think through

that.
Q Take your time, please.
A I'm sorry, do you have other questions you can ask me? I'm just, I'm trying to figure out what you had asked.
Q Nope, we'll wait. You want me to ask it again?
A Feel free.
Q Well, do you remember what the question was?
A Let's see, is it beneficial to the estate if the bid procedures happen after the settlement?
Q The settlement; yeah, that's my question exactly. I'll give you a hint. I think it is, but you tell me what you think.
A No, I understand. I mean, there may be certain aspects.
Q It would save a lot of money, wouldn't it? Three million bucks, at least.
A Here's the thing. I understand where you're going with that, but at the same time, I have a $50 million bid on the hook that was substantially bigger than my alternatives.
And if I can't keep my bidder on the hook with the timeline that they initially agreed to and I risk losing them, then I'm not sure you've created a benefit for the estate.
Q That's --
A So, I -- I'm sorry. That's why I'm struggling to answer because --
Q Okay.

A -- you can look at it multiple ways.

Q Then, I'm going to ask an easier question, which was where I started. And I did all this because you couldn't answer the simple question. Why didn't you simply suggest as part of the negotiation, hey, will you -- I'm not saying they would -- I just want to know if my investment banker, who my clients are counting on to maximize value, if my investment banker said, hey, stalking horse bidder, you know, it would be a lot better for us if you waited; want to sign you up, just wait until after we have this settlement approved so we know what assets we're selling. I just want to know, did you ask them?

A I don't recall. I don't recall.

Q It was just a few months ago. You've been working on this day and night for the last couple of months, right?

A That is fair. (Indiscernible) --

Q Okay. And you don't know whether you asked that question?

A -- fair that there are, I mean, a number of issues that were negotiated. I don't recall whether that specific negotiation occurred or a request occurred.

Q Under your proposed bid procedures, when will competing bids be due?

A Sorry, can you ask the question again?

Q Sure. Under your proposed bid procedures, when will competing bids be due?

A I believe that is April 27th, based off of most recent

filing.

Q And you understand the Court is hearing the settlement, the global settlement, and hearing that motion on April 16th and 17th, correct?

A I believe it's around those two dates, within a day, yes.

Q So there's about --

A Between the 15th and 17th.

Q -- there's about, or maybe less than, ten calendar days, I don't know how many business days that is, I'm guessing six, seven, I'm not sure. There's a window there when, it's only during that short window that competing bidders will know what they're bidding for, correct?

A It is between that window that there will be absolute clarity as to what assets are in the perimeter; that is true.

Q Okay. I'm sorry. I use simple language, I'm a simple person.

A Sure.

Q I don't know about absolute clarity and perimeter, I just want to know a simple yes or no.

A Sure.

Q It's only after the Court, assuming the Court immediately decides the settlement on April 17th, immediately, then there's ten calendar days. That's the only time when a competing bidder who might be interested in some or all of these assets will know what they can bid on, categorically, know.

A So, I don't think it's a yes or no question.
Q Okay.
A I think what I'd like to say is, what I said before, is there will be clarity on exactly what assets will be sold or available for sale after the settlement hearing, that is true.

But my belief is, what the settlement hearing will determine is whether certain assets are taken away, and all the bidders are looking at the totality right now.

It's one thing to say an asset's taken away, they've already done diligence. It would be a very different situation if you were to say, oh, we're going to add assets. But, here, all our bidders have done all of the diligence on the totality of the assets.

Q Well, it can't be the case that you categorically know the universe of bidders, right, then there'd be no purpose to have a bankruptcy sale. The purpose of a bankruptcy sale is to put everybody on notice, including some people perhaps you never talked to before, right? Isn't that the purpose of a bankruptcy court sale, to fully expose the assets for sale? Isn't that what the purpose is?
A I think that's the only purpose of a bankruptcy sale.
Q Okay. Let me ask you this. Do you believe that giving bidders, potential competing bidders, only or less than ten days to know exactly what's available for sale, you believe that maximizes interest in the assets, that people are going to

spend time and money and resources diligently on assets they don't even know they can buy?

A I -- that calls for a longer answer, which consistent with what I've told the Court before, we've been marketing these assets since November. We've been very clear that we would accept bids in the bidding procedures that were filed very early on in the case, a subset of the assets, of the stalking horse assets.

And we have -- I have yet to have a bidder, in my recollection of every conversation I've had, I've yet to have a bidder come to me and say, I'm not willing to proceed because I am not sure whether these non-debtor assets are going to be part of the portfolio.

Q The Debtor is a wholly owned subsidiary of its parent holdings, correct?

A As I testify, I don't know the exact legal structure above Minerals. I believe it is, whether it's directly wholly owned or partially wholly owned, obviously it is whollyowned directly or indirectly.

Q If I tell you that in the papers --

A Yeah.

Q -- that the Debtors, at least the Debtors' lawyers, have represented the Debtor is, quote, a wholly owned subsidiary of its parent holdings, do you have any reason to disagree with that?

A No.

Q Okay. The parent controls the Debtor's board, correct?

A I'm sorry. Can you say that again?

Q Sure. The parent, Holdings, controls the Debtor's board, correct?

A I don't know that.

Q Do you know who's on the Debtor's board?

A I do.

Q Who's on the Debtor's board?

A I believe there are employees of the Debtors as well as the independent directors.

Q How many people are on the Debtor's board?

A I don't know the exact number off the top of my head.

Q Okay.

A I believe there are at least four, but I don't know the exact number.

Q Okay. You do know that the board, strike that. You know it was the board, not the Special Committee or independent member, that authorized the bankruptcy filing, right?

A I actually don't recall specifically.

Q Okay.

MR. JONAS: Your Honor, can I introduce, I don't like introducing exhibits, but I'm going to do it. It's Exhibit 35. May I approach the witness, Your Honor?

THE COURT: You may.

Q I'd like you to take a look at Exhibit 35, which was, you'll see it's referenced, it was filed on the docket of this case, Docket Number 2. As is typically done, it's the corporate resolutions that follow up a bankruptcy petition to indicate due authority. Do you see that document?

A I do see the document.

Q So, maybe it'll help you. If I look at this document, I see it's dated February 15, 2026, which I think was the day before the bankruptcy filing. It's for this Debtor, Vanderbilt Minerals, LLC. You see that?

A Yes, I do.

Q And it says here that Jeffrey Brohel, the secretary of Vanderbilt Minerals, LLC; it goes on to certify relating to the board, and if you look down below, it says, where it's, the board? Do you see that?

A I do.

Q It doesn't say the Special Committee. It doesn't say the independent member. It doesn't say anything like that. It refers to, the board, right?

A Yes. I see the reference to the board (indiscernible).

Q Okay. And just to put this behind us so we can move on, the third whereas says, basic, I'm going to summarize it, the board authorized the petition in commencing the bankruptcy case, right?

A Yes, it says that.

Q And the next paragraph says, the board basically authorized the DIP, et cetera, et cetera, right, the DIP's transactions, right?

A I do see that.

Q And the next paragraph says, the board authorized the asset purchase agreement and the stalking horse bid, et cetera, et cetera, right?

A I do see that.

Q Okay. So, in your declaration, I'm not going to show it to you. I'm just going to read it. I can if you'd like, but let me just try. Oh, you have a copy.

A Yeah.

Q Great. At paragraph 22, I'm just going to read a little snippet. You state, quote, after I conferred with the Debtor and its other professionals about the sale bids, the Debtor's ability to acquire the non-debtor assets and the other financing proposals, Greenhill and the Debtor concluded, this is at paragraph 22, that the optimal path forward would be for the Debtor to try to enter into a stalking horse agreement with one of the three remaining bidders, substantially all of its assets, as well as the non-debtor assets. Do you see that statement, paragraph 22, it says -- it towards the bottom of the paragraph, after I conferred with the Debtor and other professionals about the -- do you see that?

A Yes, I do.

Q So, just a few questions. In, quote, concluding that the optimal path forward would be, et cetera, did you consider the interest of unsecured creditors?

A My -- personally, my goal here is to try to create as much value as I can for the estate, and obviously, unsecured creditors are very significant beneficiary of this estate.

Q So, that's a, yes? You considered the interest of unsecured creditors?

A I mean, I'm trying to maximize value for the estate, and by definition, I think that is also taking into consideration what's available for key creditors, of which, obviously, unsecured creditors are major constituencies.

Q Okay. Let me try it this way. Did you do any analysis of whether the stalking horse bid transaction versus alternatives would result in greater recoveries to unsecured creditors, to reach the conclusion you said you reached in your declaration?

A The alternatives that we -- that I consider, as the investment banker, were whether there were other bids available to the company that would maximize value. And as I talked about, the other bids available to the company were lower in amount and this was the value-maximizing sale.

Q Did you do any, like, math to do an analysis to pencil out, well, if we do this, if we do the stalking horse sale, unsecured creditors are going to get X, and if we don't do this sale and you consider other alternatives, they're going to get

Y. Did you do anything like that?
A I don't recall a specific analysis of what you're describing.
Q Okay. So, you didn't do any analysis of whether not going forward with the stalking horse bid and allowing unsecured creditors, including talc claimants, to pursue their claims, including against the parent to the extent they had them; you didn't do an analysis to determine whether that was better than the stalking horse?
A I did not do an analysis.
Q Okay. All right. Now, you were introduced or brought into this case by Jones Day, correct?
A I would say Jones Day reached out to me to see if I was available and if we had experience in the sector to be considered.
Q Okay. Would you call that Jones Day bringing you into the case?
A I would not.
Q Okay. All right. When Greenhill and you were retained, did you know that Jones Day and the Debtor's CRO, Mr. Vomero, had previously worked for the parent, Holdings, in this case?
A I'm not sure if I knew that at the time I was retained.
Q You didn't ask them about their history with the Debtor or its affiliates or anything like that?
A I'm not saying I didn't ask. I don't recall having that

conversation. I don't know.

Q Did either Jones Day or Mr. Vomero discuss or otherwise share with you any of the strategy they had developed when they were working for or with the parent?

A I don't recall having that conversation.

Q Did you ask them?

A Again, I don't recall that kind of conversation, so I don't recall whether I asked them or not.

Q The Debtor paid the stalking horse bidder hundreds of thousands of dollars pre-petition, correct?

A That is correct.

Q And what was the nature of those payments?

A Expense reimbursement.

Q Did the Debtor pay any other interested parties or bidders pre-petition?

A No.

Q Okay.

MR. JONAS: No further questions for now, Your Honor. Thank you.

THE COURT: Thank you.

Redirect?

MR. CORCORAN: I do have very short re-direct. I didn't know if anyone else had questions for Mr. Mendelsohn before.

RE-DIRECT EXAMINATION

BY MR. CORCORAN:

Q Mr. Mendelsohn, just a couple of follow-up questions. There was a lot of discussion about non-debtor assets being sold and Debtor assets being sold.

A Yes.

Q At the time the stalking horse bid or a topping bid would close -- I'm sorry.

A Would -- I'm sorry?

Q At the time, if the sale process goes forward and there is a successful bidder in this process, after the Court grants the settlement motion, assuming for purposes of this hypothetical that occurs, at the time that sale were to close, would the Debtor own all of the assets subject to the sale?

A Yes.

Q Okay. And so, the Debtor would acquire the non-debtor assets prior to selling them to whatever the buyer is, the successful buyer, correct?

A Correct.

MR. CORCORAN: No further questions, Your Honor.

THE COURT: Thank you. You may step down, Sir.

THE WITNESS: Okay.

MR. CORCORAN: Your Honor, for the record again, it's Matt Corcoran with Jones Day. The Debtor calls Mr. Vomero to the stand.

THE COURT CLERK: Raise your right hand. State your

full name and spell your last.

MR. VOMERO: Dean Vomero, V-o-m-e-r-o.

THE COURT CLERK: Do you solemnly swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

MR. VOMERO: Yes.

MR. CORCORAN: May I proceed, Your Honor?

THE COURT: You may. Thank you.

MR. CORCORAN: Thank you.

DIRECT EXAMINATION

BY MR. CORCORAN:

Q Mr. Romero, can you reacquaint yourself with the Court?

THE WITNESS: Good afternoon, Your Honor.

THE COURT: Good afternoon.

THE WITNESS: Dean Vomero. I'm a managing director with Applied Business Strategy. Thank you. And I've been the Debtor's CRO since late last year.

Q Mr. Vomero, has the Debtor recently agreed to amend the DIP facility?

A Yes, it has.

Q As part of that amendment, did the Debtor agree to pay an additional exit fee to the lender?

A Yes.

Q How much is that additional exit fee?

A $500,000.

Q Was that the original amount that the DIP lender requested in connection with the DIP amendment?

A No.

Q How much did the DIP lender originally request?

A $1 million.

Q And why did the Debtor agree to pay an incremental exit fee of $500,000 in connection with the DIP amendment?

A We need the liquidity and access to the liquidity.

Q And do you believe that the DIP lender would have given you access to that additional liquidity without your agreement to pay the additional exit fee?

A No.

Q Mr. Vomero, did the Debtor pay the stalking horse buyer $275,000 pre-petition?

A Yes, he did.

Q And why did the Debtor pay the stalking horse buyer that amount pre-petition?

A So, they had done significant diligence up until that point, and without exclusivity, and were about to get into legal documentation. So, instead of giving them that exclusivity, they asked for reimbursement of expenses. So, that's why they did that.

Q Mr. Vomero, did you provide a declaration in support of the DIP motion and bidding procedures motion?

A Yes, I did.

MR. CORCORAN: Your Honor, I have a copy of that declaration. It was filed at Docket Number 19. I'd like to hand a copy to the witness. May I approach?

THE COURT: You may.

MR. CORCORAN: Thank you, Your Honor.

THE COURT: All right.

A Thank you.

Q Mr. Vomero, is what I handed you a copy of your declaration in support of the DIP motion and bidding procedures motion?

A Yes.

Q Was it true and correct to the best of your knowledge and belief at the time you gave the declaration?

A Yes, it was.

MR. CORCORAN: Your Honor, I move to admit the declaration into evidence subject to cross.

MR. JONAS: No objection, Your Honor.

THE COURT: Admitted.

MR. CORCORAN: Thank you, Your Honor.

Q Thank you, Mr. Vomero.

MR. CORCORAN: Subject to any redirect, I have no further questions.

MR. JONAS: May I proceed, Your Honor?

THE COURT: You may.

MR. JONAS: Thank you.

CROSS-EXAMINATION

BY MR. JONAS:

Q Mr. Vomero, we haven't met. I'm Jeff Jonas.

A Nice to meet you, Jeff.

Q Nice to meet you. I'm from Brown Rudnick, on behalf of the Committee. A few questions today. Hopefully, we'll be fairly brief.

A I'm not counting on it, Jeff.

Q Well, we'll see. We'll see how you do. You are the chief restructuring officer of the Debtor, Vanderbilt Minerals LLC, correct?

A Correct.

Q And you were appointed to that role in May of 2025, correct?

A That's correct.

Q And prior to that, you worked for the Debtor's parent, R.T. Vanderbilt Holding Co., Inc., which I'm going to refer to as Holdings. Is that correct?

A It was a joint engagement between Jones Day and Holdings.

Q I'm glad you raised that because I was going to ask you about that. You were retained, in fact, jointly, as you say, by Jones Day and Holdings, right?

A Right.

Q And that was -- that retention, I think it was -- I don't know if it was you or your company, but your company is Applied

Business Strategy, LLC. Is that right?

A Yes.

Q You founded that company?

A Co-founded.

Q Co-founded, okay. And Applied Business Strategy, LLC, was retained by both the Debtor's parent, Holdings, and Jones Day on or about March 26, 2025, right?

A Correct.

Q And so, from March until May, when you were appointed as CRO of the Debtor, you worked for the parent, Holdings?

A Jointly, Jones Day and the parent.

Q Right, I'm sorry.

A Just to clarify.

Q No, no, no, no. Well, let me get to that.

A Yeah, yeah, yeah.

Q You were retained by Jones Day, and the engagement letter says it lists Holdings, and then it lists Jones Day, right?

A I'll take your word for it.

Q Okay.

A It is what it is.

Q And you were retained by Jones Day in order to get the benefit of the attorney-client privilege with respect to your work, correct?

A I actually don't know. I've never really kind of figured that out. That's the way the engagement was structured, and I

was requested to do it. So --

Q Well, who requested you to have the engagement be structured that way?

A It would have been Jones Day.

Q Oh, okay. And you never asked them, well, this is a little strange, why am I being retained jointly?

A No, we've done engagements with law firms before.

Q Okay.

A So, I didn't really think much about it. It was an advisory role, so.

Q Well, let me ask you, in your other engagements with law firms, is it in fact the reason in order to get the benefit of the attorney-client privilege and so that your work product is covered by the privilege? Has that been your experience in other cases where you've been retained by law firms?

A I'm trying to think. Personally, I haven't been retained by law firms in some time.

Q Okay.

A So -- but it wouldn't surprise me if that's the reason.

Q Okay.

A Yeah.

Q Do you think, I'm just now -- this will be the last question on this topic. Do you think the reason you were retained here jointly by Jones Day and Holdings was to get the benefit of the privilege?

A I can't answer that. I can't speak for Jones Day.
Q Okay.
A I can't.
Q Would you ever have any discussions with either Holdings or Jones Day about privilege and what you should do to protect privilege and that type of stuff?
A Periodically.
Q Okay, good. Now, the purpose of your engagement with the Debtor's parent was to consider and analyze restructuring the parent's liabilities, correct?
A Wait, the first?
Q Yeah, the parent.
A First engagement -- would you have the engagement letter in front of me? I can't recall restructuring their liabilities.
Q Okay. I just want to know your best recollection.
A Oh, of what I did?
Q Yeah.
A Under the first engagement?
Q Yeah. You were working for Holdings for a couple months, right?
A That's correct.
Q And was your work for Holdings, it was relating to -- strike. Let me back up.
A Yeah.

Q Your business is restructuring companies, right?
A Part of it.
Q Part of it, okay. And you work with distressed companies all the time, right?
A More than I care to.
Q Okay. Well, don't say that because you make a good living doing it. But the -- so, that's why I'm asking you, based on your experience. You were retained to help Holdings restructure liabilities, right?
A No, I was not.
Q You were not.
A No.
Q Well, why were you retained?
A So, to review, really, to compile intercompany transactions over a period of three years was the bulk of our work.
Q Compile intercompany transactions? What does that mean? I don't understand.
A So, the accounting; I'll try to explain it the best way. So, the accounting systems contained intercompany transactions. So, we looked at three years' worth of transactions. We actually downloaded every transaction and categorized them by company, by type.
Q Okay. Thank you. Did you ever have -- did you ever use the word bankruptcy in any of your discussions, oral, written,

et cetera, when you were doing work for Holdings? Did that word ever come up at all?

A I don't recall.

Q You don't remember at all?

A I --

Q You never talked to anybody about it? You never wrote anybody an email about it?

A I mean, perhaps. As I sit here today, I don't recall specifically -- no, actually, you know what? Yeah, I actually did.

Q Okay.

A Now --

Q Well, if your job was to look at intercompany transactions, why were you talking about bankruptcy?

A The issue towards -- so, this would have ran into about May, the timeframe. You know, I was asked to look at potential issues at that time.

Q Potential bankruptcy issues?

A Yes -- not -- with respect to Minerals.

Q But you were working for Holdings, I thought?

A At that time, yes.

Q So, Holdings asked you to do work relating to a potential bankruptcy of Minerals?

A It wasn't -- I wouldn't call it a bankruptcy. It was looking at alternative options.

Q What were the alternative options?

A There were several alternative options.

Q Such as?

A Could the business survive on its own? Could you manage out through potentially -- so, these options were explored during the course of my retention. So, could the business stand on its own? Could you commute or cash in insurance policies to survive longer? Could you engage or have a discussion with a liability management type firm? And should you sell the assets?

Those were the types of things that I considered, in theory, during the course of my retention.

Q And you think that falls under the description, reviewing intercompany transactions?

A So, my engagement involved -- so, during the first, I would say, two months -- again, this is a year ago. That was the focus of our work. And then, the engagement changed until I became CRO, so about three-week period, roughly, plus or minus.

Q Okay.

A It's my recollection so it could be off by days (indiscernible).

Q Okay. So, the engagement changed --

A Yeah.

Q So, at some point, it sounds like you started becoming --

looking at a possible restructuring of liabilities, correct?

A I wouldn't characterize it that way.

Q Okay. Did you ever, in connection with your work for Holdings, did you ever do any analysis or review of potential talc liability?

A I did a review. The only review I would have done -- I'm sorry. Jeff, could you repeat the question?

Q Sure.

A I'm just on timing.

Q No worries.

A Yeah.

Q While you were working for Holdings, did you ever, let me make it easy, do anything relating to potential talc liabilities?

A I just asked one question, and that would have been it at that time, is my recollection.

Q Okay. What is your asking a question about talc liabilities have to do with, I think you said your engagement was for intercompany transactions.

A So, as the engagement, as the intercompany work had wound down, they had asked me to interview, or -- interview for a CRO position. So, in preparation for that interview, I was just curious how many claims were there against the Debtor.

Q Do you understand today that the parent and the Debtor are adverse to each other?

A Yes.
Q You do, okay. And did any, while you were doing your prior work for the parent, do you remember any involvement in the possible global settlement that now is before the Court, that is, a resolution of liabilities by and between the parent and the Debtor? Did that come up while you were representing the parent at all in any context?
A I think you'd have to be more specific about that, but it wasn't a focus of my work. But I don't recall having a discussion about a global resolution.
Q Do you recall having any discussions with anybody while you were doing work for the parent about the parent getting a release from the Debtor?
A No.
Q Okay.
A I don't recall. I don't recall.
Q Okay. Do you recall while you were working for the parent, if there was any discussion about the sale of both the Debtor's assets and the parent's assets, some of the parent's assets?
A Yeah. I don't believe there was any. I can't specifically recall, but there wouldn't have been, if there was, it wouldn't have been seen.
Q Okay. And in May, both you and Jones Day stopped working for the parent and went to work for the Debtor, correct?

A I don't know about Jones Day. I didn't -- I think Jones Day was later.

Q Okay. But, you agree, at some point Jones Day switched. They stopped representing the parent and they took on representation of the Debtor here, right?

A Correct.

Q Okay. And you think it was later than when you did it in May?

A Correct.

Q Okay. So, you became, let me get this right. In March, you come on board. Jones Day, you get retained by both Jones Day and the parent. You then, in May, you leave the employ of the parent and Jones Day, I take it, and become CRO of the Debtor. Have I got that right so far?

A That's correct.

Q And Jones Day continued to represent the parent for some period after you became CRO of the Debtor?

A That's my understanding.

Q Okay. And at some point thereafter, Jones Day stopped representing the parent and took on representation of the Debtor?

A I believe so.

Q Okay. All right. I just want to make sure I have it right. And just to come back to your earlier testimony about the parties being adverse, the adversity is because the Debtor

in this case, of which you are CRO, has claims and causes of action against the parent, right?

A Potentially.

Q Okay. And those claims and causes of --

A Well, if I could clarify?

Q Please.

A That would have been subject to the independent committee work, so whatever work they've done.

Q Okay. We'll have --

A I -- yeah.

Q -- I've been admonished not to even raise Mr. Pickering's name today, so I'm not going to do that.

A Yeah, I'd say -- (indiscernible) in my mind.

Q No, no, and I'm not even going to go there. I just want to -- this is a very high level.

A Yeah, to be honest.

Q My question simply is, your understanding, as CRO, is that the Debtor has potential claims and causes of action against the parent, right?

A I actually don't -- I actually don't know that.

Q You don't know?

A Yes, I don't know. I don't know if the Committee does or doesn't, what conclusion was.

Q Okay. But you do understand that whatever those claims and causes of action might be, they're being settled by the

global settlement?

A That's correct.

Q Okay. Now, the Debtor is a wholly-owned subsidiary of the panel, right?

A Correct.

Q And do you know the composition of the Debtor's board?

A Yes.

Q Who's on the Debtor's board?

A So it's the Jeff Brohel, our general counsel, Amarilys Franky, our global business leader, Jamie Knowlden, our president, and Mr. Pickering, our independent director.

Q Okay, so four?

A That's correct.

Q Okay. Setting aside Mr. Pickering, do any of the other three individuals, do they have any roles with the parent or any affiliates?

A Not to my knowledge.

Q Okay. Well, after you became CRO of the Debtor, you continued to communicate directly with the Debtor's parent, Holdings, regarding the Debtor's bankruptcy, correct?

A Correct.

Q Okay. And just by way of example, let me have Exhibit 5, please.

MR. JONAS: May I approach, Your Honor?

THE COURT: You may.

Q Mr. Pickering, I'm going to show you what we've marked as Exhibit 5, which is an email dated November 9, 2025. Let me see if I have a copy of it.

A I don't think Mr. Pickering is here.

Q No, what's that? I'm sorry, what's that?

A I think you addressed Mr. Pickering.

Q Did I? I'm sorry.

A That's fine.

Q Oh, I apologize. I have him on the mind now. Mr. Vomero, this Exhibit 5 is, you'll see at the very top it says, you sent an email on Sunday, November 9, 2025, correct?

A Correct.

Q And you sent the email to, there's Mr. Pickering -- Mr. Webster and Mr. Orpila (phonetic), if I'm pronouncing it right, both of whom are at the parent, right?

A That's correct.

Q And you used to work with them when you worked for the parent, right?

A And I continued to work through the process because we outsourced accounting, so we didn't have a CFO within our control. So, yeah, I had interactions with (indiscernible).

Q Okay. So, when -- how long, does that continue into this day or do you have a CFO now?

A No, I -- it continues to this day.

Q Okay. So, you still outsource your accounting to your

parent?

A Yes, that's correct.

Q Okay. Okay. So --

A To VGS and RTVH (indiscernible).

Q I can say affiliates, I guess. Okay, so I just want to, a few quick questions. Your subject is Agenda for Call Tomorrow, and this is back in November, and in the middle of the page you write VM Release. That means Vanderbilt Minerals Release, right?

A It was -- no, it was just the topic of release. Yeah, I mean, it was, just as a placeholder.

Q Well, what does VM mean?

A Vanderbilt Minerals.

Q Okay. So, it's Vanderbilt Minerals Release. That was the topic.

A Release in general was the topic, yes.

Q Okay. And it says Creditor Scrutiny. Do you see that?

A I do.

Q And what did you mean by that?

A So, everybody in this room understands when you do transactions like this, what's coming. (indiscernible) So, I wanted to make sure, as we undertook the bulk of the work, they knew what was coming.

Q Okay. And this is back in November, November 9th. So, let me, to use that as a point in time, when did you start

discussing a release with Holdings, because this is a discussion with Holdings, right?

A It would have been with the affiliates, generally.

Q Okay.

A I don't know if --

Q Okay, that's fair.

A -- I don't think Doug works for Holdings.

Q Okay. Fair enough. I didn't know. So my question is --

A (indiscernible) answer your question on the release, I don't recall specifically when the topic came up.

Q Okay. But it was sometime before November 9th, right?

A Yeah, it would have been -- I can definitively say it would have been after we received the LOI, between then and November 9th. (indiscernible)

Q Okay. Okay. And on the next page, you have a topic, VM Murray, M-U-R-R-A-Y. Do you see that?

A I do.

Q And that refers to the Murray plant or facility?

A Yes.

Q Okay. And that's one of the facilities that we heard Mr. Mendelsohn say the Debtor doesn't own, but it's presently part of the stalking horse bid, right?

A Correct.

Q Okay. And you drop down and you say best structure. Do you see that?

A Correct.
Q And you say Minerals acquires first, in quotes, through DIP. What did you mean by that?
A I was just trying to list out whatever I could think on how to make a transaction work. So, I was just trying to garner ideas. There was nothing more than that.
Q And does this mean that you're thinking at the time was you needed to get the asset back to Minerals, so it could sell it, right? I'm just asking, I don't know.
A Well, yeah. I mean, so we had the LOI. The issue was how do we execute on it if that we had to, right, because it was only an LOI at that point. So, how would this work if, in fact, we were able to get to a definitive agreement, because I really haven't put much thought into this up until that point. I was like, all right, where are our options here? I mean, it was just that simple.
Q Okay. Now, let's take a look at Exhibit 6.
MR. JONAS: May I approach, Your Honor?
THE COURT: You may.
Q Exhibit 6 is an email you sent at the beginning of January 7th, again, to, well, this time to Mr. Webster and Mr. Pickering. Do you see that?
A I do.
Q And you say we need to start laying out detailed components of the settlement. Do you see that?

A I do.

Q And what did you mean when you were referring to the settlement?

A So, it was the work that Ben had come pretty far with the investigation. My understanding was that they had come pretty far and they were starting to negotiate. Again, I'll take a step back. I wasn't entirely sure. So, at this point in time, so there were two attachments to this email. The first was a very detailed list of the transactions, the historical, at least the summary of the transactions between the entities.

And so, as the negotiations and the investigation were ongoing, you had to take it a level down to another level of detail, and I was trying to compile all of the information that I had. And the purpose of that actual spreadsheet was for buyers, for interested parties. So, here are all the intercompany transactions that you needed to consider.

The big pieces were, I wouldn't say easy, but they were able to identify. But as you got down to the next level, a more granular, I wanted to make sure that everything was addressed in the settlement. And I was trying to inform Doug and Ben, here's other issues such as capital leases, such as various expenses. I'm going by memory right now. I just wanted to make sure it was all captured so every party had an informed base.

And so that was the purpose of that, because I wanted to

make sure that everybody knew everything. That was a big part of what I had to do here.

Q You go on to say Ben, you can join if you want, this would be first time your guys would be seeing these. What does that mean?

A Yeah, so the other component is when we received the LOI, so the Murray plant actually didn't have financial statements, so I had to create those. And I'll call them the other type, but our affiliates wouldn't have seen the IC model to the best of my knowledge, and that's my interpretation of this right now.

So, I was trying to inform everybody about, here's the financial information, here's everything that we have. And so, it was informative, and that was my primary role in all of this, was to be as informative as possible. So, that's all that was found.

Q Are you aware that the Katten report, with respect to its investigation, the Special Committee's investigation, and that I take it will ultimately support the settlement, that didn't come out to the end of January. Are you aware of that?

A The final report?

Q Yeah.

A I am aware of that.

Q Okay. Your view of the work that Ben was doing was that it really was just window dressing, right?

A Oh, my God, no.
Q No?
A Oh, my God, no, it was not. Sorry, excuse me, Your Honor.
Q Okay. Let's take a look at Exhibit 36.
MR. JONAS: May I approach, Your Honor?
THE COURT: You may.
Q Why don't you take a look at Exhibit 36. At the top, you'll see an email from Hugh Doe.
A Hugh Doe, right.
Q He works for you, right?
A Yeah. And I just want to orientate us. This is an email at the top there on October 28th that he sent to Mr. Pickering, and you were CC'd, right?
A Yes.
Q Now, I want you to turn to, if you look at the bottom, you'll see Bates numbers. It says VMIC. The first page says 9053. I want you to go to page 9056. And on Sunday the 26th, you sent an email to somebody, I take it at Holdings or an affiliate, Mr. Michael Caffarcio.
A Oh, yeah.
Q And Mr. Pickering, and you CC'd Mr. Doe. And you said in part, I think Ben's work is BS anyways. Do you see that?
A Oh, yeah.
Q And BS, what does that mean?
A That means bullshit.

Q Okay.
A That's what it means.
Q So, your view was that Mr. Pickering's work, the work he was doing in connection with the Special Committee, was bullshit?
A No, not at all. It's my sense of humor. I was pushing him and prodding him, and that's the relationship Ben and I have. That's all it is.
Q Okay.
A I can't help it. I'm a smart-ass. Probably most of the time. So, I think, no, not at all. I took it incredibly seriously. I did. A lot of time I spent with Katten and Ben trying to explain everything I knew. It was pretty (indiscernible). I took it incredibly seriously. In fact, I made a few open to Ben. You can speak to them directly. They did. So don't misconstrue my personality flaws with the seriousness that I had in this process.
Q Well, let me ask you. You understand that my constituency, the Committee, includes quite a few folks that have suffered serious diseases as a result of exposure to asbestos, right?
A Jeff, I'm an incredibly (indiscernible) person, and I gave everything I had to try to get the most value out of this situation. Regardless of where this ends up for me personally, I can commit to you, I did everything I could. So, your

constituents got my very best.

Q You understand that --

A I probably wore myself out during the process.

Q You understand they're creditors, right?

A I do.

Q Okay. Have you met with any of them? Have you talked to any of them?

A I haven't. The talc -- I had enough on my plate, and that world was handled by our general counsel. I left it up -- I left that up to him. I just had so much to do that I didn't get involved in it, and I had no experience in that realm prior to.

Q In your latest declaration, we don't have to look at it, I've just saved the time, I'll just read it to you. It's Exhibit 22. In paragraph 15 you state, I determined after consultation with Greenhill and the Debtors' other professionals that pursuing the DIP financing and the sale transaction for the stalking horse assets -- and it goes on, would maximize the value of the assets and is in the best interest of the Debtors, you said estates with an S, but there's only one Debtor's estate here, right?

A That's correct.

Q Okay. Well, in that regard, in terms of your determination that this would maximize value, can you tell me what you did, what analysis did you do?

A So first off, you have to look at, oh my gosh, what analysis did I do? Okay, so let's start with, like every day that goes by, value decreases because you're taking our minerals out of the ground.

So, let's start there. So, then I looked at the useful life and the reserves and the profitability of each one of our sites, okay? And when you did that profile, the only thing that was left in the analysis was VEEGUM.

There are diminishing money in the assets. Certain of the minerals are in decline or are not growing markets. So that was number one. Number two is we we're out of money, right, we had, I mean, it was the last three months were very difficult to manage cash.

And then, we had a looming judgment against us that, you know, at face value, bonding would have been like $7 million. So, I'm sitting there like this is the best. This was the best I thought we could do at that point in time given the facts and circumstances.

Q Let me try it. Let me try it this way.

A Yeah.

Q Did you do any sort of --

A I gave you the answer you wanted.

Q No, no, no. Are you done? I don't want to cut you off. A Well, right.

Q No, I appreciate whatever the answer is.

A Yeah, I'm trying to be helpful.
Q No, no, no. I understand. I appreciate that. So, thank you. My question is, maybe it was a bad question, so it's my fault. My question is --
A You saw my answer, it wasn't that great either.
Q Well, my question is -- because my main concern is our unsecured creditors in this case. So, I want to know in reaching your conclusion that you should go forward with ultimately the stalking horse sale, which includes the settlement agreement, et cetera.
A Yeah.
Q Did you pencil out recoveries to unsecured creditors as to whether they would do better in this regard or they would be better, for example, without all of this, without the settlement, so they could pursue claims including versus the parent?
A That was the Special Committee. So, that was outside of my role. So, my role in that was primarily to, again, to provide information.
Q Okay. So, let me -- just a few more things and I'll be done. The DIP financing and the sale transaction as now put forth, they require the global settlement to be approved, correct?
A Correct.
Q Okay. And do you think it's fair to say, I think I was

criticized for my language before. Do you think it's fair to say that they're interrelated?

A Interrelated. Can you explain that maybe with an example? (indiscernible).

Q Sure. I didn't like your example. The DIP financing -- the sale doesn't go forward unless the global settlement's approved, right?

A That's my understanding.

Q Okay. They're related to each other, right?

A Okay.

Q Okay. And that's part of the three-legged stool, right?

A Correct.

Q Okay.

MR. JONAS: No further questions, Your Honor. Thank you.

THE COURT: Thank you. Mr. Jonas, are you moving anything into evidence?

MR. JONAS: I suppose I should, Your Honor. I'll move in. I don't think there was very much, and if you give me a minute I can get the numbers, but I'd move in each of the exhibits that I used. Thank you. Perhaps we should go through them one by one unless you can state there's no objection to any.

MR. CORCORAN: Your Honor, there's no objection to the admission of any of the exhibits. I think there were 5, 6,

and 33, perhaps?

MR. JONAS: Sounds right. Thirty-six. Yeah, thirty-six. Sorry, thirty-six.

THE COURT: Thank you. Thank you.

MR. JONAS: Thank you, Your Honor.

THE COURT: Thank you.

MR. JONAS: And thirty-five, I think.

THE COURT: And thirty-five.

MR. JONAS: That's five. Thank you.

THE COURT: Thank you.

Mr. Corcoran?

MR. CORCORAN: Thank you, Your Honor. I have no further questions for Mr. Romero. I don't know if anyone else does.

THE COURT: I'm not seeing anyone. I'm getting a lot of nodding heads of no, so your excuse.

MR. JONAS: Thank you, Your Honor.

THE COURT: Thank you.

MR. JONAS: Your Honor, I'm sorry about that. Your Honor, the Debtor has no more witnesses.

THE COURT: Thank you.

MR. DAVIS: Good afternoon, Your Honor. Kevin Davis, Caplin Drysdale for the Committee. This Committee calls Michael Atkinson to the stand. Michael Atkinson, please.

DIRECT EXAMINATION

BY MR. DAVIS:

Q Good afternoon, Mr. Atkinson.

Q Could you just introduce yourself to the Court, please?

A Sure. Michael Atkinson, I'm the financial advisor and the banker for the Committee.

Q And where do you work, Mr. Atkinson?

A I work at Province.

Q And what's your position there?

A I am a partner.

Q And what is your educational and professional background, briefly?

A Sure. I have an MBA, I'm a CPA, I have a lot of other initial valuation credentials after my name. I've been doing bankruptcy work for over 35 years, I've been involved in hundreds of bankruptcy cases, and representing both the Debtor and the creditor's committee.

Q And in those bankruptcy engagements, have you been engaged as a financial advisor?

A I have.

Q Have you been engaged in any other roles in those bankruptcies?

A I've been a banker, I've been a trustee, I've been a CRO. Roles like that.

Q Would you say that the cases that you've been involved in have largely been Chapter 11 reorganizations?

A I would say of the bankruptcy work I do, which is probably 95 percent of what I do, 98 percent of them are Chapter 11.

Q All right. We won't do that math. We'll just say it's a lot. And how about bankruptcies involving mass tort liability? What's your experience there?

A So, about seven years ago, my practice shifted to almost exclusively doing mass tort bankruptcies, so 90 percent of what I do is mass tort bankruptcies now.

Q And have you been involved or engaged in any mass tort bankruptcies involving talc or asbestos liability?

A I have. I did the Honix case in Texas. I did Cypress/Imerys (indiscernible). I did, I'm doing BMI, Barretts Minerals bankruptcy case. I have a few others that have not filed bankruptcy yet. They're not -- they're private, confidential.

Q And let's go back to your larger bankruptcy experience. Have you been involved in any Section 363 sales as a financial advisor?

A I have. I would say more than half the cases I've been involved in have had 363 sales.

Q And what about in those mass tort bankruptcies, have you also been involved in cases there that have had 363 sales?

A Yes.

Q One of the ones you mentioned was BMI, Barretts Minerals. Was there a 363 sale there?

A There was, yes.
Q And what were the assets that were sold there?
A Mining assets.
Q When you've been engaged as a financial advisor or as a banker in a case that involves a 363 sale, what kind of work does that entail with regard to the sale itself?
A It depends on if I'm representing the Debtor or the Committee, or if there's a banker on my same side. But generally, we would get involved with looking at the SIMs, making sure the information was adequate.

Sometimes, we develop them. We develop data rooms or review data rooms. We review the list of people that the bankers either reached out to or we would reach out to. We generally add additional potential buyers to the sales process. We review the bid procedures, and any indications of interest that may come in, we review them.

Q And when you're representing a Committee in those situations, do you deal with the Debtors or the Debtor's banker in any meaningful way in the context of those sales?
A If I'm representing a Committee, yes, we would interact with the Debtor and the Debtor's bankers, to varying degrees, depending on the case. I have a case right now. I'm the Committee rep, but I'm jointly the sale process with the banker. So we are involved with the interviews and the meetings with all the different buyers.

Q So let me ask you about that. What has involvement been with sales processes in general?
A I have probably been involved in, I don't know, I think I said it earlier, probably like 60 plus cases that involve sales processes, and probably more than half of those I would have been the banker for whoever I was representing in those cases.
Q And so, what's your experience with and around bidding procedures I those cases?
A Usually it's something that we look at and consider. We want to make sure it's maximizing the value for the process. It's something that, you know, we typically look at breakup fees and different costs that are associated with the bid procedures. And just making sure the assets are clearly identified. Those are the types of things we would do, yes.
Q Have you ever developed or worked with others to develop bidding procedures yourself?
A Yes.
Q Ane when you've done that is there some goal or standard that gets applied to the bidding procedures?
A Generally, no. I mean, generally they're fairly similar to each other. I think this case has some unique facts, but generally they're similar to each other.
Q And when you are developing bid procedures, can you tell us a little bit about what considered and what kind of work goes into that?

A Well, I'll just give you an example here. So, if I was going to develop them here, we would want to understand the stalking horse bid.

We'd want to understand the DIP agreement. We'd want to understand the buyers and what's happening in the process thus far. And then, we'd also want to understand the business and the timing, the timing is very important in the bid procedures motion.

Q Once the bidding process gets underway, what is your experience in handling bids?

A Well, generally we'd get bids in, us, depending on which side, if I'm with the Debtor or the Creditors Committee, we'd want to understand the economics associated with them. Sort of make them apples to apples, if you will. If there's breakup fees or whatever, you need to consider, depending on which one, which assets are being assumed in the bids, which liabilities are being assumed. Just generally trying to understand the economics.

Q With regard to your testimony today, were you asked to develop an opinion regarding the Debtors proposed bidding procedures?

A I was.

Q What opinion materials did you review in developing that opinion?

A I think the same materials that I mentioned earlier, but

basically the stalking horse bid, the DIP agreement, the trial testimony that had come out, the interactions with the banker in this case, Greenhill, and discussions that we had with other parties outside the case.

Q And did you review the proposed bid procedures in this matter?

A I did.

Q And did you review the Debtor's reply brief, which was filed yesterday, with regard to their motion to approve the bidding procedures?

A I did.

Q What experience did you apply in coming to your opinion on the bidding procedures?

A What experience did I -- I mean, I think what I relied on is my experience doing many, many sale processes. The most important thing in this case, I think, in most cases, is are we maximizing the potential value here; so, that's what I was considering.

Your Honor, at this time, I'd like to tender Mr. Atkinson as an expert in bankruptcy sales processes, specifically with regard to bidding procedures.

THE COURT: Mr. Corcoran?

MR. CORCORAN: Your Honor, I object to the Court accepting him as an expert. The case law shows that now that you don't accept as an expert, he's allowed to testify.

I'm not going to object him to continue to testify, but there's no need for the Court to endorse him as an expert. If he were not qualified, I would have objections to him providing his opinion, but I object to accepting him as an expert.

THE COURT: I'm going to sustain that objection.

Thank you, Your Honor.

Q Mr. Atkinson, in your review of the bidding procedures, did you come to a conclusion about whether or not these maximize value?

A I did.

Q And what was that conclusion?

A My concern, my overall concern, is there's just a lot of uncertainty with the sales process. We have, there's probably three concerns I have. We have the stalking horse bid, which is selling assets that the Debtor does not own. And I'm very concerned about not bidders that are active, but bidders that haven't shown up.

I'm concerned that it's very expensive to do the diligence in these sales processes. And why would some bidders do that and come enter this when there's just significant uncertainty as to what they would be buying?

So, that's one concern I have related to the stalking horse bid. As far as the Debtor-only bids are concerned, I'm concerned that, I guess, if the 9019 is accepted, then I think

Debtor-only bids probably are smaller than the overall bids for the stalking horse.

So, there's not an incentive to bid in that perspective from a Debtor-only bid. And then, on the flip side, if the 9019 is not approved, then I think the DIP would be in default. And I don't know that we know what could happen in the case and whether there would even be a sale.

So, I think from an outsider looking at this to decide whether to bid or get involved in doing the diligence, I think there's a lot of hurdles that I think are inhibiting the process.

Q You were in the courtroom when the gentleman from Greenhill testified, correct?

A Yes, I was.

Q And so, did you hear him testify about how he had not been made aware of any bidders who had dropped out of the process because they had complained about a lack of certainty about the availability of the assets? Do you recall that?

A Yes, I do.

Q In your view, does that leave out these potential bidders you're talking about?

A Yes, I'm concerned about people that are not actively bidding or haven't shown up yet or could show up. That's my concern or people that dropped out along the way. Not necessarily the people that have already spent time and there's

just a handful of them anyway.

Q What activities have you undertaken in this case with regard to the sales process?

A We've had some calls, a number of calls with Greenhill giving us updates, which is helpful. We have our own list of buyers from other cases, mining cases that we've been involved in, that with the Debtor's permission we're reaching out to, and then we're going to introduce them to Greenhill.

Q Is the fact that a 524(g) plan has not been proposed here, in your opinion, an issue for potential purchasers?

A In my opinion, yes. I've had bidders in other cases, in other talc cases, asbestos cases, where they, hedge funds have reached out to me wanting to know if there was going to be a 524(g) plan because to them, without one, it creates an additional risk of liability that they said in those instances they were not willing to accept.

Q I asked you previously if you had read the Debtor's reply in support. At paragraph 18 of that reply, the Debtor state, mindful of the concerns raised by the Court at the March 12th status conference, the Debtor proposes to revise the bidding procedures to require bidders to, A, identify whether they would be willing to bid on only the Debtor's assets i.e. assuming that the non-debtor assets will not come into the estate, and B, if so, how much such bidder would be willing to bid on just the Debtor's assets. Does that proposed change

address your concerns about the bid procedures?

A No.

Q Why not?

A Because as I said earlier, I think particularly the Debtor, bidding on the Debtor's assets, and given the current facts in this case, there's head you lose, tail you lose.

If the 9019 approves, you're harmed, and if it does not, you're harmed. And so, they wouldn't necessarily want to put the time in to diligence it and make a bid.

Q And so, it would be fair to say that your principal concern, even after that revision, is an uncertainty about whether or not the non-debtor assets will be available for sale?

A Correct.

Q All right, let me back up. You're aware that the Court has scheduled the settlement motion to be heard on April 16th and 17th?

A Yes.

Q And you're aware that the bid deadline is April 27th?

A I heard that. I thought it was the 24th, but I heard it's the 24th.

Q Actually, I think you're right. I think it is April 24th. Is the time between when the Court, the earliest point at which the Court will rule on the settlement motion, and the bid deadline, in your experience, is that enough time for a

potential buyer to become involved once there's certainty about the assets?

A Not for buyers that aren't involved already, no.

Q In your view, are there procedures that could be put into place here that would better serve to encourage competitive bidding, in your view?

A Yes, this is a very unique case. I've been doing this for 35 years. I've never been involved in a sales process that we're selling assets we didn't own. And with a challenge on the 9019, so we may not be able to own them.

I think, to me, one of the things that would solve a lot of problems is if we had an economic or cash value for the non-debtor assets. If we had that, then potentially, if everyone agreed, we could potentially move forward with the sales process.

And no matter what happened with the 9019, we could potentially close on a transaction; that's one thing. Another thing that I think would be helpful is the DIP having the 9019 having to be approved.

I think some clarity about what the DIP lender may do if the 9019 is not approved could be helpful, particularly to the people bidding on the debtor assets.

Q And why is that, with regard to the DIP clarification?

A Well, as I understand it, there's a milestone or a requirement in the DIP that the 9019 gets approved. And if it

doesn't get approved, if I'm a buyer, what happens next? Is the lender foreclosed? Do we run out of money? What's the path forward? So, that's what I'd like some clarity around.

Q And, Mr. Atkinson, did you submit a declaration in this case?

A I did.

Q And was that the declaration filed under notice at Docket Number 190?

A I don't know.

Q Would it refresh your recollection if I were to show you the declaration?

A Yes. Thank you. Yes, 190.

Your Honor, we would ask that the declaration be moved into evidence.

THE COURT: Any objection?

MR. CORCORAN: Subject to cross-examination.

THE COURT: Thank you.

MR. JONAS: No further questions.

MR. CORCORAN: Your Honor, for the record, Matt Corcoran with Jones Day, the proposed counsel for the Debtor. May I proceed?

THE COURT: You may.

CROSS-EXAMINATION

BY MR. CORCORAN:

Q Mr. Atkinson, do you have your declaration in front of

you?
A I do.
Q Okay. And you were involved in putting this declaration together?
A Yes.
Q Okay. And it looks like if you turn to the first page, there is a Roman I that says, quote, professional background and education. Do you see that?
A I do.
Q Okay. And did you try to set forth all of the relevant professional background and education you thought was relevant for the Court's consideration of your testimony today?
A I didn't purposely exclude anything, no.
Q And you thought that this experience that you set forth in this declaration was the most pertinent that you could think of for your testimony today, correct?
A Well, I've been doing this for 35 years. If I laid out all my experience, it would be probably a lot.
Q But you thought this was the important experience for the court to be aware of?
A I think it was more than sufficient.
Q Did I hear your testimony correct that you said that you were the proposed financial advisor and banker for the committee in this case?
A Yes.

Q Okay. Can you turn to paragraph 10 of your declaration? Paragraph 10, not page 10. In the first sentence, you wrote, quote, in the present matter, Province is the proposed financial advisor to the official committee of unsecured creditors, period, close quote. Did I read that correctly?
A Yes, you did.
Q Is there a reason you didn't mention that you were the proposed banker for the Official Committee of Unsecured Creditors in this paragraph?
A No.
Q Can you now turn to paragraph 6 of your declaration, Sir?
Do you see the first sentence reads, to date, I have led engagements on behalf of creditors' committees and debtors in connection with more than 100 cases and have served or am currently serving as a financial advisor in connection with, and then you list several bankruptcies. Do you see that?
A I do.
Q Okay. You don't mention that you served as a banker in any of those cases, do you?
A I don't in this section, no.
Q All right.
A But I did serve as a banker in some of them.
Q Is there a reason you didn't mention that you served as a banker in some of them?
A I didn't think it was an issue, no.

Q Can you turn to paragraph 7 of your declaration? And do you see the second sentence that says, I have led engagements on behalf of I have served or am serving as a financial advisor to the Official Committee of Unsecured Creditors. And then you list several official committees. Do you see that?

A I do.

Q And you don't mention there that you served as a banker for any of those committees, do you?

A Correct.

Q Okay. And then, the next sentence in that paragraph, it says, I am also representing or have representative or excuse me, let me step back. Next sentence also reads, I also served as financial advisor to the Official Committee of tort claimants in the Chapter 11 cases of Rite Aid Corporation, correct?

A Yes, that's what it said.

Q And it doesn't state that you represented, you're serving as the banker for the official committee of tort claimants in the Rite Aid bankruptcies, correct?

A Correct.

Q In the next sentence, it reads, I am also representing or have represented the official committee and it lists several committees, correct?

A Yes.

Q It doesn't state there that you served as a banker for any

of those committees.
A Correct.
Q Did you serve for a banker in any of those committees?
A I did.
Q Why didn't you mention that you served for a banker for those committees?
A I just didn't.
Q In the next sentence, it says, I have provided, do you see at the bottom of page 3, it says, quote, I also provided litigation consulting services to certain creditors, and then it lists several creditors. Do you see that?
A I do.
Q Okay. And that doesn't mention that you served as a banker for any of those groups, correct?
A Correct.
Q All right. In the next sentence, it says, I am serving or have served in a claims valuation role in many of these engagements, and it lists several engagements. Do you see that?
A Yes.
Q All right. It doesn't say you're serving as a banker for any of those engagements?
A Correct.
Q All right. Is there anywhere in your declaration where you stated that you served as a banker for any constituency in

a bankruptcy case?

A I don't recall. I can read it and look, but I don't recall.

Q Does your website at Province state whether or not you're a banker?

A I don't know.

Q Would you be surprised to know that it doesn't state that you're a banker?

A I don't really update that very often. You know, when you get to my level of doing cases, you don't update your resume very often. So, I have no idea what it says. It's more everyone knows who I am, so that's generally how I get hired.

Q Okay. Do you have a Series 7 license from FINRA?

A I do not.

Q Do you have a Series 24 license from FINRA?

A I do not.

Q Do you have a Series 63 license from FINRA?

A I do not.

Q Do you have any licenses that would allow you to serve as an investment banker?

A Me, personally, no.

MR. CORCORAN: Just one moment, Your Honor.

THE COURT: Certainly.

MR. CORCORAN: Your Honor, I have no further questions. Thank you.

MR. AGAY: Your Honor, may I ask a question?

THE COURT: Go ahead.

MR. AGAY: Your Honor, David Agay from McDonnell Hopkins on behalf of the Commodore entities.

CROSS-EXAMINATION

BY MR. AGAY:

Q Good afternoon, Mr. Atkinson. Mr. Atkinson, did I understand your testimony to be that it's important as part of your engagement to understand the stalking horse bid?

A Yes.

Q Okay. Did I also understand you to testify that it's important to understand the timing of the process?

A Yes.

Q Okay. Did you also testify that you want to understand the economics of the transaction?

A Yeah, I think I was speaking more generally, but yes, that's true.

Q Okay, sure. And did you also testify that you want to understand what the DIP lender may do if the 9019 is not approved?

A I think I said that. I thought that would be helpful to the process.

Q So, before today, before we're speaking now, did you ever speak to my client or me?

A I have not.

Q Okay. Did you ever try to?

A I have not. No.

Q Okay. To your knowledge, did counsel for the Committee ever try to talk to me or my client about these issues?

A I'm not aware.

Q Okay. Why not?

A Well, we just got hired, and frankly, we've been going through 10,000 documents that have been uploaded in trying to prepare, for what (indiscernible) presented. So, you know, fixing it, I think counsel has had discussions with the other side.

I don't know if they've discussed things with you specifically, but there have been things that we've suggested that we thought would be helpful, and I believe that they have had conversations with this side of the table, whether we do or not, I'm not sure.

Q Did you ever ask this side of the table if you could talk with us, and they said no?

A I did not know.

MR. AGAY: I have no other questions.

THE COURT: Thank you, Mr. Agay.

Anyone else?

THE COURT: You might be excused. Thank you.

MR. JONAS: I'm sorry. Just real quick, because we have some people on the Zoom. I know we've closed it for the

testimony.

I'm just wondering if we could reopen that, because they've been asking us if they were able to watch the proceedings, and I thought I'd at least inquire with the Court.

THE COURT: Are we ready for argument, or are we still taking testimony?

UNIDENTIFIED SPEAKER: Your Honor. We have no more evidence.

MR. JONAS: We rest, Your Honor, so we're done.

THE COURT: You both rest. Then, yes, we can reopen.

MR. REYNOLDS: Thank you, Your Honor. Good evening, Your Honor.

THE COURT: Good evening.

MR. REYNOLDS: For the record, Dan Reynolds, Jones Day, proposed counsel for the Debtor. What we have left today is the relief the Debtors are seeking in the bidding procedures order and the relief the Debtors are seeking in the final DIP order. There will be things that we discuss. In fact, you and I won't discuss it.

Counsel for Ben Pickering, the Special Committee at Katten, will be presenting the motion for the settlement in a month. But that is not up for today, Your Honor. Today, I would like to start with the bidding procedures, if that works with Your Honor, and then if we make it through that, we would proceed to the final DIP order.

THE COURT: Thank you. I'm wondering if we take a brief ten-minute break. We just need to notify the marshals and things if we're going to be staying past 5 o'clock when the Court closes. So, maybe now, that way we're doing both closing arguments at the same time. So, it's about 4:40. 15 minutes?

No, that would be wonderful.

Thank you, Your Honor.

THE COURT: Thank you.

THE COURT CLERK: All rise.

THE COURT: The Court will take a brief recess.

(Recess)

THE COURT CLERK: Continuing with the 2 p.m. calendar.

MR. REYNOLDS: Good evening, Your Honor. For the record again, Dan Reynolds from Jones Day. I was briefly able to confer with counsel for the Committee about how to handle the rest of this evening, and we are very mindful of the Court and its staff's time, and so if the Court would be interested, what we would both propose is that we do the presentations for both motions in one block each.

So, I would present both the argument in favor of the bidding procedures, and then the argument in favor of the separate final DIP order.

And then, the Committee would argue against first the bidding procedures, and then the DIP order, and then I might

come back up for a brief rebuttal, of course.

And the U.S.T., excuse me, I very much apologize. The U.S.T. would handle the same. I didn't have a chance to ask you that question, I apologize.

THE COURT: That's okay.

MR. REYNOLDS: I don't know if anyone else in the courtroom has plans to speak or would like to break it up differently, but if the court would be interested in handling it that way.

THE COURT: That makes sense.

MR. REYNOLDS: Makes sense?

UNIDENTIFIED SPEAKER: That's fine with us, Your Honor.

THE COURT: Thank you.

MR. REYNOLDS: And then, so with that, Your Honor, I'll begin with the bidding procedures motion, which can be found at Docket Number 16.

And, Your Honor, mindful of the Court's time, we've discussed the bidding procedures before. We've discussed the six different sets of relief that are actually being asked for in the bidding procedure, the approval of the procedures, the designation of the stalking horse bidder, and the authorization to provide bid protections, the scheduling of the auction and the sale hearing, the approval of our sale notice, the approval of our assumption and assignment procedures, and approving the

related noticing procedures for the assumption and assignment of executory contracts.

As was the case on March 4th, almost all of this relief is uncontested. Instead, as to the relief the Debtor is actually seeking in the bidding procedures, based upon the bidding procedures order that the UCC submitted yesterday, which I presumably think that if entered by the Court they would drop their objection, there appear to be four limited disputes between the Debtor and the UCC on the actual bidding procedures order.

The Committee appears to be arguing that the bidding procedures do not adequately provide bidders an opportunity to bid on only the Debtor's assets, rather than the assets that may later come into the estate as Debtor's assets as part of the settlement.

As we laid out in our reply to the UCC objection, which can be found at Docket Number 196, that's simply not correct. As Mr. Mendelsohn has testified, the initial reach out to the potential DIP lenders and the potential bidders only contemplated a potential sale of the Debtor's assets.

Additionally, Section 6A2 makes it clear that a bidder can bid on any subset of the stalking horse assets, including the assets owned by the Debtor. To any potential bidder listening on the phone, you are more than able to bid only on the Debtor's original set of assets.

Second, the Committee seems to argue that if a bidder were to bid on all of the stalking horse assets, a bidder should be required to allocate value between the Debtor and the non-debtor assets. As Mr. Mendelsohn testified, this is the wrong tool to provide the data that the UCC is seeking, which appears to be obtaining standalone valuations for just the Debtor's assets.

As Mr. Mendelsohn testified, there is a key difference between putting yourself on the hook with a binding bid for a subset of assets and simply allocating between different sets of assets in a larger bid. While a binding bid on a subset of assets provides an indication of fair market value, an allocation is a theoretical exercise rather than a true mark of value of the assets and will be heavily influenced on how the bidders want to allocate value for tax and depreciation purposes.

Instead, putting yourself on the hook to purchase a set of assets at a certain value is the best way Courts know to obtain indications of real indications of market value. While it is the Debtor's expectation that value in this case, in this Chapter 11 case, will be maximized by including the non-debtor assets in the sale, importantly, the bidding procedures allow us to be wrong.

If the Debtor receives a bid for less than all of the stalking horse assets that would benefit the Debtor's estate

more than the stalking horse agreement, the Debtor retains the ability to accept that offer and back out of the settlement agreement.

I'm pointing specifically to Section 7b7 of the bidding procedures that states the Debtor shall have the right to determine in its reasonable business judgment and in consultation with the consultation parties which will include the Committee which bid is the highest or otherwise best bid for the applicable auction package and while not in front of Your Honor today I would note that Section 7.13b of the settlement agreement gives the Debtor's independent manager authority to terminate the settlement agreement any time before the settlement order becomes a final order if doing so would be consistent with his fiduciary duty obligations to the Debtor.

Note that under the bankruptcy rules that while the settlement order would come before the bid deadline so bidders have certainty over the amount of assets the settlement order will not become a final order until after the bid deadline. So if we get a bid in counter to our expectations based on the sale process that Greenhill did that provides us with a bid for just the non-debtor assets that that bid makes the entry into the settlement order not an exercise of the fiduciary duties of the estate we have every ability to walk away from the settlement agreement and just take that bid.

However, the Debtor is mindful of the concerns raised

by the Court at the March 4th hearing and as we stated in our reply we are willing to modify the bid procedures to require bidders to identify whether they would be willing to bid on only the debtor's assets and if so how much such bidder would be willing to bid on just the debtor's assets.

To that end, we got into a room with our investment banker late last night and thought about how best to amend the bidding procedures to do just that and so I'd like to walk you through those proposed changes. They aren't filed in the docket. I have copies for everybody and I'd just like to briefly walk through those revised bidding procedures. A lot of copies everybody can come.

UNIDENTIFIED SPEAKER: These are different from what was filed?

MR. REYNOLDS: Correct. So, we, in attempting to respond to the Committee's objections, what Your Honor said we got a chance to get into a room with our investment banker and think about how do we implement this change actually in the bidding procedures.

May I approach, Your Honor?

THE COURT: You may.

MR. REYNOLDS: So, there's not many changes, Your Honor. We tried to make it as concise as possible for everyone's benefit. So, first on page three of the red line, we modified the key dates and deadlines to auction to match

Your Honor's scheduling order from early this week.

One thing I would just want to call out is the bid deadline. So, in the order that you entered and this was probably our fault from the schedule we sent you, we took off the time of the bid deadline.

If we go forward I'd like to have a 4 o'clock bid deadline instead of an 11:59 bid deadline just for my own sanity's okay so we'll fix that. And then, if we move forward we go to Section 6. Section 6 are the bid requirements that start on page five and we start on Section 2.

Section 2 we add that a qualified bid must include the following. The stalking horse assets to be purchased and whether they would consider submitting a qualified bid for only those assets that the debtor owned on the petition date or has acquired in the ordinary course of business since the petition date. We've defined these as the original assets. This is actually the language that the Committee used in their proposed order to describe just the Debtor assets. So, we you know the greatest compliment in law is plagiarism. We pick that up we put it right in there. So, we've done that.

We've deleted D because if you go further down all the way to 14 we have put in a new concept. 14 is on page 12. Here we have what we call the alternative set of purchase assets and I'm going to cut to the chase. What this does is allow a qualified bidder a streamlined opportunity to submit

two qualified bids.

A qualified bid for whatever they want and if they so choose a qualified bid just for the Debtor's assets. You will notice that 14 is almost identical to Section 2, except it just speaks in the terms of the Debtor's assets. So, just like in paragraph 2, they have to identify the original assets to be purchased. They have to identify any original assets in the bid that the prospective bidder intends to operate as a going concern.

And then, C, include the liabilities, if any, to be assumed, including any debt to be assumed. And then, we have D, a new D. What D does is, it streamlines the rest of the qualified bid process by only naming those requirements above that it would be necessary to do twice for two different qualified bids.

So, for instance, we're not going to ask bidders for two sets of adequate assurance of future performance. If they bid on a big bid, they don't need to do that for the little bid. The same for the bid deposit.

We're not going to chill bidding by saying if you want to bid, if you submit two qualified bids, your bid for the bigger set of assets, that deposit is going to be enough. We're not going to hold people back.

And so, with this, Your Honor, I think we get to the core point of what Mr. Mendelsohn testified to, that there is a

difference between saying I would like assets A, B, C, and D for $50 million. And now that I've said that, I'm going to guess, hypothetically, with no additional skin in the game, what A, B, C, and D are worth versus saying I want assets A and B and I will pay this much for them.

They're on the hook. There's a qualified bid that the Debtor can enforce if they're the highest and best bid. They have to be the backup bidder if they are the second best bid. They're on the hook. And that requirement to be on the hook is the best way to indicate value.

Finally, the UCC has requested that the bidding procedures order dictate how and when the non-debtors contribute the assets proposed to be part of the sale. There are two huge problems with that beyond the fact that this is really an objection to the settlement agreement and how the negotiation between the independent committee and the non-debtor are bringing these assets into the estate.

First, neither the Debtor nor any party in interest has standing or the legal right to demand that the Court order a non-debtor to mark and sell its assets. We say all the time in the reverse. If you want the benefits of bankruptcy, you actually have to file for bankruptcy.

I think that's actually some of the Committee's points in some of the things that they are going to litigate against the settlement hearing. We'll hear from them then. On

the other hand, you only get jurisdiction over a Debtor and you only get to make those demands if that Debtor actually files for bankruptcy.

Second, those assets have never been marketed as a stand-alone set of assets because we do not have authority to do that. Mr. Mendelsohn made it very clear. We went out today, we went out in our process, and we only offered the Debtor assets. And then when our bidders came back and said, we don't want just the Debtor assets, we want the Debtor assets plus everything we need for VEEGUM, we went and negotiated with the owner of VEEGUM about how we can bring those assets to us to be included in the sale.

So, as far as marketing processes goes, it hasn't gone through that sort of process. It has only gone through its process once the bidders identified that they wanted those assets as part of the sale as a collective unit.

The UCC's objection also discusses a number of issues that are not in front of the Court today. First, the UCC has requested that my previous representations on the record be implemented as a condition to the bidding procedures.

Now, I would argue this is truly a sale objection regarding whether certain assets should be included in that sale. That said, attached as Exhibit A to our reply and support, which once again can be found at Docket Number 194, we've negotiated an amendment to the APA with the Commodore

parties to make clear which avoidance actions are being proposed to be sold in the sale and which insurance proceeds and avoidance actions are not being proposed to being part of the stalking horse bid.

However, they're still assets of the estate, and another bidder could come in and make a bid on them, and then we would all have to deal with that problem. We've negotiated with the stalking horse bidder that it won't be part of the stalking horse APA.

Second, the UCC seems to suggest that the bidding procedures should be subjected to heightened scrutiny, even though this is a procedural motion where no definitive relief, like a sale, is being granted. That is for another day. And that the proposed stalking horse is clearly not an insider.

We're going to discuss the entire fairness standard more during the DIP presentation, so for the sake of time, I'll move quickly through this. I would just stress that the UCC cited no applicable case law that a procedural motion, such as bidding procedures, instead of a sale motion or a DIP motion, has ever been subject to (indiscernible).

Third, it appears that the UCC is asking the Court to reconsider its designation of the stalking horse bid and the authorization of the bid protections. That order, for the record, is found at Docket Number 139.

Interestingly, after deciding not to engage with the

Second Circuit's strict standards for a motion for reconsideration, the proposed order that the UCC submitted largely left the bid protections in, say for including a credit for the $275,000 that was paid to Right Lane by the Debtor before the petition date.

However, as Mr. Mendelsohn described and Mr. Vomero testified on the stand, those payments were expense reimbursements that the Debtors provided to the Commodore parties in order to keep them working without exclusivity. They had made it all the way through diligence on their own dime, and this was what was needed to keep them working on definitive documents. And those payments paid for themselves.

As a subsequent mini auction to be the stalking horse raised the price of the stalking horse assets by significantly more than the expense reimbursement. In the end, Your Honor, the bidding procedures that we've submitted are reasonable, standard, and will help the Debtor maximize the value of its assets.

And with that, unless Your Honor has any questions for me at this portion, I'll move on to the DIP.

THE COURT: Yeah, please do.

MR. REYNOLDS: So, yesterday, at Docket Number 195, we filed a revised DIP credit agreement and a red line showing the changes to the agreement since the first interim order. So, this reflects both the first amendment to the DIP credit

agreement and the second amendment to the DIP credit agreement in the red line.

The first amendment, for Your Honor's information, was just changing milestones based on this Court's other rulings. So, based on the Court's rulings, we entered into quick amendments to make sure that we wouldn't end up in default.

The second amendment, however, is a result of significant arm's length negotiations between the DIP lender and the Debtor. When we first negotiated the DIP with the DIP lender, the DIP lender made clear that it would not provide the final $8.5 million under the DIP until the settlement agreement order was entered, because only then could it have recourse against the non-debtor assets to protect its increased investment.

At the second interim DIP hearing, Your Honor, we represented to you that if we obtain the first $6.5 million slotted as the interim DIP amount, we could maintain sufficient liquidity until this hearing.

However, in order to make it to the settlement hearing in mid-April, the debtor required more draws under the DIP than the initial $6.5 million. What the Debtor's professionals did first, in light of Your Honor's concern at the interim DIP hearings regarding not placing a necessary secured debt post-petition on this Debtor, was to determine the

minimum amount of funding we needed while adequately funding the UCC's investigation.

After negotiating with the DIP lender in good faith, the Debtor was able to obtain, upon entry of the final DIP order, but before entry of the settlement order, another $2 million of funding under the DIP.

In addition, the DIP lender agreed to carve out an additional $3 million from its collateral with respect to the budgeted UCC fees between their appointment and the expected close of the sale. This liquidity will allow these cases to reach the mid-April hearing on the settlement motion and the motion to dismiss while, in our minds, adequately funding the UCC's investigation. And more on this in a moment.

This amendment was not free, however. The Debtor did agree to modify the Debtor's exit fee by increasing it by $500,000. As Your Honor heard in testimony today, the original ask was $1 million. We negotiated them down to $500,000.

The Debtors determined that this was a reasonable concession to make in light of the circumstances. However, the debtor respectfully submits the amended DIP credit agreement and the final DIP order provide the Debtor with exceedingly strong terms that allow the Debtors to fund a process that not only maximizes the value of the Debtor's estates, but also funds the UCC's investigation. The UCC disagrees and raises two main categories of concern.

First, that the DIP contains an event of default in the event the intercompany settlement is not approved. Second, that the DIP contains a potpourri of other protections for the DIP lender, including what the Debtor believes are standard events of default, milestones, and waivers.

I'm going to handle these one at a time. On the intercompany portion, first, heightened scrutiny does not apply to the DIP. The DIP is an arm's-length transaction between non-related parties, the Debtor and Commodore. To support their contention that the DIP should be subject to heightened scrutiny, the UCC relies almost solely on In re Latam Airlines Group, SA, which can be found at 620 B.R. 722.

In citing this case, on page 5 of their objection, they describe Latam as a case where the Bankruptcy Court for the Southern District of New York applied heightened scrutiny to two related transactions where only one was a transaction with an insider.

Respectfully to my colleagues, I don't believe that's a wholly accurate summary of the facts in Latam, so let's briefly talk about the facts. In Latam, the Court was reviewing a single DIP credit agreement in the amount of $2.45 billion.

That credit agreement did include two tranches. Tranche A was a $1.3 billion senior secured loan from a non-insider, and Tranche C, which at one point was called

Tranche B but became Tranche C, was a $900 million first lost under-collateralized junior loan from two of Latam's largest shareholders.

Those facts can be found at 620 B.R. at 730. The Creditors' Committee objected to the facility, arguing, among other things, that it failed to meet the entire fairness standard. That argument can be found at pin cite 765.

Rather than treating the two tranches as two separate transactions, they argued that the entire facility must meet the heightened standard because, and this is important, the Tranche A DIP facility is economically tied to the Tranche C DIP facility in that funding under the Tranche A DIP facility is conditioned upon the approval of the funding of the Tranche C DIP facility.

In other words, without C, you get nowhere. You can't start. There's no beginning. It's just to implement A, C must be in place. Again, in Latam, the UCC's objection was premised on the fact that a transaction with a non-insider was preconditioned on a transaction with an insider being approved.

Your Honor, it is March, and we are here at the final DIP hearing. Nothing Your Honor does today preordains what's going to happen at the settlement agreement in April. If Your Honor enters the final order today, all of the terms and conditions of the DIP will be approved on a final basis.

The only parts of the DIP that are in any ways

connected with the settlement agreement is whether or not the debtor in possession can access additional liquidity under the DIP once it obtains more collateral to secure those DIP obligations, and whether or not the DIP lender, if the project it has invested its capital in, may seek a return of its capital once that project is permanently frustrated.

Finally, I would point out that the Southern District of New York approved the DIP under Latam, even under heightened scrutiny, nine days after the ruling that's cited in the UCC's objection.

A bit of procedural history for the Court on that one. The Bankruptcy Court for the Southern District of New York initially denied the DIP motion, not because it violated Section 364 of the Bankruptcy Code or the entire fairness standard, but because it found that certain terms of the Tranche C lending, specifically a discounted equity conversion option, constituted a sub rosa plan.

In fact, while justifying the Tranche C funding under the heightened scrutiny standard, as DIP financing, the Court held that the terms of the Tranche C facility were essential in raising the Tranche A facility. That is at pin cite 771, and thus held that the entire fairness standard had been met. That holding is at between pages 791 and 92.

Nine days later, the Southern District of New York approved the DIP after the lenders in Latam submitted a revised

DIP financing agreement without the equity election that the Court was worried created a sub rosa plan. That order is at docket number 1091 in the Latam Airlines Group case, which is in the Southern District of New York, Number 20-11254.

As I've said here, the facts are clearly distinguishable from Latam, and the Debtor believes that the right review standard is whether it was reasonable for the debtor to agree to the terms in the DIP that were available to us, but even if Your Honor were to subject this DIP to heighten's group today, the Debtor respectfully submits that this DIP meets this standard.

The call right found in Section 10.23 of the DIP was a highly negotiated term, essential to the DIP lender that allowed the Debtor to have access to additional capital once it had additional collateral to secure the loan.

This term was essential to finalizing of the DIP. The inclusion of the event of default related to the intercompany settlement is also logical, given the transaction the Commodore parties who are providing the DIP are seeking. The Commodore entities are seeking to acquire a distinct set of assets, the Debtor and the non-debtor assets.

They have committed significant capital in support of this project. In the event that the settlement agreement is denied and that project is frustrated, the Commodore parties naturally want their capital back to redeploy it in a different

way.

Therefore, the terms related to the intercompany settlement were vital to the Debtor's ability to obtain a DIP from Commodore. And remember, Commodore provided the highest and best bid as well on the Debtor's assets significantly.

In terms of the DIP itself, the UCC raises a number of concerns about what the Debtor believes are standard terms for a DIP; events of default on exclusivity, DIP liens on avoidance actions, commercial tort claims and insurance, and the 506 and 552 waivers.

Again, on this front, the Debtor believes that the standard is whether it was reasonable for the Debtor to sign up to the DIP that is available to it. Now, we of course listened to the UCC's issues and we did have a conversation with the DIP lender about what, if any, concessions it was willing to make.

Now, to understand Mr. Agay's response to that request, which I'll get to in a moment, I think we need to hear from Mr. Jonas and his position from the last status conference.

Here is what he said, and I'm starting at page 40 on line 22 of the transcript of last week's hearing. Just me guessing, but in all my experience, I've never seen a buyer, DIP lender walk away when the Court kind of stares them down. And I think that is required here. I think sometimes justice simply requires a Court to stare down a buyer in a DIP.

Here, the same, a DIP lender. And they decide not to go forward; well, so be it. We're not worried about that. And that's my third point, Your Honor, which is the Committee, on behalf of its constituency, is prepared to take that risk and accept the consequences of that.

In other words, Your Honor, Mr. Jonas represented on behalf of the Committee of Unsecured Creditors, that they are willing to take the risk of a DIP default and the consequences that come with that.

Now, Mr. Agay can certainly speak to himself, but as the Debtor trying to negotiate concessions out of a DIP lender, this made things more difficult. I had to answer the question, why should I give up any standard protection in a DIP when there is a party actively willing and trying to have the loan be in default; and as a result, the only way to recoup my investment in capital is to exercise remedy.

It makes negotiations on this point incredibly challenging. And again, the provisions of the DIP that the UCC objects to outside of the intercompany settlement are very standard for cases like these. Milestones that prevent a DIP lender's capital from being tied up for indefinite periods of time are standard.

It is reasonable and customary for an event of default to occur if the Debtor's right to an exclusive plan filing or solicitation is terminated. It is unreasonable to

expect any debt lender to subsidize a Debtor's operating losses without a clear Chapter 11 exit date or the reassurance provided by milestones along the way.

Neither the Bankruptcy Code nor case law prohibits a secured creditor from conditioning a Debtor's financing or use of cash collateral on the achievement of milestones. Liens on all available assets at the entry of the final order to ensure that if a DIP lender has to exercise remedies, they are able to do so effectively are also standard.

There is no legal basis for the proposition that avoidance proceeds must be reserved for unsecured creditors. Unsecured creditors do not hold an exclusive right on unencumbered assets, including but not limited to the proceeds of avoidance actions and commercial tort claims.

Rather, it's black-letter law that avoidance actions and commercial tort claims constitute assets of the Debtor's estates, which may be utilized in accordance with the Debtor's business judgment.

Where the DIP lender is providing a carve-out for professional fees, the granting of the 506(e) and 552 waivers are appropriate and standard where the lender has subordinated its claim to a carve-out, allowing the Debtors to use DIP financing to operate the business subject to a budget and a carve-out, while at the same time allowing the assertion of a claim under 506(e), which would be subject to a budget and a

carve-out.

In effect, authorize double dipping against the DIP lender. Further, Debtors are well within their sound business judgment to agree to waive the equities of the case doctrine to obtain debtor in possession financing on a consensual basis, especially where lenders subordinate their claims to a carve-out to fund the Debtor's operations and administrative claims.

In light of the UCC's concerns regarding these protections, instead of arguing that our DIP is too small, which is a new one, the UCC should be focused on the fact that because we have tried to keep the balance of the DIP as low as possible until the settlement came. That way, if they get what they want and what they've told us all that they want, Mr. Agay's task of recovery will be smaller.

His client doesn't get a surplus, Your Honor. He only gets back what he put in plus interest and fees. But given the UCC's strategy, it's rational for a DIP lender to demand all possible protections so that the DIP lender is confident that there will be a surplus. He's fully played. There's a surplus.

That finally gets us to the budget, Your Honor, and I think we need to frame this discussion with a bit of the basics. We have carve-out in this case. A carve-out is not a cap on professional fees. The only caps on professional fees

that exist in bankruptcy are Bankruptcy Court review and the estate's ability to pay administrative claims.

What a carve-out is instead is a DIP lender removing cash from its collateral so the professionals have some certainty of payment. Now, if this case proceeds the way that the Debtor hopes and there is a value-maximizing transaction, the Debtors will have at least $35 million, if not more, of unencumbered cash available to pay administrative claims and unsecured claims.

The question for the carve-out is how much more difficult is the DIP lender willing to make its collections efforts if the UCC gets what they want in this case, which is dismissal or conversion by their own admission.

Now, we have obtained what I believe is a significant concession from the DIP lender and have them remove $3 million more of their collateral and put it in the carve-out on behalf of the UCC for the time between its appointment and the expected termination of the DIP at the close of the sale.

Again, this is not a cap on fees. This is about how much more difficult the DIP lender is willing to make its collection efforts in the event the UCC gets what they want, and we submit that a $3 million budget is an appropriate to number.

To date, the UCC has not publicly stated what they believe to be an appropriate number, and I will leave that to

them. Now, we've sort of got a new war of numbers on what is appropriate. To make it simple, I suggest that we just look at the DIP budget, which I believe is the last pages of the docket where we submitted the revised credit agreement. It is the same DIP budget that we discussed at the last hearing. The restructuring expenses have not changed. The $3 million for the Committee has not changed.

And again, we are talking about what is escrowed, not a cap on fees. And when you look at the funds that are proposed to be escrowed under that budget, the UCC's $3 million escrow is about 42 percent of the Debtor's professional escrow of $7.1 million.

In comparison, the UCC wants to just take its 11 weeks and compare that to all pre-petition and post-petition fees of the Debtor's professionals. I think a recent example with similar professionals in a similar case would be helpful.

Counsel to the UCC in the Avon case in Delaware, as it is here, included Caplin Drysdale. These two cases, as we've discussed and Ms. Lennox alluded to earlier, are very similar. I respectfully submit that Avon was a bit messier because not only did it have a similar in-company settlement, the buyer was actually the non-debtor parent of the Debtor, which is not the case here.

In that case, in the final debt budget, the Debtor professional's line item was $20.4 million, while the UCC's

professional's line item was $11.5 million, or 56 percent. However, only $3.6 million of the UCC's budget was to be escrowed, or about 17.5 percent in comparison to the Debtor's professionals. The rest would be non-escrowed, subject to the administrative claims process, presumably.

Essentially, we are offering to escrow significantly more fees by percentage than certain of those professionals accepted in a different case. We have copies of that budget for anyone who wants it, but for the record, it was Exhibit 1 to Docket 318 of Case Number 23-11836 in the District of Delaware.

I would also point out that just the counsel to the Debtor in that case spent 7.5 million pre-petition to prepare the case compared to counsel in this case that spent about 2.9 million as disclosed in the relevant statement of financial affairs for both cases.

So, any argument that we need to talk about the pre-petition fees, if this number worked in Avon and there was much, much more pre-petition fees in Avon, we respectfully submit it should work here.

And again, because I believe it's important to reiterate, this is not a cap on the UCC's fees. The only such caps are this Court's review and the estate's ability to pay administrative claims. This is only the amount that the DIP lender is willing to carve out of its collateral to provide

additional certainty of payment to professionals.

Your Honor, the Debtor requires this DIP. They were unable to obtain unsecured financing in these cases. It was reasonable for the Debtors to accept the terms of the DIP available to it.

So, Your Honor, before I request entry of the final DIP order and the bidding procedures order, I'd first like to ask if you have any questions for me.

THE COURT: I guess I do. Looking at Docket 195-3, the Exhibit C that you talked about that has the professional fees and the DIP budget, for this week, there's a $2 million advance. Is that correct? And now you're saying the additional 6.5 is not available until and if the settlement is approved?

MR. REYNOLDS: Correct. So, that is the credit agreement that we were able to negotiate was in the original DIP construct, we would have the interim DIP of 6.5.

And then, on what was supposed to be today in the original formulation, we would have had the bidding procedures order, the settlement agreement, and the final DIP order. And then upon entry of those three orders, we would get access to the additional 8.5.

So, I actually think that this goes back to something that was discussed earlier in court today. The original proposal was to have all those three things heard at the same

time and the adjournments were at the request of the committee.

So, now that we have pushed this off to the extent that we don't have the liquidity necessary to make it to April 15th without additional funding, we had to go to our DIP lender and said, we need more than you are willing to give us without recourse to the non-debtor assets.

And we were able to negotiate 2 million more. But the remainder will come in once the DIP lender has recourse in the form of 10.23 of the credit agreement, the call right to the non-debtor assets.

THE COURT: Thank you.

MR. REYNOLDS: Anything else?

THE COURT: No, that's nothing further.

MR. REYNOLDS: Well, then with that, Your Honor, I am gonna reserve some comments for rebuttal and see the podium to any other party who would like to speak on the bidding procedures order.

THE COURT: Thank you.

MR. MOLTON: Good evening, Judge. My name is David Molton and I'm with Brown Rudnick, and proposed counsel to the UCC. I had intended just to get up here and introduce myself to you because I hadn't been here before and it's a pleasure, Your Honor, to be here and then turn the ball or the lectern over to Mr. Jonas who was going to handle some of the, all of the arguments regarding the two motions that are on today.

But I find myself to spend just a little bit of time at Your Honor's sufferance because we heard at the very get-go from Ms. Lennox and then we heard from Mr. Reynolds before the start of this argument, preamble about how preamble should not be a part of today.

So, i.e., trying to frame the narrative. So, I just want to have a few points generally in my first appearance before you to talk a little bit about what was said today and what led us to here today.

Judge, before the Committee was formed in response to a pleading filed by asbestos claimants' counsel, I believe it was Mr. Reynolds who could have been somebody else because I couldn't really see with my eyesight because I was watching by Zoom as were some others.

But I believe somebody stood up and in response to that pleading said on behalf of the debtors, what's all the fuss here, Judge? Nonchalantly, what's all the fuss? As if there was nothing to it at all. These are simply the Debtors' claims that we're proposing to settle.

Well, you heard today from the stand from the CRO, Mr. Vomero, as he was talking about Exhibit 5, Claimants' Committee Exhibit 5; they know that it's not just that. He mentioned in response to the release issue that, gosh, I wanted to let everybody know what was coming.

Judge, your docket is now filled with what came as a

result of that. Basically, creditor scrutiny of the tenth degree as appropriate in a case like this. Even taking the Debtor and its parents, no doubt, at its word and view as to what is encompassed by an estate claim release, they can't dispute the fact that up to the instant, the instant of the Debtors filing their Chapter 11 case, the claims which the Debtor calls estate claims now, alter ego claims, successor liability claims, business continuation claims.

Those claims, up until the instant of the Debtors' filing, were the claims and remedies of asbestos claimants and other creditors under applicable law. That's the sub-text surrounding everything that has happened before and what you have seen here and the question and answers from that stand. That's the sub-text, is that this case is about eviscerating those claims.

Now, Ms. Lennox says, this is not Purdue; this is not 524(g). Well, maybe it should be 524(g). But Your Honor knows why it isn't or why they wanted it not to be. Because both 524(g) and the old, now illegal, Purdue releases required 75 percent or more Plaintiff vote in favor of the Chapter 11 plan, something they will never get, maybe not even one vote from an asbestos claimant, under their purported three-legged stool, which we just heard, gives 50 gross, maybe 35 net.

And that 35 net with the evisceration of all those estate claims is going to be used before it goes to any

claimants to pay administrative claims. We just heard that. We just heard that, that 35 or less maybe covers one or more, but not much more, of the tort system trial verdicts that one or more of the asbestos claimants have already gotten in the tort system in connection with this case and this Debtor.

Judge, there are 1,500 asbestos claimants, 1,500 that the Debtor would like to divide 35 net, and that doesn't account for the administrative take. We've heard repeated, I've heard twice, I think, Ms. Lennox today, somebody say this is more like Avon, which is a District of Delaware case, which was in front of Judge Goldblatt, who confirmed the case.

But Avon, Judge, concerned estate releases that concerned relative newcomer third-party affiliates, not like here, where we have an integrated family run for decades with, in 2013, all of the assets, all of the obligations coming to a central business entity, all the liability.

THE COURT: Mr. Molton, I don't generally interject myself in the presentation, but we are getting late. And those are, if we can stick with the bidding procedures, I realize that they're integrated with the settlement and the assets.

MR. MOLTON: I will, Judge. I just had another page. So, I'm going to say, and move quickly, but I had to remark this because of what I heard. I'd say this case is more like a Xactech (phonetic) in front of Judge Silverstein in the District of Delaware, where $10 million or probably less

settlement was abandoned after creditor scrutiny and creditor Committee objection.

And those claims quickly went to a post-confirmation trust after that settlement was blown up, so to say, by abandonment with a lot of objection. It went to a post-creditor trust, which is now running those claims in Chancery Court and seeking a billion dollars for those estate claims, those alter ego and other claims.

Lastly, and then I'll sit down, Judge, also, this case is more like the Kidde Carrier (phonetic) case in front of Judge Silverstein in Delaware, where after a vigorous investigation and vigorous mediation with Lane Phillips, the claimants came together with the non-debtor, agreed to a settlement of about $500 million or more, and that's presently going to confirmation.

Judge, all I would say is I needed to stand up in regards to some of the statements today, just level set and submit, that as we go forward from today, the evidence in the law I submit will follow the committee's positions. And that's all I had to say, and I think that was a few minutes. Thank you.

MR. JONAS: Your Honor, I really do promise to be very brief, so I won't repeat any of the remarks about what I would call our general position. I know you've heard that many times. Just to say the one sentence I'll say, just to make

sure it's tied together.

The reason I think that's so important, the general, because everything we do here requires good faith, whether it's a settlement, and we're not confused. We understand what's happening. And I appreciate we're not here on a settlement today, but if the whole three-legged stool is compromised, if you will, infected with bad faith and lack of good faith, it has to be taken in that view, which is why I keep saying this should all be taken up at a proper trial and a proper hearing in a month when we've had an opportunity to do real discovery, not just winging it with people on a stand, and then tie it all out and see where we land.

So, enough about the general. Let me just talk two minutes about the specifics. I'll just say this. I don't think the way this is supposed to work, we're negotiating live, we're being handed drafts that they tried one way, didn't work. They tried another way, didn't work. This isn't the way it's supposed to be done.

I think sometimes Courts have to call balls and strikes. So, we're here on what they last put forward. On what they put forward right now, I saw it five minutes ago, ten minutes ago; fine, I accept that.

It's not for me to negotiate and give you a number and tell you what the fee budget should be. That's not the way it works. We oppose these motions, and we oppose them because

I think the testimony on the specifics fully supports our position as follows.

A Debtor shouldn't notice up a sale of assets it doesn't own. I think the evidence supports. You'd be the first bankruptcy Judge in history, in history, to enter an order, a bid procedures order, permitting the sale of assets which a Debtor doesn't own.

There's a reason for that. It's crazy. It just doesn't make any sense. It doesn't make any sense because people don't know what they're bidding on and respectfully to all the section sites that we heard, you think bidders are going to go look at section 7.2(a)1(i)B7, and then tie back to another section and say, ah, okay, here, I can bid, and then if the settlement's approved.

It's craziness. They just want to know what am I bidding on. They don't know that today. Nobody can know that today, and they won't know until after you've heard the settlement. So, the proper way this should be done is it should be taken up after the settlement. And if the Debtor wins and the settlement is approved, we'll know what the assets are, and we can have a proper notice.

People shouldn't have two minutes and 32 seconds by the time, A, it puts pressure on you to make a decision, which I think is inappropriate, and B, it doesn't give people enough time. So, this is no way to run a process, and it's certainly

no way to keep trying to fix and fix and fix and fix.

It doesn't work. That's really all I have to say about the bidding procedures. It can't maximize value because people don't know what they're bidding on. Enough about that.

Now, I'll just turn to the DIP, and I'll be done.

THE COURT: Let me ask you one question, Mr. Jonas. You had submitted a revised bidding procedures that had addressed a couple of different issues. The one was the allocation, and then there were several requirements of the holding company and putting things on the record.

So, are you stepping back from that position that you are now saying you don't want anything, or what is your position with respect to the revised provisions recognizing the risk that was put on, saying if this blows up, if all of these, no stool. We don't have anything. We have a secured asset base now that is --

MR. JONAS: Well, I'll say this, Your Honor, and I'm not blaming anyone, but I didn't put us in that position. We're there, unfortunately, okay, but to say, oh, don't do something bad because of what I did, I don't think that's right.

I do have to say, I'd say this. I don't want to back off. We submitted something. If we got everything that's set forth in our marked-up order, we're trying to be constructive. From a litigator's point of view, I kind of regret it because

my view is you call balls and strikes.

They put forth a motion. We object. Make the call. However, I know speaking for our Committee, as we've discussed it, if the order is entered in the form we've proposed, we'll live with that.

THE COURT: Okay, I just, I want to make --

MR. JONAS: Yeah, no, I understand. I appreciate your asking. As you heard Mr. Atkinson say, he's been thoughtful about it. He thinks we can live with that as we've proposed for various reasons because it exposes the assets in a way that might work.

So, we'll live with that. However, we're not there. We proposed it. It was rejected. They tried again and again and again, and so I just have to take what I'm faced with, which is a motion and an order that's unacceptable, and we'd ask you to deny that today.

For all the reasons, and I think the testimony supports it, I mean you heard it. I won't go over it again. So, let me turn to the DIP. The DIP is also a little bizarre, and I understand why it was done because I deal with this all the time on behalf of Committees.

Debtors like to try and position and leverage and get everything in the right way, so it puts leverage on the parties. It puts leverage on the Court, and they can get the result that they want.

So how'd they do that here? Well, if the settlement isn't, that DIP and the final order, if approved, provides that. If the settlement isn't approved, it's game over. The DIP lender has a senior priority, super priority, admin claim, liens.

They get to come in and pay themselves off. They get to foreclose. They get to take the assets. So, now we heard today a new reason why that's okay. Oh, we're going to keep the budget low. Again, the way this is supposed to work is not for them to keep coming up with arguments on why it works. It doesn't work.

We should not be in a position where if the settlement isn't approved, the DIP blows up and gets to take their assets. I'm not going to spend any time on the professional fee budget. We did propose in discussions a number. I'm not going to do that.

I'll just say, and you heard lots of, I guess, testimony, Mr. Reynolds, about other cases and all that stuff. But I'll just say we shouldn't be so constricted. We'll be a little bit constricted, I guess, because we did put forth a number. But it shouldn't be a small percentage of what the Debtors' professionals have put forth. And his argument that don't worry about it because it's not a cap.

Well, if we win our motion, it is a cap. It could very well be a cap because he's saying, well, don't worry about

it because if you lose the motion, then it's not a cap and there'll be plenty of money around and you'll get paid. Well, that puts us in a directly adverse position to our client's position.

We think the settlement, as you know, we think the settlement should be rejected. We think the case should be dismissed. We don't want to be in a position where professionals are exposed in that way.

So, again, Your Honor, for all of the reasons I think, I don't think you heard any testimony that supports putting, supporting -- I shouldn't say that. I think we've had testimony that supports the position we're taking. And I just think it's, frankly, I don't think you need any testimony.

It's just commonsense. There's a reason why you'd be the first Judge in history to approve a sale of non-debtor assets. It doesn't make any sense. And with that, I'll rest, Your Honor. Thank you very much.

THE COURT: Thank you, Mr. Jonas.

Your Honor, I do just have something there to bring.

THE COURT: Certainly, Ms. Champion.

MS. CHAMPION: Sure. First of all, I just want to recognize and thank the Court and its staff for its time and consideration today, acknowledging that the Court has been on the bench, I think, since 9:30 this morning, going nonstop. So, thank you for hearing us today.

And for that reason, Your Honor, I did have about five or six pages of comments, but I'm skipping to the last page and just want to make one really crucial point here. And that is, Your Honor, when all these pieces are viewed together, the pre-petition planning, the insider relationships, the structure of the stalking horse bid, the DIP financing, the vague asset picture, and the compressed timeline, the concern is not simply that the process is moving quickly.

The concern is that the process is moving towards a predetermined outcome, that will be too late to do anything about when the facts are revealed. And if this strategy works, Your Honor, and this is my key point, Harrington v. Purdue becomes meaningless.

Every Debtor could sell assets under 363, bundle in affiliate releases for some arbitrary sale price and call it value maximization. The effect is the same here in this case. Creditors lose their claims without their consent.

And in this case, over their objection, and this is what Purdue expressly prohibits and I ask the Court not to allow such a runway for that strategy. And for those reasons, Your Honor, the United States Trustee objects and fully supports the Committee's objections and requests that this Court deny approval of the bidding procedures and DIP financing on a final basis, and require that the process have meaningful investigation and participation by the Committee to ensure that

any sale is conducted in a manner that's appropriate and contemplated under the Bankruptcy Code.

And with that, Your Honor, I'll conclude. Thank you so much.

THE COURT: Thank you.

MR. AGAY: Your Honor, David Agay on behalf of the Commodore entities. I just got up to see if you have any questions for me, since I'm the stalking horse bidder and the DIP lender?

THE COURT: I don't, Mr. Agay.

Mr. Agay, I mean, everybody's question that was intimated earlier was, you know, what is the stalking horse going to do if this blows up here today, you know, where the dates are gone and all of those things.

And I'm sure, if you were, would like to answer that question that was posed by the parties.

MR. AGAY: We're done.

THE COURT: Okay. That's what I assumed that you were going to say. But I appreciate that.

MR. AGAY: Thank you, Your Honor.

THE COURT: Certainly.

MR. HOWARD: Your Honor, George Howard, Vinson Elkins on behalf of the non-debtor parent. I, similarly, I don't want to take up any more time. Do you have any questions for me? I can tell you that what was proposed by the committee does not

work for us.

THE COURT: Thank you. Appreciate it.

MR. HOWARD: Okay. Thank you.

THE COURT: Did you have anything further, Mr. Reynolds? I know you wanted a couple minutes.

MR. REYNOLDS: Your Honor, at this time, we won't have any rebuttal, and I simply just ask for entry of the bidding procedures order and the final DIP order. Thank you.

THE COURT: It is now almost 6 o'clock. The Court has been given a lot of information this afternoon and testimony to think about. My proposal is going to be to convene by video only tomorrow at 1:30.

The Court, if it can, will make every effort to issue a decision on both, oral decision on both tomorrow at 1:30, and then we will figure out the next steps from there.

And, again, everyone can participate by video. We don't need to be in the Court.

Mr. Agay?

MR. AGAY: Your Honor, I would just ask your indulgence if I can participate by phone from an airport by video.

THE COURT: You may.

MR. AGAY: I apologize in advance.

THE COURT: I realize everyone is traveling and airports are not fun under any stretch, much less these days.

So, certainly, I appreciate that. And then, we will figure out what, if anything, needs to be done going forward after my rulings tomorrow.

Is there anything further?

Not from the Debtor, Your Honor. Thank you.

Thank you.

And thank you to the staff, Your Honor.

Thank you.

And thank you to our marshals, our CSOs, for keeping the lights on while we are here. So, with that said, all of you safe travels, and we will reconvene at 1:30 tomorrow by video.

THE COURT CLERK: All rise. Court is adjourned.

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

I, TRACY E. VERGOLLO, 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, and to the best of my ability.

/s/ Tracy E. Vergollo

TRACY E. VERGOLLO

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