Docket #0466 Date Filed: 4/24/2026

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.	.	
	.	April 16, 2026
. . . . .	.	10:00 a.m.

TRANSCRIPT OF:

MOTION TO SETTLE FILED BY VANDERBILT MINERALS, LLC (DOC. NO. 22)

MOTION TO SEAL DOCUMENT FILED BY OFFICIAL COMMITTEE OF UNSECURED CREDITORS (DOC. NO. 311)

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

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

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(Proceedings commenced at 10:01 a.m.)

(Note - Witnesses were difficult to hear)

THE CLERK: All rise. United States Bankruptcy Court for the Northern District of New York with the Honorable Wendy A. Kinsella presiding is now in session. You may be seated.

Thursday, April 16th, 2026, 9:00 a.m. -- or 10:00 a.m. calendar, Case 26-60110, Vanderbilt Minerals, LLC. We have two matters on the calendar.

Docket Number 22, Motion to settle, and Docket 311, Motion to seal document.

Please note your appearances for the record.

THE COURT: Good morning, Counselors. Why don't we start with counsel for the debtor and then counsel for the independent manager.

MR. SULLIVAN: Good morning, Your Honor.

Charles Sullivan, Grayson Walter, Bond, Schoeneck & King, counsel for Vanderbilt Minerals.

THE COURT: Good morning.

MR. BARNOWSKI: Good morning, Your Honor.

Dan Barnowski. I have with me Cindi Giglio, Marc Roitman, and Summer McKee for the independent manager.

THE COURT: Good morning, Counselors.

MR. JONAS: Good morning, Your Honor.

Jeff Jonas from Brown Rudnick. With me is my partner David Molton and my colleague Lydel Benson. Also Kevin Davis,

Lucas Self, and Wendy Barnett, have our co-counsel Caplin & Drysdale for the Official Committee of Unsecured Creditors. Thank you, Your Honor.

THE COURT: Good morning.

MR. JONAS: Your Honor, I just want to say I believe we have Committee members and/or their representatives that are attending by Zoom. There may be some here and some joining, but I just want to let the Court know.

THE COURT: Thank you.

MR. JONAS: Thank you.

MS. CHAMPION: Good morning, Your Honor.

On behalf of the United States Trustee, Erin Champion. I also have with me in the courtroom Paula Barbaruolo.

THE COURT: Good morning.

Other appearances in the courtroom.

MR. HOWARD: Good morning, Your Honor.

It's George Howard, Vinson & Elkins, on behalf of the non-debtor parent, R.T. Vanderbilt Holding Company, and the other non-debtor affiliates. I'm here today with two of my colleagues, Jamie Leader, and Lauren Kanzer.

THE COURT: Good morning.

MR. HOWARD: Good morning.

MR. LEVINE: Good morning, Judge.

Paul Levine, local counsel, Lemery Greisler, for R.T.

Vanderbilt Holdings. I filed a motion for admission pro hac vice for James Leader, and I anticipate that he will participate in the hearings. And so I would move orally for his admission as well. He's a member of the Bar of the State of Texas in good standing.

THE COURT: Thank you, Mr. Levine. That motion is granted for today.

MR. LEVINE: Thank you, Judge.

THE COURT: Thank you.

MR. AGAY: Good morning, Your Honor.

David Agay on behalf of the Commodore Entities. I think we have some people listening in on the phone. I'm happy to be here in person. Thank you.

THE COURT: Good morning.

MR. HERSHEY: Good morning, Your Honor.

Sam Hershey from White & Case for Paul Vanderbilt.

THE COURT: Good morning.

Other appearances in the courtroom?

(No audible response)

THE COURT: Hearing none, why don't we turn to appearances by video.

MR. LICHTENSTEIN: Good morning, Your Honor.

Scott Lichtenstein from Chiesa Shahinian & Giantomasi. I'm appearing pro hac vice for Zurich North America and Fidelity & Deposit Company of Maryland.

THE COURT: Good morning.

MR. STOLZ: Good morning, Your Honor.

THE COURT: Other appearances?

MR. STOLZ: Good morning, Your Honor.

Matthew Stolz of Cohen, Weiss and Simon appearing for the United Steelworkers Union.

THE COURT: Good morning.

MR. DOVE: Good morning, Your Honor.

Jeffrey Dove of Barclay Damon, local counsel for the Commodore Entities.

THE COURT: Good morning.

Other appearances by video?

(No audible response)

THE COURT: Okay. Hearing none, Mr. Barnowski, did you have an approach to proceed or should we start with the motion to seal?

MR. BARNOWSKI: Your Honor, I think you asked yesterday for an update --

THE COURT: Yes.

MR. BARNOWSKI: -- on sales process.

THE COURT: Yes.

MR. BARNOWSKI: And so debtor's counsel is --

THE COURT: Wonderful, thank you.

MR. SULLIVAN: Your Honor, thank you. Good morning

again. For the record, Charles Sullivan, Bond, Schoeneck & King, for the debtor.

Your Honor, I also wanted to supplement the appearance of my firm. My colleagues, Brendan Sheehan and Alexis Takashima are here today as well, part of the Bond team.

Your Honor, yesterday during the hearing, the Curt asked for an update concerning the sale process, and I did have an opportunity to confer with the debtor as well as Greenhill, and I'm prepared just to give a general update for the Court to apprise where we stand.

Your Honor, as the court is aware, the bidding procedures order required supplemental noticing. In accordance with the terms of the bidding procedures order, that noticing was carried out by Verita on behalf of the debtor immediately following, obviously, the entry of the bidding procedures order.

Greenhill also put together a summary of the bid procedures and the changes that were directed by the Court in connection with those bid procedures, as well as additional information that was required by the bidding procedures order that was all done in consultation with the Committee, Your Honor, and that was disseminated to all known and prospective purchasers, including a number of parties specifically identified by the Committee as potential interested parties.

So, obviously, Your Honor, that noticing has all taken place.

In response, Your Honor, I can report that there are a handful of parties that have expressed preliminary interest and are conducting varying degrees of due diligence at this time. However, at this point, the debtor has received no purchase offer and no bids, and of course, obviously, the bidding deadline, the bid submission deadline is April 24th. So, we're continuing to work that process actively, Your Honor, and that's where it stands. Happy to answer any questions the Court may have.

THE COURT: Thank you, Mr. Sullivan. That's very helpful. The Court would ask, in anticipation of the DIP hearing next week, if the Court would be provided if there's an updated budget and the status of cash so the Court could be prepared for that hearing next week as well since that's been adjourned.

MR. SULLIVAN: Of course, Your Honor.

THE COURT: Thank you.

MR. SULLIVAN: Thank you, Your Honor.

THE COURT: If we would be able to do that by the close of business tomorrow, that would be very helpful for the Court to prepare for next week.

MR. SULLIVAN: Great. Thanks, Your Honor.

THE COURT: Thank you. So, we do have the motion to seal the document that was brought by the Committee, I believe.

And then we'll turn it over.

MR. JONAS: Your Honor, I don't have anything to add to our motion. I think we've had a pretty standard practice here of trying to be respectful and file motions to seal. Thank you.

THE COURT: Certainly. And I did not see any objections to that. Obviously, everything's been on shortened time, so the Court wanted any opportunity if anyone had any objection.

MR. SULLIVAN: No objection, Your Honor.

THE COURT: Thank you. Okay. That motion is granted.

Mr. Barnowski, shall we turn it over to you?

MR. BARNOWSKI: Your Honor, the Special Committee has a short opening statement.

THE COURT: Certainly.

MS. GIGLIO: Good morning, Your Honor.

THE COURT: Good morning.

MS. GIGLIO: Cindi Giglio from the law firm of Katten Muchin Rosenman. I'm counsel to Ben Pickering, the independent manager and sole member of the Independent Special Committee of the debtor.

I'm here today on Mr. Pickering's motion for entry of an order approving the global settlement between the debtor and R.T. Vanderbilt Holding Co. and certain of its subsidiaries.

That's at Docket Number 22. Much has already been said in this Court about the settlement, but not yet by my client, the movant. We look forward to bringing our story out today and into this narrative. I'd ask Your Honor's indulgence while I spend a few minutes level-setting on what this motion is, and then I'll turn to what this motion is not.

By this motion, the Independent Special Committee asks the Court, pursuant to Rule 9019, to approve an arm's-length, good-faith compromise of estate causes of action against Holdings and its subsidiaries. I'll call those the settling parties. As Your Honor is aware, the debtor-in-possession, here Minerals, has the authority to manage its assets of the estate, and that includes causes of action. The debtor can either pursue those actions through litigation or pursue them by settling them, as we're doing here.

Here, the debtor-in-possession, Minerals, vested the Independent Special Committee with the sole authority to make that decision. Your Honor, Mr. Pickering is totally independent. He has three decades of restructuring experience. He's advised public and private companies and is a CPA, chartered insolvency and restructuring professional, and a licensed insolvency trustee in Canada.

Mr. Pickering has no prior dealings with the debtor, any of the debtor's affiliates, no parties to any lawsuits pending against Minerals, or the stalking horse bidder. He has

no connection to any professional in this case other than passing interactions over his long career with Jones Day and Brown Rudnick. He's also worked with Mr. Vomero and Mesirow Financial over a decade ago.

I personally had never met Mr. Pickering before he called me to discuss this case. He came to me at Katten because Katten routinely represents independent committees in restructuring situations, and the team that I co-lead has conducted approximately 50 of these investigations since 2020. I am no stranger to exactly what is before this Court and the seriousness of what is at stake for creditors. My career depends on my reputation, my judgment, and my credibility.

I'm an officer of this Court and I take that role very seriously. The fact that Mr. Pickering has been called a so-called independent and that his investigation has been labeled a scheme or a sham should also be taken seriously because it reflects a shoot-first, aim-later approach by the Committee that is unsupported by the record. We and Mr. Pickering, we know that our reputations and credibility are on the line. That is true every time we do one of these investigations.

The fact that the UCC called into question Mr. Pickering's integrity and my integrity within 72 hours of entering this case without so much as a phone call to discuss the investigation, it tells you what you need to know about how

the UCC has prosecuted this case. A lie repeated doesn't make it the truth. The record will bring out the truth and will demonstrate that this investigation was conducted in good faith and in a rigorous manner over the course of several months.

My team conducted nine formal Special Committee meetings, routinely connected informally with Mr. Pickering by phone, sent out detailed document requests, conducted interviews of seven witnesses, and provided Mr. Pickering with hundreds of pages of analysis that we've now shared with the parties in this case. Mr. Pickering was an active listener, participant, and was unwavering in his conviction to get a fair deal for creditors.

His goal in this case is to get a fair recovery for litigants and to do what we always hope to do in a bankruptcy, save a business, save jobs, and consummate a going concern restructuring. Mr. Pickering will testify to his thorough investigation process, the claims he identified, how we valued those claims, and why it is his business judgment that settling those claims maximizes the value of this estate.

At bottom, the settlement is a classic quid pro quo. The debtor is releasing claims against the settling parties, and the settling parties are providing valuable consideration to the debtor. If the settlement is approved, the debtor will receive the transfer of the Netzsch Mill, the transfer of all equipment and assets owned by AMT, located at Gouverneur, the

transfer of the VEEGUM plant in Murray, Kentucky, the transfer of the Lyle Mines in Arizona, including the related rights to mine saponite and hectorite, the transfer of necessary equipment.

In addition, the debtor will not have to pay Holdings under the Management Services Agreement, and the debtor will not have to pay Global Services under the Mineral Services Agreement. Global Services has also agreed to provide ongoing services to the debtor for at least six months.

In addition, upon execution of the settlement agreement, the debtor received a pre-petition cash payment of $450,000, forbearance of the annual fee due to Holdings under the Management Services Agreement, continued ordinary course of business arrangements with Holdings and its affiliates, which protect going concern value, the support of holdings and its affiliates to facilitate a smooth and economically efficient sale process.

You will hear from Mr. Pickering that he valued all of this in excess of $27 million. It was also important to Mr. Pickering that the value can be realized immediately, without time-consuming and costly litigation. And to be clear, the debtor will receive this value regardless of whether you approve the sale at a later date. In exchange for those valuable assets, the debtor will be granting releases of estate claims against the settling parties and their representatives.

You will hear from Mr. Pickering that after careful consideration of related party transactions, business dealings and alter-ego claims, he valued the claims being released using assumptions designed to create a best-case litigation scenario. And he got to $19 million at the high end.

The releases are tailored to only release estate claims against the settling parties and their representatives. They do not release any claims that the debtor may hold against its own officers or directors. The releases also do not release any third-party claims, period.

The Committee claims that non-consensual third-party releases are being granted here. That's plain false. The motion is a straightforward 9019, where the debtor seeks to release potential litigation claims for locked-in, immediately available value. The party with fiduciary responsibility to make that decision to settle is the debtor-in-possession. This is black-letter law.

Although the Committee makes arguments about Section 524(g), those arguments are totally irrelevant to this hearing. Approval of settlements does not require a creditor vote, does not require any sort of creditor approval. What it requires is that Your Honor determine that the debtor exercised its judgment and that the settlement that the debtor entered into is fair.

Congress set it up this way, and yet the creditors'

Committee demands a veto right over a debtor's business judgment simply because this is a tort case. That logic is not supported by the Bankruptcy Code or case law and impermissibly elevates the fiduciary for one group of creditors over the fiduciary that Congress chose to act for all creditors.

The Second Circuit has developed a multi-factor test to determine whether a settlement satisfies Rule 9019. Those are the Iridium factors. I'll briefly go through them.

The first one is the balance between the litigation's possibility of success and the settlement's benefits. Courts have universally recognized that this is the most important factor. And in this factor, we're looking at whether the estate will fare better by litigating than settling. Mr. Pickering will explain his investigation process, each claim he identified, the claims he thought were valuable, the claims he thought were viable, and then how he valued those.

We then consider the likelihood of complex and protracted litigation including, importantly, the difficulty of collecting on a judgment. Mr. Pickering will explain how he rigorously considered the collectability of claims, and he will explain why Mr. Atkinson's projected value of the asbestos claims against the debtor is meaningless. That analysis is only of the debtor's liability. We've found that the alter-ego's claims are substantively weak as to Holdings, nonexistent as to the Vanderbilt family, and that there's meaningful

collection risk as to Holdings.

Next, we consider the paramount interests of creditors. Mr. Pickering will explain how the settlement benefits employees, vendors, customers, and claimants. The competency and experience of counsel supporting the settlement. Mr. Pickering will testify that Katten and Katten alone advised him as to the settlement. The releases to be obtained by officers and directors. Again, Your Honor, no officers and directors of Minerals are getting a release.

The extent to which the settlement is the product of arm's-length bargaining. Mr. Pickering will testify about an all-day in-person settlement conference and rounds of hard-fought negotiations, including that he was willing to walk away from negotiating if he did not get a fair price. Much time has been spent creating a false narrative that the settlement was predetermined before the investigation had concluded.

You will hear from Mr. Pickering that it was not a secret that the settling parties held valuable assets that could form the basis of a settlement, but that's if and only if one could be reached. The stalking horse and other parties had been asking for the settlement assets to be transferred to the debtor so that they could then be purchased free and clear by the buyer. This opened the door to a potential mechanism for a settlement, but whether or not to enter into the settlement

remained in the sole discretion of Mr. Pickering. Just because a door was open did not mean Mr. Pickering had to walk through it.

The 30(b)(6) witness for the stalking horse testified at his deposition that, quote, no promises were made to him that a settlement could be reached. Much time has also been spent arguing that something like this settlement has never been done before. That's not the case. Settling estate claims for in-kind value is commonplace. As we explained in our brief, a nearly identical construct was employed years ago in the Adelphia case.

But again, all that's being considered today is the settlement. The settlement, if approved, will allow the debtor to offer its newly acquired assets at auction. If that sale is not approved or if a different sale is approved or if the debtor reorganizes around those assets, the debtor will still have achieved by this settlement a better result than it could have achieved by litigating. The settlement stands on its own.

Now turning to what the settlement is not, and I'll be brief, Your Honor. The settlement is not a Purdue end-around. This settlement does not touch, alter, or address in any way third-party claims that under Purdue cannot be settled without creditor consent. There are no third-party releases in this settlement.

In Purdue, the Supreme Court acknowledged that the

debtor could continue to resolve its own claims, including derivative claims. What the debtor could not do was impose nonconsensual third-party releases against the Sacklers. The UCC argues that the debtor is part of a decade-long litigation tactic by the Vanderbilt family, citing various allegations of misconduct. Those allegations read like the direct claims that were at issue against the Sacklers in Purdue. Those direct claims couldn't be released in Purdue, and they will not be released in this case to the extent they exist.

So what about the claims that the UCC dubs Emerald claims? The UCC argues that Emerald was wrongly decided by the Third Circuit, but that analysis has already been done by the Second Circuit, and they reach the same result as the Third Circuit. This Court is obligated to follow the controlling precedent in the Second Circuit set forth in Nordlicht.

Your Honor, just 10 days ago, the Second Circuit reinforced Nordlicht in the Clough (phonetic) case. We didn't cite that in our brief because it's recently just came to our attention. If Your Honor hasn't seen it, I'm happy to hand up a copy.

THE COURT: I've seen it. Thank you.

MS. GIGLIO: Okay, thank you.

So there in that case, the Second Circuit held that a trustee has standing under Section 544 to pursue alter ego and bail piercing claims on behalf of creditors and held

definitively under Delaware law, which is the law that governs this debtor, that those claims are general in nature. The cases are clear, and they leave no wiggle room for the arguments being advanced by the Committee.

So what is the UCC really arguing? Is it that these type of claims cannot be pursued on behalf of an estate in any circumstance? Or does the Committee just agree with the way the debtor in this case has exercised its right to settle claims on behalf of the estate? I'd submit it's the latter, reaffirming that the applicable standard is Rule 9019 and Rule 9019 only.

So where does this all bring us? Never before in my experience has a settlement motion been the subject of so much in-court discussion before it's actually been heard. We believe this was an intentional strategy to prejudice this proceeding before the evidence could be presented. But today, the evidence will be heard, and the evidence will show that this settlement was the result of a fair and careful process by the only fiduciary for all creditors, Mr. Pickering.

Mr. Pickering faced two choices, accept a settlement that brings $27 million in value into the estate now and enables a sale process with the potential for significant upside to creditors, or he could reject that in favor of a long, expensive, and uncertain litigation with significant collection risk. Mr. Pickering chose the bird in hand.

We submit that judgment was fair and reasonable and ask the Court to approve the settlement. Thank you, Your Honor.

THE COURT: Thank you.

MR. JONAS: Good morning again, Your Honor.

Jeff Jonas from Brown & Rudnick.

Your Honor, subject -- one housekeeping matter, I guess. Subject to it being acceptable to the Court, I believe, it wasn't me, but I believe the parties have agreed we'll try and get in all the evidence today, and in any event, no matter where we end up, come back tomorrow morning. Again, if it's okay with the Court to do closing arguments, I think it would be more effective and give us an opportunity to take everything in and give a better presentation.

THE COURT: Certainly.

MR. JONAS: I don't think there's any objection.

Your Honor, as for opening today, I'd like to -- I'm even more excited to get to the evidence, especially Mr. Pickering's testimony, and as soon as possible. So with that, I'll reserve all argument for closing tomorrow.

I would like to just say, Your Honor, today marks the Committee counsel's sixth week in this case. We've been drinking from a fire hose, but I would like to thank Erin Champion and Paula Barbaruolo of the U.S. Trustee's Office for

helping to keep this case on a level playing field for the early part of this case before we were involved.

But we're here today, Your Honor, and ready to go forward. Thank you.

THE COURT: Thank you, Mr. Jonas.

Mr. Barnowski?

MR. BARNOWSKI: Thank you, Your Honor.

The Special Committee calls Eric Mendelsohn to the stand.

THE CLERK: Please come forward and be sworn in. Please raise your right hand and state your full name and spell your last.

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

ERIC MENDELSOHN, SPECIAL COMMITTEE'S WITNESS, SWORN

THE CLERK: You may be seated.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. BARNOWSKI:

Q Good morning, Mr. Mendelsohn.

A Good morning. I know you've testified here before. I won't make you go through all of the introductions and everything, but could you just give us a brief reminder of what your role in this matter is?

A Yes. I am a managing director at Greenhill Company. We serve as the company's investment banker, helping them raise DIP financing and work through the sale of the company's assets.

Q When were you engaged in this matter?

A In August of 2025.

Q And what were you specifically asked to do at that point?

A Just our broader engagement or right at that moment?

Q Let's talk specifically about the sale. What were you asked to do with respect to a sale?

A Yeah. So we were asked to first do diligence and pull together information around the debtor's assets, the debtor's business, look at the projections, and pull together an information memorandum that would describe the company's operations so that we could market the business to potential buyers, also come up with a list of potential buyers, including financial sponsors and strategic --

Q When did you first have contact with potential buyers in this matter?

A We went out first to look for DIP financing, and that was in early October. It wasn't meant to pre-run the sale process, but a couple of parties we contacted actually expressed an interest in buying the assets. So a few parties sort of tried to jump the line a little bit. That would have been in October. We didn't launch the formal sale process until early

November.

Q When did you first hear from a potential buyer or lender that they wanted the Holdings assets that are at issue in this hearing included in any sale?

A Yeah. That would have been in the latter half of October.

Q Did that surprise you?

A It did not.

Q Tell us why.

A As I've testified before, the assets in question, the non-debtor assets, are really critical to the operation of the VEEGUM family of products. And the processing plant that takes those raw materials and turns them into VEEGUM is actually owned by a non-debtor. And all the parties that have done diligence and want the VEEGUM asset recognize the strategic importance of owning it.

So at that point in time, certainly we started to receive feedback from potential buyers and lenders that they would like to have those non-debtor assets be part of the sale or part of the assets on which they would lend money.

Q Have you heard similar statements from all other parties who have provided an indication of interest in a material portion of Minerals' assets?

A Yes. So the indications of interest we've received, all written interests that had looked at assets, substantially all

the assets. They weren't for discrete, smaller properties. Every single one of them was either verbally or in their letters told us that they wanted those assets.

Q Have you reported that fact to the board of Minerals?

A Yes, I have.

Q Was Mr. Pickering present at those board meetings?

A Yes.

Q Have you formed any opinions on whether the debtor's estate is better off with these Holding assets in the estate, even if the ultimate sale process does not go forward?

A Yes.

Q Can you expand upon that a little bit?

A Yes. I believe that those assets do have real value to the estate and also are, at least in our experience, in the sale process we have run, have been very important to bidders in order to maximize value. I will not opine on to the relative value in terms of the settlement. That's not my area of expertise or what I was tasked to so.

MR. BARNOWSKI: Okay, thank you. No further questions.

MR. JONAS: No cross, Your Honor.

THE COURT: Thank you. You may be excused. Thank you.

(Witness excused)

MR. BARNOWSKI: The Special Committee calls Ben Pickering to the stand.

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

MR. PICKERING: Ben Ross Pickering, P-I-C-K-E-R-I-N-G.

BEN PICKERING, SPECIAL COMMITTEE'S WITNESS, SWORN

THE CLERK: You may be seated.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. BARNOWSKI:

Q Good morning, Mr. Pickering.

A Good morning.

Q Because I've sat with you before and I sat through your deposition, I'd like to remind you that you are a little bit of a soft talker.

A Yes.

Q So if you could lean into the mic or maybe project a little bit so everyone can hear you, okay?

A Yes, if you have any trouble hearing me, please. I get reminded of this all the time. I am a fairly soft talker. I may I also ask about being able to stand at times.

MR. BARNOWSKI: I should tell Your Honor, Mr. Pickering has a back issue and he occasionally has to stretch it out, if that's okay.

THE COURT: Absolutely.

THE WITNESS: If that's okay.

THE COURT: Certainly.

THE WITNESS: Thank you.

THE COURT: And we can take a break if necessary.

MR. BARNOWSKI: Okay. Thank you, Your Honor.

BY MR. BARNOWSKI:

Q Mr. Pickering, why don't you introduce yourself to the Court?

A Sure. My name is Ben Pickering and do you want me to give my background?

Q That will be my next question.

A Okay.

Q So go ahead and give us your background.

A I sort of jumped the gun.

Q Give us your professional background, if you would.

A Sure. My name is Ben Pickering. I am -- all of the designations that I'm about to mention I am retired from. I am a chartered accountant and a CPA from Canada. I am a Chartered Insolvency Restructuring Professional, the designation in Canada given by the restructuring association there.

I'm a licensed trustee in bankruptcy. Sorry. I am a licensed trustee in bankruptcy. I also did all of the courses and completed it for the CIRA, which is the U.S. designation, but I didn't -- I didn't submit the -- I passed all the exams.

I didn't submit the papers because I just didn't think it was necessary for me to have another designation.

And I have -- my experience in doing restructuring work has been for over 30 years.

Q How many restructurings have you worked on?

A I -- it's numerous. I can't begin to tell you how many.

Q Dozens upon dozens?

A Yes.

Q Walk us through the jobs you've held.

A Sure.

Q I don't need to know, like, when you were a waiter in college or anything like that, just your professional job starting with, why don't we start with Ernst & Young.

A Sure. Can I go chronology from the oldest to?

Q Sure. Absolutely.

A -- (indiscernible). Sure.

So I began my career with Pannell Kerr Forster, and that was coming out of university. Pannell Kerr Forster was where I started to do audit work initially as part of getting my designation. From there, Pannell Kerr Forster became Pannell Kerr MacGillivray. I then switched into working in their restructuring group after three, three-and-a-half years of doing audit work, and I've been in restructuring basically ever since.

From there, I went to Deloitte Touche. After four-plus

years at Deloitte Touche, I got an offer to join the province of Ontario in their privatization secretariat, which was looking at restructuring and selling businesses that were owned by the province. After my time there, which was a one-year contract that they extended and asked me to stay for 18 months, after that, I went to KPMG. Ultimately, I worked at KPMG in the restructuring group.

From there, I transferred to the U.S. KPMG group to help with things that I had been helping with already, but then to make the permanent move to the U.S. And then because of (indiscernible), the KPMG restructuring practice, like many others, had to spin off. So we spun off to he Mesirow Financial and became Mesirow Financial Consulting, where I continued doing restructuring working with Mesirow Financial.

And then I left when I got an offer to join Ernst & Young in their restructuring group. And I was there for 12 years. And then I reached the mandatory retirement age in the partnership, and I retired in June of 2020.

Q And what have you been doing since then?

A Dealing with two bouts of sciatica for the first year. And then I started to take on these director record roles.

Q And how many boards have you sat on?

A In director roles?

Q Correct.

A Two. For -- in the business sense, two. But I've also

sat on nonprofit and charitable boards.

Q Have you ever worked with the debtor before?

A I have not.

Q How about any of the debtor's affiliates?

A No. No.

Q How about any of the Vanderbilt Entities or the Vanderbilts themselves?

A No, I have never worked with them.

Q When were you engaged by Minerals?

A I was engaged by Minerals, I know I was approved to join the board in September, but through engagement letters and things, it wasn't until October that I --

Q Of 2025?

A Of 2025.

Q Do you know, are you aware of who recommended you to serve as an independent counsel -- I'm sorry, independent director.

A Yes, it was Mr. Vomero.

Q And do you have a friendship with Mr. Vomero?

A Mr. Vomero and I worked together at Mesirow Financial Consulting, again, over 15 years ago.

Q Okay. Have you -- are you social friends with Mr. Vomero?

A I mean, we speak. We don't -- you know, our families don't hang out together or, you know, we don't go golfing together or anything like that, maintain a connection.

Q Have you worked together at all with Mr. Vomero in the

last 15 years?
A No.
Q When you were engaged by the debtor, what were you asked to do?
A So I was asked to, specifically to look into the intercompany relationship, transactions, and investigate any potential claims that were there.
Q Were you told what result the company or its lawyers wanted you to reach?
A Absolutely not.
Q Were you instructed that Holdings was demanding a release?
A No.
Q Were you instructed that the Holdings facility in Lyle and Murray needed to be part of any settlement?
A No.
Q Did you become aware that buyers later on in board meetings, that buyers were interested in including or having some of the Holdings assets part of any sale effort?
A Yes.
Q That wasn't a secret?
A No.
Q Are you aware, sitting here today, that there was consideration in 2024 of those assets being transferred to Minerals?
A Yes.

Q And are you aware why that didn't happen in 2024?
A Yeah. I became aware of the fact that their lending facility at Holdings with wells, they had a consent right. And that that consent right was not granted and, therefore, they couldn't complete the transaction.
Q So it wasn't any scheme or conspiracy to set up a bankruptcy filing. It was the bank that held consent rights that refused to give them?
A That's correct.
Q Were any limits -- strike that.
What is the authority of the Special Committee?
A The authority is to, again, to review, investigate, and settle any intercompany claims.
Q Do you have, and the Special Committee, have the full authority to investigate and settle claims?
A Yes, full authority. I didn't need the rest of the board's approval.
Q Were any limits placed on your work?
A No. No limits at all.
Q Did you have any goals in mind when you began your work?
A Well, the first goal was to sort of understand what those intercompany relationships with or were, and then obviously to hire counsel and understand what all of the potential claims could be.
Q And did you hire counsel?

A Yes, I did.
Q Who did you hire?
A I hired Katten.
Q Why?
A I based that on, I did some search on what kind of firms I could consider, and I looked at firms that either I knew or I had good experience, and I narrowed it down to two, and chose Katten based on their experience.
Q Did you interview both of those firms?
A Yes, I did.
Q And based on that interview, you made your choice?
A Yes.
Q Did you undertake an investigation of potential causes of action or claims that Minerals might have against any of its related parties?
A Yes. Can you repeat that just to make sure I --
Q Yeah, did you undertake, did the Special Committee undertake an investigation of potential causes of action or claims that Minerals might have against related parties?
A Yes.
Q Did the debtor place any limitations on your investigation?
A No.
Q Were you told you couldn't, you were not allowed to delve into any topics?

A No. I was never told I had --
Q Were you told that you were not allowed to interview any people?
A No.
Q Did anyone other than Katten help in your investigation?
A I received input from, Katten did most of my investigation assistance, but I did get help obviously from Mr. Vomero and input from Mr. Mendelsohn where I needed them.
Q And when you talk about the help you got from Mr. Vomero, is that help understanding certain background facts?
A Yes. Again, as I mentioned, you know, one of the things I wanted to understand was what were the intercompany relationships, what were the transactions. And we spent a great deal of time so that I could understand what they were.
Q Did he ever attempt to influence what a settlement might look like?
A No.
Q Let's walk through what you did to conduct that investigation. Did the Special Committee serve document requests?
A Yes.
Q Did the Special Committee serve document requests on Minerals?
A Yes.
Q How about on Holdings?

A Yes.
Q Has the Special Committee continued to look at all documents produced leading up to this hearing?
A Yes.
Q Did anyone at any time refuse to give you any materials that you asked for?
A No.
Q Did your team request and review all board minutes of Minerals?
A Yes.
Q All associated presentations to the board?
A Yes.
Q How about of Holdings?
A Yes.
Q Did the Special Committee conduct interviews?
A Yes, they did.
Q I don't want this to turn into a memory test, but if you can, tell us who was interviewed.
A Sure. The parties interviewed were Mr. Don Orpilla, who was the CFO of Holdings, Mr. Brad Johnson, who is the President of Holdings, Mr. Jeff Brohel, who is the Chief Legal Officer, General Counsel, I guess, and a member of the Board of Minerals.

I also asked for interviews of Ted Kryspin, who is the Treasurer at Vanderbilt Global Services, and Mike Cafarchio,

who is the Comptroller at Vanderbilt Global Services. And then, of course, Mr. Vomero.

Q How many times was Mr. Vomero interviewed?

A Four times.

Q What were the goals of those interviews?

A Again, they were all exploratory goals that related to understanding and exploring intercompany matters, whether that was transactional approvals, interactions. All nature of things.

MR. BARNOWSKI: For the record --

THE COURT: Certainly.

MR. BARNOWSKI: May I approach, Your Honor?

THE COURT: You may.

MR. BARNOWSKI: For the record, I'm handing the witness what's been premarked as Special Committee Exhibit 8.

(Pause)

THE CLERK: Special Committee Exhibit 8 marked for identification purposes.

(Special Committee's Exhibit 8 marked for identification)

MR. BARNOWSKI: Oh, I'm sorry.

THE COURT: Thank you.

BY MR. BARNOWSKI:

Q Have you had a chance to look at that, Mr. Pickering?

A Yes, I have.

Q Does this accurately reflect the Special Committee

meetings that occurred in the course of your investigation?

A It does reflect all of them, yes.

Q And the interviews?

A Yes, and the interviews.

Q How many times did the Special Committee meet to discuss the progress of the investigation before any settlement negotiations occurred?

A Formally or informally?

Q Well, let's start -- that's a fair question. Let's start formal meetings of the Special Committee.

A I believe there were nine.

Q And when you say informally, what is it you're talking about?

A We had numerous conversations and discussions regarding different facts and updates, et cetera, that weren't part of formal meetings.

Q Okay, so this may be stretching your memory a little bit, but can you give us an estimate of how many such informal meetings you had with your team?

A There would be numerous because we could be talking a couple times a day or a few times a week or I couldn't tell you how many times it was.

Q Do you think it's more than 50?

A I don't know, but I would say yes.

Q Are you aware that the UCC was eventually appointed and

chose counsel on March 6th?

A Yes.

Q Four days later, the UCC filed a brief accusing you of not being independent and of conducting a sham investigation. Had they ever met with you before that?

A No.

Q Had they even talked to you?

A No.

Q Had they received any discovery from you?

A No.

Q How did that make you feel?

A Well, it didn't really feel very good, obviously. I mean, this is my professional reputation on the line. And, you know, accusations like that are very serious.

Q Was your investigation a sham?

A Absolutely not.

Q So let's talk about some of the things you looked into. Intercompany agreements. Does Minerals have management services agreements with anyone?

A Yes, they do.

Q Okay, what services are provided pursuant to those agreements?

A So there is a management services agreement with Holdings for executive services and management-type services, which would include, again, the executive office, which would be CFO,

CEO.

Q So there's an agreement with Holdings --

A Yes.

Q -- pursuant to which Holdings provides management services?

A Yes.

Q Is that fair?

A Correct.

Q What about, is there an agreement with Global Services?

A Yes, there's an agreement with Global Services called Vanderbilt Global Services.

Q So we've talked in this courtroom before, I've heard mention of who Holdings is. I don't know that we've ever talked about Global Services. Who is Global Services?

A So Global Services, typical of a structure like this, it's the back office. So they would provide accounting, treasury, IT. It's typical for a centralized service to be set up like this.

Q And are those services provided in both of those arrangements, the Holdings and the Global Services, pursuant to a written contract?

A Yes, they are.

Q Does Minerals, let's start with the Holdings management services agreement. Does Minerals benefit from this arrangement?

A Yes, it does.
Q How?
A Well, it allows it, first of all, let's do things like strategic direction. They will provide input on strategic direction, right? They provide -- they will provide input on strategic direction. They have, obviously, the CFO services, which is important for management.

They'll provide access to insurance and access to decisions regarding capital expenditures and business, major business decisions like that.
Q And is Holdings paid for providing those services?
A Yes, they are.
Q Did you determine that the amount paid was reasonable?
A Well, there's two types. There are services that are costs so, for example, insurance. They'll structure insurance programs to cover the entire organization, and an allocation will be made to them for their portion, which, again, upon review, I asked Mr. Vomero to do, that appeared to be reasonable.

And then there is a more global charge provided for their services, which was initially $2 million.
Q And what is it -- has that been changed over the years?
A Yes, and it was recently changed to $750,000.
Q And that's the profit that's earned on the provision of the services? Is that fair?

A Correct, yes.
Q Is that customary in management service agreements like that?
A Yes. Yes, it is.
Q And what is global services paid for its services?
A So, again, all of these services are charged back to Minerals at cost. And as I mentioned, the services that they provide would be things like accounting and treasury and IT, basically all back-office-type services.
Q And how is Global Services paid for those?
A Again, via the agreement, it's an allocation of their costs at 29 percent to Minerals.
Q Okay, can you explain that in a little bit more detail?
A Yes. The allocation is done because Global Services will have their costs as a total bucket, but they provide services to not just to Minerals, but also to Vanderbilt Chemicals, which is a separate division as well. And so they must allocate their costs.
So they allocate it as, sorry, I think I said 21 percent, 29 percent.
Q Twenty-nine percent.
A To Minerals and 71 percent to Chemicals.
Q And does that cover all of the work done by Global Services?
A Yes, it does.

Q And why 29 percent, do you know?
A They did a study back in, it was 2018 or 2019, regarding effort and time spent on the various organizations, and that study was completed and determined a 29/71 percent split.
Q And who pays the 71 percent?
A That's paid by Chemicals.

Q And did you determine that that was reasonable allocation?
A Yes. Yeah, based on the services that they got. Again, I asked Mr. Vomero his help since he was in the weeds of that understanding.
Q Does being a party to those agreements save Minerals money?
A Yes, it does.
Q How?
A When you're looking at it, again, organizations of this type that use the nature of these services are typical. In order to do that, it allows, for example, let's use Global Services as an example. If you didn't have Global Services, each of the subsidiary entities would have to have their own accounting group, their own treasury group, their own IT group.
And when you have all these at one level of services that you provide for the entire organization, then clearly it saves money because you're not duplicating duties among subsidiary entities.

Q I'm going to ask you, you talked a little bit about the management services being provided by Holdings. Let's put that in a little corner and move on because I'm going to come back to that a little later, okay?

A Sure.

Q Does Minerals do any of its own management services?

A No. No.

Q It has a board?

A It has a board.

Q Does the board make decisions about the conduct of the business?

A Yes, it does.

Q And walk me through --

(Knocking sound)

MR. BARNOWSKI: Can I proceed?

THE COURT: Please.

BY MR. BARNOWSKI:

Q Sorry about that. Can you walk me through -- well, strike that. I'll move on.

Was it your determination that these arrangements were fair and reasonable?

A Yes.

Q Did your investigation find any expenses that were allocated to Minerals that were inappropriate?

A We found some that we were questioning, but we didn't see

anything that was significant.

Q So just to drill down, the company has airplane expenses, correct?

A It does.

Q It has country club expenses, correct?

A It does, yes.

Q And those are split on a 71/29 percent share? Is that right?

A Correct.

Q So tell me how it is that the use of the company airplane can benefit Minerals?

A So the company airplane is used to visit the various mining sites, which are important. There's four different mining sites that all feed into the production of sort of -- there's more than four -- four that feed into VEEGUM. And then there's also Dixie and Standard and Gouvernard, all just names of their regions, all of which have different mining sites.

So the plane will take executives to those mining sites to review those sites, to look at operations, to consider capital improvements and capital expenditures, et cetera.

Q Are those sites located close to major United States airports?

A Not that I understand.

Q Did your team actually drill down on flight logs and things of that nature?

A Yes, we did.
Q Did you ask follow-up questions about the nature of certain flights to certain places?
A Yes.
Q And did you conclude that those expenses were reasonable?
A So again, the expenses were -- especially those where there were sites involved were reasonable. There were some that we had questions about as to why the plane was flying there.
Q Like give me an example.
A I believe it was maybe Augusta or something to that effect that they were taking the plane to.
Q Augusta, Georgia?
A Yeah.
Q And what did you learn about why the plane goes to Augusta, Georgia?
A I think it was for going to attend the Masters, I think.
Q Okay. And was that a business development expense?
A It may have been.
Q How much of all of the flights you found that you had questions about, what was the total value of -- strike that.
You looked at every flight --
A Yes.
Q -- taken over 13 years?
A Yes.

Q And how many flights, how much at issue did you find where you just weren't completely confident that that was a flight that was used to go to a Minerals site?

A Well, the cost that was allocated to Minerals for each of these flights could have been perhaps somewhere around $11,000 on average. And when we looked at where there was questions around where those flights were going to, it totaled something less than $200,000.

Q Over the course of 13 years?

A Over the course of 13 years.

Q And you're not saying that those were bad expenses, you just weren't completely confident?

A Right, yeah.

Q Walk me through what you learned about the company's cash management system.

A So, the -- sorry, just take a drink of water.

The company operates on a unified cash system, which is fairly typical, again, for large organizations. I've been involved with organizations that do this similar to this system.

What happens in a unified cash management system is when subsidiaries -- and we talk about all the subsidiaries. When subsidiaries receive payments, that cash comes into that subsidiary's bank account so that it's clear as to who that cash belongs to. And then typically at the end of the day, the

cash management system will sweep that up to a unified account where all of the cash is held together.

Then when payments are made, the payment goes through the system to be processed. Cash is then moved down into the subsidiary to satisfy the payment amount. Again, all of this is very typical for how unified cash management systems work.

Q Why? How does Minerals benefit from that?

A Well, Mineral -- has Minerals benefitted from that?

Q Yeah.

A Yeah. They don't have to have their own treasury folks to deal with making payments, et cetera. It can all be done out of one centralized system.

Q Did the company systems maintain diligent records of all money that was swept, who it belonged to, and all money that was then paid?

A Yes, it did. Every transaction was identified as to who the money was coming from at the Holding level and who the money was going out to.

Q Did you conclude that this arrangement was fair and reasonable --

A Yes.

Q -- for Minerals?

A Yes.

Q Was there some sort of system issue that you learned with respect to the tracking of the funds that were owed and owing

by the various parties?

A Yes. Yeah, one of the first things that Mr. Vomero pointed out to me when we spoke about the intercompany activity was how the SAP system had faults. Fault not in the sense that it wasn't recording things accurately as far as the cash in and cash out.

But most systems that I've seen, when you have cash coming in and it goes up to the global holding, when you make a payment, that payment will then come back out of the intercompany balance between the two. Unfortunately, the system didn't operate in that fashion.

Q How did it operate?

A It operated where it looked at exactly who distributed cash or received cash. And as a result, you ended up with continuously growing balances over the 13 years that were not reflective of who really had a balance at the end of the day.

Q Were the records accurate? Did they accurately track the movement of money?

A They -- yes. As I said, they accurately tracked the movement of cash and who it was for, just that they didn't properly net those transactions.

Q Let's break that down. That's a little complicated. How much time did you spend trying to understand the systems?

A I don't know how much time, but I spent a good amount of time, and Mr. Vomero spent a good amount of time explaining it

to me.

Q And earlier, you mentioned that Mr. Vomero was interviewed four times. Is this one of the reasons why he was interviewed four times?

A Yes. Yes, because Mr. Vomero was really the one who understood the system.

Q Okay. And they have been using this cash sweep system and management system since when?

A I believe since 2013 --

Q Okay.

A -- (indiscernible).

Q So, just to break it down, on any given day, let's say a million dollars, I'm just using a round number, is swept out of Minerals account to the centralized system. How is that recorded by the system?

A Okay. So, the system records that as a million dollars receivable. At Minerals, I'm talking about at Minerals at the debtor. They would record that as a million dollars due from Holdings.

Q So, Minerals would have a million dollar receivable on its book for that sweep?

A Correct.

Q Okay. Now, let's say Holdings used $900,000 of that, I know these are big numbers, but to pay employees of Minerals. How would that be recorded with respect to Minerals?

A Okay. Again, this is where the system issue is pretty clear to explain. Again, VGS, which is the Global Services Division, would indicate how much money they needed for payroll.

So, let's use your example of $900,000. Holdings would send $900,000 to Global Services. That's $900,000 of Minerals million dollars -- million dollar sitting there. They would send that over to Global Services. That step was recorded as amount paid from Holdings to Global Services.

So, now Global Services owes Holdings, according to the records, $900,000. And because they're paying that for the benefit of Minerals, then the system recorded that Minerals owed Global Services $900,000 for that payroll.

Q Okay. So --

A You can see where this is becoming a problem.

Q So, you've got a million dollars swept out to pay employees. A typical company, I assume, would reflect that as $100,000 receivable of Minerals. Because a million was taken out, $900,000 was used to pay employees.

A Again, in the systems that I've seen, you have that netting exercise, which would then reduce the balance due from Holdings because it's used some of the Minerals money to pay for payroll.

Q But the system that was used for Minerals reflected a million dollar receivable of Minerals and a $900,000 payable of

Minerals. Is that right?

A Just to make sure, I'm going to restate that.

Q Yeah.

A So, at Minerals books, it's going to still show a million dollars receivable from Holdings and it's going to show a $900,000 payable to VGS. Meanwhile, the payroll has been paid.

Q But it's a payable of Minerals, correct?

A Minerals to VGS and receivable from Holdings. But again, the net effect is that it should really be $100,000.

Q Sure. And this was done for 13 years?

A For 13 years.

Q And cash was swept how often?

A Daily.

Q And so, over the course of 13 years, did those totals build up?

A Yes, they did.

Q How big did they build up?

A If you look at -- I don't know if you have it, but if you look at the 2024 audited financial statements, in there, there's a schedule that shows all the balances. And Vanderbilt Minerals had, let's call it $500 million in a receivable and $500 million in a payable.

Q Now, there's been a lot of discussion in this courtroom about a global netting exercise. Was the global netting done

as a result of this system's limitation?

A Yes, correct.

Q By the way, this system's limitation, was it something that Minerals caused? Let me simplify the question. This was a system's issue, not a Minerals employee issue or a Holdings management issue.

A Correct.

Q Correct?

A Correct.

Q Okay. The global netting exercise was an attempt to accomplish what?

A It attempted to accomplish, again, when you go to a unified system that's properly being recorded, it actually fixed the entries so that they would properly be reflected, as you would see in most global systems that get recorded correctly.

Q And before we get too deep into the global netting exercise, I noticed in the interview summaries that were provided to you, which we'll talk about a little bit later, there was an attempt by the Special Committee to interview a whole number of officers and directors about the basis for that global netting. Is that fair?

A Yes.

Q And did those people, were they able to answer those questions?

A For the most part, no.
Q Who was able to answer those questions?
A Mr. Vomero.
Q Why was Mr. Vomero able to answer those questions?
A Because he was tasked with trying to understand and correct the system flaw.
Q Were any of those officers and directors you interviewed, other than Mr. Vomero, involved in that global netting process?
A Not at all.
Q Okay. So in the global netting exercise, what was done in the most simple terms that you can? Because I'm not very bright and I'm not an accountant. What was done to balance out or take care of those buildups?
A What steps were taken or --
Q Yes.
A Yeah.
Q Well, start from a global, to overuse the word global. What was the result? And then walk me through how it got there.
A Sure. Basically, the end result was to bring the balances in line with their proper reflection of how they should be recorded. So you ended up with a net balance. I think Mr. Vomero, again, I'm not criticizing Mr. Vomero for the work that he did, but he looked at 4 years as opposed to 13 years of the exercise.

So in the 4 years as he reconciled that, I believe the balance he ended up with was, if you can correct me, I think it was $14 million.

Q And what you mean by that is there was a receivable still owed to Minerals of $14 million. Is that right?

A Yeah. Yeah. Which makes sense because, again, they're transferring their cash up to Minerals.

Q And just to be really simplified, did the global netting exercise effectively take the amounts that we used, an example of $900,000 that was a payable of Minerals, and set it off from the million dollars that was a receivable Minerals?

A Absolutely.

Q And did that better reflect the reality of the transactions if the system had functioned properly from the beginning?

A It did.

Q Did you conclude whether there was anything wrong -- well, strike that.

Did your team try to assess whether there was anything wrong with taking setoffs like that?

A As far as how that came together, I mean, yes, I asked my -- I asked my team to take a look at how that transaction or the steps of that transaction worked.

Q Did you take a look at the transaction?

A Yes, I did. Yeah.

Q And did you conclude there was anything wrong with taking setoffs like that?
A There was -- no, I concluded there was nothing wrong.
Q Tell me why.
A Well, in the steps that were taken, the balances that were sitting at the various subsidiary entities were transferred from that subsidiary, excluding Minerals, transferred from that subsidiary to Holdings in order to accumulate the total balance. And then that amount was set off against the total balance that Minerals owed to Holdings.
Q And did you and your team attempt to determine whether this could be considered a constructive fraudulent transfer?
A Yes, we did.
Q Do you know what a constructive fraudulent transfer is?
A Yes, I do.
Q Why did you -- I assume you concluded it wasn't a constructive fraudulent transfer?
A Yeah, it was not a fraudulent -- a constructive fraudulent transfer.
Q And why is that?
A Well, there was reasonably equivalent value exchanged for the transaction. And also, as a preference -- I may have these backwards, as a preference, setoffs are allowed. This was not a transfer, this was a setoff.
Q Let's break that down. I think you answered a question I

didn't even ask yet.

A I'm sorry.

Q So, on the constructive fraudulent transfer, why did you determine that reasonably equivalent value was exchanged?

A Well, because you have all of the services -- again, using the example I gave of the -- or we gave as the payroll example, right? They received -- you know, they obviously were able to pay their employees. So, setting it off against the balance that was owed from Holdings, which was effectively the cash that they had used to pay their payroll amount, was reasonably equivalent value. They got good value for what was being set off.

Q And there was a dollar-for-dollar setoff of amounts owed and amounts owed to, correct?

A It was dollar-for-dollar for these transactions, yes.

Q What about, you mentioned a preference. Did your team and you try to understand whether this could be considered a preference?

A Yes.

Q And what did you conclude?

A My understanding is that setoffs are not -- for insiders outside of the 90-day setoffs, are not considered preferences. This was a setoff. And transfers would be, this was not a transfer, this was a setoff.

Q So, a setoff is not a transfer under the Code.

A Right.
Q Is that --
A Right.
Q Okay. Now, let's just take a step back and look at the -- putting aside the law, was this global netting exercise actually beneficial to creditors of the estate?
A Yes, it --
Q Did it benefit them?
A Yes, it was.
Q Tell me why.
A Well, if you didn't do this exercise, and let's just look at the four years of transactions that occurred. If you didn't do this and you assumed that those payables were due and owing to the subsidiaries, you would have added $127 million to the claims pool. And if you take an example, do you mind if I keep going?
Q Yeah, absolutely.
A If you use, I know the Committee asserts $500 million of liabilities, let's just go with that number for a moment. The 500 plus the 127 million, you'd have a $627 million claim pool. If you had, let's assume that the sale can still go forward at $50 million, the result would be that 20 percent of that value would go to Holdings, which would be $10 million, which I don't think is the correct thing to do.
Q Okay. But as part of the transaction, you're also wiping

out or setting off a receivable.

A Correct.

Q Why doesn't removing the receivable hurt the creditors?

A Well, again, part of what I want to make sure we drill down on is whether or not the claims were considered to be valid. We wanted to understand if there were claims, how much would those claims be worth.

And so I want to ask an exercise of how much value is sitting at Holdings, including its subsidiaries, excluding Minerals. And the answer that we got from Holdings was less than $5 million. I think they stated it was 3 or 4 million dollars. We had that stated a few times.

Then I asked Mr. Vomero to go through an exercise of deconsolidating the financials, basically taking Minerals out of the operations to understand what that profit would look like.

Q You're getting ahead of me a little bit.

A I'm sorry. I'm sorry.

Q We're going to talk later about how you valued a potential collection with Holdings or against Holdings. In terms of the reduction of that receivable, how much of that receivable, if it was left on the books, could have been collected from Holdings in your analysis?

A Very little.

Q Are we talking single digits?

A Yes.
Q I mean, I didn't mean a dollar. Are we talking a couple million dollars at most?
A Under -- yeah. I mean, you'd have to make some pretty -- you'd have to make some pretty aggressive -- not aggressive, I'm trying to think of the right word. You'd have to make assumptions that the Holdings business could survive to start with. If you said they could survive, then, yeah, the recovery you would get would be in the single digit millions.
Q Less than the $10 million that would go out of a sale to satisfy the payable?
A Correct.
Q How long did you spend, you and your team, getting to the bottom of the global netting exercise?
A Oh, we spent numerous hours.
Q And did Jones Day guide you in that process?
A Absolutely not.
Q Did the Holdings board guide you in that process?
A No, not at all.
Q Did the Minerals board guide you in that process?
A No.
Q Was this a sham, your determination?
A No.
Q After all the setoffs going in both directions were reconciled, what was the final tally of what Minerals was owed?

A Minerals was apart from the note?
Q No, I'm just talking about the setoffs.
A The setoffs, yeah. That balance owing, again, I believe at that time was approximately $14 million.
Q Okay. And did you -- we're going to get later to how you pursued claims, but did you pursue that $14 million as part of the settlement?
A Yes, that balance as it was at the time. Yes.
Q And who owed the $14 million?
A Holdings. At the settlement time, if I may break it down, it was Holdings and Vanderbilt Worldwide.
Q So there was a piece of it owed by Holdings and a piece of it owed by Vanderbilt Worldwide?
A Correct, yeah.
Q Okay. I think that's another entity we haven't really talked about before. Just tell us who Vanderbilt Worldwide is.
A Sure. Vanderbilt Worldwide is a, I believe, a UK entity. That entity, my understanding is, was established to provide global sales support, but really didn't come to be as beneficial as they thought it was going to be.
Q Was it still in business?
A Yes.
Q Active business?
A Yes.
Q Of the $14 million, how much was owed by each entity,

Holdings and Worldwide?

A 6.4 million dollars from Worldwide. Again, it was stated in euros, so converting, you'd have to get 6.3, 6.4 million dollars. And then $7.6 million was owed from Holdings.

MR. BARNOWSKI: Your Honor, may I approach just to get the easel?

THE COURT: Yes, you may.

THE WITNESS: I'll stand if you --

THE COURT: Certainly.

(Pause)

BY MR. BARNOWSKI:

Q All right, so $14 million receivable owed to Minerals, correct?

A Correct, yes.

Q That's probably the most effective demonstrative I've ever done.

A Yeah, I'm glad you wrote it large today.

Q In your investigation, did you also learn that Minerals was owed an outstanding promissory note?

A Yes.

Q By whom?

A Holdings.

Q And when was that promissory note issued?

A It was issued in 2013.

Q When is it mature?

A Eleven years from now, 2037.
Q So it's not due for 11 more years?
A Eleven more years, yes.
Q Is it in default?
A No, it's not.
Q So payments are being made on it?
A Payments are being made in accordance with the schedule.
Q So, just to make sure I understand, you couldn't sue on this promissory note for a breach?
A No.
Q Do you have any ability to collect $27.9 million in a legal sense right now?
A No.
Q Could Minerals demand payment on it?
A We did in the negotiation.
Q Legally?
A No.
Q Could you do anything to enforce it?
A We could.
Q The amount of that is how much?
A At the time of the -- so it's $27.9 million today. At the time of the negotiation, it was 28.3. The 27.9 reflects the $450,000 of cash that we received as a result of the settlement negotiation. But at the time, it was 28.3.
Q And now it's how much?

A 27.9

Q Let's go back to your investigation. Did your team attempt to analyze whether there were other viable and valuable claims?

A Yes, we did.

Q Were there any?

A Again, other than maybe the small amounts that we talked about with respect to the plane and the country club, we didn't find any valid and viable claims.

Q What about dividends? Weren't there dividends issued by Minerals?

A Yes, there were.

Q How long ago was the most recent dividend issued?

A It was 2019.

Q Did you determine that all dividends issued were outside the statutory period for constructive fraudulent transfer?

A Yes, we did.

Q How about for an improper or illegal dividend?

A Yes, (indiscernible).

Q How big were those dividends?

A In total, I believe it was four years of dividends, $16.6 million.

Q Did you consider that over the course of 13 years to be an exorbitant amount of dividend?

A We didn't think it was exorbitant at all. Plus, a portion

of those dividends were actually passthrough tax dividends, again, which is very common for companies to do. Holdings Company got, again, to a consolidated tax return. And if some of its profit would be as a result of subsidiaries.

So typical in organizations, they will hand down the tax liability to the subsidiary. I think 5 -- over 5 million dollars of that 16 was related to passthrough taxes, so the profit portion was only 10 or 11.

Q By the way, I failed to ask this earlier, I apologize. When you were engaged in, I think you said September of 2025, did you seek to determine whether Minerals was solvent in the period leading up to your engagement?

A You mean by solvent, I certainly asked (indiscernible), meaning their debts as they became due and things like that. But I didn't do a solvency analysis. Q Were you provided copies of historical financial statements?

A Yes.

Q Was there a going concern expression in those?

A No, there was not.

Q Those were audited?

A Those were audited, audited by Deloitte.

Q There's been some argument in this proceeding leading up to today about the formation of a goodco and a badco in 2013. Have you analyzed whether Minerals and Chemicals, whether one of them was more profitable than the other over the last, let's

say from 2013 to 2020?

A Yes, it was well known that Minerals was the more profitable business.

Q Did you make any conclusions about whether Minerals was formed as a badco?

A It did not appear to be formed as a badco.

Q Let's talk about potential fiduciary duty claims. If, for example, the Board of Minerals improperly approved the global netting, does today's settlement or proposed settlement release those directors from liability?

A It does not.

Q Does it release the Minerals Board from any liability?

A It does not.

Q Have you read the pleadings in this case?

A Not every single one.

Q Some of them?

A Some of them.

Q There's a lot of historical briefing about what happened in 1970 and 1980 and 1990. A lot of bad conduct, alleged bad conduct that occurred. In your proposed settlement, does it release any of those officers or directors or owners of Holdings if they engaged in misconduct directed at any of the talc claimants?

A No, it does not.

Q So they could still -- they could all still sue a Holdings director if it turns out that they committed a misconduct directed at hiding, for example, a talc claim or directly committed a tort against a creditor?

A Yes, absolutely.

Q Did you have extensive meetings and discussions with your counsel about the viability of all these claims we've talked about?

A I did.

Q Did you have -- did you receive presentations from counsel?

A I did.

(Pause)

Q As we're gathering those, when did you have the first --

(Pause)

MR. BARNOWSKI: While we gather those, we've had a request for a break. Is that -- would you like me to proceed or is this a good time?

THE COURT: We can take a break. Before we do though, were you going to move Special Committee 8 into evidence? Were you waiting till the end? I just --

MR. BARNOWSKI: I was going to wait till the end, but I might as well do it right now. Can I move --

THE COURT: I just don't want to lose track.

MR. BARNOWSKI: Can we move Special Committee Exhibit

8 into evidence, Your Honor?

MR. JONAS: Your Honor, I think it's a demonstrative. I don't think all -- I understand sometimes these come in if the witness testifies to every single item on the exhibit. I don't think that was the case. He wants to correct it, that's okay, but I'm not sure we had testimony about every item on here.

I obviously have no objection that it's a demonstrative, but I don't think this can be taken as evidence of everything that's on the pages.

THE COURT: Well, perhaps we'll wait and when you cross-examine --

MR. JONAS: Okay.

THE COURT: -- then we can revisit it. So we'll just leave it on the side.

MR. JONAS: Thank you, Your Honor.

THE COURT: Okay.

MR. BARNOWSKI: Thank you, Your Honor.

THE COURT: So how much time for a break? We're just --

MR. JONAS: I just needed a couple of minutes, Your Honor.

THE COURT: Twenty minutes.

MR. JONAS: Or less.

THE COURT: Well, it's almost 11:25, 15 minutes, 11:40.

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

THE COURT: Okay, thank you.

THE CLERK: All rise. Court will take a brief recess.

(Recess at 11:22 a.m./Reconvened at 11:41 a.m.)

THE CLERK: All rise. You may be seated.

THE COURT: I apologize to the parties. We have some construction work going on that's a little distracting but we are working on getting that stopped. So we'll have to.

MR. BARNOWSKI: Not a problem. Maybe they can turn the heat down a little bit, too, because it's gotten hot in here.

THE COURT: It is.

MR. BARNOWSKI: Oh that wasn't meant as a --

THE COURT: Oh no. I agree with you, Mr. Barnowski. We're not used to having so many warm bodies in the place. So we'll see if Mr. Poon took care of it and we'll go from there. Thank you. Please proceed.

BY MR. BARNOWSKI:

Q So, Mr. Pickering, when we left off, I believe we were talking about your meetings with the Special Committee.

A Yes, sir.

Q I'm going to show you a couple exhibits just to mark for

the record. When was your first presentation from the Special Committee on potential legal claims and potential related party claims that could be brought? If you recall.

A Yeah.

Q When was it?

A Oh when was it? That was in December. I don't know the exact date, but December of 2025.

MR. BARNOWSKI: May I approach?

THE COURT: You may.

MR. BARNOWSKI: Marking for the record Special Committee Exhibit Number 2.

THE COURT: Thank you.

THE WITNESS: Thank you.

(Special Committee's Exhibit 2 marked for identification)

BY MR. BARNOWSKI:

Q Take a look at that, if you would.

My question for you is simply is this a presentation that was provided to the Special Committee on December 16th of 2025 on the ongoing investigation?

A Yes, it was. Yes, it is.

Q At this point, the investigation had been going on how long?

A Since late October so it was a month and a half.

Q There are a number of preliminary assessments of claims contained in here. I'm not going to turn and have you go

through all of them, but were these final findings on claims?
A No. This was just a preliminary update.
Q If you look at Page 34 -- I'm sorry, if you look at Page 33, there have been allegations raised in this case that the Special Committee did not consider alter-ego and veil-piercing claims.
A That's correct.
Q Did you consider veil-piercing and alter-ego and successor liability claims?
A Yes. This is a report on -- this is the initial report on the alter-ago and veil-piercing claims.
Q Did you consider -- did you continue to investigate those claims after this December meeting?
A Yes we did.
MR. BARNOWSKI: May I approach, Your Honor?
THE COURT: You may.
MR. BARNOWSKI: Marking for the record Special Committee Exhibit 3.
(Special Committee Exhibit 3 marked for identification)
BY MR. BARNOWSKI:
Q What I've just handed you is Special Committee Exhibit 3. Does this reflect the presentation that was given to you at the Special Committee on January 27th, 2026?
A Yes it is.
Q If you take a look at Page 11, what follows after 11 is

dozens and dozens of pages of discussion of potential claims, related party claims that Minerals might have. Have I characterized that correctly?

A That's correct.

Q Did the Special Committee carefully consider all of these potential related party transactions?

A Yes we did.

Q If you look at Page 56, there's a discussion there several pages long of piercing the corporate veil and alter ego. Again, did the Special Committee continue throughout this period from mid-December till the end of January to analyze alter-ego, veil-piercing, successor-liability claims?

A Yes we did.

Q We're going to talk about those claims and what you found on them.

MR. BARNOWSKI: May I approach, Your Honor?

THE COURT: You may.

MR. BARNOWSKI: Marking as Special Committee Exhibit Number 4.

(Special Committee Exhibit 4 marked for identification)

BY MR. BARNOWSKI:

Q Does this accurately reflect a presentation that was given to you on February 13th, 2026 at the Special Committee?

A Yes, it does.

Q I've counted this up. There's well over 200 pages of

presentations given to you in a basically two-month period. Do you agree with that?

A Yes.

Q And how many other discussions did you have with your team about potential claims?

A Apart from these, we had numerous. Numerous discussions.

Q That's a lot of time and a lot of money spent in a sham investigation. Was this a sham?

A It was definitely not a sham.

Q Jones Day participate in any of these meetings?

A None.

Q Any director of Holdings participate in any of these meetings?

A Other than myself, no.

Q Did any directors of Minerals participate in any of these meetings?

A Oh, sorry. I thought you said of Holdings, my mistake. Yes.

Q Either Holdings or Minerals?

A Nor Minerals, no. Other than myself, no.

Q The decisions that were reached at the Special Committee and by the Special Committee, whose decisions were those?

A They were mine based on the facts and methods.

Q There's a lot of legal analysis in here of potential claims and causes of action. Agreed?

A Yes.
Q Ultimately, after getting that legal analysis, are the conclusions your own?
A Yes.
Q So we've got these two claims on the board. We're going to talk a little bit about alter ego in a little bit. But did you demand payment on both of those claims at full amount?
A Yes, I did.
Q So you demanded $41.9 million?
A Again, it was slightly higher than that because the 27.9 was actually 28.3 at the time. But other than that correction, yes, we demanded that total.
Q And what were you told?
A The response back to start with was no on the note payments. Not at that -- not at that amount. And the smaller claim number that's up there also was no.
Q Okay. Was there a reason why they turned you down on the note?
A There was no default or it was not due at that time.
Q So it wasn't defaulted or it wasn't owed --
A Right.
Q -- at that point in time.
A Right.
Q And what exactly did they -- when I say they, you met with Holdings counsel. Is that right?

A Yes. The first -- well, the first interaction I had asked Ms. Giglio to reach out to Vinson & Elkins to state our opening position.

Q And what did you understand the response was on the A/R payment, the $14.0 million payment?

A Again, no.

Q Would you have preferred to receive full payment?

A Absolutely.

Q Would you have preferred to receive payment in cash?

A Yes.

Q Were you told one way or the other whether Holdings had that cash?

A Yes. We were told that Holdings does not have that much cash available.

Q Were you told whether Holdings, even if it had such cash, would have a problem obtaining and releasing such cash?

A Yes. They couldn't incur additional debt.

Q And why was that?

A Their debt facility had some covenants in it that precluded them. They were very close on their debt covenants. I'm not exactly sure if I can recall what they were, but they didn't have much space left in any debt covenant.

Q And they have an outstanding ABL of how much?

A It's approximately $30 million.

Q With whom?

A With Wells, Wells Fargo.
Q Okay. So, with that in mind, did you attempt to value these two claims from a litigation perspective?
A Yes.
Q And what was the purpose of valuing them from a litigation perspective? Why?
A Well, again, I wanted to understand if we had to go into litigation, what would be a potential outcome. And so, we had to look at those claims from that perspective.
Q And the $27.9 million note that wasn't due for 11 years, did you attempt to value that from the perspective of what it would be worth if it was paid in an accelerated manner today?
A Yes.
Q Okay. And how did you do that?
A So, recognizing that it would need to be discounted to present value for what it would be worth, I did ask -- and we considered different discount rates, but I did ask Greenhill to give me their view on what market comps would be for a discount rate per yield on a note like this.
Q And what did you find?
A We found a variety of numbers. We didn't really find a good comp. The problem here was that you're dealing with a private company as opposed to public companies. You're dealing with a company that doesn't have anywhere close to the same level of revenue as the comps had. A lot of the comps were

secured.

Some were unsecured. But, going as close as we could, they were also better rated given the risk of Holdings compared to the companies that we were looking at. Ultimately, I concluded that -- do you want me to go to the conclusion?

Q Yes, please.

A Yes. Ultimately, I concluded that I wanted a position to start with of 12 percent.

Q Okay. Did you just pick that number out of the air?

A No.

Q Talk to us a little bit about how you determined -- did you ask Greenhill to help you?

A I asked them to give me the information from which I could make a basis. I didn't ask them for a particular recommendation.

Q And what else did you do? You talked about looking at comparables. What do you mean by that?

A So we looked at companies in the chemicals industry because that was what was going to be left at Holdings at the end of the day was a chemicals company. They did look at the analysis and, again, it showed that if you had good rated companies with, you know, certainly more revenue and a better credit rating, you might be in the high single digits for unsecured. And lower rated companies, you were well north of 12 percent.

As a result, there was no real comp at 12, but I could certainly see that where this company was going from a position of its rating, potential rating, and the solvency issues that it was facing, that it was going to be a high risk note for anyone to take. Plus it's unsecured, it doesn't have a market to trade in.

Notwithstanding all those facts, which would drive you to a percent which would be much higher, resulting in a much lower number on a present value basis, I wanted to take a more aggressive position with Holdings and I decided I'd try 12 percent.

Q Okay. And did you receive feedback that that was too aggressive a rate to use?

A They -- from Holdings?

Q From anyone.

A From anyone? I did get some comments that maybe it could have been higher, but I stuck to my guns at 12 percent.

Q And just to be clear, because I'm a lawyer, I'm not a finance guy, you go higher on your discount rate, like you were being advised, it leads to a smaller payment?

A Present value shrinks.

Q Okay. So using your 12 percent, what did you determine was the discount value of the promissory note?

A The promissory note was 20.6 million, I believe.

Q That's the value if the note was paid today rather than

waiting 11 years for it to be paid?
A Correct.
Q And just to be clear, you couldn't go to court and demand payment on any such note?
A No, not at that point in time.
Q Let's talk about the A/R amount of 14 million. Just to level set, this is the two amounts that totaled 14 million from Worldwide and Holdings, correct?
A Correct, yeah.
Q Did you seek to value that from a litigation perspective?
A I did.
Q And just walk me through how you value something, you personally, from a litigation perspective.
A Sure. From a litigation perspective, I mean, I certainly asked my counsel what their view was. And then based on factors like that, I did some of my own research to determine what kind of factors there would be. And that would be probability of success, probability of collectability, fees that were involved and, of course, how long it would take, and the discount rate that you'd have to apply.
Q And you're trying to determine what would be reasonable to take now as opposed to litigating it and --
A Correct.
Q -- spending money to get there. Is that fair?
A That's correct. Yeah.

Q Okay. So what likelihood of success adjustment did you apply?
A So, I said we'd have an 80 percent likelihood of success.
Q Okay. You're smiling.
A Yes, I am.
Q Is that because that's an aggressive risk factor?
A Yes. I mean, based on the research I did and the discussions that I continue to have with counsel, it would appear that that 80 percent was pretty aggressive.
Q So, I was always told if your litigator tells you you have a 90 percent chance of winning, that you better get a new litigator. Did you receive advice like that?
A Yes, I did.
Q Okay. Did you also apply bigger adjustments to get a kind of a range of litigation value?
A Yes, yeah. I looked at a variety of different --
Q Let's stick to likelihood of success for now.
A Oh, likelihood of success. Yes.
Q And what was the lower?
A I looked down to say, well, what if it was a 70 percent likelihood of success, which was probably, you know, again, still fairly aggressive, but I considered what a 70 percent likelihood of success would be.
Q Did you apply an attorney's fees adjustment?
A Yes, I did.

Q Tell me the aggressive one and the less aggressive ones you applied.

A So, the aggressive one, meaning I'm setting the value higher, was a 20 percent basis of fees and expenses.

Q Okay. And what was the less aggressive one?

A Thirty percent.

Q Okay. And did you take a collectability risk discount?

A Yes.

Q And what is that meant to factor in?

A That's a likelihood -- once you're successful in your litigation, how likely are you to collect?

Q Okay. And was that a big risk here, given what you knew about Holdings financial condition?

A Very much a big risk.

Q And what adjustment did you take?

A Again, I took 80 percent.

Q So, you assumed that there was an 80 percent likelihood that you could collect?

A Yes.

Q You're smiling again. Why is that?

A I'm sorry. Again, it's a pretty aggressive number, right? You know, the likelihood of being able to collect on any judgment from a debtor which is struggling is already -- or company that's struggling already is -- 80 percent is pretty aggressive.

Q Why are you taking such aggressive discounts? When I say aggressive, I mean adjustments that lead to a way higher amount of value.

A Yeah. Again, my job here is to try and maximize value for the estate. And I didn't want to take more -- more, you know, lower discount rates that would provide a lower result. So, I wanted to stick to something that was going to be, you know, to me, more beneficial for the estate.

Q Okay. Did you seek to present value the recovery if you were to receive it today?

A Yes.

Q And what present value assumptions did you make?

A So, again, the term, we used the same term as what was on the note, figuring that that would be a reasonable match. And then, because there's no -- first of all, there's no due date on these notes, either of these notes, right. You've got a receivable from Holdings and a receivable from Worldwide, neither of which have due dates. So, we had to make some assumptions.

So, again, because the note was an 11-year term, we attached the same 11-year term to the note, or to the A/R. And then, because, again, there's no stated discount or stated interest rate and because there are, you know, again, no terms like there is with a note, I thought it would be better to have a slightly higher discount rate. So, I used 15 percent which,

again --

Q I think we're mixing apples and oranges. You got one step ahead of me. You're talking about you analyzed this from a discount rate, correct?

A Correct, yes.

Q I asked you whether you present-valued a litigation recovery.

A Oh, my apologies.

Q That's okay.

A Mr. Barnowski, I am so sorry. Yes, we did. We did look at it from a perspective of how long would this litigation take.

Q And what did you assume there?

A Again, pretty aggressive assumption that it would only take two years.

Q And what interest rate did you assume?

A Five percent.

Q So, I'm not going to make you pull out a calculator because I know you know the number anyway. But if I were to take 14.0 million and multiply it by 0.8 for the likelihood of success, 0.8 for removing the 20 percent attorney's fees, 0.8 to reflect the collectability risk, and then the present valuation, which would be two years at 5 percent, what number do I get?

A I believe it's six million, in that range.

Q 6.5?
A Yeah.
Q That's all right?
A Yeah, 6.5.
Q By the way, you made these adjustments and analysis several months ago, right?
A Yes, that's right.
Q This isn't something you come up with in court to justify a number, is it?
A No, it's not.
Q Using the less aggressive multipliers, taking the $14 million and multiplying it by 0.7 for likelihood of success, 0.7 to reflect the 30 percent attorney's fees, 0.7 to reflect the 30 percent collectability risk, and three years at 5 percent, do you remember that number?
A I believe it was somewhere in the $4 million range. Four to five.
Q Does 4.1 sound right?
A 4.1, yeah.
Q If I add these numbers up, let's start with the aggressive numbers, 20.6 plus 6.5, what do I get?
A You get 27.1.
Q And if I add up the less aggressive?
A 24.7.
Q Did you also seek to assess the 27.9 from a litigation

perspective?
A Yes.
Q Applying the same 80, 80, 80, two years at five percent present value?
A Correct, yes.
Q Do you remember what that came out to?
A It was somewhere in the 13- to 14-million-dollar range.
Q Yeah. I'm not going to write that down, but if we were to do that, the total value would be around 19 million?
A Yes.
Q Did you take that range into your discussions with Holdings?
A Yes, I did.
Q And what is that range?
A That's 19 million to 27 million.
Q Did Holdings have 27 million in cash to give you?
A No.
Q Did you try?
A I tried.
Q What items did Holdings have to contribute to Minerals that were of value to Minerals?
A The main thing that they could contribute was the VEEGUM plant in Murray, Kentucky, the Lyles mine that was in Arizona, and the ancillary pieces of equipment that were used in those operations or the operations at Minerals.

Q And when you went into this settlement discussion with Holdings, had you already been informed? We heard earlier today from Mr. Mendelsohn that the board had been informed that these assets were integral to any sale. Had you already been informed of that?

A Yes, I had.

Q So you knew that those assets were important?

A They were important, yes.

Q Now, you are not an appraiser, are you?

A I am not.

Q Were you aware of an appraisal of those assets that had been conducted?

A Yes, the Murray, Kentucky facility and assets had been appraised by Houlihan.

Q Houlihan & Lokey?

A Oh, sorry. Yeah. Yes.

Q And that's less than all of the assets that were at issue here? A Correct.

Q And what did Houlihan reach as the appraisal value?

A I believe it was 23.3 million.

Q And that doesn't include what?

A I believe that includes Lyle, the Lyle Mine, and I don't believe it includes what's called the Netzsch Mill, which is in Gouverneur, which is separate and apart from VEEGUM.

Q Did you just accept that appraisal value?

A I -- accepted in what way?
Q Did you just go into the settlement and say, well, this is worth 23.3 million?
A Oh, I see. No, I did not.
Q Why not?
A Because that particular value was done a couple of years ago and, again, we were running a process, so it's a pretty common place to assume that the market's going to tell you the value of the assets, which was what I wanted to rely on.
Q You got one step ahead of me. Is there a better way to value the assets than have Houlihan?
A Yes, especially in a bankruptcy, you know, the market will give you that.
Q There's no market bid for these specific assets, is there?
A When you say these specific, you mean the Murray, Kentucky facility, or?
Q The assets being contributed in this settlement today by Holdings.
A There's no -- can you repeat that again?
Q There's no -- the market isn't bidding specifically on just those assets, is it?
A Oh no. No, that's right. Yeah. They're bidding on them as if they were combined.
Q So what did you do to try to determine what value might be attributable to those assets?

A Again, assuming that the market is providing the value through the auction process, I had to figure out a way to allocate that value. I didn't need to run a valuation on what was being contributed. I need to understand how would I view the allocation of value from a buyer's perspective?

Q Okay, so let me stop you and take a step back.

A Right.

Q The market is giving you a value or an amount for what?

A They're giving a value for all of the debtor's assets, including the assets that were proposed to be provided by the non-debtors.

Q The stalking horse's bidder?

A The stalking holder's bidder.

Q And what is that bid?

A That bid today is $50 million.

Q And has the stalking horse or anyone else allocated value between the assets that are part of the sale?

A Not that I'm aware of.

Q And did you try to do that?

A Yes.

Q And how did you do that?

A So there's a few different ways that we thought of, and I really spoke with Mr. Vomero around what -- you know, we put our heads together to say, how would we think about this allocation of value. And I went back to the SIM, which was a

good indication of how it was being, you know, marketed to buyers as to what was their view.

And you could look at things like revenue, but the problem with revenue is you could have a high volume, low margin product, so revenue would give you an unfair result. EBITDA wasn't fair because the buyer is going to have their own view of what they can have below that profit line, that gross profit line. So I could just give away the answer. We decided that gross profit was the best way to take a look at them.

Q And what do you mean by, I think you said gross profit, gross margin?

A Gross margin, yeah.

Q And what do you mean by that?

A So in any business you'll have revenue, and what you would remove from that revenue is your cost, your direct cost of operation. So that would be any of your raw material inputs. You'll have your labor. You'll have overhead and other direct costs related to the product to get to a gross margin.

Q And is it fair to say a buyer is going to be looking at the total gross margin they're buying?

A Yes. In fact, again, in the SIM, it was -- gross margin was definitely the focus in the SIM of the assets that were being made available.

Q And just to simplify it, there's going to be two pieces to that. There's going to be a gross profit from the VEEGUM

materials and a gross profit from the non-VEEGUM materials?

A That's correct, yes.

Q Do they affect each other?

A Yes, they do.

Q How?

A So, if it's okay, I'll go into the detail behind --

Q Yeah, go ahead.

A Yeah. So if you look at just Minerals books, right, the gross margin would reflect what Minerals is achieving on their production. And let's focus specifically on VEEGUM as an example, that they would have their gross profit for VEEGUM.

But if you're combining these assets, you also have to look at, well, what was the gross margin that Chemicals was achieving from that VEEGUM operation. And you have to add those two together because any buyer is going to look at it and say, well, what am I actually buying. I'm not just buying Minerals gross margin. I'm buying the gross margin of the VEEGUM plant itself.

So you'd have to bring those things together. And that would include not just what they were selling from VEEGUM directly, but also what they were selling from VEEGUM-related products, like I think it's VAN GEL is the name of the other products.

Q So I went to law school because I don't like the sight of blood and because I can't do financials. So bear with me. I'm

going to try to understand what you're saying. Is it fair to say that the Chemicals operation is earning a gross margin on the assets that are now part of the sale and are no longer Chemicals?

A Yes, absolutely.

Q Is it fair to say that Minerals is earning a gross margin on the same assets from how they're using?

A Yes.

Q And those are all wrapped together and sold to a buyer?

A Yes.

Q And the buyer is going to get both pieces of gross margin?

A Yes, they are.

Q And what did you determine was the proper allocation between the gross margin that the buyer would be getting from the VEEGUM products and from the non-VEEGUM products?

A So just on that math alone, that range or value was somewhere between 50 and 60, over 60 percent.

Q Attributable to whom?

A Attributable to the VEEGUM assets.

Q So how many hours did it take you to come up with that?

A We spent many hours. I don't know how many, but it was -- there was an effort behind it.

Q So which, you said 50 to 60, which allocation did you give to the VEEGUM -- to the Chemicals/Holdings contribution?

A Fifty percent.

Q Why 50? Why not 60?
A Again, I'm trying to maximize the value for the estate, so I don't want to give -- I don't want to use numbers that are going to be less beneficial to the estate. So only allocated 50 percent.
Q And you did that independent of the Houlihan analysis?
A Yes.
Q You didn't use the Houlihan analysis to help you get there?
A No.
Q Did it give you added confidence in your analysis that Houlihan was 93.3 percent identical to yours?
A Yes.
Q So using your 50 percent allocation, what was the total value that you attributed to the VEEGUM assets as of now?
A As of now, yeah. It was a $50 million sale, $25 million allocation.
Q I'm really regretting drawing a line down the middle. But -- so somewhere between 23.3, which is Houlihan, and 25, which is your allocation?
A Correct.
Q Now what else was contributed as part of this settlement?
A So, again, lengthy negotiation to try and maximize value for creditors. I asked for as much cash as we could get. You know, I'll just give you the end result, we can go back on the

details. The end result was another $2 million of added items to 2.01.

Q 2.1?

A Yeah, somewhere in that vicinity.

Q And that's additional equipment, pay ahead, things like that?

A Yes, there was a variety of items that we got them to agree to.

Q Ongoing services?

A Yes.

Q Cash?

A Cash. Ongoing services.

Q Waiver of charges?

A Waiver of charges that were outstanding. Contribution of services for free during the course of the bankruptcy. And we also -- I also wanted to make sure that we weren't taking away estate dollars from using, again, the Global Services Group after the asset was, if the sale goes through. And so they also provide us with ongoing BGS support for no charge.

Q So you went into the negotiation wanting somewhere between 19 to 24 to 27 million dollars, somewhere in that range?

A Yes, that's right.

Q And you got?

A I got the top of the range.

Q Did you have to negotiate hard for that?

A Yes.
Q How many days?
A It was -- it was numerous days. I think we started that first reach-out in the end of January and we concluded in mid-February.
Q By the way, I got ahead of myself. I forgot to ask, what happens if the auction leads to a higher value?
A Oh, this again, I think is another really beneficial thing. If the value goes higher than 50, and I believe Mr. Mendelsohn will say that I've had conversations with Mr. Mendelsohn that there are interested parties, and we've seen before the filing and now after, that it would appear as a robust auction.

The nice thing is that there's an upside. There's at least 10 million -- first, there's 10 million of upside that we as the estate get in full. We don't have to share that.
Q How would that change your allocation? If, for instance, the sale was for 60 million, would that change your allocation?
A Yes, based on that allocation, we'd save $30 million plus the 2.1.
Q So at that point, you'd think that you would conclude that you received $32.1 million in value?
A Yes, that's right.
Q Even if you were to use the Houlihan appraisal value, which doesn't include all the assets that are part of this

sale, and add the 2.1, you'd still end up above the midpoint of the range you wanted?

A That's correct, yes.

Q You've heard a lot in this case about potential alter-ego and veil-piercing claims, correct?

A Yes.

MR. BARNOWSKI: Before we get there, may I approach?

THE COURT: You may.

MR. BARNOWSKI: For the record, I'm marking Special Committee Exhibit 1.

(Special Committee Exhibit 1 marked for identification)

BY MR. BARNOWSKI:

Q Is this the settlement agreement and release?

A Yes.

Q This is what you negotiated?

A Correct.

Q Does this accurately reflect that negotiation?

A It does.

MR. BARNOWSKI: Your Honor. I would move this document into evidence.

THE COURT: Mr. Jonas, any objection to entering the settlement agreement into evidence?

MR. JONAS: No objection, Your Honor. Thank you.

MR. BARNOWSKI: I'd also move into evidence while I'm

on it the presentations?

MR. JONAS: No objection, Your Honor.

MR. BARNOWSKI: Special Committee Exhibit 2, 3, and 4.

THE COURT: No objection?

MR. JONAS: No objection.

THE COURT: They're admitted.

(Special Committee Exhibits 1 through 4 admitted into evidence)

BY MR. BARNOWSKI:

Q Okay. So, let's talk about the alter-ego claims, the successor-liability claims, the veil-piercing claims. Did your investigation analyze those claims?

A Yes, we did.

Q Let's just start with a general question. What did your investigation generally conclude with respect to whether those claims against Holdings were likely to succeed?

A And when you say those claims, can you be specific?

Q Alter ego, veil piercing, and successor liability.

A Yeah. We concluded that they were going to be very difficult, but it was not really valid or valuable claims.

Q Okay. So was it important to your investigation that Delaware courts generally apply a very high standard to those types of claims?

A Yes. Again, the LLC is a Delaware LLC, so looking at

Delaware law, again using advice from counsel, my understanding is that it's extremely difficult ti prove alter ego.

Q Okay. And how far back did you look in analyzing these claims?

A Well, we started by the statute of limitations, but I wanted to go back further. I wanted to go all the way back to 2013 just to see would there be anything there? What kind of value could you create if there was something, some issue? So, we went back all the way to 2013.

Q Okay. And what materials did you review? Let's start, did you review the minutes --

A Yes.

Q -- of Minerals?

A Yes.

Q Minutes of Holdings?

A Yes.

Q Interviews?

A Yes.

Q Presentations at the board?

A Yes.

Q All documents produced in this case?

A Yes.

Q Let's talk about some of these elements. Did you find any evidence in your review that Holdings and Minerals use the corporate form to promote a fraud?

A Can you say that again? Sorry.
Q Did you find any evidence in your review of all of these materials in your interviews that Minerals or Holdings use the corporate form to conduct a fraud, perpetrate a fraud?
A Yeah. We did not see evidence of a fraud.
Q Did Minerals or Holdings seek to conceal the reorganization from its creditors?
A No.
Q From the talc claimants?
A You're talking the reorganization in 2013?

Q Yeah.
A No.
Q Why do you say that?
A Well, I think my understanding is there was press coverage of it and that the claimants had identified or sought to seek remedies against Holdings, then that was, I'm not sure what the right term is in legal terms, but that was clarified that it was Minerals that was the defendant.
Q And is it your understanding, did you learn, that Minerals filed a notice of the reorganization in every single talc claim that was going on at the time?
A Yes. Yes,
Q So there was no attempt to hide this?
A No.

Q Did you find any evidence of commingling of Minerals and Holdings funds?

A There was no evidence.

Q Okay. So we talked about a unified central banking system. Why isn't that commingling?

A Well, again, as I described, right, as the funds go in and out to different directions, it's all meticulously tracked. So detailed records were kept. They were kept not in arrears, they were kept daily. And so you could identify whose money was whose at Holdings, which is, again, very typical of that type of system.

Q Did you find any evidence of any siphoning of funds, of Minerals funds, by Holdings?

A No evidence.

Q What about failing to observe corporate formalities? Were there records kept of all the meetings?

A Yeah, there were records.

Q Minutes?

A Yes, records, minutes. Yeah.

Q Board meetings?

A Board meetings were held regularly.

Q So let's talk about Randy Johnson. Did your team interview Randy Johnson?

A Yes, they did.

Q And there's references in these reports to some of those

interviews, correct?

A Yes.

Q Did Randy Johnson say anything in his interview? Who is Randy Johnson?

A So Randy Johnson is the president of Holdings and was a former board member of Minerals.

Q Did he say anything in those interviews that caused you concern?

A Yes.

Q Tell me what he said.

A He made reference to, just use his terms, he used reference to pulling all the strings, and he made reference to rubberstamp.

Q Okay. Were those comments disclosed in these reports?

A Yes, they were.

Q I apologize for asking this, but I'm going to. If this was a sham investigation, do you think that those comments would be flagged?

A They would not be.

Q Okay. So what did he say -- when he said pulling the strings, what did he say it in reference to?

A He was referring to corporate items. So he was referring to items that were typically done at the corporate level. And actually, in his reference, when he said pulling the strings, he said that was done by Treasury, which would be the CFO at

his level. So Don Orpilla.

Q And was he specific about what Holdings was pulling the strings on?

A Sure, yeah. He said things like union contracts and capital expenditures and regulatory matters.

Q So let's take a step back. An hour ago, I guess now, maybe a little longer even, you mentioned that there is a management services contract with Holdings pursuant to which Holdings provides all the management services for a fee to Minerals. Correct?

A Correct, yeah.

Q So does it surprise you to hear that Holdings is pulling the strings on those management services?

A No. That was what they were contracted to do. Yeah.

Q Did you take the comments seriously?

A Oh, we still took the comments seriously. Yes.

Q Did you dig down on them?

A Yeah, very much.

Q How?

A I asked my team and also myself to be more aware of that and certainly not that we weren't being aware of it. I just wanted more review done. I wanted more interviews done.

Q Did you find any other evidence in all of your other interviews and all of your other documents that you looked at

that Holdings was somehow inappropriately pulling the strings?
A No, we saw no evidence.
Q Did Mr. Johnson make another comment that caused you concern?
A Yes. He made a comment about rubber-stamping two different transactions.
Q What were those two transactions?
A One was approving the intercompany note, which is subject to the settlement there, from the 2013 restructuring. And he made a comment about rubber-stamping the dividends, which we talked about, the $16.6 million in dividends.
Q Okay. So let's talk about the promissory note.
A Sure.
Q When was the -- did Minerals even exist when the promissory note was issued?
A No.
Q So who issued the promissory note?
A So the promissory note was part of the overall restructuring to create Holdings. The promissory note was issued by Holdings.
Q And then Minerals was created after that?
A It was part and parcel of that whole thing, yes.
Q And what happened to the promissory note?
A So the promissory note was put in place.
Q And then given to?

A And then given to Minerals.
Q Okay. So would it surprise you if Minerals didn't do a significant drill-down on the value or the amount of the note, given the fact that it was already previously negotiated and put in place and just given to it?
A If you look at the minutes, the note was ratified.
Q Ratified, is that the word used?
A Yes. That was the word that was in the minutes.
Q Nevertheless, did the use of that phrase, that something had been rubber-stamped, cause you concern?
A Absolutely.
Q How serious concern?
A Serious. Again, we took both of these comments very seriously.
Q And the other thing that he said rubber-stamping about was dividends that were issued how long ago?
A They were 2016 to 2019.
Q And these are the dividends we've already talked about?
A Yes. The tax dividends and the profit distribution.
Q That are outside the statute of limitations?
A Yes.
Q Now, veil-piercing, alter-ego, successor-liability claims require proof of total domination and control. Is that your understanding?
A That's my understanding.

Q Despite what Mr. Johnson said, did you find any evidence of total domination and control by Holdings?

A No, we did not.

Q It also requires the use of the corporate form to commit a fraud. Despite Mr. Johnson's comments, did you find any evidence whatsoever that the use of the corporate form had been used to commit a fraud?

A No.

Q By the way, when you were retained, did you go visit Minerals offices and facilities?

A I did, yes.

Q Why?

A I wanted to see it for myself. It's located in Little Rock, so I arranged with Mr. Vomero to go up and see the facility. I wanted to, you know, walk the halls and meet the people and review the facility.

Q Does Minerals have its own directors?

A Minerals has its own directors, yes.

Q Does it have its own office?

A It does. It has its own separate office.

Q Does it have its own facilities?

A It has its own facilities.

Q How many employees does it have?

A In total, there's 127 or something like -- something like that.

Q How many of those 127 also work for Holdings?
A None.
Q Are the various affiliates run as one entity?
A No, they're not.
Q Does Chemicals have separate facilities?
A Yes, they do.
Q Based on this analysis --
A Can I just mention --
Q Yes, absolutely.
A Yeah. On the visit to the facility when I -- when I went there, not only is the office space of Minerals separate and apart, it's across the street. It has its own parking lot. They don't even mix parking lots. They have their own parking lot. And the people that I met there were all Minerals people. That's where I sat down with Ms. Franky who was on the board. I also sat down with Mr. Brohel who is on the board. Both of them have offices in that Minerals facility.
Q And they're on the board of what?
A Minerals.
Q You mentioned earlier that there was a filing made to give notice to all talc claimants of this corporate reorganization in 2013?
A Yes.
Q Since 2013, has anyone successfully brought a veil-piercing or alter-ego or successor-liability claim against

Holdings or Minerals?

A They have not.

Q Has anyone tried?

A Not that I'm aware.

Q There's been a couple times where someone has sued Holdings, but when they were told that Minerals holds the talc liability, they just dismissed their claims?

A Correct.

Q Did your investigation stop there with respect to the veil-piercing, alter-ego, and successor-liability claims?

A No.

Q Why not?

A When you said stop there, stop?

Q Did you analyze further on those claims?

A You meant stop there as a point in time or stop?

Q Did your analysis stop?

A No. No, the analysis did not stop.

Q What else did you do?

A So again, we continued to review books, records, attended all the depositions just to make sure that no evidence was coming out that would give us any concern.

Q Did your --

A Immediate concern.

Q Sorry.

A Because -- and maybe I'm going to be jumping ahead of you

a little bit, but one of the things that I definitely wanted to have was a fiduciary out in case something came to light that would cause me concern. So I think that's part of the reason why we just didn't stop. We kept going.

Q Did your investigation also analyze whether a successful alter-ego or veil-piercing claim, if it was successful, would lead to a meaningfully increased recovery, bigger than this, for creditors?

A Yes, I analyzed that.

Q And let's start with a general question. What did you find? Bigger, smaller, same?

A Small.

Q So a decreased recovery for creditors?

A Correct.

Q So are you saying that if someone actually pursued one of these veil-piercing, successor-liability, alter-ego claims and got a $150-million judgment or a $500-million judgment that they would get less money than this settlement brings to the creditors?

A That's correct.

Q Can you explain that to me?

A Sure. In piercing the corporate veil, we had to understand what value could be at Holdings. And so, again, remember there's a statement from Holdings itself that said that their EBITDA was in that three- to four-million-dollar

range. We saw that in other materials.

But I asked Mr. Vomero to work with me on, as I said, deconstructing the financial statements to get to what is Holdings and its affiliates EBITDA, excluding Minerals, which was, again, we had to make some fairly, I'm not going to use the word aggressive, but they were forgiving assumptions, giving them more value than we had assumed they could actually achieve through various cost-cutting and restructuring. And that was, I think, 3.2 or 3.4 million dollars would be best.

So with that in mind, I then considered what would a typical market multiple be. You know, what are the ways you can look at the value of a business. So with that three-something-million-dollars of EBITDA, I needed to understand what type of business was Chemicals, right. And based on what I reviewed and discussions that I had, it's probably more of a commodity-type business, which has a lower multiple in the range.

Even if you assume that it was some mid-range or mid-commodity business, it's slightly higher, it was certainly not a specialty chemicals company. So again, based on my own research, I looked at it and said, you know, what is a commodity business? What's that multiple? That's four to seven times EBITDA. A mid-commodity would be seven to ten times. And just, you know, pick the midpoint there, call it seven, right. A seven times multiple on $3.2 million gets you

$21 million.

I remember standing in front of any judgment that you'd get would be a secured creditor, which had a first name.

Q Who's that?

A That's Wells.

Q How much?

A Thirty million. So you'd come up short, significantly short. And even if you went and made some higher assumptions, you're still going to be short.

So it was not the reason to dismiss the claims. But in analyzing what I felt was best for the estate, if that number was significantly higher, we'd have to -- you know, we would have discussed it and thought more about weighing the possibility of success in those claims.

But when you realize that your ability to collect is going to be so low, if not zero, I very much wanted to make sure that this settlement was brought forward to the Court because I think it provides the best value to the estate.

Q So let's, just for simplification, let's assume that EBITDA was four million, which is higher than what you found, correct?

A Uh-huh.

Q And let's assume that you used a ten times multiple, which is higher than you thought was appropriate, correct?

A It was (indiscernible) average, yeah.

Q What is your assessment of what the likely market value of putting Holdings out for sale would result in?
A Again, using that, it would be approximately $40 million.
Q And so if someone got a billion dollar alter-ego claim, you're saying the most that could be recovered from Holdings is roughly $40 million, at the high end?
A The most that you could recover from Holdings would be net of the Wells facility. So not 40 --
Q So 40 million minus 30?
A Minus 30 would give you 10.
Q And you've got to pay your attorneys to get that?
A Well, again, now you're talking about going through litigation, lengthy litigation.
Q Right.
A Right.
Q And you talked earlier about a 20 to 40 percent contingency fee?
A Yes.
Q So now we're down to six to eight million?
A Right.
Q And time value of money?
A It's probably going to take, you know -- I've seen the Holdings position that they're ready to litigate, so it's going to take some time.
Q And collectability risks?

A The collectability risks are going to be high given the numbers that we were aware of.
Q And we're not even talking right now about likelihood of success, are we?
A Correct.
Q So is it your testimony sitting here today that even if an alter-ego claim hit the jackpot, that the creditors would get less?
A Yes.
Q What about the Vanderbilts themselves, or any other equity holders of Holdings? Did your analysis seek to determine the likelihood of an alter-ego, successor-liability, or veil-piercing claim against them?
A Yes, we did.
Q Did you find any evidence in any of your work that the Vanderbilts siphoned funds out of the company?
A We saw no evidence.
Q There were some, to be sure, dividends paid to them?
A Correct, yes.
Q How much?
A In the last six years, it was approximately $5.7 million.
Q Did that strike you as unreasonable?
A No, it did not.
Q Did you find any evidence of any equity holder of Holdings exerting total domination and control over the conduct of

business?

A No. Saw no evidence of that.

Q They were just deposed the other day, weren't they? Both Vanderbilt brothers, right?

A Yes.

Q Did anything come out of that deposition that causes you to rethink that?

A No.

Q At least one of them sat on the board?

A Yes.

Q Did you see anything in any of the minutes that showed domination or control by that member of the family?

A No. No.

Q And actually, on the siphoning point, did you see contrary evidence that indicated that they were specifically trying to keep money in the company?

A Yes. I actually reviewed the minutes myself as -- I'm not sure if I reviewed every single one, but what I reviewed, I reviewed a lot of those minutes. And what I noted in the discussions in those minutes were that when it came to dividends, there were many times when they said, we're not taking a dividend or they're reducing their dividend.

And notwithstanding their decision to not pay themselves, they were approving -- in the same meeting, they were approving

pay increases for their employees, bonuses for their employees, funding of the employee stock option plan, which I took as this is -- they're rewarding their people before they're rewarding themselves.

Q And by the way, you mentioned dividends paid to the Vanderbilts over time. Those dividends were not paid by the debtor, correct?

A Correct.

Q They were paid by Holdings?

A Yes.

Q Did you see any evidence of the Vanderbilts or any of the other equity holders commingling their funds in the business?

A No.

Q So did you reach a conclusion as to the likelihood of succeeding in an alter-ego, veil-piercing, or successor-liability claim against the equity holders of the equity holder of the debtor?

A No, we saw no evidence.

Q By the way, do other stakeholders benefit from this settlement, as well?

A Yes, they do.

Q Which ones?

A There's a whole host of people who benefit. Should -- do you want me to run through those?

Q Yeah, please.

A Sure. I mean, obviously, you've got employees, the 147-odd employees at Minerals that benefit from an ongoing business.

You've also got the employees who work at the VEEGUM facility because they're going to come over, as well. They maintain their job, which would be at risk if there was a liquidation. You've got the employees at the Lyles Mine which would come over as well, so they maintain their jobs. That's just one group.

There's obviously downstream suppliers who, as we've all seen in bankruptcy cases, they may be significantly impacted. They're certainly going to be impacted if this business is not around, so continuation of their businesses and employment of their people is important.

Then upstream, I think, is very important. Think about the customers. You know, if you -- if you look at the SIM, and based on discussions I've had, their customer base could be -- they're helping produce cosmetics, they impact the agricultural industry, they feed into automotive, and they feed into life sciences, both med devices and pharmaceuticals.

This is extremely important, especially when you start thinking about automotive and life sciences, which I've got a lot of experience in, where when you change an input, you generally have to go through validation again, and that takes time. It could take as much as a year.

The interesting point about that is that if you go a step further and who this benefits, not just the customers, but the end users, particularly in pharmaceuticals, right. VEEGUM is something that -- you know, it does some things like, you know, it improves (indiscernible), mundane things like that.

But it also impacts, because of the viscosity, it impacts when that active pharmaceutical ingredient, which is the key in any pharmaceutical product, the thing that actually treats the problem, it can impact when that gets released. This to me is, in my experience with pharmaceuticals, you have to go through a validation process if you want it changed. And it's inefficient for most pharmaceutical companies to have multiple suppliers of product.

So I think at the end of the day, a risk of products being pulled from the market means that the customer -- the end user patients are also beneficiaries of this.

Q I want to circle back to something that came up much, much earlier in your testimony. You testified that there was 100, 200 thousand of expenses that in the course of your multi-month investigation, you couldn't exactly figure out how they benefitted Minerals or not.

You didn't decide that they were improper, you just weren't sure, right?

A Right.

Q Did your settlement leave room to accommodate those

amounts?

A In the sense that they were -- they were inappropriate, utilized by directors for their own personal profit, there's a (indiscernible). We don't compromise that.

Q Was your investigation a sham?

A Absolutely not.

Q Did you take direction from anyone in conducting it?

A I took advice from my counsel, who are obviously very well experienced in conducting these types of investigations, thank you. But I didn't take any specific direction from anybody.

Q Did you take your fiduciary responsibilities seriously here?

A Very seriously.

Q Did you do your best to achieve the best result you could for the creditors of Minerals?

A Yes, I did. I think the result we've got is at the top end of the range. I think it was a pretty good deal.

Q Do you consider this settlement fair and reasonable?

A Yes, I do.

Q Why?

A Again, it achieves a pot of at least $50 million for the creditors, which has upside to go to $60 million or more, but the first $10 million comes in. So you're providing benefits to the creditors. It also avoids, if you decided to not have a transaction and just liquidate the assets, you're going to get

significantly less. You're not going to have the benefit of the VEEGUM assets.

And at the end of the day, you know, lengthy litigation, especially with the collection risk, as I've discussed, would result in something significantly lower.

MR. BARNOWSKI: Thank you. I pass the witness.

THE COURT: Thank you, Mr. Barnowski.

THE WITNESS: (Indiscernible)?

THE COURT: Absolutely.

THE WITNESS: Thank you.

(Pause)

CROSS-EXAMINATION

BY MR. JONAS:

Q Good afternoon, Mr. Pickering.

A Good afternoon.

Q Nice to see you again.

A And you.

Q And if you need a break or you need to stand up, just let me know.

A Okay, thank you. Yes. I just took one, thank you.

Q Mr. Pickering, you were hired, and your job was to whitewash the debtor and its parent and its affiliates' efforts to insulate themselves from talc liability, correct?

A No.

Q In that regard, you were going to enter into a global

settlement as cheaply as possible, no matter what, right?

A No.

Q In connection with your investigation, you often simply accepted what you were told or ignored it without independent analysis in order to arrive at a preordained result, correct?

A No.

Q To the extent necessary, your job was to obfuscate the facts from and delay producing relevant materials to the Unsecured Creditors Committee, correct?

A No.

Q Okay. You were retained in this manner in October 2025, correct?

A Correct.

Q And since that time, you have worked somewhere between 250 and 500 hours on this matter, right?

A Again, that was an estimate. I'm not exactly sure how many hours.

Q That's what you told me at your deposition.

A Yeah.

Q Okay. Now, you were retained to be what's been referred to, and I appreciate it's an LLC, but I think it's been commonly referred to as an Independent Director, is that right?

A Correct.

Q Or a sole member of a Special Committee of the board of the debtor, correct?

A Correct.
Q And so when we've been talking about meetings of the Special Committee, it's a meeting of one, right?
A Correct.
Q Okay. And prior to you being retained in October 2025, in August, you got a call from your friend and former colleague, Mr. Vomero, asking if you were interested in a board role for a matter he was working on, right?
A I got a call from Mr. Vomero about that board role, yes.
Q And early on, you familiarized yourself with the Vanderbilt companies, right?
A I'm sorry, before the call? No.
Q No, thereafter.
A Oh, thereafter. Yeah, I mean I (indiscernible).
Q Okay. You're aware that -- for example, you're aware that in 2006, there was a merger transaction resulting in a merger of numerous Vanderbilt entities into R.T. Vanderbilt Company Inc., or what has been referred to as RTVC, correct?
A Correct.
Q And you "don't know much" about that transaction, correct?
A That's correct.
Q And you haven't investigated it, looked into it, or asked about, really asked about that transaction, right?
A No.
Q Now, when the 2012-2013, do you know the date that --

we're talking about the merger transaction, do you know the actual date of that closing?

A I think it was January 1st --

Q Okay.

A -- of 2013.

Q Yeah, and I've heard, I always say 2012-2013, but now I'll use your January 1st. So when the 2013 merger transaction was done, the RTVC entity, the single entity that existed, already had talc litigation and liabilities, correct?

A Yes.

Q And you did nothing to examine any talc liabilities existing prior to the 2013 merger, correct?

A Well, those talc liabilities came to Minerals with that -- with that transaction.

Q Exactly. Just to make the point, prior to that merger transaction in 2013, there was one company, which was the R.T. Vanderbilt Company, Inc., right?

A Correct.

Q Okay. And then coming out of that merger, there was the debtor, the Minerals entity, and numerous other Vanderbilt Entities, including the parent Holdings, correct?

A Correct.

Q And in connection with the 2013 merger transaction, you did not ask whether that transaction was done for the purpose of isolating or ring-fencing talc liabilities in Minerals,

correct?

A Are you asking me if I specifically asked --

Q Yeah.

A -- whether that -- I don't believe so.

Q Okay. I want to talk about talc liabilities. At your -- at least at your deposition a few days ago you believed that Minerals had a reserve on its books for talc liability, right?

A Yes.

Q You didn't know whether the --

MR. BARNOWSKI: Your Honor, Your Honor, I -- apologies -- I just object to reading deposition testimony in to him. If he has a question, I think he should just ask him. If he wants to impeach it, then he should impeach it.

MR. JONAS: That's fine, Your Honor.

THE COURT: Sustained.

BY MR. JONAS:

Q You didn't know whether that reserve was $90 million or as high as $120 million, correct?

A Yes, I've heard different things about what that liability reserve is.

Q Okay. Do you think the amount of a talc reserve on the debtor's books, of which are the independent director, do you think that's important to know?

A Yes, it was an amount that again (indiscernible) yes.

Q Okay. You didn't know -- and, again, I'm -- well, let's

ask -- you don't know if the debtor put that reserve on its books before or after the bankruptcy, right?

A I believe it was on the books before the bankruptcy.

Q But you don't know specifically when it was put on the books?

A I don't know specifically.

Q Okay. And you didn't do any separate assessment of the appropriateness of the debtor's 90 to $120 million reserve for talc liability, correct?

A Correct.

Q You didn't look at the specifics of how the 90 to $120 million reserve for talc liability was determined?

A Correct.

Q Okay. And you didn't do any independent review, diligence, investigation, or analysis of that reserve, correct?

A Correct.

Q Correct. You don't know how many years of talc liability that reserve represents, correct?

A Correct.

Q Other than accepting the company's 90 to $120 million reserve, you didn't do any independent investigation or analysis of what the estimated face amount or gross amount of the company's talc liability might be, correct?

A Correct.

Q And other than accepting the company's 90 to $120 million

reserve, you didn't do any independent investigation or analysis of what the estimated amount of the company's future talc liability might be, correct?

A Correct.

Q Okay. Now, there's a company called PACE, P-A-C-E, that provides a report to the debtor, or Minerals, with an estimate of future talc liability, right?

A Uh-huh.

Q You've never seen any of the PACE reports?

A No.

(Pause)

Q I'm sorry, what was your answer? I missed it.

A I said no.

Q Okay, thank you. I'm sorry, my apologies.

You've never even asked to see or review the PACE reports, correct?

A No.

Q You would have retained your own expert to estimate the debtor's talc liability, correct?

A I could have.

Q But you didn't do that?

A No.

Q You're aware that Mr. Atkinson of Province, the official committee expert, he's filed a declaration in this case?

A Yes.

Q You're aware that Mr. Atkinson has done a detailed analysis and estimated the debtor's total talc liability at something more than $500 million, correct?
A I believe that's correct.
Q And at least as of your deposition a few days ago you hadn't dug into or reviewed his report?
A No.
Q Okay. So you're not in a position to criticize or refute any of his findings?
A Correct.
Q Okay. You've never examined the company's talc insurance, correct?
A I have not, I believe my counsel reviewed the insurance.
Q You yourself have never reviewed the company's talc insurance, correct?
A Correct.
Q You don't know what the face amount of the debtor's talc insurance is, correct?
A Correct.
Q Okay. The gross amount of present and future talc liability is related to the amount of a potential alter ego, piercing the corporate veil, and successor claim against the debtor's parent and affiliates, correct?
A Can you repeat that, please?
Q Sure. The gross amount of present and future talc

liability is related to the amount of a potential alter ego, piercing the corporate veil, and successor liability claim against the debtor's parent and affiliates, correct?

A The -- sorry, you said the amount of --

Q Yes.

A -- potential claim, yes.

Q And you said?

A Yes.

Q I'm sorry, if you could just speak up.

A Yeah, no problem.

Q Thank you. We did this at your deposition.

A Yeah, I know. You can remind me, please.

Q Yes. Okay, thank you.

And that's because if there was an underlying talc claim of $100 million, let's just say --

A Right.

Q -- and there was a good alter -- we'll just use alter ego claim, that talc claimant conceivably could bring a $100 million claim against the parent, is that your understanding?

A That's my understanding.

Q Okay, perfect. So, to understand the potential amount or the value of these types of claims, that is alter ego, piercing the corporate veil, successor liability, you have to understand or know the underlying -- the amount of underlying talc or tort claims, correct?

A To understand the amount of the claim that could be brought forward?

Q Yes.

A Yeah.

Q Okay. And you didn't do any independent work or really anything to understand the underlying talc claims against this debtor, right?

A Correct.

Q Okay. This case was filed on or about February 6th, 2026, is that your recollection?

A I'm sorry, what --

Q February 6th, 2026, have I got that right? Early February?

A The case --

Q Yeah --

A -- being filed?

Q -- the bankruptcy case.

A I believe it was February the 16th.

Q Okay. Mid-February?

A Mid-February --

Q Okay. Thank you.

A -- (indiscernible) --

Q Thank you. My mistake.

Now, the Official Committee of Unsecured Creditors was appointed a few weeks later, correct?

A I don't remember the exact time, but I'll say sure.
Q Okay. And do you recall that the committee retained counsel in early March or thereabouts?
A I don't know specific time --
Q Okay.
A -- but I'll agree.
Q And you might have heard my statement at the beginning that this is our sixth week, that is, my firm's representation of the committee, this is our sixth week, so does that sound about right to you?
A Sure.
Q Okay. So the committee has had about six weeks to obtain information and documents, analyze and decide its position, in this case it's opposing a global settlement you've been working on for about six months, right?
A Correct.
Q After the committee served discovery on you in March, you produced the three Katten presentations that you were shown by your counsel today regarding your investigation and settlement in substantially redacted form, correct?
A Yes.
Q In fact, most of the pages were completely blacked out, making the presentations useless to the committee in connection with its work, right?
A I will just say yes.

Q Okay. You've seen them, there's this black -- page after page of blackout, right?
A Correct.
Q Okay. Even after many meet-and-confers and the committee filing a motion to compel, you refused to turn over the unredacted presentations, correct?
A Yes.
Q Finally, after the Court approved the committee's motion to compel, you turned over the unredacted presentations on Saturday, April 11th, right?
A I don't know the exact date, but I'll agree with you.
Q Saturday, today is -- what's today, Thursday?
A Today is the 16th.
Q Okay. So it's five or six days before trial that you produced the unredacted presentations, right?
A Right.
Q Okay. Now, in connection with the Court allowing the committee's motion to compel, in your turnover of the unredacted Katten presentations you made changes from the unredacted to the redacted presentations before you turned those over to the committee, isn't that right?
A Sorry, are you asking me if the presentations were amended before they were handed to you?
Q Let me be clear. We got redacted presentations, lots of blackout, but there was some information there.

A Right.
Q Okay? You were instructed by the Court after our motion to compel to turn over the unredacted presentation --
A Right.
Q -- right? At least in some respects you made changes to the redactions that we got before you turned over the report, did you not?
MR. BARNOWSKI: Objection, Your Honor. If there's a concern about what was produced, I produced the documents, we produced the documents. I'm happy to have a meet-and-confer with --
MR. JONAS: No, no, no, no --
MR. BARNOWSKI: -- counsel.
MR. JONAS: -- not fair, Your Honor. We have a witness --
MR. BARNOWSKI: You never raised it with me before sitting here today. I don't know what this is about, but I'm happy to sit down and talk about it.
MR. JONAS: No, sir. We have a witness on the stand who's test -- excuse me -- who's testified at length about presentations that he was shown by his counsel. If those presentations in connection with when -- he's obviously now testified about when they were delivered to us, and if something improper was done by him as the person whose reports they are, effectively, I'm entitled to ask him questions about

it. I'm happy to show him the detail and we can go from there.

THE COURT: I'll allow it.

THE WITNESS: The only changes that were made was to remove the redactions.

BY MR. JONAS:

Q Okay, the only changes that were made were to remove the redactions?

A That's what I'm aware of --

Q All right, and maybe I'm wrong, but I'd like to get to the bottom of it. So, let's take a look.

A Sure.

Q Let's look at Trial Exhibit -- our Trial Exhibit 49.

MR. JONAS: May I approach, Your Honor?

THE COURT: You may.

(Pause)

MR. JONAS: And one more, Your Honor, this will be 250.

BY MR. JONAS:

Q So I want to look at page 18.

MR. BARNOWSKI: Of which report?

MR. JONAS: Hold on one second. I'm sorry, of both of them, page 18, since they're supposedly the same document except for the redaction removed. So that's why I think the pages should match up.

BY MR. JONAS:

Q And if we look at page 18 --

THE COURT: And we're talking about Exhibit 49?

MR. JONAS: Sure, Your Honor, we can start at 49, and then we'll look at 250.

BY MR. JONAS:

Q So, the first one is Trial Exhibit 49, that was the redacted version. If you look, you'll see many redacted pages. At the top of page 18 it says, "Minerals' board of managers is currently comprised of," and it lists -- do you see the five individuals?

A Yes.

Q And if I look at 250, the unredacted, supposedly the same report, you told me the only thing that was done was to remove the redaction, and if I look at page 18, I see Minerals board of managers and now it's only four individuals. Do you see that?

A (No audible response)

Q Mr. Webster is removed.

A I see that.

Q So my question, sir, is why were changes made from the redacted version to the unredacted version?

A I'm not familiar with that. It must have been a different -- it must have been a different draft. That surprised me --

Q Well --

A -- because that --

Q -- see, here's the problem, there was so much redaction I can't really tell. So, were other -- did you make other changes that I don't know about?

A No, I didn't make any changes, we didn't make any changes.

Q Well, you did, I'm showing you. There was a change that was made, correct?

A This must have been a different draft.

MR. BARNOWSKI: Your Honor, I object to this. He was not involved in any way in the production. I am happy -- no one has ever raised this before today, clearly trying to put on a show, but regardless I will get to the bottom. I instructed my team to produce the documents that were redacted, this is the first time I've ever seen this. My guess is that whoever redacted them, I'd have to call my office, but regardless I'll give him whatever is necessary. And if they really, truly needed this for some important reason, I sat in a room with this man for multiple hours two days ago, nothing was raised on this. This is --

MR. JONAS: May I respond, Your Honor?

THE COURT: You may.

MR. JONAS: Your Honor, we fought tooth and nail -- we've been in this case six weeks, we have fought tooth and nail to get disclosure. You heard my position at the beginning, I asked him the question, was your job to obfuscate? He said no. My belief, and I think I'm going to prove it

today, is that that's exactly what happened. This case has been about delay, about obfuscation, so that we cannot get complete information. We got the redacted reports, I think it was Saturday night, I think. I was traveling, I had to have them printed at a hotel, it was --

MR. BARNOWSKI: Saturday at 5:00.

MR. JONAS: Saturday at 5:00, it was a mess at a hotel having to print hundreds of pages. Nevertheless, okay. We knew -- and that was knowing -- that was with them knowing that the deposition was going to take place on a Tuesday, so we didn't have a lot of time. So, I don't think it's incumbent on me -- all I know is, when we did en examination, we found at least one change.

Now, you could say, well, it was only one change, but we were looking at blacked-out pages. So, I have no idea what else was changed --

MR. BARNOWSKI: I'm happy --

MR. JONAS: -- and -- excuse me --

MR. BARNOWSKI: -- I'm happy to --

MR. JONAS: -- excuse me --

MR. BARNOWSKI: -- provide that information --

MR. JONAS: -- can I finish?

MR. BARNOWSKI: Yes.

MR. JONAS: Apparently, the witness who's responsible for this -- he can hire counsel, that's fine, but he is

responsible for this report. And I think part of the big show we had this morning was how much time he put into it, how careful he is, that's great, but when it comes to giving us the same information we didn't get it.

So I'll leave it at that, Your Honor, I'm happy to move on, but I think this is -- it's an important issue.

THE COURT: You've made your point, Counselor. Move on.

MR. JONAS: Thank you.

BY MR. JONAS:

Q Okay. All right. Even after turning over the unredacted presentations at Saturday, I'll take Mr. Barnowski's word for it, at 5 o'clock, you didn't turn over the underlying investigative reports, correct?

A What do you mean by that?

Q Sure.

A Yeah.

Q There were -- you did -- we were told today that you did interviews of many people, key people to get at the facts including, for example, alter ego, successor liability, all kinds of claims. You did an investigation and you had to talk to people, right?

A Yes.

Q You talked to people at Holdings, you talked to people at Minerals, right?

A Yes.
Q Okay. And you didn't actually do those interviews yourself, did you?
A No, I did not.
Q You didn't listen to them, did you?
A No.
Q You didn't sit in on them?
A No.
Q No. You had your law firm --
A One, I was there for one.
Q Which one was that?
A Mr. Vomero's first one.
Q We'll talk about that in a minute.
A Sure.
Q You had your law firm conduct those interviews, correct?
A Yes.
Q And then they prepared -- I think it was emails, but they prepared summaries for you, very detailed summaries of the interviews, correct?
A Yes.
Q Okay. And those summaries, multiple pages of emails, those were important because they contained facts that they uncovered in your investigation, right?
A Right.
Q Okay. Do you even know that when we got the unredacted

presentations at 5 o'clock on Saturday we didn't get the investigative report -- the underlying investigative interview summaries?

MR. BARNOWSKI: Your Honor, I object to this line of questioning. As Counsel knows, the interview summaries were not part of the motion to compel that was decided last week, and when Counsel sent me an email on Sunday saying -- or maybe it was Monday, I don't remember which -- saying are you going to give us the interview summaries, I said to him, they weren't part of the motion to compel, are you seeking those? And he said yes, and we voluntarily produced them to him the next week.

So I think it's a little improper to suggest that counsel somehow didn't something wrong because they didn't produce something that was not the subject of a motion.

MR. JONAS: Respectfully, Your Honor, we're not here for testimony from counsel, I have a witness on the stand, I asked him a simple question. Let me ask it.

BY MR. JONAS:

Q Did you know that when the unredacted reports were delivered to us on Saturday at 5:00 p.m. that the underlying emails or summaries of interviews, which you've said were important, were not produced to us, did you know that?

A Yeah, I came to be aware of that.

Q When did you come to be aware of it?

A Again, back in the discussion when you were asking for -- or your team was asking for the summary notes, I had a conversation with counsel to ask them or produce those.
Q Were you involved in the decision not to turn over those notes when the unredacted reports were turned over?
A The discussions we had were about your request, which was to provide the reports, and the Judge's ruling, you know, which was encouraging that to be produced, and I instructed counsel to, yes, please produce the unredacted reports.
Q When did you give that instruction?
A I don't recall which specific day, but it was a telephone conversation that we had with respect to the reports and I said they should turn them over.
Q Okay. Well, you didn't turn over the investigative reports until Sunday, I'll represent that to you, there seems to be uncertainty. It might have been Sunday night, I'm not sure, but is -- would you agree with me on that?
A That sounds fine.
Q Okay. That was less than two days before your deposition, right?
A Right.
Q Four to five days before trial, right?
A Right.
Q And --
A The total of those were maybe eight pages.

Q And you didn't -- well, let's talk about those eight pages. We're going to spend some time on that. You didn't want to produce those interview notes because they're damning evidence against the propriety of your investigation, correct?

A No.

Q Those notes contain *prima facie* evidence, in fact admissions of defendants of claims that the debtor holds against Holdings and affiliates for alter ego, piercing the corporate veil, and successor liability, right?

A The comments that were made were also in the reports that you received.

Q Okay, we'll get to that. You have not turned over any interview notes from the interviews, I think you said there were four of them, of Mr. Vomero, correct?

A There were none made.

Q Oh. So, how many people did you interview?

A We interviewed seven in total.

Q And was Mr. Vomero the seventh or the eighth?

A He was throughout the course of the investigation.

Q Okay, but is he part of seven or was he number eight, so to speak? Seven -- is he included in the seven interviews?

A Yes, yes --

Q Okay.

A -- because we had six individuals who were interviewed once and he was interviewed four times.

Q Four times, okay. And everyone else that you interviewed, notes were prepared of those interviews, right?

A Right.

Q Mr. Vomero, no notes. Why not?

A Well, my understanding is a lot of the discussions around him, again, the one that I attended was around the accounting and, you know, those types of financial steps that were taken, the netting is an example, that were explanatory --

Q Your ability to testify in detail today about the setoff and the transactions, that is at least in substantial part based on the interview -- I think you said this -- on the interviews, four of them with Mr. Vomero, right?

A Lots of facts went into it.

Q And a lot of the facts came from Mr. Vomero's interviews, right?

A Uh, I want to say the right way to answer this, which is -- which is we had a lot of discussions with Mr. Vomero, I had a lot of discussions with Mr. Vomero, and the information that, you know, we continued to get was all regarding do we understand this correctly, what does this mean, it's all part of our growing knowledge of understanding. Notes were made, notes were made, again, it was all part of open discussions with Mr. Vomero.

Q But I don't get the benefit of seeing any summary of those important interviews in order to prepare for a trial or your

deposition, do you understand that?
A I understand that.
Q Okay. Who made the decision not to take notes of Mr. Vomero? Was it your decision not to take notes of Mr. Vomero's interviews?
A No.
Q Well, who made that decision?
A I -- I don't think it was a purposeful decision not to take notes.
Q Really? Every other interview somebody was assigned to take notes and then all of a sudden, for Mr. Vomero, no notes were taken, that wasn't a purposeful decision?
A Not that I'm aware of.
Q Okay. Well, let's get to the heart of it then.
You understand that an alter ego or piercing the corporate veil claim -- I think you said this -- would require domination and control of Holdings over Minerals, correct?
A Yes, complete domination.
Q You had your law firm conduct interviews with these key employees, we've talked about that, right?
A Mm-hmm.
Q And then, again, they provided you with these email summaries, right?
A Yes.
Q Okay. So let's take a look at 240 -- our Trial Exhibit

243. I'm also going to -- just to make it more convenient, I think it's 244.

(Pause)

MR. JONAS: Excuse me, Your Honor, I'll be right there.

(Pause)

MR. JONAS: Okay. May I approach?

THE COURT: You may.

(Pause)

BY MR. JONAS:

Q Okay, let's take a look first at 243. This is what's been marked as our Trial Exhibit 243, it's an email from Cindi -- I never pronounce it right --

MR. BARNOWSKI: Giglio.

MR. JONAS: -- Giglio -- I never do that, but sorry.

BY MR. JONAS:

Q This is an email from Cindi Giglio to you dated January 15th at 6:39 p.m., correct?

A Correct.

Q And this -- and we're going to look at some more, but this is an example of the types of interview summaries that Katten provided to you when they interviewed key employees, right, or other personnel?

A Yeah, these are executive summaries.

Q Okay, first let me ask you a question. If I look at the

first page, it says that at this interview was Mr. Barnowski, Ms. -- I think it's McKee, Summer McKee -- let's see, Cindi was there as well, and Arlen Moradi, do you see that, Moradi?

A Yes.

Q Do you think it was necessary that Katten had four people -- I don't know if they're all lawyers or not, I know at least three of them are -- at these interviews?

A I didn't take issue with it.

Q Okay. Do you know if that's the amount of Katten people that interviewed Mr. Vomero four times?

A Yeah, I don't know who was there at his second or fourth interview, but at his first interview -- I don't recall.

Q Okay, if you could just speak up, please?

A Yeah, I don't recall --

Q Okay.

A -- who was there.

Q So let's take a look at the second page. You talked a little bit about Randy Johnson, so I want to do the same.

Now, at the bottom of the page this indicates this is the interview of Randall "Randy" Johnson, president of Holdings, right?

A Correct.

Q And at the top of the next page it indicates he's been employed by the Vanderbilt family of entities since 1984, forty-something years, right?

A Correct.
Q And he began in the sales department and was eventually promoted to vice president at the Minerals entities, right?
A Yes.
Q And after 2013 he was appointed president of Minerals, right?
A Yes.
Q 2016, he became president of R. T. Vanderbilt Holdings Co., right?
A Yes.
Q And he's also -- he's also been, at least until September, he was on the board of Minerals, right?
A Yes.
Q Okay. So this is pretty much somebody that knows just about everything there is to know about Vanderbilt, about the Vanderbilt entities, right? He's been there forty-something years, right?
A You would think he had a bit of institutional knowledge.
Q You would think so. And he's the most senior guy there is, he was the president at Holdings and he was a board member at Minerals, right?
A Yes.
Q Okay. Now, I want to look at the section titled "Company Operations," do you see that towards the top of the page there?
A Yes.

Q And when asked what Holdings does on a day-to-day basis -- this is under operations -- so he was asked, what does Holdings do on a day-to-day basis to assist Minerals' operations.

He answered in the vein that, quote, "Holdings pulls all the strings," close quote. Do you see that?

A I see that.

Q And he went to explain that includes, for instance, union contracts, capital expenditures, hiring and firing decisions, governmental affairs, mining regulations, right?

A Yes.

Q And he further told the interviewers that these decisions are typically made by the finance group within Holdings, right?

A Yes.

Q So, let me ask you, do you agree with me that the expression, quote, "pulls all the strings" means control?

A Yes, that's why we took it very seriously.

Q And do you agree with me that pulls all the strings could mean domination?

A It could be.

Q It basically means that Holdings is running Minerals, right, they're making every decision?

A If that was the facts in evidence, then that's why we investigated further.

Q Well, this is the defendant, do you understand that this is the president of the defendant admitting, admitting that his

company controls, makes all the decisions for, pulls all the strings for Minerals, its subsidiary, isn't that what he's saying?

A We have to take it in context of what else he refers to because he said this includes for instance, and then he goes to union contracts, capital expenditures, hiring, firing, governmental affairs, all the things that as I mentioned were part and parcel of what the management agreement covered. And he goes on to further state that he wasn't the one that was doing this, these decisions were typically being made by the finance group, which I'm assuming he meant was Don Orpilla.

Q The finance group at his company, Holdings, right?

A That's -- that's the -- yes.

Q Because Minerals didn't have a finance group, right?

A Correct, which --

Q So every financial decision for Minerals was getting made by Holdings?

A Well, no, that's not a correct statement.

Q Oh, okay, if you say so.

Now, he actually went on to say it was in Minerals' best interest to participate in the cash sweeps because it took financial decision-making responsibilities away from Minerals' employees who generally did not have the financial background or skills to make those decisions, isn't that what he said?

A That's what he said.

Q Okay. And this tells us that Minerals gave up financial decision-making to its parent, Holdings, right?
A Again, not necessarily because it depends on what he meant by financial decision-making.
Q Did you talk to Mr. Johnson?
A I did not.
Q This is all we know, this is all that I know about what Mr. Johnson said, right?
A Right.
Q Okay. And if Mr. Vomero said something different, I don't know it because I didn't get his notes, right?
A Right.
Q Okay. Now, Mr. Johnson, the president of Holdings and Minerals board member, he had little to no knowledge regarding the June 2025 netting exercise, right?
A Correct.
Q That was a kind of important transaction, wasn't it, the 2025 netting?
A Yes.
Q You've heard the Court ask a lot of questions about it, it's been at issue in this case, and the president of Holdings and a board member of Minerals, he didn't know anything about it?
A Right.
Q Oh, okay. Now, with respect to the intercompany note you

referenced somewhere up on your chart, Mr. Johnson indicated he had little to no knowledge regarding the basis of the note, and that the Minerals board essentially provided a, quote, "rubber stamp," close quote, on the note at the direction of Holdings, correct?

A Correct.

Q He went on to say that Holdings wanted to enter into the note, so they asked Chemicals and Minerals to rubber stamp it, and so we did.

A That's what he said.

Q Okay. Holdings tells Minerals, oh, sign this note. Okay, where do we sign? That's what happened, right, that's what it tells us?

A That's what he's purported happened, yes.

Q Okay. Does it say there they asked any questions about it before they rubber-stamped it?

A He didn't say that, no.

Q No. Did he say they made sure it was appropriate for Minerals to sign a note to Holdings, did he tell you about that?

A No, he did not.

Q Did he say Minerals investigated the propriety of signing a note to Holdings?

A He didn't say that.

Q Did he say that anybody at Holdings -- at Minerals thought

about creditors or talc claimants before they signed that note?
A He did not say that.
Q No, because all they did was they told them, sign it, and they signed it, right?
A That's what he says.
Q Okay. Boy, that sounds like dominion and control of Minerals by Holdings, don't you think?
A There's many other facts here to consider.
Q I'm just asking about this. Does that sound, what we've just been through, does that sound to you like complete dominion and control by Holdings of Minerals, yes or no?
A No, you have to consider all the other facts.
Q Okay. Now, with respect to distributions, Mr. Johnson, president of Holdings, board member of Minerals, had no knowledge regarding the purpose or thought process behind the various distributions Minerals issued to Holdings that were approved by the Minerals board, right, isn't that what he said?
A That's what he said, yes.
Q And he said, even though the Minerals board approved the distributions, Mr. Johnson indicated they were simply providing a rubber stamp at Holdings' behest, right?
A That's what he said.
Q All right. Now, he went on to say, Mr. Johnson, that, quote, "The analysis and decisions were being made at the Holdings level, after which recommendations were made for

Minerals to rubber stamp," that's what he said, right?
A That's right.
Q Okay. Do you know the effect that the -- do you know -- and I know you're not a lawyer, but there's been a lot of legal conversation, I just want to ask you, do you know the impact when a defendant makes an admission to facts, do you know how that affects a cause of action?
A Well, again, what I know is that we took these very seriously and wanted to see if there was any other evidence of complete domination and control because these were obviously serious comments, as I mentioned before, we took them very seriously.
Q Well, did you follow up with Mr. Johnson?
A No, I asked my team to.
Q You took it so seriously -- you personally thought this was very, very serious?
A Yes.
Q You never spoke to Mr. Johnson?
A No.
Q Okay.
A Well, I have had a conversation with Mr. Johnson --
Q Not about this?
A Not about this.
Q No, okay. Okay, let's look at some other notes. I want to roll back to the first page, Mr. Cafarchio. Did I say that

right?

A Cafarchio.

Q Cafarchio. At the top of the page marked 2 at the bottom, he's an SVP controller at Global Services, right?

A That's correct.

Q And if we look down the page to the June 2025 netting exercise --

A Right.

Q -- he -- it says, Mike did not play much of a role in the June 2025 netting exercise, he simply, quote, "recorded the entries that were given to him," close quote.

In response to being asked whether he played a role in determining what amounts should be added or subtracted from the accumulated payable balance throughout the years, Mike responded that he didn't and he said -- and I'm going to fix it because you told me this at your deposition --

A Yeah.

Q -- there might not be anybody that does --

A Right.

Q -- that you had followed up because there was -- people were wondering what he said and they followed up with him and it was corrected, and in fact his comment, his quote was there might not be anybody that does, right?

A That's correct.

Q And he's saying there might not be anybody that

understands or knows the -- in connection with determining what amounts could be added or subtracted from the accumulated payable balances throughout the years, that's what he was saying?

A That's what he said.

Q Okay. All right, now let's go to Trial Exhibit 244.

(Pause)

MR. JONAS: Excuse me, Your Honor, one second, if you don't mind.

THE COURT: Certainly.

MR. JONAS: I handed -- no, it's 245, I handed it up.

THE COURT: I believe you handed up 242 and 3, yes.

MR. JONAS: Then he's right and I'm wrong, as usual, Your Honor. This is 242. Good to have smart people to work with.

BY MR. JONAS:

Q Trial Exhibit 242, Mr. Pickering, these are -- at the top we see it's an email from yourself to Summer McKee at Katten, and then there's a bunch of folks CC'd, and these are some more interview summaries, right?

A Correct, yes.

Q All right. And let's just take a look at Mr. Brohel -- Brohel?

A Brohel, yeah.

Q Okay. He was general counsel at Minerals, right?
A Yes.
Q And he -- with respect to the 2013 promissory note to Minerals, he had little to no knowledge regarding the note's genesis or its current status, right?
A Yes.
Q And with respect to Holdings' management agreement and related expenses, he had no knowledge as to its specifics, and he went on, as to the private jet and country club expenses that are passed down to Minerals, he viewed those as providing some benefit, right?
A Yes.
Q Okay. And then to the infamous June 2025 netting exercise, Jeff was involved in some meetings where the netting exercise was discussed, but noted that for the most part the decision to implement the netting exercise was made by the financial accounting professionals, right?
A Yes.
Q And those financial accounting professionals, they are Holdings employees, right?
A Well, again, as I -- I think we discussed this as we were looking at professionals, it's likely that he is referring to Mr. Vomero and his team.
Q Well, were they at Holdings at that time?
A In June, I believe they were.

Q Okay. Now, let's turn the page, at the top, dividend and pass-through tax distributions. Mr. Brohel, the general counsel, said Jeff -- well, Jeff, he was not knowledgeable on the subject, but suggested that Doug Webster, who also served on the Minerals board, would be a better person to speak to, right?

A Yes.

Q You never spoke to Mr. Webster, did you?

A No.

Q No interview of him at all, right?

A Right.

Q Okay. Let's drop down and down at the bottom, other topics, Mr. Brohel was generally aware of the $143 million receivable owed by Holdings, the 2013 promissory note, and the June 2025 netting -- I'm sorry, this is Mr. Kryspin --

A Oh --

Q -- let me -- my bad.

A -- thank you.

Q Page 3 at the top, it's Mr. Kryspin, he's a VP and treasurer at Holdings, right?

A Right.

Q And with respect to other topics, it said Ted, Mr. Kryspin, was generally aware of the $143 million receivable owed by Holdings -- owed by Holdings, right, to Minerals?

A Correct.

Q The 2013 promissory note and the June 2025 netting exercise, but was not knowledgeable enough to provide substantive insight on any of these subjects.

Not a lot of people seem to know much about that 2025 netting exercise, right? And we've looked now at a whole bunch of interviews, nobody has been able to really provide information.

A Right.

Q Right. The guy that really has the information is Mr. Vomero, right?

A Yes.

Q Because he designed it?

A Well, he was hired -- one of the things he was hired to do was to obviously look at the systems issues that were going on and understand what the true reconciliation of those balances would be.

Q All in anticipation of bankruptcy, right?

A I'm not aware of that. I wasn't --

Q Do you think it was a coincidence that starting in the summer of 2025 a global netting transaction was done whereby Minerals, I'll just say lost, I know you wouldn't use that word -- Minerals lost a $127 million receivable from Holdings, a whole bunch of intercompany agreements were amended during the summer of 2025, weren't they?

A Yes.

Q How many, like six?
A I'm trying to count them. I'm not sure how many there were, but there were some.
Q And there's a note from Holdings to Minerals that was amended twice, it was amended in the summer and then it was amended in January again, right?
A Yes.
Q Do you think it's coincidental that all those things happened and then, a few months later, the company filed bankruptcy?
A They were going through a clean-up exercise, I don't know the reason why, I wasn't involved there.
Q Did you ask anybody?
A Yeah, I spoke with Mr. Vomero about it, and he said they wanted to clean up the record issues that were happening.
Q But I don't know what else he said because I don't have the notes from his four interviews, do I?
A I believe you've had an opportunity to depose him.
Q You think it's equal time for me to be able to depose someone without interview notes from a million-plus-dollar investigation that's been conducted over six months, you think that's fair?
MR. BARNOWSKI: Your Honor, Your Honor --
MR. JONAS: I'll move on, Your Honor.
MR. BARNOWSKI: -- I object. He's just badgering the

witness at this point, come on.

BY MR. JONAS:

Q Okay, let's take a look at the notes from Mr. Orpilla at the bottom.

Mr. Orpilla has been employed by Vanderbilt entities since the 1980s, right?

A Yes.

Q And as to the cash management sweeps -- and he's the SVP and CFO at Holdings, right?

A Mm-hmm.

Q And as to the cash management sweeps, he was not as knowledgeable as Ted on the topic of centralized cash management sweeps, right?

A Correct.

Q And if we turn the page and we drop down, he couldn't provide any insight into the Holdings management agreement and related expenses, right?

A Oh, the last bullet on that page?

Q Yeah.

A Yes.

Q Okay.

MR. JONAS: Your Honor, I'm at a break, I don't know if it's a good time or --

THE COURT: Probably, it's probably time for people to stretch and perhaps get a quick bite to eat, although I

don't believe our café is -- it closes at 2:00.

MR. JONAS: Oh, okay.

THE COURT: If it's the fifth floor, for anyone interested. There's also vending machines up there.

How much time do we think we need, 30 minutes?

MR. JONAS: Whatever you'd like, 30 minutes is fine. Thank you.

THE COURT: It's 1:35, why don't we reconvene at 2:05.

THE CLERK: All rise. Court is in recess until 2:05.

(Recess at 1:35 p.m./Reconvened at 2:09 p.m.)

THE CLERK: Please be seated.

MR. BARNOWSKI: Good afternoon, Your Honor.

THE COURT: Yes, just one minute, Mr. Barnowski.

For those of you who are on video or phone, we received quite a few calls, you were muted and can't hear or see the testimony, live testimony, per Judicial Conference policy. So, for anyone who is listening in, when oral argument commences either later on today or tomorrow, that will be open, but during the testimony that will be closed.

So, I just wanted -- I understand we're getting quite a few calls and requests on that, so I just wanted to clarify that while that line was open.

Mr. Barnowski.

MR. BARNOWSKI: Thank you, Your Honor. I just wanted

to clarify the record on one point --

THE COURT: Yes.

MR. BARNOWSKI: -- because the integrity of my firm was challenged there for a minute.

THE COURT: Understood.

MR. BARNOWSKI: What was produced to the committee in redacted form was the presentation that was given to Mr. Pickering on December, whatever date that is --

THE COURT: The 15th?

MR. BARNOWSKI: -- on the document, 13th --

THE COURT: 15th.

MR. BARNOWSKI: -- 15th. When you ordered the production of the document, I instructed my associate back in the New York office to un-redact them. He went on the system -- I should take a step back.

After that meeting, we learned in the meeting -- we as lawyers learned in the meeting that the one person whose name doesn't appear on the second document was not actually on the board, and so we went into the document and amended it. He was not part of the December 13th meeting, we took out his name. When I instructed my associate to produce in unredacted form the meeting presentation from December, he went onto the system and pulled down the most recent version, which did not include that person's name in it, and produced it. That's why there's a difference in the document.

THE COURT: Thank you, appreciate that clarification.

Mr. Jonas --

MR. JONAS: Yes.

THE COURT: -- hold on just a minute.

(Pause)

THE COURT: Okay, please proceed.

MR. JONAS: May I proceed, Your Honor?

THE COURT: You may.

MR. JONAS: Thank you.

BY MR. JONAS:

Q Mr. Pickering, I'd like to turn to the 2025 netting transaction -- or sometimes people say setoff, right?

A Right.

Q But that's the same thing?

A Yes, netting exercise setoff.

Q Okay. Now, obviously, you're familiar with that, right?

A Yes.

Q Okay. And in connection with that transaction or transactions the debtor, Minerals, immediately prior to the transactions taking place, it had a receivable of at least $127 million and, immediately after the transaction, that receivable was substantially reduced, right?

A Yes.

Q Okay. And you determined in your investigation that the debtor had no claims relating to the 2025 netting or setoff

transactions, right?

A Yes.

Q And when you had a discussion with Holdings -- and we'll get to this in a little bit -- about settling, you didn't even ask Holdings for any value on account of potential claims that might relate to the 2025 netting transaction, right?

A When you say potential claims --

Q Sure.

A -- litigation claims or --

Q Yes.

A Litigation claims -- maybe you could restate the question.

Q Sure. I'm sorry, let me try it again.

A I'm sorry.

Q No, no, no, not at all.

You reviewed the 2025 netting transaction, correct?

A Yes.

Q And there was mention of -- we'll get to your conclusion, but there was mention maybe it could have been a fraudulent transfer or there might have been other claims that Minerals had against Holdings in connection with let's just say the reduction of its receivable, correct?

A Yes.

Q Okay. And you ultimately determined that those claims were not -- I don't know, how would you describe it?

A Yeah, valid and viable.

Q Okay, not valid and viable. Thank you.

So, you made that determination and then, when you got to talk settlement -- and we'll get to this in a minute -- with Holdings -- and we talked about this is where you ended up, your settlement discussion, right?

A Right.

Q You didn't -- did it occur to you that perhaps you should ask for something in connection with the 2025 netting transactions?

A Well, again, the settlement was encompassing of all of those potential claims, right --

Q Oh --

A -- and that the -- you know, where we saw outstanding amounts were these three items that -- two, but there are three items that you see there.

Q Okay. And this is what you got value on account of, right?

A Right.

Q You didn't get any value on account of any potential claims relating to the 2025 netting transactions?

A Well, again, I think when we looked at whether there was valid and viable claims, the settlement encompassed all of that, again, as we've explained, but the focus of the settlement was on the numbers that we knew were outstanding, including our receivable numbers.

Q Well, when you went to settle with Holdings, did you make the claim, a demand that, hey, we have a viable claim in connection with the 2025 netting transaction, how much are you going to pay us for that, did you do that?

A Yeah, I mean, we asked for -- what we made the claim for was the outstanding balances, one of those balances was the result of the netting transaction.

Q Yeah, no, it was -- the claim was for the balance of the amount that was due on the receivable that was reduced by over a hundred million dollars after the netting transaction, right?

A Correct.

Q Okay. You didn't make a claim or demand at all in connection with the actual netting transaction.

What I mean by that is, the fact that Minerals lost over a $100 million receivable, you didn't make -- you didn't even suggest that you get paid any value on account of that?

A Again, if you look at the fact that -- you know, we didn't believe that the claims were valid and viable, but if you did reverse that netting exercise, you'd end up -- as I explained before, you'd end up with a significant addition to the claims pool.

Q Mine is a very specific question.

A Yes.

Q Did you raise potential claims in connection with the 2025 netting transaction in settlement discussions with Holdings?

A Again, we didn't believe that there was valid and viable claims. So, I'm not sure how you'd phrase it, it's probably more of -- you're asking me about, you know, the legal rationale behind it, but, again, we didn't believe that they were valid and viable claims, whether we -- whether we asked specifically for something that we didn't think was valid and viable, that was all encompassed as part of the settlement.

Q So, you made a decision that the claims didn't have any value, and you didn't even try and settle them for anything, you didn't even raise those claims, right?

A Again, I think that we concluded that they weren't valid and viable, so I think --

Q Okay.

A -- I understand what you're trying to get to, it's did we establish a balance for those claims --

Q Right.

A -- and I would say it's all a part of this settlement where, again, we're at the top end of our range. So, we got -- I think we got very good value for anything that we could see was a valid claim and --

Q Okay.

A -- (indiscernible) --

Q Well, let me break it down. You got value on account of two financial, I'll say instruments, right?

A Right.

Q That's the only value you got was on account of the initial $14 million -- I forget if that was the note, I think?
A No, no, the note is the --
Q The receivable?
A -- yeah, that's the two receivable balances.
Q The two receivables, right. And the 27.9 is the note?
A Right.
Q And that's the universe of value that you got. You didn't get anything on account of any other claims.
A Yes, like did we get anything specifically for those claims --
Q Yes, sir.
A -- like this is for this claim, this is --
Q Yeah.
A -- for this claim, no, it's all encompassed as part of --
Q Well --
A -- that settlement.
Q -- in fact, you didn't get anything because you didn't ask, right? You didn't go into your initial settlement meeting, which we'll get to in a minute -- the only thing you asked for value on account of were these two -- I'll just keep saying two, I know there might be three, but financial instruments, right?
A Yes, I believe that's where we settled.
Q You didn't raise potential alter ego claims, alter ego

claims in -- ever with the other side that you might have had those claims against, right?

A I believe counsel had some discussions with their counsel, but I know it's part of our settlement negotiations. When I sat down, it was not part of the specific discussions --

Q Okay. So, in any settlement discussion you were at, you never raised the potential of that claim and getting some value on account of it, alter ego, right?

A Yes.

Q Okay. And piercing the corporate veil, same answer, right? You never raised it, you never got any value on account of it, right?

A We didn't believe that they were valid and viable claims, yes.

Q Okay. And successor liability, same thing, right?

A Yes.

Q Let me ask you, do you think it's carrying out your fiduciary duty to unsecured creditors and talc creditors to not even raise potential claims in connection with a global settlement agreement?

A Well, again, we were looking at the potential recovery to maximize what value there could be, right? And so where we knew we had valid and viable claims, we went after those; where there was no valid and viable claim, we know there is going to be some litigation and that litigation, as I've discussed, is

going to resolve the worst -- worst recovery claims.
Q Why predetermine it? Why not make the ask? I mean, you had -- facially, you had Mr. Johnson basically saying on a platter, here's an alter ego, piercing the corporate veil, maybe successor liability claim, and you just decided we're not even going to ask for any value on account of those claims?
A I'm sorry, I don't know if we asked specifically for that, that would have been the lawyer-to-lawyer discussion, and when we had the conversations about a settlement, we were focused on these claims.
Q Sir, respectfully, you are a fiduciary of this estate --
A Right.
Q -- you direct lawyers, they don't decide what they're going to do, right?
A Right.
Q So did you direct them to try and get some value on account of alter ego, successor liability, piercing the corporate veil? Did you say, hey, go into that settlement, get me some value for that, or at least put it on the table, did you do that?
A I -- I -- unfortunately, I am uncertain whether we had that specific discussion because we talked about a lot of claims. So, in that initial discussion, again, we made a demand for the 43 some odd million dollars.
Q Yeah, based on two financial instruments, right?

A Right.

Q Right, okay. And now I think I want to come back to my question, I just want your opinion. You've been a fiduciary in many cases, right?

A One other case I'm a fiduciary in, yes.

Q Okay, but you've been in the bankruptcy game for a long time, right?

A Yes, that's correct.

Q Okay. So, do you think it's appropriate for a fiduciary when there are potential claims and there's a global settlement discussion to not even make the ask for anything, not even raise those claims, do you think that's appropriate for a fiduciary to unsecured creditors?

A Again, part of our negotiation was to try and settle that. All these things, we knew -- we knew when they asked for a release we had to include, you know, whatever value we could get. And so, again, we maximized the value by negotiating to the upper point of the range of what we thought was valid and viable.

Q Okay, can we try yes or no? And I don't -- I'm not going to badger. If you can't answer it, just tell me I can't answer it.

You have broad experience in the bankruptcy game, you've been a fiduciary, I want your opinion whether you believe it's appropriate conduct for a fiduciary to unsecured creditors,

when making a global settlement of their claims, if it's appropriate to not even raise claims that you did an investigation about, you know there's a possibility of claims, never mind the strength of them, you know my opinion on that, but do you think that's appropriate conduct for a fiduciary to unsecured creditors, yes or no?

A I -- yes.

Q You do? Okay.

You don't know if Minerals was solvent when it gave up the $127 million receivable from Holdings, right?

A Right, solvency was not part of the decision.

Q Yeah. I'm going to show you Exhibit 2 -- well, let me see, maybe I --

MR. JONAS: -- if I have one minute, I think I can expedite, Your Honor --

THE COURT: Certainly.

MR. JONAS: -- which everybody will be happy about. Thank you.

(Pause)

BY MR. JONAS:

Q Okay. And, please, if I -- I want to try and speed things up here because everybody is getting hot and tired, including me, and I know your back must bother you. So, I'm going to try and do it without the document, I'm happy to -- we can do that drill if we have to, but I'm just going to read you a quote

from your report. This is the -- we talked about it, so I think you'll be familiar with it -- this is from the January 27th, 2026 presentation, the middle one, I think, and it was -- it's 251, which I've already put up. There's a sub-bullet talking about the netting transaction and solvency and it says, "It is" -- you said, I don't know what the report said -- "It is unclear to what extent the determination of Minerals' solvency at the time of such transfers would be impacted by then-pending litigation claims," right?

A Right.

Q And is that you're telling us the solvency of Minerals, it could go one way or the other depending on the magnitude of talc claims?

A Correct.

Q And you did no independent analysis of talc claims?

A Right, nor did we come to our conclusions on the basis of solvency.

Q Okay. So, negotiations -- let me just see.

Okay. In January of '26, you began to negotiate the global settlement between Minerals and Holdings and affiliates, right?

A Yes.

Q And those negotiations started -- well strike that. One more question, I apologize.

You believe that Minerals filed bankruptcy because of its

talc litigation, correct?

A Well, all the related issues that come with that like we talked about, the building, you know, professional fees, they were running (indiscernible) --

Q Okay, but I think -- I think you said the mounting pressures of the litigation costs as a result of the litigation was putting constraints on the company and they couldn't last, right?

A That's right.

Q So it was the talc litigation, that's the basis on which the company filed to deal with its talc litigation?

A Right.

Q Okay. And in January '26 you began to negotiate the global settlement, right?

A Yes.

Q Okay. And the negotiations regarding the global settlement in January started with you instructing Katten to reach out to Holdings' counsel, right?

A Yes.

Q And you weren't involved in those initial conversations?

A No.

Q Okay. And on that first call between Katten and Holdings' lawyers you're aware that Katten made a demand for the face value of these financial instruments, right?

A Yes.

Q And you believe that was roughly -- is it 43 million or --
A Yeah, 43 million.
Q Okay. And, again, the only possible claims Katten raised on that call were in connection with these instruments from the parent or affiliates to Minerals, right?
A I'm sorry, say that again?
Q Strike it, I'm going to do a better one.
Katten did not make any demand regarding Minerals' possible alter ego, piercing corporate veil, successor liability claims, right?
A Not that I'm aware of.
Q Okay. And in fact Katten didn't raise them because you, as a fiduciary, decided that they weren't viable, they didn't have any value, right?
A Correct.
Q Okay. You determined that the best strategy to maximize the amount Minerals could receive in connection with the global settlement from Holdings and affiliates was not to even make an ask for any other claims, whether in connection with the -- any other claims other than these financial instruments, right?
A The basis for us was these financial instruments.
Q Okay. So, just to review again, you decided -- you decided the strategy to maximize settlement was not to raise the alter ego claims, right?
A Right.

Q Not to raise successor liability, right?
A Right.
Q Not to raise piercing corporate veil, right?
A Right.
Q Not to raise possible fraudulent transfer in connection with the 2025 netting transaction, right?
A Right, based on they're not valid, viable claims.
Q Okay. Not to raise the amendments of a bunch of intercompany documents that were done in the summer of 2025, right?
A Right.
Q Not to raise the two amendments of the note that ran from Holdings to Minerals, one in July and one in January, right?
A Correct.
Q Okay. Not to raise anything on the dividends, right?
A Right.
Q Not to raise anything in any other respect, right?
A Understood, yes.
Q Okay. And you believed that was the way to maximize value for what might be more than $500 million of talc claimants at Minerals, right?
A Yes, as I have explained why.
Q Okay.
A And could I go back over that again?
Q Nope, you can do it on redirect.

A All right.
Q And after the initial call Holdings sent a term sheet which was short of the $43 million you had demanded, right?
A Yes.
Q And so -- well, let me back up before we get there.
During that first call between Katten and Holdings, Holdings did explain -- Holdings' lawyers told Katten that it wanted complete releases from Minerals, right?
A I don't know if it came up during that call, but certainly we were aware of it, you know, and at some point in time I was aware of it. I don't know if it came up specifically on that call, but it was -- at least not that I recall; it may have come up, it may not have.
Q Okay, we'll take may have.
A Yeah.
Q And from the beginning of that -- during that call onward, nobody ever pushed back on giving a complete release to Holdings, right?
A Well, again, the Holdings release was negotiated (indiscernible) so I'm not sure where the release request was to start with, but again we made sure that that release did not release any third party claims, any direct claims or any claims against the officers and directors --
Q But you understand that outside of bankruptcy talc claimants could pursue alter ego, piercing corporate veil,

successor liability claims against the parent and affiliates, you understand that, right?

A I understand.

Q But you understand that at least it's the debtor's position that in bankruptcy those claims now belong to the estate and you can settle those claims for those talc claimants, right?

A Correct.

Q And notwithstanding the evidence provided by Mr. Johnson, who's been at the company since 1984 and is the president of Holdings and a Minerals board member, you determined not to make any ask for the claims we've discussed, alter ego, et cetera, right?

A Correct.

Q You agree that the June 2025 netting exercise was an insider transaction, right?

A Yes.

Q Yeah.

A Yeah.

Q And let me ask you -- I'm going to get over into legal a little, but you've talked a lot about this stuff and you have a lot of experience -- are you aware that insider transactions are subject to a higher standard of review which is called strict scrutiny versus the customary business judgment rule, are you familiar with that?

A I am not sure.
Q Well, what standard of review do you think was appropriate in connection with the insider transactions we've talked about?
A Well, again, we did a lot of detailed analysis, we did a lot of review of what that transaction was. As I've explained in great detail, there was a lot of understanding of how that -- how those balances came to be, how they were inappropriate, you know, and how that was needed to be rectified and was rectified.
Q But let me ask you, you determined the transactions were appropriate, right?
A I determined the transactions were --
Q The insider transactions we're talking about that there were no claims relating to those?
A Yes, no valid and viable claims.
Q Well, let me ask you, when you looked at the board's conduct in approving -- at Minerals' board's conduct in approving those transactions, right, the netting, the amendments to the notes, the intercompany agreements, et cetera, when you reviewed the company's conduct, the board's conduct, what standard of review did you use?
MR. BARNOWSKI: Your Honor, I object to this line of questioning. I --
THE COURT: I think we're headed into legal analysis.
MR. BARNOWSKI: Yeah, deep into legal analysis. And

the Minerals board isn't released here in any way, so I think we're well outside --

MR. JONAS: I'll move on, Your Honor.

THE COURT: Move on.

BY MR. JONAS:

Q Part of your -- I saw it in your reports, part of your determination that all those transactions, including the netting transaction, were appropriate or not actionable was because -- and I think you said Minerals got legal advice from Jones Day, right?

A Correct.

Q Did you know when you said that statement that Jones Day was on both sides, that it was representing Minerals and it was representing Holdings in those transactions?

A It was representing Minerals and all of its -- or Holdings and all of its affiliates.

Q But yet you thought that -- you made a comment that Minerals got legal advice from Jones Day, right?

A Yes.

Q Did it concern you that Jones Day was on both sides of the transaction and effectively providing advice to Minerals and to the other side, its counter party Holdings?

A Well, did it concern me? Yes, I asked questions about why -- you know, does that have -- do we have a concern with that, but in looking at the transaction and the issues that were in

the system, it was a clean-up exercise of system problems for the most part and (indiscernible) didn't result in any transfer (indiscernible) --

Q Well, let me ask you, as an independent board member and the Special Committee in the Minerals bankruptcy case, have you investigated or considered whether the debtor's retention of Jones Day was appropriate in this case?

A Yeah, I did ask about, you know, their wanting to step down, it wasn't my decision for them to do that, I didn't hire them at that time of (indiscernible) --

Q No, but when did you -- well, strike that.

Did you do an invest -- you did a lot of investigatory work, you were supposed to look at intercompany issues, so my question is, did you do -- because I didn't see it in any of your reports, did you investigate the propriety of Jones Day representing your company, Minerals, the debtor in this case, because you were supposed to look at those types of issues, right?

A It was something that I have seen before, it wasn't something that I thought was not allowed, let's put it that way.

Q So in late January, early February, when following up on the initial call between Katten and Holdings, the lawyers, you got a term sheet from Holdings which you refer to as short, right, from the 43-odd million?

A Yes.
Q Okay. And then you suggested there be a meeting among the parties, right?
A Yes.
Q And that happened in February?
A Correct.
Q And by the end of that meeting you were getting close to a global resolution, right?
A Well, getting close is a relative term. I mean, we were closer than where we were, but we weren't there yet.
Q Okay. And, again, just to confirm -- I'm sorry, I don't mean to badger you, but now we're at a different point in time -- during that meeting that took place, the in-person meeting, which you were at, right?
A Yes.
Q Consistent with the previous conversations, there was no discussion of the settlement of any claims that Minerals might have against Holdings and affiliates relating to alter ego, piercing corporate veil, and successor liability, right?
A Correct.
Q Okay. And at those -- at that meeting, consistent with the previous conversations, there was no discussion of the settlement of any claims that Minerals might have against Holdings and affiliates relating to the 2025 netting transaction, right?

A Yes.
Q Okay. So then there was some follow-up back and forth, and you ultimately settled at $27.1 million, right?
A Yes.
Q Okay. That's about $16 million less than where you started, right?
A Right.
Q Okay. You've been aware for some time that as early as September of '24 there were discussions at Holdings about the transfer of the VEEGUM property from Chemicals to Minerals, correct?
A That's correct.
Q That transfer now is part of the global settlement which you negotiated, correct?
A Yes.
Q You've also been aware for some time that Jones Day represented all of the Vanderbilt entities, right?
A Yes.
Q I just want to show you Trial Exhibit 55, it will be real quick.

MR. JONAS: May I approach, Your Honor?

THE COURT: You may.

MR. JONAS: Thank you.

(Pause)

BY MR. JONAS:

Q So, I want to look at Trial Exhibit 55. We've talked about this, I think. This is the second amended and restated intercompany note, you'll see it's got a number of dates, I want to talk to you about that.

This note originated, the original issuance date was January 1, 2013, right?

A Correct, yes.

Q And then it wasn't amended for 12 years, correct?

A Correct.

Q And then in July of 2025 it got amended for the first time?

A Yes.

Q And then in January of 2026 it got amended for the second time?

A Correct.

Q And you don't know why the note only was amended for the first time in July 2025 after 12 years, right?

A Right, but in answering your question, my understanding is that it was amended to reflect the reality of the way that the note was operating --

Q You don't know why for 12 years the note just sat there and then all of a sudden, in the summer of 2025, a few months before bankruptcy, the note got amended, you don't know the answer to that question, right, why?

A Well, again, my understanding is that the note was amended

to reflect the reality of how the note was being treated and how it was operating.

(Pause)

Q Let me ask you, have you talked to any talc plaintiffs' lawyers about their views on potential claims against the parent and any subsidiaries?

A I have not.

Q What's that?

A I have not.

Q You haven't talked to any talc plaintiffs' lawyers?

A No.

Q Do you think it might be a good idea? Those are the guys that bring these types of claims, right, wouldn't it be instructive to you to hear their views on the validity and the strength and the nature of claims that might be had by talc claimants against the parent and affiliates?

A No, I think in conducting my assignment, my role was to investigate claims, to investigate intercompany claims, the size of the talc claimants and the talc claimant pool is a function of what happens with the recoveries that we get. So my job was to maximize recoveries.

Q Thank you.

MR. JONAS: May I approach, Your Honor?

THE COURT: You may.

MR. JONAS: Almost done, Your Honor.

(Pause)

BY MR. JONAS:

Q Okay. We're looking at Trial Exhibit 39, this is an email from November 9th from Mr. Vomero to, among others, you and Mr. Webster at Holding and Mr. Orpilla at Holding, right?

A Yes.

Q And you had only been on the job a couple weeks maybe?

A (Indiscernible) --

Q Yeah, okay. And so he sends you an email, an agenda for a call between you and Mr. Webster and Mr. Orpilla, and the agenda includes, if I look in the middle of the page, VM release, do you see that?

A I see it.

Q That means Vanderbilt Minerals release, right?

A Correct.

Q And he was talking about one year of all related-party affiliate transactions have to be disclosed, right?

A Yeah.

Q And he said creditor scrutiny, right?

A Yes.

Q What he meant by that was -- well, first of all, he was in the beginning of November suggesting that there was going to have to be -- terms of a transaction, there was going to have to be a Vanderbilt Minerals release, right?

A I don't know if that's what he was implying that it would

have to be that.
Q What's that?
A I don't know if he was implying that there has to be a release.
Q Well, what do you think that means?
A Again, this is -- you see at the top it says, "Feel free to edit as you see fit." So I don't know whether all of these topics were his or if he put this list together after speaking with them, but I think one of the topics was the release out of all these other topics.
Q Yeah, and he was saying the -- whatever he was saying, it says Vanderbilt Minerals release and there was going to be creditor scrutiny of that, right?
A Right.
Q Okay. And then, if we turn the page, towards the top it says VM Murray, do you see that?
A Yes.
Q That's the VEEGUM plant?
A That's correct.
Q And he's talking about -- and then down below it says -- underneath VM Murray it says, "Best structure," do you see that?
A Yes.
Q And he wrote, "Minerals acquires first through a DIP," right?

A Right.
Q Do you think he meant that there was going to be a bankruptcy and that Minerals was going to have to acquire the VEEGUM facility?
A It was one of the considerations as to how that was going to happen --
Q Right.
A -- right.
Q And the same thing on the Lyles plant, right? That's down below, there was going to have to be a transfer assignment, right?
A Right.
Q And so this email, when you have been on the job for two weeks, I don't know, something like that, it's fair to say, is it not, that Mr. Vomero was telling you that in terms of an upcoming transaction there was going to be a Minerals release and there was going to be transfer to Minerals of the VEEGUM and the Lyles plants, right?
A Well, this is all just -- what I recall from the conversation from this, Mr. Vomero was trying to put together the considerations that would need to be thought about, whether this was through a bankruptcy or not, and, you know, whether he felt that they would be asking for a release was -- or if somebody else asked him to put them on there, that was his choice, it was not my -- I didn't have any input into this.

Q I know, but you hadn't -- by this point in time you hadn't done any investigation at all, right?
A No.
Q You were just barely on the job, right?
A Yeah.
Q Okay. And he's putting in your head right from the very beginning there was going to have to be a release from Vanderbilt Minerals?
A He was not putting anything in my head, in fact --
Q Well, he's putting -- he's telling you, he's giving you a list of items and one of them is a Vanderbilt release, right?
A Well, again, I don't know where this agenda was put together from, but, again, I think he's trying to outline all the things that would need to be considered.
Q Okay.
A I don't recall even discussing a release (indiscernible) --
Q You read the email before you had the call, right?
A Right.
Q Okay. You don't view this as Mr. Vomero preordaining substantial elements of the global settlement that you would be negotiating, right?
A No, I don't, because what I viewed this as is thinking about all of this step and you look at all the rest of the content of the email, it's all of the necessary items that we

would need to consider if, again, as we heard, buyers were beginning to show -- to indicate that they wanted to have the Murray assets included in a sale and, as a result, we had to start thinking about -- you know, Mr. Vomero had to start thinking about in particular how would that sever happen and what were all the things that we needed to have brought into Minerals as a result of that transaction. It's not easy just to, you know, take a piece of another operating entity and stick it into another operating entity --

Q Let me ask you this --

A -- you've got to go --

Q I'm sorry --

A -- through all kinds --

Q -- my apologies -- no, no, no, my apologies.

A No, no, no problem, no problem. You've got to go through all kinds of iterations. In fact, you know, things that -- I don't think they were on here because I brought them up later, I thought, you know, what about any rights, what about any patents, what about any processes, like all those things would need to be done. And, again, I'm not -- I wasn't trying to take the role of the lawyers who would actually be the ones to kind of do this, but we needed to think about all of those pieces that would be integral for any buyer.

Q Mr. Vomero -- do you know if Mr. Vomero was thinking about a bankruptcy back in May when he transferred over from the

parent to be CRO of the subsidiary?
A When -- I'm sorry, when he transferred over to --
Q Yeah, do you know that in May of 2025, Mr. Vomero, prior to that time, had been working for Holdings, do you know that?
A Right.
Q And in May of '25 he dropped his Holdings representation and he became CRO of Minerals, do you know that?
A Right, yes.
Q And so do you think his doing that was in part because he was formulating ideas around a bankruptcy for Minerals?
A I have no --
Q Okay.
A -- knowledge of that.
Q All right.

MR. JONAS: May I have one minute, Your Honor?

THE COURT: You may.

(Pause)

MR. JONAS: Nothing further, Your Honor. Thank you.

THE COURT: Thank you.

MR. JONAS: Thank you very much, I appreciate it.

THE COURT: Do you have redirect?

MR. BARNOWSKI: Only a little, Your Honor, I promise.

REDIRECT EXAMINATION

BY MR. BARNOWSKI:
Q Good afternoon again, just a few questions. There was a

lot of talk on your cross about Mr. Johnson's comments, I'm not going to repeat them and go back over them, but just to make sure that the record is clear. If we give credit and we assume that everything that the UCC's counsel wants to argue Mr. Johnson's comments show, if we credit all of that and say it's a lay-down, 100-percent alter ego, veil piercing claim victory guaranteed, your analysis showed that that would lead to a smaller recovery for creditors than would the settlement, is that correct?

A That's correct.

Q And I'm not going to make you go back through all the financials and how you got there, but it's tens of millions of dollars less, correct?

A (No audible response)

Q There was a lot of talk about the rubber stamp of the note. Just to be clear, the note was an obligation from Holdings to Minerals, correct?

A Correct.

Q And that note has been pursued in this settlement, correct?

A Correct.

Q It's not the creation of an obligation of Minerals?

A No, no, it's just the opposite; it's a receivable to Minerals.

Q In your experience and your history with bankruptcy cases,

did you view it as your job to demand payment for claims that you concluded after a several-month investigation were not viable or valuable?

A Sir, can you say that again for me?

Q Yeah. In your experience in bankruptcy cases, did you consider it your obligation here or part of your job to seek payment on claims that you had investigated for several months and concluded were not viable or valuable -- and valuable?

A No, it's not part of my job.

Q And in the negotiations that we've talked about with Holdings, you went in and demanded a number, correct?

A Yes.

Q You didn't go in and say this number goes this and this number goes to this claim, correct?

A No, exactly.

Q And you understood that Holdings had defenses to some of these claims, correct?

A Yes.

Q They pushed back, didn't they?

A They did.

Q Did you take direction from Dean Vomero?

A No.

Q Did Dean Vomero tell you what you needed to go get in a settlement?

A No. You understood, we heard earlier Mr. Mendelsohn that

the buyers who had expressed interest thus far wanted those assets, those Holdings assets to be part of the sale, correct?

A Yes.

Q You understood that was a way to bring value into the estate, correct?

A Correct.

Q You understood that Holdings lacked the ability to pay cash to Minerals to settle claims, correct?

A Correct, cash and debt.

Q And debt. You understood that they had a lender, an ABL facility who was a problem because they would have to consent, correct?

A Correct.

Q Were these assets that were brought into the estate a way to fund a reasonable settlement and get around those issues?

A Yes.

Q As a fiduciary of the estate, do you think it would be good use of estate resources to pursue a claim and demand payment on a claim that has no legal merit and would not survive a motion to dismiss?

A No, we wouldn't use estate resources to pursue something that has little to no value.

MR. BARNOWSKI: I appreciate your patience with me. I have no further questions.

THE COURT: Thank you.

MR. JONAS: Nothing further, Your Honor.

THE COURT: Nothing further? U.S. Trustee?

MS. CHAMPION: I have nothing, Your Honor.

THE COURT: Nothing?

MR. JONAS: Oh, I'm sorry, may I introduce my exhibits, Your Honor.

THE COURT: Yes, yes, you may.

MR. JONAS: I'm happy to have the witness step down, if you'd like.

THE WITNESS: It's okay?

THE COURT: Yes.

THE WITNESS: Thank you.

THE COURT: Thank you for your time.

(Witness excused)

MR. JONAS: Your Honor, we would -- I believe I attempted to introduce 49 -- this is our -- the Committee's trial exhibits -- 49, 55, 39, 242, 243, and 250.

MR. BARNOWSKI: No objection, Your Honor.

MR. JONAS: Thank you.

(Creditors Committee Exhibits 39, 49, 55, 242, 243, and 250 admitted into evidence)

MR. BARNOWSKI: We would also move into evidence Exhibit 8, which I believe there was an initial objection --

MR. JONAS: You can have it.

MR. BARNOWSKI: All right.

MR. JONAS: No objection.

THE COURT: So admitted.

(Special Committee Exhibit 8 admitted into evidence)

THE COURT: Do you have any other witnesses, Mr. Barnowski?

MR. BARNOWSKI: We do. The Special Committee would like to call Mr. Wyse to the stand.

THE CLERK: Please raise your right hand, state your full name and spell your last.

THE WITNESS: Michael Wyse, W-y-s-e.

MICHAEL WYSE, WITNESS, SWORN

THE CLERK: Thank you. You may be seated.

MR. LEADER: Your Honor, good afternoon, James Leader, I represent Holdings, from Vinson & Elkins. I think I can cut what I was going to do with Mr. Wyse pretty considerably if we just take a short break, and I can come back and do a much shorter direct.

THE COURT: Okay. Ten --

MR. LEADER: Ten minutes is great.

THE COURT: Ten minutes? Okay. So we'll take a brief adjournment until 3:05.

MR. LEADER: Thank you.

THE CLERK: All rise. Court will take a brief adjournment.

(Recess at 2:54 p.m./Reconvened at 3:05 p.m.)

THE COURT: You're still under oath.

MR. LEADER: May I proceed, Your Honor?

THE COURT: You may.

MR. LEADER: Thank you.

DIRECT EXAMINATION

BY MR. LEADER:

Q Mr. Wyse, can you introduce yourself to the Court, please?

A Yes, Michael Wyse, I am the managing partner of the Wyse Group.

Q And when were you engaged by Holdings?

A November 21st, 2025.

Q And, Mr. Wyse, did you prepare two declarations in this matter?

A I did.

Q Okay. One on April 8th?

A Yes.

Q Okay.

MR. LEADER: Your Honor, I have a copy of Mr. Wyse's April 8th declaration offered in support of the Holdings joinder to the debtor's objection to the motion to dismiss. It's marked as Exhibit 6, Holdings Exhibit 6. I'd like to hand a copy to Mr. Wyse. May I approach?

THE COURT: You may.

MR. LEADER: And, in the interest of efficiency, I'm also going to hand him the exhibits to that declaration. And I

apologize in advance, I underestimated the copy needs of the proceeding, so I don't have quite as many as I should have.

(Pause)

MR. DAVIS: Your Honor, sorry, Kevin Davis for the committee. Just as a point of order, I mean, we ordered that we would sever the motion to dismiss and the settlement motion, so I just want to make sure are these questions being asked for the settlement motion on for today?

MR. LEADER: It's for the settlement motion, Your Honor.

MR. DAVIS: Okay, I just wanted to be sure.

BY MR. LEADER:

Q Okay. Mr. Wyse, is this document marked Holding Exhibit 6 a copy of your April 8th declaration and the exhibits attached that were offered in the joinder?

A Yes.

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

A Yes.

MR. LEADER: Okay. Your Honor, I move to admit into evidence for purposes of this hearing the declaration marked Exhibit 6, along with its Exhibits 7, 8, and 9.

THE COURT: Mr. Jonas?

MR. JONAS: Oh, Kevin.

THE COURT: Oh, sorry.

MR. JONAS: I'm sorry.

MR. DAVIS: No objection, Your Honor.

THE COURT: Thank you. They're admitted.

(Holding Exhibit 6 admitted into evidence)

BY MR. LEADER:

Q And, Mr. Wyse, did you provide a second declaration in support of Holdings' response in support of the settlement earlier this week?

A Yes.

Q Okay.

MR. LEADER: Your Honor, may I hand these out now as well, if I may approach?

THE COURT: You may.

(Pause)

BY MR. LEADER:

Q And, Mr. Wyse, is this a copy of your declaration from earlier this week and the exhibits that you filed along with it?

A Yes.

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

A Yes.

MR. LEADER: Your Honor, I move to admit into evidence these exhibits marked 2, 3, 4, and 5 into evidence.

THE COURT: Committee?

MR. DAVIS: No objection.

THE COURT: Thank you. They're admitted.

(Holding Exhibits 2 through 5 admitted into evidence)

BY MR. LEADER:

Q Mr. Wyse, I'd like to very briefly hit on a few topics from your declaration.

You've been in the courtroom all day today, right?

A I have.

Q Okay. And you heard Mr. Jonas refer a few times to the $127 million account receivable that Minerals had, do you remember that?

A I do.

Q Would you call that an account receivable?

A I wouldn't.

Q Why not?

A It's only a part of, I'll call it, the puzzle, it's a part -- it's really, what it is, it's raw data, un -- you know, unaudited raw data from the SAP system.

Q Unreconciled?

A Unreconciled, yes.

Q That's what you meant.

A Sorry.

Q Okay. And you heard Mr. Pickering testify earlier and sort of explain how you can reconcile the two sides of that equation in the intercompany system, correct, you heard that?

A That's correct.
Q And did you agree with Mr. Pickering's explanation as being accurate?
A I did.
Q And it was generally consistent with your declaration that we have in front of you?
A That's correct, yes.
Q Okay. And part of what you did in your engagement is you reviewed Mr. Vomero's methodology in sort of performing that reconciliation, correct?
A That's correct.
Q And what did you do to sort of check and evaluate Mr. Vomero's work?
A Sure. We met with Mr. Vomero, we got his reconciliation, you know, he walked us through it. We had conversations with company personnel and we had, you know, access to the SAP system.
Q And is that a project that you and your team worked on over a matter of hours or a matter of weeks?
A It was weeks.
Q Okay. So, in addition to reviewing Mr. Vomero's methodology in arriving at his numbers, was there anything else you did to get yourself comfortable that his approximation was an appropriate approximation of the balance between Minerals and Holdings?

A Yes, we -- you know, we did his -- the reasonableness test of his methodology, made sure the math mapped. Then we took a step back and said, you know, the -- and realized that really the only thing that Minerals can contribute to Holdings is its net cash flow. And so, you know, we looked at it, we then said, okay, what was the net cash flow of Minerals over the same period.

Q I'm going to stop you there, over what period?

A I'm sorry, from 2013 to 2024.

Q And why is that net cash figure, as you say, all that Minerals could contribute to Holdings, can you just explain to us what you mean by that?

A Yeah, sure. So, as Mr. Pickering testified to earlier, the services that are provided to the subsidiaries and one of those being Minerals, some of them through (indiscernible) you know, there's the HIB's (phonetic) accounting, you know, and stuff like that, that's all coming down, you know, being supported by -- supporting Minerals from Holdings. There's no transactions that go up except for -- it can be cash, cash can be swept up, which was the example that Mr. Pickering went through before, we have his own exhibit.

So that's really the only thing that can go up to Holdings is cash flow and it has to be net cash flow because it can't just be that one side of it, you know, there are other expenses and costs of operating a business.

Q And so I understand what you mean, the net cash is the only thing available to be sent up net of what is sent down. Okay.

A That's correct.

Q All right. And what number did you arrive at in calculating the net cash flow from 2013 through 2024 at Minerals?

A Yes, and so we looked at the audited financials. So, at the back of the audited financials, there's consolidating financial statements, which show the different entities and what they're contributing, and now there's the individual balance sheets. So we took that balance sheet and ran a cash flow off of that to see what that cash flow could be, and what that --

Q Sorry, I'm going to interrupt you there just for the record, is that Exhibit 3, which is an exhibit to your declaration?

A I think so -- yes --

Q Just for reference for the Court.

A -- yes, it is.

Q Okay, sorry. Go ahead. I interrupted you.

A Sorry. No, all good. Yeah, so we looked at what that net cash flow was over that period and it was approximately $6 million.

Q Okay. And should I think of $6 million, in your view, as

the absolute maximum that intercompany balance from Minerals to Holdings could possibly be?

A It would be tough to understand the math around why it could be more.

Q So, it could be a little more, it could be less --

A It could be a little less, yeah.

Q Yeah.

A Yes. It's an approximation on the cash flow too, so --

MR. LEADER: No further questions.

THE COURT: Thank you.

CROSS EXAMINATION

BY MR. DAVIS:

Q Good afternoon, Mr. Wyse.

A Good afternoon.

Q Again, for the record, Kevin Davis, Caplin & Drysdale, for the committee.

Mr. Wyse, you said that your firm was engaged in November of 2025, correct?

A That is correct.

Q And you were engaged by Holdings, correct?

A That is correct.

Q You were never engaged by Minerals?

A That is correct.

Q You did not do any work for Minerals?

A That is correct.

Q You did not do any work for Mr. Pickering?
A That is correct.
Q Part of your work for Holdings was analyzing and reconciling historic intercompany transactions and intercompany claim balances, is that right?
A Per the engagement letter, yes.
Q But, as of the time of your retention, the netting transaction that we've been discussing, that had already been completed, correct?
A That's correct.
Q That was completed approximately six months before you were retained, right?
A It's -- yes.
Q You had no rule in the May 2025 netting transaction, correct?
A I did not.
Q Nor did anyone at the Wyse Group?
A That's correct.
Q In your experience, netting transactions like the May 2025 one that reconcile intercompany balances are not something typical companies do?
A Netting intercompany balances? It's not -- I mean, I wouldn't call it typical, it's not atypical either.
Q But it's only, in your experience, typically when some segment of an enterprise is going to be separated out that such

reconciliations are usually performed, is that right?
A That would make sense.
Q And you aren't aware of any reconciliation that occurred between Minerals and any of its affiliates prior to the May 2025 netting transaction, correct?
A That is correct.
Q Here, you understand that the May 2025 netting transaction was undertaken because Minerals was being carved out of the Vanderbilt enterprise, is that right?
A I don't know the genesis of the -- you know, at the time what they did and why the reason they did the netting, but that would make sense.
Q Okay, but in a situation, a situation like this where you're doing an intercompany reconciliation, under your experience, you believed that this would be a situation where the reconciling entity would be being carved out of an enterprise?
A Yes.
Q So, by the time your firm was engaged in November 2025, the netting transaction had already been approved and accounted for in the books of the Vanderbilt enterprise, correct?
A I believe that's correct, yes.
Q And so the balances had already been reconciled and reflected in the books of Minerals?
A I believe so --

Q And --
A -- right?
Q You don't know?
A If the netting was actually effective into the books of the --
Q Correct.
A -- of Minerals? I would assume it would be.
Q Okay, but you didn't check the books of Minerals to see if it had actually been effectuated?
A What do you mean by books?
Q You didn't look at the Minerals financials to see if the netting transaction had actually been reflected in the Minerals' financials?
A We looked at the intercompany transactions, we -- that was our goal to hire -- we were hired to look at the intercompany transactions, the IT.
Q So did you or your team review any of the board approvals of the May 2025 netting transactions in the course of your work?
A No.
Q Okay. But in your declaration, which you just sent up last Monday, you attached deposition testimony from Mr. Dinero (phonetic) and also Mr. Webster, is that correct?
A I believe so, yes.
Q Did you review those depositions?

A No.

Q Not in full?

MR. LEADER: Your Honor, I'm not sure what testimony he's talking about, but that wasn't in the packet we just submitted --

THE COURT: Would you approach, please?

MR. LEADER: I'm sorry, Your Honor. I'm not familiar with deposition testimony being attached to the declaration, so I'm just not sure what he's talking about.

THE COURT: Could you be more specific, please, what you're referencing?

MR. DAVIS: This was attached to the declaration that was submitted in an unredacted form as part of the supplement of the records, and it's cited in the declaration.

MR. LEADER: I think possibly he's referring to an exhibit to a filing of which the declaration was also an exhibit, but I'm not familiar with Mr. Wyse testifying to an attachment to his declaration being deposition testimony.

MR. DAVIS: One moment, Your Honor.

THE COURT: Yes, please.

(Pause)

MR. DAVIS: I'll move on, Your Honor, it's fine.

THE COURT: Thank you.

BY MR. DAVIS:

Q Mr. Wyse, when you were engaged by Holdings, are you aware

that it was Mr. Randall Johnson who signed the engagement letter on behalf of Holdings?

A Yes.

Q And during the time that you provided services to Holdings, you were in communications with Mr. Johnson, correct?

A Yes, he was -- yes.

Q And you also provided -- you had communications with and you gave presentations to Doug Webster?

A Yes, I've spoken with Doug Webster on numerous occasions, yes.

Q Were you aware that prior to your engagement both Mr. Johnson and Mr. Webster had been members of the board of managers for Minerals?

A I was aware of that, yes.

Q And were you aware that Mr. Johnson and Mr. Webster were two of the board members for Minerals who approved of the 2025 netting transactions on behalf of Minerals?

A I don't think I was aware of that, no.

Q You assisted Holdings in negotiating the -- what's been referred to as the global settlement at issue today, is that right?

A That's correct, yes.

Q And in particular you assisted Holdings with negotiations around the intercompany transaction reconciliation?

A Primarily, yes.

Q In fact, you were involved in the negotiations, there was a big in-person negotiation and you actually attended by Zoom, you were there at the negotiations?

A I was there by Zoom.

Q And so you're aware that this settlement is providing releases to Holdings for more than just claims regarding the intercompany transactions?

A Yes.

Q And you did not perform any analysis of the value of the settlement for Holdings or Minerals on the whole, correct?

A I wouldn't -- I worked -- I was an adviser to Holdings, I wouldn't do anything on behalf of --

Q That's right.

MR. DAVIS: No further questions.

THE COURT: Thank you.

MR. LEADER: Nothing further, Your Honor.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you.

(Witness excused)

MR. BARNOWSKI: The Special Committee rests, Your Honor.

THE COURT: Thank you.

MR. DAVIS: Court's indulgence, Your Honor, if I --

THE COURT: Certainly. A lot of papers --

MR. DAVIS: -- can get my things from under the pile

here.

(Pause)

MR. DAVIS: Your Honor, the committee calls Mr. Michael Atkinson to the stand.

THE CLERK: Please raise your right hand, state your full name, and spell your last.

THE WITNESS: Michael Atkinson, A-t-k-i-n-s-o-n.

MICHAEL ATKINSON, WITNESS, SWORN

THE CLERK: You may be seated.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. DAVIS:

Q Good afternoon, Mr. Atkinson. How are you today?

A I'm good.

Q Did you file a declaration in this matter?

A I did.

(Pause)

MR. DAVIS: May I approach, Your Honor?

THE COURT: You may.

(Pause)

BY MR. DAVIS:

Q Mr. Atkinson, is this the declaration that you drafted and was filed in this case in this matter?

A It is.

Q Before we get into the meat of the declaration, can you

introduce yourself to the Court, starting with some of your educational and professional background?

A Sure. My name is Michael Atkinson, I am a principal partner with Province, a financial advisory firm, doing bankruptcy consulting. I've been doing bankruptcy consulting for over 35 years. I have worked at numerous firms along the way and most -- before Province I was with a firm called Penta Advisory Services and, prior to that, I was Protiviti.

Q And could you tell us about your experience in the area of mass tort claims estimation?

A Yes. In mass tort claims estimation, I have represented probably over 30 different creditors committees that represented mass tort -- in mass tort bankruptcies, including many asbestos cases.

Q And how many cases have you provided expert testimony in the -- approximately how many cases have you provided expert testimony in the area of mass tort estimation?

A In mass tort, probably close to 25 cases.

MR. DAVIS: Your Honor, at this time I would like to tender Mr. Atkinson as an expert in mass tort claims valuation. I don't know what the --

MR. BARNOWSKI: No objection.

BY MR. DAVIS:

Q Mr. Atkinson, did you prepare a presentation to accompany your testimony this afternoon?

A I did.
Q Would it assist your testimony to have that presentation available?
A It would.
MR. DAVIS: May I approach, Your Honor?
THE COURT: You may.
(Pause)
MR. BARNOWSKI: Can I ask, has the presentation been shared before right now with counsel?
MR. DAVIS: No, the contents are from the report.
MR. BARNOWSKI: Straight from the report?
MR. DAVIS: I believe so.
THE WITNESS: The content, yeah, it's all -- it's all derived from the report.
MR. DAVIS: Okay.
THE COURT: Counselor, are you intending to provide this as an exhibit, or simply an aid --
MR. DAVIS: No, this is a simple demonstrative --
THE COURT: -- just an aid?
MR. DAVIS: -- Your Honor.
THE COURT: Okay. Thank you.
BY MR. DAVIS:
Q Okay. Let's turn to slide 3, Mr. Atkinson. And could you tell me what you were asked to do in this case with regards to your expert testimony today?

A I was asked to provide an estimate of the current and future meso liabilities, and as well as determine the effect of those liabilities on this global settlement.

Q And are you prepared to offer those opinions today?

A I am.

Q And could you summarize those opinions for the Court, please?

A Sure. I've estimated that the liabilities associated with meso claims is $525 million, and I believe, to the extent the claims are -- the litigation claims are valid, which I assume that they are, that the global settlement is not reasonable.

Q And the opinions that are set forth in slide 3, does that generally sum up your opinions with the Court today?

A Yes.

Q What fundamental steps did you take to arrive at your estimate of the debtor's talc liability?

A I reviewed -- there was a substantial amount of historical claims activity, there was over 3400 claims that have been filed, there were hundreds of claims that were paid, they go -- they went back as far as 1948 as far as exposure was concerned, and they have increased materially in recent years. So, I was able to rely on the debtor's history as it relates to the claims.

Q Turning to slide 4 of your deck, does this accurately summarize the methodology -- or at a high level the methodology

that you used in coming to your estimate?

A Yes, at a high level, we determined the number of claims. We then determined a dismissal rate because a substantial amount of claims that are brought are not brought to fruition, they're dismissed, so we back out those amounts. And then we looked at the average claim payouts that had occurred over the last eight years to determine what the claims values were, and then we adjusted the claims values based on when they would come in the future for inflation, and then we discounted all that back to a current value.

MR. BARNOWSKI: Your Honor, before we get past slide 4, I would point out that there is a significant amount of historical factual information that Mr. Atkinson has included in these slides that were not shared with counsel before, as well as in his declaration. He testified in his deposition that he has no basis to know any of those facts, they're not based on personal knowledge, and they don't have anything to do with the valuation.

I don't have any problem with him testifying that there were this number of cases and he values them at X dollars, but to put in in 2006 there was this merger and in 2007 there was this agreement, none of that has anything to do with his valuation, and I think it's just improper to dump that factual record in through an expert who isn't really relying on any of that factual record to testify.

MR. DAVIS: Can I respond, Your Honor?

THE COURT: Yes.

MR. DAVIS: I think that Mr. Atkinson can testify as to what he relied upon in coming to his estimation. All of these materials were disclosed as part of his report, they were all part of his reliance materials. He is simply presenting them, as I understand, for background in being able to do his valuation.

So, I ask that we at least be able to elicit testimony from Mr. Atkinson on how he utilized these things in terms of his knowledge -- or, excuse me, in terms of his opinion today. As an expert, he's capable of testifying -- relying on hearsay, relying on documents, et cetera, as long as they form his opinion. So, I think we can hear from Mr. Atkinson about that.

THE COURT: I'll allow it. You may object to a particular question as they come up as opposed to a global conversation that is based on his understanding of the facts.

MR. BARNOWSKI: Thank you, Your Honor.

THE COURT: Thank you.

BY MR. DAVIS:

Q Mr. Atkinson, in coming to your estimate, did you examine any aspects of the debtor's corporate history?

A I did.

Q And are those aspects of the corporate history discussed

in your report?

A They are.

Q Why was it important to your estimate to examine those aspects of the debtor's corporate history?

A I was trying to determine the entities that liability may have been attributable to and may currently be attributable to.

Q And what were you able to determine -- were you able to determine from your review when he debtor or any of its predecessors sold talc?

MR. BARNOWSKI: Your Honor, I have to object. We just deposed this man two days ago and he testified that he's made no attribution of who was liable or who was not liable, and I was told on the record by counsel that he would not be offering any further opinion testimony on that. Again, I don't have any problem with him telling us what he thinks the number is, but to change his testimony to tell us who is liable for that number I think is far beyond what he testified to in his deposition and his original report.

MR. DAVIS: Your Honor, in the report all of this -- all of this corporate history is disclosed. Mr. Atkinson, as I understand it, is testifying to this in order to form a basis of why he was valuing the talc at this value for the debtor. This was open for deposition, this was all part of the report, and at no point do I believe that Mr. Atkinson said I -- he's not offering an opinion on the liability, this is a reliance

material for him assigning value to the liability.

I would also note that the 2006 merger agreement which is at slide 5 was just introduced into evidence. So, we can put that in front of Mr. Atkinson, if that's easier.

MR. BARNOWSKI: It's not that, Your Honor, it's the fact that he was specifically asked in his deposition have you made any conclusions about the viability of alter ego, et cetera, et cetera, and who was responsible for this liability. And he not only said he hasn't, but there was a lot of colloquy between counsel about whether he was going to change his opinion and offer more at trial. And we took a break and Mr. Davis came back and said, no, this is it, he's not testifying to the viability of any of these claims against any particular entity, he's just been asked to assume that they are viable and he's giving us a number.

MR. DAVIS: Your Honor, this is about the debtor being liable for this talc liability, this is not an opinion on successor liability, it's not an opinion on alter ego. I love that we're talking about Mr. Atkinson's deposition with testimony from Mr. Barnowski. He'll have an opportunity to cross and he can do that, and he can elicit what he chooses, but maybe we should wait and actually listen to the testimony before Mr. Barnowski guesses what's going to come. He can object when the question comes --

MR. BARNOWSKI: Well, I --

MR. DAVIS: -- and he has his opportunity to cross.

MR. BARNOWSKI: I'm just objecting to his statement, that he made an attribution of who was liable. I'm not objecting to your question. He just said something different than --

MR. DAVIS: Well, your colloquy went well beyond that.

THE COURT: Well, you certainly can examine that on cross examination. If it's going to be the basis for his opinion, he needs to state it was my understanding as opposed to stating it as a fact, and I would prefer that you ask the questions in that manner.

MR. DAVIS: That's fine, Your Honor, that's fine.

BY MR. DAVIS:

Q In your work, Mr. Atkinson, did you come to an understanding about when the debtor or any of its predecessors sold talc?

A I did.

Q And what was that understanding?

A My understanding is they sold talc from 1948 to 2008.

Q Do you understand whether the debtor has ever mined talc under the name Vanderbilt Minerals, LLC?

A The debtor has not mined talc under that name.

Q What is your understanding of how Vanderbilt Minerals, the debtor here, has come to have talc liability?

A It was because of these transactions that I laid out in my report.

Q Was one of those transactions the 2006 merger agreement?

A Yes.

Q And turning to slide 5 of your presentation -- and this is now in evidence -- are these depictions of parts of the certificate of merger that -- excuse me, did you review this document?

A I did.

Q And did you review it with regard to your expert opinion?

A I did.

Q And what is this document, what is your understanding of what this document is?

A This is a certificate of merger of the Vanderbilt Enterprise -- where Vanderbilt Enterprise merged with R.T. Vanderbilt. So, prior to this merger there were seven different entities that existed: The Vanderbilt Chemical Corporation, World Trade Corporation, Standard Minerals, Dixie Clay Company, Vanderbilt Minerals Corporation, Gouverneur Talc Company, and the Vanderbilt Expert Corporation, and after this merger they became one entity, the RTVC entity.

Q And turning to Slide 6, Mr. Atkinson, did you prepare this slide?

A I did.

Q And is this a fair depiction of your understanding of what

occurred in the 2006 merger?

A From the previous slide, yes, it's my depiction of that.

Q In the course of your work for preparing for this testimony, did you become familiar with a 2013 transaction undertaken by R.T. Vanderbilt Company?

A Yes.

Q How did you become familiar with it?

A Through the documents that I looked at, including the document that's referenced here. There's a Notice of Special Meeting of Shareholders from December 7, 2012.

Q Is the first page of that document what we find in Slide 7 of this presentation?

A Yes.

Q And what is your understanding, at a high level, of how the 2013 transaction worked?

A The 2013 transaction created a number of new entities, including Holdings, Chemicals, Minerals, and Global Services. And the RTVC entity that was created in 2006 was turned into those new entities. And it's essentially similar to where we are today.

Q Turning to Slide 8, you see two slides, Step 1 and Step 2. Do you recognize these slides depicted on Slide 8?

A Yes.

Q From where do you recognize them?

A They were attachments to the Notice of the Special Meeting

of Shareholders.

Q And did you use these slides to develop an understanding of the 2013 transaction?

A Yes, I did.

Q Okay. Can you describe your understanding of what occurred in these first two steps that are described in these slides shown on Slide 8?

A Sure.

So the first step was there were a number of new entities that were created. And those are the new Holdings, new Minerals, new Chemicals, and new Services. The second step was a merger where the Minerals entity was given the RTV assets. So all the assets of RTV were transferred to Minerals.

Q Okay. Were there further steps?

A There were.

Q Okay. Are some of those steps depicted on Slide 9 of the presentation?

A Yes.

Q And are the steps described here, are those from the same attachment to the Special Board Meeting minutes that we discussed earlier?

A Yes, they were.

Q Can you describe your understanding of how the steps depicted here worked in the 2013 transaction?

A My understanding of the next step is that two of the new

entities were placed underneath new Minerals. And new Minerals were placed underneath new Holdings. So one of the entities, new Chemicals, was placed under new Minerals and new Services were placed under new Minerals, and the RTV entity would cease to exist.

The next step was new Minerals, which had been given all the assets as part of this transaction from RTV, transferred some chemical assets to the Chemical entity and then transferred service assets to this new Services entity.

Q Okay.

A And then -- I'll just continue.

Q Go ahead. Let's move to Slide 10.

A Slide 10 is there is two more steps. The next step, new Minerals distributed all the subs and certain assets to the parent. So there were entities created underneath the new Minerals, new Chemicals, and new Services. And those entities were then transferred up to new Holdings. And at that point in time, new Holdings issued debt to new Minerals, which is part of the subject of the settlement here. So the final structure is off to the right, which is, again, similar to where we stand today, where there's new Holdings and a number of entities underneath there, including new Minerals, new Chemicals, and the new Services entity.

Q And the intercompany debt you referred to, is your understanding that is subject of the settlement?

A That's correct.
Q All right. Let's move to the next slide, Slide 11.
Are you aware of whether Minerals has provided information in this case regarding its tort history?
A Yes, it has.
Q Have you reviewed that information in preparing your opinion?
A I have.
Q Could you give a general discussion of your understanding of the history of the talc litigation from that review?
A Sure. So we noticed the first meso claim, and I'm focused on meso claims here because that's 99 percent of the claims that came to fruition.
So in 1987, the first claim was filed. There were a spattering of claims until 2006 when the Hirsch verdict came about. It was the first large verdict. And you can see on the chart on the right, there was a substantial amount of claims each year after that. You know, probably close to about 150 claims, on average, for each year since 2006, which is also when the merger occurred.
And then, there's a -- one of the things that I'll get into in a few minutes, but looking at all the claims data, we noticed some changes in the dismissal rates going down a little bit, which is something I see in a lot of these mass tort cases. As time goes on, the law firms that are bringing the

claims refine it and don't bring as many bad lawsuits, so there's a slight change in the dismissal rate.

But overall, we were able to look at 3,400 meso claims that have been filed since 1987, and they've generally been increasing over time. And certainly the dollar amounts that have been paid have generally been increasing over time.

Q Starting in 2013, based on the information provided by the debtor, is it your understanding that, of the Vanderbilt Enterprise, that Minerals is the primary named defendant in talc litigation, starting in 2013?

A Yes.

Q The estimate that you provided at the beginning, the $525 million, does that include any value for non-mesothelioma talc claims?

A It does not.

Q Are you aware of any non-mesothelioma talc claims being reflected in the debtor's litigation history?

A Yes.

Q Moving on to Slide 12.

So we talked about how the first step was forecasting a number of claims. Can you tell me what methodology you used to project the number of future claims that might be filed against Minerals?

A We used the historical data that the debtor had as it related to the claims. We went back and we focused on the

oldest claims that had the most history. So claims that were exposed, people who were exposed in 1948 to the mid-'60s, and calibrated that off of the amount of talc being produced. And ultimately, we were able to predict how many claims were going to come forward.

This chart on Page 12 shows the years since first exposure for the claims on the bottom. And then, across the top is how many claims are filed. So you can see the average years from exposure is about 58 years, 55 to 58 years. So we anticipate, if you go back and you look at the time, there was exposure from 1948 to 2008, the mid-point, that's about 1978, where, you know, the claims that are midway through the exposure are probably about midway through being filing claims.

So any claim that's later than 1978, you will have a much higher number of claims coming. And then any product that sold prior to 1978 would have a lesser amount of claims (indiscernible).

Q And just to back up for a moment, on Slide 12, the x-axis here says, "Years since first exposure, i.e. latency."

Could you describe just the concept of latency in future claims with regard to mesothelioma?

A Yeah. So it's sort of well-studied that meso claims develop over a long period of time from first exposure. Usually, it's some period of time of exposure. And then, ultimately, it's about 40 to 60 years that people develop

mesothelioma. Although, it's getting a little bit later as people are starting to live longer.

Q And based on your analysis, how many future claims did you estimate will come forward against Minerals?

A I estimate that about 7,153 future claims would come forward.

Q And is the figure on Slide 13 of your presentation, is that a representation of that forecast?

A Yes. But this is, again, we looked at the total meso filings we calibrated to talc consumption, and then went back to the 1948 to 1969 claims data to determine the number of the claims per 1,000 tons, and then used the average of those years to determine how many claims we think will come in the future.

What we anticipate from that prior slide and from the data is that claims will likely come for the next 60 years from now. Ultimately, I only included 30 years in my estimate. So I'm only including the next 30 years of claims. So instead of 7,153 claims, my estimate is 5,000 and some claims.

Q Okay. So we have a number of claims. And the next step is to determine a dismissal or a payment rate, right?

A Correct. Dismissal rate next and then payment rate.

So on Slide 14, I determined the dismissal rate. And the way we got to the dismissal rate is we noticed -- we sort of mapped out all the years of filing. And the column third from the right is dismissal rate. So that's how many claims of the

claims that were resolved in a given year, what percentage of them were not paid and dismissed without payment.

And we noticed in the last eight years, it's been averaging close to 80 percent, 78 percent. Prior to that, it was in the 90s. This is, again, mid-90s. This is something I've seen in many, many asbestos cases. Again, the bar has, you know, sort of changed as tactics and brought better claims. So this is something, you know, eight years is a long time. So it's something we anticipate continuing.

So what I've determined is 78 percent of the claims will get dismissed. So when I look at the number of claims, the 5,500 claims that I think will come forward, I ultimately reduced that claims number down to 1,336 that will get paid.

Q And so then your estimate takes the number of claims and it multiplies it by this payment rate to determine what?

A Other than that -- so once I determine the number of claims that will get paid, then I look at the average payments over the last eight years. That's on Slide 15.

Q Okay.

A We looked at the last -- all payments for claims that were paid in the last eight years. And it's got an average of $531,000 per claim.

Q And how did you arrive at that number?

A I summarized all the steps on Slide 16. So we determined the current future claims. There's 6,054 current and future

claims, there's 540 current claims, and then I've estimated 5,514 future claims, which again, is just the claims over the next 30 years.

So of those claims, we estimate only 22 percent of them will get paid. So 1,336 are going to get paid in a rate of $531,000 and determine a nominal dollar amount of $974 million. But I needed to present value that back, so the present value of that is $525 million.

Q And determining the present value, is that the application of the inflation and discount rate that you discussed?

A Yeah. The nominal value has inflation rate because these claims are going to come over the next 30 years. So they're going to be worth more in the future. But then, because I'm valuing them today I had to present value them back.

Q And so bringing all this together, you get to a current and future estimated value of mesothelioma claims against the debtor at $525 million?

A Correct.

Q Would you call this an aggressive or a conservative estimate?

A I think it's probably conservative. I'm only valuing the next 30 years of claims, and based on the claims data, there's definitely going to be claims over the next 60 years. So that's conservative. Those claims are later in time, so it's not as significant a dollar amount, but certainly it's well

over $100 million more if I was to go all the way out to the full 60 years.

Q Okay. Did you take that estimate and at all compare it to the value of the settlement on offer here today?

A I did.

Q What is your understanding of the consideration that the debtor is receiving in the settlement?

A We talked about that it's been -- in Court today, it's been discussed. My understanding is that there's non-debtor assets that are being contributed. It's my understanding that the value from the Special Committee is about $27 million for those assets that are being contributed. And in return for getting those assets, the Special Committee has agreed to reduce intercompany notes and intercompany receivables, or exchange them, and the value that the Special Committee puts on those intercompany notes and intercompany receivables is a range of values of $20 million to $27 million.

So, if I compare the value we're receiving, which is the non-debtor assets, which is $27 million, in the low range, we're receiving net zero dollars, and in the high range, we're receiving $6.5 million.

Q Well, let's back up.

So you took the Special Committee's valuation of the non-debtor assets and plugged that into the settlement, right?

A Yes.

Q Okay. And so how did you then decide what is being "received" on behalf of Holdings? Excuse me, let me -- strike that.

You mentioned a net of zero dollars to around $6 million. What value does that reflect and how did you come to those numbers?

A In the low range, where it's zero dollars, it reflects the $27 million of value we're getting for the non-debtor assets offset by the value of the receivables in the intercompany note based on the Special Committee's value of those two and the highest value that they put on that, which is $27.2 million.

Q And so the zero dollars is, based on your math, the Special Committee's values is what is being assigned to any consideration other than the relief of the note and the accounts receivable.

Is that right?

A Yeah. It only considers, from the Special Committee's numbers, and it only considers the two assets that they essentially traded for the non-debtor assets.

Q And looking at Slide 17, the last line here, implied success rate of alter ego, veil-piercing, successor liability, how did you come to these numbers? What do they mean?

A I compared my determination of talc liabilities of $525 million to, in one instance, the zero dollars, essentially negative $100,000 in the low, and then the high, compared that

number to the $6.5 million, and I get 1.2 percent.

And I've only considered, you know, my talc liability number. I've not considered values for any of the other potential causes of action, the (indiscernible) other potential causes of action.

Q And so the zero to $6.5 million range, that's not only for the successor liability, veil-piercing, alter-ego claims, but that would be the assignable value to everything other than the note and the accounts receivable, based on the Special Committee's valuation.

Am I understanding that correctly?

A That's correct. That is all that we're receiving. And we're giving up -- in addition to giving up the intercompany note and the intercompany receivables, we're giving broad releases.

MR. DAVIS: No further questions, Your Honor.

THE COURT: Thank you.

CROSS EXAMINATION

BY MR. BARNOWSKI:

Q Good afternoon, Mr. Atkinson.

A Good afternoon.

Q Good to see you again.

A Nice to see you.

Q I just have a few questions for you.

In your declaration in this case and your testimony, you

don't contend that there's anything wrong with releasing alter-ego or veil piercing or successor liability claims. You just think that insufficient consideration was paid for those releases here, correct?

A I don't know that I have that opinion, one way or the other in my report.

Q Do you remember you and I sitting in a room?

A I do remember that.

Q You probably guess that I asked you that question a couple days ago. Do you remember that question?

A Can you repeat the question one more time? Sorry.

Q Yeah.

You don't contend that there's anything wrong with releasing alter-ego, veil piercing, successor liability claims. You just think that insufficient consideration was paid for that release here, correct?

A Oh, so you're asking me if the right dollar amount were paid, would it be all right to release those claims? Yes.

Q Sure.

A Yes.

Q Okay.

And your belief that the right dollar amount wasn't paid here is based on your belief that the talc litigations could recover hundreds of millions of dollars?

A That's part of it, yes.

Q And you understand that the intercompany settlement that we're here talking about today, that's at issue in this hearing, does not release Minerals from any underlying tort liability, correct?

A Correct.

Q And to the extent that any talc claimants have any direct claims against Holdings for their involvement in any underlying talc liability, the claims that are being settled today, or that are proposed to be settled, they're not being released, either, correct?

A I'm not a lawyer, but that's my understanding.

Q The only thing is being released in the intercompany settlement here is estate claims that Minerals might have against Holdings or its officers and directors. You understand that, right?

A There may be a dispute about what an estate claim is, but, yes.

Q Now your report says that you believe that talc claimants personal injury claims against Minerals might be worth, I think I have this right, somewhere between 150 and 500 million. Is that correct?

A I believe it's 500 million. The 150 I think is a number that came from PACE who's the debtor's valuer.

Q And to be clear, you are not offering any opinion on the likelihood of Minerals actually prevailing -- I'm sorry.

You are not offering any opinion on the likelihood of Minerals, or any of the talc claimants, prevailing in any veil piercing, successor liability, or alter-ego claims, right?
A That's correct.
Q The UCC's counsel just told you to assume that those claims are strong, correct?
A That's correct.
Q You and I can agree that the UCC's counsel might have a motive to tell you those claims are strong.
A They may. I've been -- worked with UCC's counsel in other cases and we've been successful in getting money paid in similar circumstances, so I have a little bit of personal knowledge that it does work out for us, but --
Q Sure.
A -- this could be a different occasion here.
Q But sitting here today, you are not aware of a single successful attempt to bring a veil piercing, successor liability, or alter-ego claim against Holdings, correct?
A I'm not aware of one, no.
Q It's never been done.
A Not that I'm aware of, no.
Q And we look back on your history here to 1980 and even 1948, I think we talked about, never been done.
A You're talking about beyond this case?
Q I'm talking about any -- if you are aware of any

successful veil piercing, alter-ego, or successor liability claim that's ever been brought against Holdings?

A Against Holdings, no.

Q Or against any of its equity holders.

A Correct.

Q And you're not giving an opinion today on the value of any alter-ego, veil piercing, or successor liability claim, correct?

A I am if successful, I am.

Q If successful?

A Correct.

Q Okay. But you haven't taken a risk adjustment or any of the things that would go into assessing whether it would be successful, right?

A Correct.

Q And, importantly, you're not giving any opinion on what the talc claimants could actually recover from Holdings if they won a veil piercing, successor liability, or alter-ego claim, correct?

A Correct.

Q You have done no assessment of Holdings', or any of its affiliates' ability to actually pay on any judgment, correct?

A Well, beyond the fact that they're not contributing all of their value right now, there's releases that there are -- they bargained for. So there's something they're holding back. So,

there's some additional value out there, I don't know exactly what it is.

Q Could be a dollar, could be a million dollars, maybe it's even ten million, but you don't know what it is, correct?

A Well, it seems fairly material or we wouldn't be having this fight.

Q You don't know what it is, do you?

A Beyond that, no.

Q And you've done no analysis of what that might be, correct?

A Not specifically, no.

Q Okay. The only person, to your knowledge, who's done that analysis testified for three hours earlier today about the analysis that he performed. Were you in the courtroom when that happened?

A I was.

Q Nor have you done any assessment of the ability of any of the equity owners of holdings to actually pay on a judgment for alter ego, veil piercing, or successor liability, correct?

A I have -- you know, I didn't see any work product related to that in the data room analysis. I'm not sure if anyone did that analysis.

Q So, the answer is no, you haven't done it?

A No.

Q And sitting here today, you are unable to point to any

evidence in the record that would suggest that Holdings can pay a judgment of, let's just take $20 million.

A I'm not sure how much Holdings can pay.

Q When I deposed you a couple days ago, you didn't even know that there was a $30 million ABL outstanding to Holdings, correct?

A I don't recall that, but it's very possible.

Q And can you and I agree, I promise, this is my last question.

A Okay.

Q Can you and I agree that it would be reasonable for an independent director like Ben Pickering who has fiduciary responsibilities to all the creditors to take into account what could actually be recovered from Holdings and/or its equity owners in a veil piercing, alter-ego, or successor liability claim?

A In general or in this instance?

Q I can read you the deposition question I asked you.

I mean, I've read it literally what you, strike that.

A Well, I just don't remember if it's general --

Q Can you and I -- I'll repeat it.

Can you and I agree that it would be reasonable for an independent director like Mr. Pickering back there, who has fiduciary responsibilities to all the creditors, to take into account what could actually be recovered from Holdings and its

equity owners in a veil piercing, alter-ego, or successor liability lawsuit? Yes or no?

A I mean, again, you're asking me a question related to a very general. Yes, for sure, in certain circumstances, that would make sense. I'm not sure it makes sense here.

MR. BARNOWSKI: No further questions, Your Honor.

THE COURT: Thank you.

MR. LEADER: Your Honor, we were prepared to ask questions from the declaration. I understand there's a presentation that was put in and not the declaration. If we could just have a minute to review the presentation and see if we need to ask him about some things in the presentation. Otherwise, I won't have any questions.

THE COURT: You may, because this is not being admitted into evidence, correct? This is just a visual --

MR. DAVIS: Correct.

THE COURT: -- aid.

UNIDENTIFIED ATTORNEY: (Indiscernible)

THE COURT: Second --

UNIDENTIFIED ATTORNEY: (indiscernible)

THE COURT: Do we envision any other witnesses?

MR. DAVIS: No, Your Honor. I'm just going to enter an exhibit and we'll be good.

THE COURT: Okay.

MR. AGAY: Your Honor, could I ask a couple of

questions while they're looking at that?

THE COURT: You may.

MR. AGAY: Your Honor, David Agay on behalf of the Commodore Entities.

CROSS EXAMINATION

BY MR. AGAY:

Q Mr. Atkinson, good afternoon.

A Good afternoon.

Q My client is a senior secured creditor in this case, correct?

A Correct.

Q Okay. Do you know how much we're owed?

A I think you've put forward about eight (indiscernible) million dollars.

Q $8.5 million, does that sound right?

A Yes.

Q You are appearing as an expert witness on potential talc damages today, correct?

A Correct.

Q Are you also the financial advisor to the Committee?

A I am.

Q Okay. You're not appearing as the financial advisor to the Committee today, correct?

A I don't know if I can undo that. I'm both, so.

Q Well, but are you offering testimony as the financial

advisor to the Committee today?

A I'm offering testimony related to my declaration.

Q Okay.

So you're not offering any testimony about any work that you have done regarding any alternative transactions if the intercompany settlement fails.

A No, it's not pending.

Q Okay. Do you recall, I don't know if it was last hearing or a couple hearings ago, I had asked you if you'd ever called my client to sort of talk through things, see if they would support alternative transactions?

A I do.

Q Okay. Had you reached out to them at that point?

A I have not.

Q Have you reached out to him since?

A I have not.

Q Oh. And, again, you're not here on the witness stand offering any alternatives today if the intercompany settlement fails, correct?

A I am only here for my declaration.

Q Okay. Are you aware that the Committee is putting together evidence around that issue?

A I'm not aware, one way or the other.

Q Okay.

MR. AGAY: I don't have any other questions, Your

Honor.

THE COURT: Thank you.

MR. LEADER: Your Honor, I appreciate the patience.

I think the question is whether the one exhibit that's being admitted is the declaration, in which case I do have a question about the declaration.

MR. DAVIS: That's correct.

MR. LEADER: Okay. Then I do have questions about the declaration.

THE COURT: Certainly.

MR. LEADER: So do you want to go ahead and admit it, and then I can --

MR. DAVIS: Sure.

This was Committee Exhibit 150 to admit.

THE COURT: Any objection?

MR. LEADER: No objection.

THE COURT: Okay. It's admitted.

(Committee Exhibit 150 admitted to evidence)

CROSS EXAMINATION

BY MR. LEADER:

Q Good afternoon, Mr. Atkinson. My name is James Leader. I represent Holdings.

A Good afternoon.

Q I just wanted to ask you a quick question about your declaration. Do you have it in front of you?

A I do.

Q Could you turn to Paragraph 19, please?

And I'm actually going to focus on a sentence that occurs after the page. So the page with Paragraph 20 on it.

A Okay.

Q Do you see the sentence that starts "Notably certain"?

A I do.

Q Okay. "So notably certain assets," and it lists "VEEGUM Plant, Lyles Mine, Netzsch Mill that were operated as one within the debtor's predecessor prior to 2012 restructurings are now sought to be recombined through the intercompany settlement."

Do you see that?

A I do.

Q Okay. And there's no footnote on this sentence. So I was wondering what is your source for the statement that the Lyles Mine and the Netzsch Mill were operated as one within the debtor's predecessor prior to the 2012 restructurings?

A Yeah, I think this should -- this is a mistake. It should have just been the VEEGUM Plant was.

Q And why do you say that?

A Because I think the others were purchased later on, after 2012.

Q Okay.

MR. LEADER: No further questions.

THE COURT: Thank you.

You may step down.

(Witness excused)

THE WITNESS: Thank you.

THE COURT: Thank you.

No further witnesses?

MR. DAVIS: No further witnesses, Your Honor.

UNIDENTIFIED ATTORNEY: No rebuttal witnesses, Your Honor.

THE COURT: Okay. So I understand there was a request to have closing arguments tomorrow. Everyone's in agreement with that? I think that makes complete sense given the expedited time frames and at least allows a little bit of a breathing room.

There are a couple of things that the Court would like specifically addressed tomorrow that are more legal arguments, obviously, than testimony. Whether or not the heightened standard for insider transaction applies, and, if so, what that is. We had a little bit of testimony, but not, wasn't really fleshed out.

And then, there was a reference early on in the opening in terms of the In re Kuack (phonetic) and how that impacts this motion, if at all. And I believe that you had, I'm sure you have those sites. That's I think April 6th.

And then I had requested from Mr. Sullivan from the

debtor the status of updated budget and status of the cash and the DIP, which I believe Mr. Agay just said was in fact at the $8.5 million.

So the Court is going to suggest that we adjourn until ten o'clock tomorrow, if that makes sense. We will have to figure out next steps after that in terms of a ruling in one of the DIP lenders. The Court would ask Mr. Agay, again, if the DIP lender would consider extending the DIP by a couple of days so that deadlines.

Mr. Sullivan doesn't look very anxious to step up there with you.

MR. AGAY: I need a chaperone, Your Honor.

MR. SULLIVAN: Your Honor, Charles Sullivan, Bond, Schoeneck & King, for the debtor.

So during a break, Mr. Agay and I did confer on this very issue. And given the time period that the Court will have to consider this motion, there's a lot of evidence here today. There's a lot of testimony.

After consultation, the DIP lender will agree to extend the deadline, I believe, until Wednesday --

THE COURT: That would be wonderful.

MR. SULLIVAN: -- which will permit the Court to consider the evidence submitted in the Court and the oral arguments provided tomorrow.

THE COURT: That would be very much appreciated.

There's a lot before it, and the Court -- it's a very important decision for everyone. And the Court wants sufficient time to be able to do that.

MR. AGAY: Understood, Your Honor.

I think we are also going to have to extend the final DIP order milestone, which I think was for April 20th, also.

THE COURT: All right.

MR. AGAY: But we can --

UNIDENTIFIED ATTORNEY: We'll confer.

THE COURT: Based on the representation on the record, and we can set whatever time that we want to do that. Next Wednesday, actually, the Court could issue an oral ruling. I do have a regular calendar. We can do that in the afternoon or whatever makes sense in terms of time frame, and people can do it by video to conserve estate resources as well.

That would be very much appreciated in light of the Court-induced significant change in circumstance on all of this. Please thank your client, Mr. Agay. The Court appreciates that very much.

MR. AGAY: Thank you, Your Honor.

THE COURT: Before we adjourn until tomorrow at 10:00, is there anything else that we need to deal with from an administrative or other basis?

UNIDENTIFIED ATTORNEY: No, thank you, Your Honor.

THE COURT: Okay.

UNIDENTIFIED ATTORNEY: Not from us. Thank you.

THE COURT: Okay. Thank you all for your time today.

THE CLERK: All rise.

Court is adjourned.

(Proceedings conclude at 4:10 p.m.)

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C E R T I F I C A T I O N

We, DIPTI PATEL, TRACEY WILLIAMS, and KAREN WATSON, court-approved transcribers, hereby 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 our ability.

/s/ Dipti Patel
DIPTI PATEL, AAERT CET-997

/s/ Tracey Williams
TRACEY WILLIAMS, AAERT CET-914

/s/ Karen Watson
KAREN WATSON, AAERT CET-1039
J&J COURT TRANSCRIBERS, INC. DATE: April 21, 2026