Docket #0467 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 17, 2026
. . . . .	.	10:00 a.m.

TRANSCRIPT OF MOTION TO SETTLE FILED BY
VANDERBILT MINERALS, LLC (#22)

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

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(Proceedings commence at 10:00 a.m.)

(Call to Order)

COURT CLERK: Case 26 -- Friday, April 17th, 2026. Case 26-60110, Vanderbilt Minerals, LLC, motion to settle. Please note your appearances for the record.

THE COURT: Before we get to the appearances, for those people who are on the phone or on the video, there is no picture apparently of the bench. You can only see the courtroom, but I understand that you can hear everything, so we decided to proceed and not get bogged down in an IT delay.

So, for those on the phone, I apologize, or the video, I apologize, but we are going to proceed, and you'll just have to listen in for arguments. So, with that said, why don't we note the appearances in Court.

Counsel for the Debtor?

MR. SULLIVAN: Good morning, Your Honor. Charles Sullivan, Grayson Walter, Brendan Sheehan, and Alexis Takashima for the Debtor.

THE COURT: Good morning.

Counsel for the Independent Committee?

MR. BARNOWSKI: Good morning, Your Honor, Dan Barnowski, Katten Muchin Rosenman; with me, Cindi Giglio, Marc Roitman, and Summer McKee for the Special Committee.

THE COURT: Good morning.

Counsel for the Committee?

MR. JONAS: Good morning, Your Honor. Jeff Jonas from Brown Rudnick. With me is my partner, David Molton, my colleague, Lydel Benson; from our co-counsel, Caplin Drysdale, are Kevin Davis, Wendy Barnett, and Lucas Self on behalf of the Official Committee of Unsecured Creditors. Thank you, Your Honor.

THE COURT: Good morning.

U.S. Trustee?

MS. CHAMPION: Good morning, Your Honor. Erin Champion for the United States Trustee, and here with me today in the courtroom is Paula Barbaruolo.

THE COURT: Good morning.

Counsel for the Vanderbilt entities?

MR. HOWARD: Good morning, Your Honor. It's George Howard, Vinson and Elkins on behalf of non-Debtor R.T. Vanderbilt Holding Company and the other non-Debtor affiliates.

I'm here today with my colleagues, Mr. James Leader and Ms. Lauren Kanzer, and my local counsel right behind me here.

MR. LEVINE: Good morning, Judge; Paul Levine, Lemery Greisler, local counsel with Mr. Howard.

THE COURT: Good morning.

MR. LEVINE: Thank you.

THE COURT: Counsel for Commodore?

MR. AGAY: Good morning, Your Honor. David Agay from

McDonald Hopkins on behalf of the Commodore entities, and I think we have some people listening on the phone.

THE COURT: Good morning.

Other appearances in the Courtroom?

MR. MACWRIGHT: Good morning, Your Honor. Thomas MacWright from White and Case on behalf of Paul Vanderbilt.

THE COURT: Good morning.

Any other appearances in the Courtroom?

(No Response)

Hearing none, is there anyone by video or phone who wishes to note their appearance?

MR. BELLUCK: Yes, Your Honor.

MR. GONSALVES: Good morning, Your Honor.

MR. BELLUCK: Joseph Belluck from Belluck Law, counsel to the Bishop family, who are Chair of the Talc Claimants Committee.

THE COURT: Good morning.

MR. GONSALVES: Good morning, Your Honor. Nick Gonsalves from Weitz and Luxembourg, counsel for Kathleen Dole on the Unsecured Creditors Committee.

THE COURT: Good morning, Counselor.

MR. LITCHTENSTEIN: Good morning, Your Honor. Scott Litchtenstein from Chiesa, Shahinian and Giantomasi for Missouri North America and Fidelity and Deposit Company of Maryland.

THE COURT: Good morning.

MR. STOLZ: Good morning, Your Honor. Matthew Stolz of Cohen, Weiss, and Simon for the United Steelworkers Union.

THE COURT: Good morning.

MR. THOMPSON: Good morning, Your Honor. Clay Thompson for Heather Colding who's a member of the Unsecured Creditors Committee, as well as other mesothelioma victims. I'm with Maune Raichle Hartley French & Mudd.

THE COURT: Good morning.

Any other appearances by phone or video?

(No Response)

Hearing none, why don't we get started.

MR. BARNOWSKI: Good morning, Your Honor, Dan Barnowski, again, for the Special Committee.

At the onset, we'd like to address the two questions you raised yesterday at the end of yesterday's hearing. The first question, how the Second Circuit's decision in the Kwok case impacts this 9019 motion.

The short answer is, the Second Circuit has definitively rejected the UCC's argument that the Debtor cannot settle alter ego, veil piercing, and successor liability claims. The Kwok decision could not be more directly on point. And more, just as importantly, it applies Delaware law.

And so, the question that was raised in the UCC's brief is that this is not an issue of Federal law, it's an

issue of State law; whether they're right or wrong, the Second Circuit has decided that the Bankruptcy Code allows these claims to be settled by the Debtor's estate and applies Delaware law in getting there to hold the same thing.

So, I think under both arguments, Kwok ends the debate. The Kwok case reaffirms the Second Circuit's prior decisions, but importantly it refocuses that analysis around Section 544 of the Bankruptcy Code, the strong-arm power. That section, Section Sub-A says, the trustee shall have, as of the commencement of the case and without regard to any knowledge of the trustee or of any creditor, the rights and powers of a creditor with a judicial lien.

Bankruptcy practice has long recognized that Section 544 allows a Debtor to pursue, settle, and release state law fraudulent transfer claims. Those claims, of course, belong solely to creditors under State law. The Second Circuit has now held in the Kwok case that the analysis is the same for State law claims based on alter ego, veil piercing, and successor liability. This should end the inquiry.

As Ms. Giglio said in her opening statement yesterday, the Second Circuit has left no wiggle room for the Committee to advance this objection, at least in Courts bound to follow Second Circuit law.

The second question is whether or not a heightened standard for insider transactions applies to the 9019 motion,

and if so, what that standard is. We would suggest that Your Honor follow the same standard applied by Judge Wiles of the Southern District of New York in the Chassix Holding case, which I have a copy of here.

Here, as in the Chassix case, the settlement is with the Debtor's parent, therefore, the standard is, we acknowledge, heightened scrutiny, and we're not hiding from that scrutiny. We recognize that this is a very important motion for the company and for its creditors, and we have every expectation that Your Honor is going to carefully scrutinize the settlement.

But what does it mean to apply heightened scrutiny? Here, we would also propose to follow Judge Wiles' lead in the Chassix case. If you'll indulge me, I'd like to read just a couple quotes from it.

"Since the settlement here is with the Debtor's parent, the Court agrees that it is proper to apply heightened scrutiny." He goes on, "regardless of the level of scrutiny or deference to be applied, the factors to be considered by the Court in connection with the proposed settlement are essentially the same."

And then, he lists the seven Iridium factors. He continues, "The Court should apply these factors to determine whether the settlement is fair and equitable. However, in making that determination, the Court need not hold a mini

trial." Of course, we've held one, that's okay.

And then, he goes on to say on page 74, "The gist of the objection is that the Court should disregard the testimony by the Debtor's witnesses and should conclude that the evidence offered by the Debtor somehow was not enough to carry their burden of proof as to the wisdom of the settlement."

"However, heightened scrutiny of a settlement does not mean the Court should subscribe to conspiracy theories or that the Court should substitute blind guesswork in place of the evidence that was submitted."

So, the answer to Your Honor's question is, we would say three things. One, heightened scrutiny applies; two, the analysis comes down to the Iridium 9019 factors; and three, the evidence that Your Honor heard yesterday should be the guide.

And here, we believe that application of those Iridium factors demonstrates that the settlement is fair and equitable. We submit that we've met that standard. And what I propose to do is go through that standard and apply it to the evidence that has come in, as opposed to conjecture or conspiracy theories that have been bounced around this courtroom for over a month now.

The first factor, and the most important Iridium factor, the balance between the litigation's possibility of success and the settlement's future benefit. This is a classic give-and-get analysis. The give here is the estate gives up

the ability to sue Holdings and its representatives for estate claims, which include, under Second Circuit law, controlling Second Circuit law, alter ego, veil piercing, successor liability.

In exchange, the estate gets assets that the undisputed evidence shows are valued at least 27 million. I say, at least, because procurement of these assets allows the company to sell its business for at least $50 million and continue as a going concern.

So, you'll remember yesterday I put up on this board how Mr. Pickering valued the gets and he valued it at 27 million as a baseline, but that ignores the fact that additionally, in addition to that $27 million of hard assets that are coming into the estate, the evidence is uncontroverted that without those assets -- that getting those assets allows the estate to sell additional assets for at least $50 million. Without those assets, there's no $50 million sale.

It also allows the company to continue as a going concern. So, the get it is at least $27 million, probably closer to $50 million and that ignores the soft gets; the gets associated with continuing as a business, the employees keeping their job, the downstream benefits, the upstream benefits.

The analysis of how much the give is worth is tethered to the viability and the value of the Debtor's potential litigation claims against the settling parties,

Holdings and the affiliates. It's important to pause here and ask, what does it mean for a claim to be viable and valuable? You heard Mr. Pickering talking about that a lot yesterday on cross.

Under Delaware law, directors analyzing whether to pursue litigation on behalf of a company are directed to engage in a two-step analysis. The first step, whether the claim is viable. In other words, would it survive a motion to dismiss? If the answer is, yes, that doesn't automatically mean the company needs to pursue it.

The Delaware Supreme Court has said that the second step, which is perhaps the most important step, is determine if the claim is valuable and this means essentially a cost-benefit analysis. This is precisely the type of analysis that Mr. Pickering, that's mandated by the Second Circuit, mandated by Delaware law, mandated by the Iridium factors and it's the analysis that Mr. Pickering talked about yesterday.

Essentially, the question is, what is a reasonable estimate of the value that the litigation could produce in the way of a recovery. It doesn't matter if there's a $500 million potential judgment that could be gotten if they can't collect any money into the estate. That's the analysis that Mr. Pickering talked about. He got pounded on cross; he got pounded in his deposition for not figuring out what the total amount of a talc judgment might be.

I submit that if the talc judgment is a billion dollars, a trillion dollars, $500 million, or a $100 billion, it doesn't matter if Holdings only has a dollar to satisfy it, and the only person that did any analysis of that, the only one, is Mr. Pickering.

You heard from Mr. Atkinson yesterday. He acknowledged he didn't do that. He also acknowledged it was entirely reasonable for an estate fiduciary like Mr. Pickering to do that analysis. I thought it was somewhat revealing that not only is he the only person that did that analysis, the UCC didn't even cross him on it. They didn't ask him a single question about it.

I'd submit it's probably because they acknowledge that he's right. Otherwise, we would have heard some witness taking issue with what he had to say on the stand. There is not a piece of evidence in this record except Mr. Pickering's analysis that there is no money to satisfy a $500 million judgment.

I guarantee you in the closing, you're going to hear from the UCC at least five to ten times, $500 million, $500 million, $500 million, $550 million, $525 million. It's irrelevant if Holdings cannot satisfy that judgment. That's the analysis that the Second Circuit and Delaware law says Mr. Pickering had to do, and he did it.

Mr. Pickering didn't just do that. He analyzed what

is the likelihood of winning litigation on the various potential estate causes of action, including alter ego and veil piercing. He discounted them for litigation risk. He considered the cost of pursuing that litigation on the various -- of those various potential causes of action, and this includes direct costs such as counsel and expert fees. It also includes indirect costs, such as time value of money, harming a company's long-term strategic interest, closing a company down; he considered that.

And third, as I just said, what is the risk that even if you win on the various potential causes of action, you can't collect them. In Mr. Pickering's testimony, you heard an hour of testimony on the analysis he did on every one of those claims.

He analyzed them, and as the Committee has pointed out, he analyzed numerous -- I'm sorry -- sorry, strike that. He analyzed all those potential claims. He also analyzed other potential claims that he wasn't even crossed on yesterday. In particular, he found the company had viable claims to collect on intercompany debts of around 42 million, but he also determined that there would be serious challenges to those litigations.

Specifically, the intercompany note, that I think was worth 27.9 million that he testified about doesn't mature for 11 years. It's not in default. There's no right to collect on

it, so you can't say it's worth $27.9 million unless you're willing to wait out 11 years to get it.

So, what did he do? He engaged Green Hills to help him. He did research on the internet. He determined that the proper discount rate was 12 percent, and then he revalued it. He wasn't crossed on that. No one else offered any evidence on that. I think it's uncontroverted that that was a proper valuation of that claim.

There's also the AR balance, the 14 million. There's no stated maturity rate on that. There's no interest rate on it, and the only way to collect it if they refuse to pay it is to litigate. And so, what did he do? He did what the Second Circuit tells me he has to do. He did a litigation cost-benefit analysis. He risk-adjusted it for likelihood of success. He risk-adjusted it for attorney's fees and present value, and he came up with a number, again, that he was not crossed on and that no one has countered. That valuation stands before the Court as the only valuation done of that claim.

Mr. Pickering also did a thorough analysis of other claims that the committee has spent a lot of time discussing in this Court, including claims arising from global netting transaction. For the global netting, Mr. Pickering and Mr. Wise walked the Court through how the balances accumulated and how the SAP system limitation allowed them to grow without

automatic reconciliation.

As Mr. Pickering explained, all of the underlying entries were meticulously tracked in the system, but because of a system limitation, Minerals carried accounts receivable from Holdings, which reflected amounts swept out of its accounts, and a corresponding accounts payable that accumulated over time, reflecting its operating expenses.

In most businesses, those amounts would be automatically offset. I think he gave a colorful example about how money, if moved to pay payroll expenses, would be deducted from the money swept, and that reconciliation would occur on a day-to-day basis in a normal business.

Here, Mr. Vomero was brought in, and his job was to reconcile those large amounts. That's what he did. Mr. Pickering's analysis was that that reconciliation reflected the reality of the transactions and was proper. They aligned the books with the economic reality.

But Mr. Pickering's analysis did not end there. Even though there was a clear explanation for why the transaction occurred, he still evaluated potential claims that could be pursued based on them. You can see that in the three reports that were presented to the Special Committee. He determined that the Debtor likely could not credibly state a claim against holdings that would survive a motion to dismiss on the global netting. Put simply, under the Bankruptcy Code's definitions,

a set-off is not a transfer that can be avoided, and moreover, the dollar-for-dollar reduction in debt that the Debtor received in the transaction is reasonably equivalent value as a matter of law.

Then, Holdings would have an ironclad statute of limitations defense. The applicable look-back period is 90 days, even if the set-off counterparty is an insider. Is he right on that? We submit he is. Is he wrong on it? No one crossed him. There's no contrary evidence that he did something wrong. He certainly applied his reasoned business judgment to analyze the transaction and try to get to the bottom of it.

The Committee has raised concerns about whether it was appropriate for the Minerals Board to enter into the global netting transaction. But that question, what we submit is an important one, is not relevant to the analysis here today, because even if there was a viable breach of fiduciary duty claim against the board, those claims are not released in the settlement motion.

So, let's turn to the alter-ego theories of liability. We've heard a lot about them over the last month. Mr. Pickering analyzed these claims extensively in the litigation, but under controlling Second Circuit law, I'm just going to refer to them collectively as alter ego theories. That way I can stop saying, alter ego, veil piercing, and

successor liability.

They're strongly disfavored. They're extraordinary remedies. They require a Plaintiff to prove that the corporate form was used to perpetrate a fraud. This requires a showing that Holdings exercised, the phrase is, total domination and control, not domination and control over one transaction or three transactions.

It also requires showing that the party commingled its assets, siphoned its funds, and effectively took over the other entity's operations. We'd submit here the Kwok case is another very instructive -- it's very instructive on this point as well.

It shows what it takes to succeed in this type of claim. Essentially, the two entities have to merge and become one; one entity totally taking control of the other one and using it to commit a fraud, using it to commit a fraud on creditors.

Here, there is clearly separation between the entities. I'm going to come back to that in a moment, but before I do, I want to talk a little bit about Randy Johnson's statements. We acknowledge that wasn't hidden from anyone. It's in the reports; it's in the summaries; Mr. Johnson's statements about rubber stamping and string pulling, they seriously concerned Mr. Pickering. He didn't wave them away.

If this had been what he's been accused of since the

very beginning, of doing a white washing, of not doing his job, he would have simply moved on, but he didn't do that. He investigated further. What he found is that no other officer or director echoed those comments, including in numerous depositions taken in this case.

I believe at the end of this proceeding, the parties are going to move in deposition testimony that's been designated. The UCC has had full opportunity to depose anyone they wanted. There's going to be a whole bunch of deposition testimony submitted.

No one talked about rubber stamping. They could have asked anyone about it. No one talked about string pulling. They could have asked anyone about it. In fact, they testified to the opposite. The corporate minutes and records reflected that the Minerals Board met regularly, it carefully considered its options, it made reasoned decisions.

You heard yesterday about some of the equity holders refusing payment of dividends and instead putting money back into the business. That's not commingling and siphoning of assets. That's the opposite.

Moreover, when Mr. Pickering looked carefully at Mr. Johnson's comments, he found that they would not -- some of them were not surprising at all. It would not be surprising for Holdings to dictate management of day-to-day operations for Minerals. Why? Because authority over those operations, those

activities, had been expressly delegated pursuant to an agreement between the parties and they were paid for providing those services and Minerals benefitted from offloading those services to an entity that was more experienced in them.

Minerals is not an entity that is a management services company. It's mining, and it offloaded some responsibility -- it offloaded responsibility for those management services of day-to-day activities to Holdings. It still had its own board for big decisions. It still made its own decisions.

The fact that Minerals may not have due diligenced a promissory note that was issued before Minerals even existed is not surprising either. That was the comment he made about rubber stamping a promissory note. The timeline, it kind of got -- I think it got glossed over when he was on cross, but the timeline of that promissory note is it was issued by Holdings before Minerals existed. It was to the benefit of Minerals.

The fact that when Minerals is then formed a couple months later doesn't due diligence the promissory note that it's being given to the tune of $100 million, I don't think it's all that surprising. They took the promissory note. They were happy to have it. But it is important to note that to be successful, alter ego and veil-piercing theories require total domination and control, like we see in Kwok, siphoning of

assets, which just don't exist here; abuse of the corporate form to perpetrate a fraud. There's been no evidence of a fraud.

None of the evidence demonstrates total control. None of the evidence demonstrates fraud. None of the evidence demonstrates commingling of funds or siphoning of funds.

To the contrary, the evidence demonstrates, it proves corporate separateness. Minerals had its own operations. It has its own operations. It has its own place of business. Mr. Pickering went to it. He's the only one who testified, he actually went and made sure that was the case.

It has its own employees, 120 of them. It has its own directors. It has its own officers. It has its own business purpose. That's why someone wants to buy it. And as Mr. Pickering colorfully testified yesterday, it even has its own parking lot.

In short, Mr. Johnson's comments were troubling. They were concerning to Mr. Pickering, and they were taken seriously. But they don't show that Minerals was not its own functioning business. It clearly was.

The second Iridium factor is the likelihood of complex and protracted litigation; the expenses associated with it, the inconvenience and delay, the difficulty in collecting on a judgment. Mr. Pickering did not end his analysis with whether the potential claims were viable. He moved on to the

second step that the Second Circuit tells him he has to do.

As you heard in his testimony, he went further and evaluated whether the potential litigations would be valuable. In other words, would all of this litigation that the objectors want the estate to pursue, if successful, lead to additional value for creditors above what the settlement achieves?

Again, the evidence on this point is undisputed. The answer to that question is a resounding no. Holdings is a company with negative EBITDA this year. In the last few years, it has averaged 3 to 4 million of annual EBITDA. Mr. Pickering concluded that the value of Holdings, excluding the assets contributed by Minerals, is $40 million using an aggressive valuation, using a 10-times multiple.

But Holdings is also obligated on a $30 million preferred first-lien ABL to a third-party, Wells Fargo. Mr. Pickering concluded that collection of any value in litigation approaching the settlement value would be impossible, even if this estate would somehow hit a grand slam home run, and this is critical.

He's criticized for not assessing the alter ego claims. He clearly did. But even if there is a five to ten-year litigation, all the way through to appeal, on a claim that is heavily disfavored under the law, where the elements are at best a toss-up, and I would argue that they're not even close to a toss-up, but at best a toss-up, what do you get at

the end of the day? And again, I don't want to repeat myself too many times, but I know we're going to hear $525 million, because that's all we've heard in this case; 525, 525, 525 million. All of that is irrelevant. That's the grand slam home run that they want to hit. Great. But that's a judgment against Minerals. It's not a judgment against Holdings.

We've heard no evidence in this case, no one took the stand, including Mr. Atkinson, and said an alter-ego claim would be successful against Holdings. What he testified was that counsel told him to assume that fact. There's no evidence in the record whatsoever that those claims would be successful.

The only evidence is Mr. Pickering saying they would not, in his assessment. But putting aside whether he's right or wrong, at the end of the day, you've got to recover funds. A judgment doesn't do any good for the creditors if they don't get funds, especially if they throw $50 million of settlement out the window to chase it.

The Committee offered no evidence to contradict the serious collection risk, and again, it didn't even ask Mr. Pickering any questions on cross or in his deposition about it.

So, you've heard about the analysis that Mr. Pickering did. It was thorough. It aligned with what is required in the Second Circuit. No one else in the case did that type of analysis, and instead, what we got is a valuation of claims, underlying personal injury claims against the

Debtor.

I think it's critical to also point out that Mr. Atkinson agreed on the stand yesterday that it would be reasonable for an estate fiduciary like Mr. Pickering to compare the amount that creditors would recover in a settlement, recover in a settlement, to the amount that creditors could actually recover, recover in a litigation.

This is exactly what Mr. Pickering did, and it's exactly what no one else has done. The third Iridium factor I want to discuss is the extent to which settlement is the product of arm's length bargaining. Mr. Pickering testified --

UNIDENTIFIED SPEAKER: Good morning, everyone.

UNIDENTIFIED SPEAKER: Good morning.

UNIDENTIFIED SPEAKER: Good morning, thank you all for --

THE COURT: Excuse me, whoever's on the phone or the video who's not mute, please mute your line.

MR. BARNOWSKI: Thank you, Your Honor.

We were talking about the third Iridium factor, the product was whether the settlement was the product of arm's length bargaining.

Mr. Pickering testified to his investigation process and his arm's length negotiations; he explained he was willing to walk away if he didn't get a deal that he considered fair and equitable. The UCC spent a lot of time yesterday

questioning why Mr. Pickering didn't demand value in settlement negotiations for claims that he already concluded had no merit.

But that's not the job of an independent director. The independent director's job is not to try to use the threat of litigation to leverage a third party into paying for claims that the independent director has already decided have no merit.

I guess that's a negotiation style that some people use. It's not a negotiation style that's mandated on anyone. If Mr. Pickering, after months of analysis, concluded that claims were not viable and they were not valuable, he was not required to go in and demand money for them.

Putting that aside, I think just the reality of the situation should be analyzed. If Mr. Pickering walked into a negotiation session and said, give me $500 million for these personal injury claims, and Holdings has a total of these assets and maybe $5 million total to run the rest of its operation, do you think that they would say, well, sure, we'll give you 500 million? Do you think they'd say, we'll give you 100 million?

He tried to get maximum value for what he considered viable claims. And when he didn't get it, he then risk-adjusted those claims and discount valued some of those claims, determined what he considered a reasonable range and got at the top end of it. No one's questioned that range. No one's

questioned a single piece of his analysis in terms of his adjustment, except that he didn't demand payment on claims that he thought were not viable.

The undisputed evidence demonstrates that the settlement is the result of extensive arms-length negotiations. Mr. Pickering talked about delegating to counsel to have a first negotiation session with opposing counsel. When that didn't get the number he wanted, he talked about an all-day negotiation session that he attended in person where he made demands, counter demands were made, and that also didn't lead to a settlement, and he walked away.

And then, they continued, and eventually he got to a number that was at the top end of his range. Negotiations involved material changes to both economic and structural terms. If you remember, he talked about $2.1 million of additional benefits being thrown in. He negotiated aggressively to get Holdings to make certain pay aheads, to make certain concessions that certain charges wouldn't be made during the Bankruptcy, that services would be provided for free, certain services.

This was a back-and-forth negotiation that resulted in Mr. Pickering getting the top end, not the bottom end, the top end of what he thought was valuable and viable. And again, no one has questioned the risk adjustments he engaged in.

The next two Iridium factors are the paramount

interests of creditors and whether other parties in interest support the settlement or don't object to it. First, the settlement is supported by Commodore, the estate's only secured creditor. The evidence also established that other parties in interest who are engaged in diligence in the sale process are very much in favor of the settlement.

All indications of interest have been to acquire the settlement assets and the Debtor's assets. Approval of the settlement is much more likely to lead to a robust auction than denial. In addition, as reflected by comments made on the record by counsel to the United Steelworkers at the March 24th hearing, the Debtor's employees support the outcome made possible by approval of the settlement, a value-maximizing sale that provides for a going, concerned path forward to the Debtor's business.

As the Adelphia case made clear, this is not merely a counting exercise of how many people support and how many people oppose. As Judge Gerber wrote in Adelphia, where the settlement proponent is trying to maximize value for all the fundamental Iridium factors, benefits of settlement, likely rewards of litigation, costs of litigation, and downside risk plainly trump the headcount in support.

Additionally, Mr. Pickering testified yesterday that this company has a reason to exist. It is an operating business with real stakeholders. The consequences of denying

approval of settlement are not abstract. Downstream suppliers of goods and services, not only the Debtor, but also to the Murray, Kentucky operations and the Lyle Mine would be impacted by the likely cessation of operations. For many of those counterparties, that disruption could be significant.

Upstream, the impact is equally serious. The Debtor produces unique, integrated products that are relied upon across multiple industries, including agriculture, cosmetics, automotive, healthcare, life sciences.

As the Court heard from Mr. Pickering, in the pharmaceutical context in particular, the validation process is lengthy. If these operations are disrupted, there is a real risk that products incorporating VEEGUM will not be readily replaceable. It will take time. That, in turn, could affect the availability of medications that patients depend on. These are real-world consequences that flow directly from the decision.

The next Iridium factor, Your Honor, is the nature and breadth of releases to be obtained by officers and directors. Mr. Pickering analyzed claims against directors and officers of the Debtor in his investigation, but they are not at issue here today. None of those officers and directors of the Debtor are being released in this settlement.

Direct claims that individual creditors could bring against Holdings, against Holdings' directors, against

Holdings' officers, employees, also are not being released today. In their objection to this settlement, the UCC put in front of you 10, 20 pages of alleged misconduct that has occurred at Holdings. I'm not validating that. I'm not agreeing whether that's right or not.

But that misconduct, if it's actually true and they can prove it, supports a direct claim, perhaps. Those direct claims are not being released. They can pursue those claims. The only claims being released are estate claims, Debtor claims.

The last factor in the Iridium test is the competency and experience of counsel. The testimony was clear on this. The relevant decisions regarding the investigation, the evaluation of claims, the negotiation of the settlement were made by Mr. Pickering, independent manager, utilizing the advice of his independent counsel.

You've heard from Ms. Giglio that that independent counsel has done upwards of 50 investigations like this. Jones Day did not have any role in negotiating the settlement. The Committee's assertions to the contrary are just not supported by the record. Mr. Pickering told you he was given complete carte blanche to pursue whatever he wanted in this investigation, and he did so without any interference from outside counsel.

So, in conclusion, Your Honor, I'd like to take a

step back, just talk a little bit about the history of this case or this motion. Within days of the Committee's appearance here, they told Your Honor a story. They said that the evidence would show that Mr. Pickering was not actually independent, that he did not actually conduct a thorough investigation, and that he did not actually negotiate in good faith or at arm's length.

In short, they said he and his investigation were a sham. They repeated that story, Your Honor, in multiple hearings before today and yesterday. If you recall, there was one time I popped up and said, the settlement hearing is not in front of you today, Your Honor; we disagree with everything that's being said, and I look forward to our opportunity to explain that to you.

This is really their entire theory of this case, that Mr. Pickering did not do his job, that he didn't take it seriously, that he was bought and paid for. These are the kind of accusations that harm reputations. They should not be taken lightly.

Officers of the Court who make them should be required to back them up, not with conjecture, wild accusations, or conspiracy theories, but with facts, with evidence. We all sat through Mr. Pickering's testimony yesterday. I believe he was on the stand for three hours. The inescapable conclusion from that testimony is that that man

back there took his job seriously. He analyzed all the potential estate claims, including their legal and factual basis; he determined carefully which ones could be pursued; he carefully considered what options were in front of them, and most importantly, he carefully considered what would lead to the greatest recovery for the creditors.

This supposed sham investigation, I thought it was so revealing that the UCC didn't even bother to cross a lot of that analysis. If it was such a sham, if he was bought and paid for, if he did such a terrible job, where was that evidence? Where were the questions meant to show that? Total silence.

Mr. Pickering effectively had two options; a settlement that brings $27 million of immediate value into the estate, and facilitates a sale that will bring at least $50 million into the estate, the proverbial bird in the hand; or option two, pursue a high-risk, difficult, time-consuming, disfavored, alter-ego veil-piercing claim that he concluded did not have merit and that would almost certainly, ultimately, bring less money into the estate. Those are the two options he had. One or the other.

He chose the bird in the hand. Not just any bird, a $50-million bird; a $50-million bird that allows people to stay employed, allows a business to keep functioning. We ask this Court to find that that decision was fair and equitable and we

thank the Court and Court staff for your patience this week. Nothing further.

THE COURT: Thank you.

MR. JONAS: Good morning, Your Honor. Jeff Jonas from Brown Rudnick for the Committee.

I have some demonstratives that I'm going to walk through. Can I hand up a set?

THE COURT: You may. Have these been shared with counsel before?

MR. JONAS: No, I'm just going to walk them over there right now.

Again, Your Honor, Jeff Jonas, Brown Rudnick for the Committee.

Okay. Your Honor, let me start with heightened scrutiny, which I think has already been acknowledged, but it's interesting. They did an investigation, they did a report, they used the wrong standard. I think an argument can be made. I'm not going to make it because I think we can win on any standard, but they spent millions of dollars, a lot of time. They used the wrong standard.

So, in terms of their case and putting forth their case, for the first time we heard an argument from a lawyer about why the settlement passes muster on a standard that's the appropriate standard. So, this is the nature of this case, Your Honor. We always -- in six weeks, we always have to,

facing opposition, facing difficulty, we have to root things out. Not an easy job. I love the job. I do it all the time, but I just want the Court to appreciate that.

We have to determine what the appropriate standard is on the day of trial. This should have been done by our Special Committee; they're our fiduciary. They shouldn't be using the wrong standard to assess what was done.

But set that aside. As we've said, Your Honor, and I want to talk about heightened scrutiny because I think there's a few wrinkles that were not covered in the acknowledgment, so to speak, that are critically important.

First of all, it applies to insider settlements. And again, I'm not going to read everything on the slides, but I wanted to provide these slides because I think the cases and whatnot are cited here in case the Court is interested in looking at them, we've cited a number of cases.

And again, engagement of an independent director does not alter that standard. Again, it's been acknowledged. But what I think is critically important, Your Honor, when a heightened standard applies is a recent case from Judge Laurie Silverstein in Delaware in the Kidde-Fenwal case. We've cited it here. It's actually quite recent, in June of 2025.

In that case, she found that when there's an insider settlement and the heightened standard applies, what's particularly important is, is there plenty -- and you're

looking at Emeril and claims under Emeril is that there be Plaintiff support. That becomes an element that has to be included within the heightened standard when looking at, you know, Emeril-type insider claim settlement.

What creditor support do we have here? None. You heard, oh, excuse me, there was one comment about the buyer. Well, we know what the buyer's interests are. They want to buy the assets. They want whatever makes it easy to buy the assets. They're really only a creditor. They said they referred to them as secured creditor. They're really only a creditor because they did the DIP loan to buy the assets.

So, I would discount that, Your Honor. And when you look at the Committee, which represents unsecured creditors, opposed, you're going to hear, I think, from individual committee members and-or their representatives later, Your Honor. I know a number of them want to make some statements. There is zero creditor support.

So, what do they do? Oh, employees, et cetera. I'll get to that. I think that's a parade of horribles that, frankly, the Court doesn't have to concern itself with. But nevertheless, Your Honor, there is no creditor support. And I think Judge Silverstein in that case was spot on. And we'd ask that you take note of that, Your Honor.

Okay. The Iridium factors, I won't do it exactly by reference to the factors, but I want to talk about some facts

that elucidate the factors. Number one, the Debtor seeks to release numerous valuable claims with an assertable value in excess, we believe, of $500 million for no consideration.

There has been no evidence that these claims are complex or difficult to prove. In fact, Your Honor, I think we demonstrated yesterday through the evidence which was provided in the statements of Mr. Johnson, who's the president of Holdings, the Defendant, who's been on for many, many years the Board of Minerals.

His statements put the lie to what we're doing here. These are not difficult claims. They are very straightforward. He said, basically, there was, in fact, domination and total domination and control of Minerals by Holdings. And by the way, Your Honor, I just want to say, Mr. Barnowski went at great length regarding why the alter ego claims are not viable.

We're not here to try those claims today. We're simply here, as we did, we rooted them out, found some amazing evidence. Never mind, it's very unusual. We're not just making a proposition or an assertion. We found, I think, an absolute admission, et cetera, that shows the strength of the claims.

The question today, and I'll get to this, I'm not going to do it right now, is armed with that evidence, what did Mr. Pickering do? That is the question, because he's our fiduciary. And I think what he did with those claims also

supports all of our claims in this case. He seems like a very nice man and none of this is personal, but he did nothing.

In fact, he went out of his way to bury the claims and didn't ask for a penny for the claims. Now, we heard a lot today, they're trying to back into, well, why? Oh, he didn't think that the Defendant could pay. That is completely, completely backwards.

I don't think we'd have the litigation system we have in this country if every time a Plaintiff went to settle a claim they said, hmm, I'm going to do an analysis of how much the Defendant can pay and then I'm only going to ask for what I think the Defendant can pay.

By the way, the analysis was completely wrong. We'll get to that in a minute. But that's the question. We're not here to try alter ego or successor liability or piercing the corporate veil claims. I think we have enough evidence that they're prima facie good claims.

Next factor. I want to talk about this approach that Mr. Pickering took, which is, well, even if the claims were good, which I think they're getting pretty close to acknowledging today, Your Honor. Even if the claims are good and let's say they're $500 million, that's ridiculous. We can't ask for that because they don't have it.

Well, did Mr. Pickering put on any evidence of Holdings' insurance? I think he even made some comments he

didn't look at any insurance issues. What about insurance? Maybe there's $100 million of insurance. We don't know. What about the Vanderbilts who are getting releases, the Vanderbilt family?

We think they have assets. What about those assets? Where's his analysis of that? It's -- I don't want to really go down the road because I don't really think it's -- this isn't the way it should have been done. You don't examine a Defendant's assets in that way and then circumscribe what you're going to ask for. That's not the way it should have been done, and it's not a defense to the way it was done.

I've talked about unsecured creditors, uniformly opposed. Effectively, the settlement which is being proposed doesn't provide any value on Court claims. In terms of -- I do think the record reflects that Holdings reached or entertained a proposed settlement prior to appointment of the Special Committee, and the so-called investigation was designed to reach a preordained, contrived conclusion.

I'm going to show you, laid out in a timeline, we have heard evidence here that within, well, first of all, Mr. Vomero and Jones Day, Bankruptcy experts were on the scene for months, and it is not a coincidence, Your Honor, and I'll even tell you my theory on it. I think it's correct.

For months they were planning for Bankruptcy. Back, I think it was late '24, was one of the first times we saw some

discussion in some of the emails and whatnot; they knew they had to get the VEEGUM plant to Minerals in order to effect a sale, and that was all going to be carried out in Bankruptcy. We saw it in a number of emails.

It's obvious Mr. Vomero was hired. He's a Bankruptcy expert. He ultimately was installed as CRO. After he had worked for the parent, he was installed as CRO of the Debtor in contemplation of Bankruptcy. That's clear. It's clear from a number of his engagement even. Jones Day was on the scene.

Everything that happened here was a setup. You could ask yourself, well, why did they -- the netting transaction, why did they give away a receivable of $127 million from my Debtor? Because that would have been difficult to settle in Bankruptcy. It would have been very hard for Mr. Pickering to say, he took 20 million, 30 million, 40 million on account of a $127 million claim against Holdings.

So, well, it was a lot easier to settle what ultimately was a 27, 43, whatever the number is, the fiduciary instruments that were left that remained at the end of a long process planning for Bankruptcy. And it's just beyond belief to think this was all a coincidence. No one would quite say it. We never -- I don't think we quite got a witness to actually admit, oh, yeah, we did that, that was all part of Bankruptcy planning. Okay.

But it's not coincidental, Your Honor. Is it

coincidental that in the summer of -- this past summer, they amended six intercompany agreements? Is it coincidental that they did two note amendments of a note running from Minerals to Holdings? No. This was all planned, and I'm not even sure Mr. Pickering knew what his role was. And I don't mean that disrespectfully. Again, very nice man; seems to -- when he puts his mind to it, he seems to do the task at hand. He does a very good job.

I just don't think he saw the bigger picture. I don't think he understood that he, in a way, was being played. He was a patsy. He was set up, here's your job, you're independent, you're going to do an investigation. But it was all part of a much, much bigger plan that I'm not sure he saw.

Anyway, insiders, the Vanderbilts and others, are giving broad releases for no consideration. And again, I don't think there's evidence of arm's length bargaining. Arm's length bargaining. What we have evidence of, evidence, is there was an initial call between lawyers at which my lawyers, so to speak, the estate's lawyers, never raised, never asked, never mentioned what on their face looked to be good claims, the alter ego and related claims.

Instead, they were very focused. They took two financial instruments or three financial instruments; that was all they were seeking recovery on. Other side, Holdings said, we know again from the testimony, they said they wanted a

global release. It was going to be part of everything. No evidence. There was no discussion about, well, what does a global release mean? What claims are being released? Nope.

Okay, sure. That's not arm's length negotiation. Even -- and it's almost laughable. They then had a quote-unquote all-day meeting. And then, after that, there was more negotiation. Over what? Over two simple financial instruments that got discounted down, and the estate made a few bucks? It just is not, not reasonable to call that an arm's length negotiation.

Your Honor, just briefly, I'm going to sidetrack, because I don't really want to talk anymore about Emeril, Nordlicht, Kwok, maybe even Whittaker-Daniels, which is waiting for a decision from Judge Ambro on the en banc Third Circuit, because I don't think we need to go there today. We've briefed all of that, and we'll leave it to the Court.

I'm going to assume, and I have assumed from my argument today that the estate can settle those types of claims. I'd urge you to look at our papers, Your Honor, but I think we're there by such a far margin that I really don't even want to waste any time making that argument. I don't think the Kwok case, by the way, changes any of the standard, and again, it's in our papers, Your Honor.

So, that brings us, Your Honor, on my, I'm not going to go through it, on the fourth slide; this supports the $525

million face amount of claims. That's uncontroverted. Nobody controverts that at all. Mr. Pickering didn't even read Mr. Atkinson's report. He certainly couldn't contradict it.

So, we know, I think the Court has to accept -- well, I hate to say it that way, but I think the only evidence of the underlying claims, the underlying talc liability claims is $525 million. Then, the question becomes, and I had Mr. Pickering testify to this, that you look at the underlying claims to determine what the value of the alter ego and related claims are. He said that, he understands that.

It's fairly obvious. So, I think the question is, I would say, today, we have to accept the fact that the alter ego and related claims could be as worth as much as $525 million on a reasonable estimate. And again, then the question is, well, we don't have to try those claims. I think we have a prima facie case. I'll get to that in a minute, Your Honor.

Slide five simply indicates and supports the fact that basically there is zero recovery on those claims, and if you look at slide six, Your Honor, this just goes back to actually slide six and seven, which I won't spend a lot of time on because I've already talked about these.

This is the support for my proposition. And part of what, yes, we've been saying from six weeks ago, our first day in this case, is a setup; that these, you look back, you see in early November, maybe a week or two after Mr. Pickering had

been engaged, Mr. Vomero sent an email to him and some Holdings folks, and he was talking about the Vanderbilt Minerals' release, and he knew what was coming. It was going to be subject to creditor scrutiny.

I'd just say, Your Honor, there's been a lot of discussion about from the other side, the fact that these claims, they're not viable. They don't have any value. I guess I'd say the lady doth protest too much, me thinks. What are we doing here? Why did we just have a million dollar trial, a million dollar investigation?

If the claims don't have any value and nobody's worried about them, why don't they just give them up? Let our clients will pursue them if and when appropriate. Why are they fighting so hard? Why is Holdings? Why are the Vanderbilts? Why are they fighting so hard to get these releases?

I think, again, it puts the lie to it. They're valuable. They're worried about these claims. There is merit to the claims. That's why we've gone through what we've gone through.

With that, Your Honor, again, I won't spend any time on slide seven. It's really the history that I think shows this isn't a coincidence. This was all a setup. On slide eight, Your Honor, I talk about briefly the global netting. I think I've already mentioned this. I think I've answered the question which maybe the Court as well has been thinking about.

Why was $127 million receivable given up pre-petition by Minerals to Holdings through this netting process? Why after 13 years, 20 years, 40 years in business, why in a few months before a Bankruptcy?

I mean, it's truly unbelievable. The SAP system, if the systems weren't working, we needed to fix them. Really? You needed to fix them a few months before the Bankruptcy? That's nonsense. They did it because it was part of the Bankruptcy plan.

And I do appreciate, Your Honor, I have to make a little, I don't think much, but a little, I have to try and tie these pieces together. It goes back to one of my first comments, we're always, we're in the dark. We've got people trying not to give us information as we've demonstrated, I'll get to in a minute.

We have to root out facts. And sometimes we have to piece the facts together. But I think it's not only a credible story, I think it's absolutely what has happened in this case, what I'm speaking to. And again, just unbelievable that all these things happened in a few months before the Bankruptcy for some other reason than the fact that there was going to be a Bankruptcy.

I'd also say, we haven't talked about this, Your Honor. I put it on the slide, which is there's a real question about that netting transaction, in that Bankruptcy Courts have

strictly construed the requirement of mutuality, meaning that a set-off to be valid must be owed between the exact same legal entities in the same capacity.

I haven't really fleshed that out. I think we did in our papers, but there's a serious question about the way in which the netting was done that would call it into question.

So, I want to turn to the investigation, Your Honor, which begins on slide ten. As we've mentioned, this is a predetermined outcome, not an independent investigation. It was done to justify or whitewash inconvenient facts in support of a settlement that was already baked.

We have substantial concerns that, in fact, the investigation itself was a rubber stamp designed to insulate Holdings and the Vanderbilts rather than a fulsome, independent, and accurate view of the record and potential estate claims. So, let's take a look at that.

What was wrong with the investigation? It failed to review or analyze whether there were any cash reserves. It failed to engage an expert to review or analyze talc liability or any independent analysis of future liabilities. It failed to speak -- Mr. Pickering failed to speak with Mr. Johnson, among the most senior employees, about his statements, his claims of rubber stamping and holding the strings.

You heard Mr. Pickering say, oh, very, very concerned. He never followed up with Mr. Johnson, never talked

to him himself. He talked to Mr. Johnson, he said, about other things. He never, never talked to him about these claims.

The Committee took the position that it was appropriate for a fiduciary to ignore inquiring about claims held by unsecured creditors in connection with the global settlement releasing claims. Never talked to the Committee, never talked to individual talc claimants or their lawyers about their claims, the strength of their claims. Those are the experts on these claims, by the way. Never did it.

Failed to consider that the Debtor had filed Chapter 11 due to the talc litigation and forwent analyzing various intercompany claims. Again, alter ego, veil piercing, et cetera, and just really, truly amazing that these things were not done. If you look at slide 11, Your Honor, I won't focus on this. It's not pretty. I'll leave it at that, Your Honor, that the Special Committee used tactics to conceal and obfuscate, not protect. They're fiduciaries that did not protect my clients, Your Honor.

They inappropriately redacted reports. They forced us to file a motion to compel production. We got the reports less than a week ago in unredacted form, Saturday, April 11th. They produced modified versions of the report. We heard Mr. Barnowski had a reason, or an excuse, or an explanation. Never -- he never stood up and said, oh, there were no other changes. He explained why an associate made the particular change. We

can't even tell whether there were other changes, because there was so much redaction in the initial report. Never got an explanation.

You heard, and I actually learned for the first time as I was standing here, I was shocked. There were no interview notes from Mr. Vomero. Obviously, I had noticed that they hadn't been turned over a few days ago. And then, I thought about it, and I thought we were going to have Mr. Vomero on the stand. They never put him on the stand. That's okay; their decision.

That's shocking. Clearly, again, clearly a decision was made that we're not going to take notes, for whatever reason, for Mr. Vomero. Maybe because they don't want to turn them over. They don't know what he's going to say. I have no idea, Your Honor.

But again, this was not a level playing field. I think on the basis alone of what's happened here in connection with obfuscating, I think on that basis alone you can deny the motion. Because, again, we have not had a fair fight here. I think we've done a pretty good job in a very limited period of time, with very limited time to actually see unredacted documents. We had one hand tied behind our back, but I think we have proven our case. But I just want to remind the Court that we really haven't had a fair opportunity.

On slide 12, Your Honor, we talked about willful

blindness. The Committee, the Special Committee, Mr. Pickering, ignored facts that were not supportive of the settlement. He never considered talc liabilities, did no work in that regard. He never conducted a solvency analysis. You heard that testimony. He made some comments around that issue. He thought, kind of, maybe, they were solvent, they were paying their debts, kind of.

Why didn't he do it? Because he didn't want to get the answer, Your Honor, an answer that we got in discovery. We had the CFO, Mr. Orpilla, at his deposition, he told us Minerals was insolvent. Well, why did we have to find that out? Why wasn't the Special Committee -- why didn't the Special Committee determine that?

They talked to Mr. Orpilla. I don't think they wanted an answer to the question, because the answer to the question means you've got to go back and look at all those transactions, everything that took place, and you take a different look at them, knowing that the Debtor was insolvent. Didn't happen here, Your Honor.

And again, here, I'm not going to necessarily go through all of these. I think the evidence is fairly clear in this regard. Of course, Your Honor, on slide 13, Mr. Johnson -- as I said, I think I referred to the interview notes from Mr. Johnson as damning. It's why they didn't want to turn them over. It's why they delayed turning them over. Maybe it's why

we never got notes from Mr. Vomero. I don't know. But to sum up, when asked what Holdings does on a day-to-day basis to assist Minerals' operations, Randy answered in the vein that, quote, Holdings pulls all of the strings, close quote.

And this wasn't just one or two functions, a treasury function maybe or something else. This was all union contracts, capital expenditures, hiring and firing decisions, governmental affairs, mining regulations, et cetera.

He further opined these decisions are typically being made by the finance group within Holdings. He also went on, Your Honor, Minerals Board essentially provided a rubber stamp. They asked Chemicals and Minerals, this is Holdings, asked Chemicals and Minerals to rubber stamp it and so we did.

They were simply providing a rubber stamp at Holdings' behest. I think that's, I won't spend any more time on it. I think the Court gets the point. And again, not here to try these points, just to demonstrate strong evidence and ask, now I'll ask again, what did Mr. Pickering do with this?

He did nothing. He made himself judge, jury, and executioner. He didn't even try to get any value for any of these claims. He didn't ask, didn't ask. It's backwards, Your Honor, the way this approach.

Your Honor, on the last page, I briefly want to talk about where we are in this case and where we go from here. I know I would, I tend to be a literalist and I do these types of

cases all the time, and I would say on the one hand, Judge, your job is to call balls and strikes. It's not to worry about everything else, so to speak. You just have to look at this in a vacuum and make the right decision.

But I know that doesn't always happen. Our system is a results-oriented system and to your credit and most Bankruptcy Judges' credit, they worry. They worry about the case. They worry about employees. They worry about what's going to happen with the case. I get it. So, I want to address that, Your Honor. I didn't want to leave that unsaid.

These claims that were settled for no consideration can be abandoned by, again, I told you why I think they're desperate to get them, but the Court could basically say, these particular claims can't be included in the settlement. And then, other people will have to make a decision how they want to proceed.

And I think that would also demonstrate what we're dealing with here, meaning with the Vanderbilts and Holdings, all really one in the same, you know, are they going to put people out of work because they are insistent on getting releases?

That's not your problem, Your Honor. You wouldn't be doing that. But I guess we'll find out whether, I hope we'll find out, how far they're willing to go to get these releases. But I think, you know, obviously, solution number one is simply

carve these out, carve these valuable claims out of any settlement.

You could dismiss the case, obviously. Maybe we'll be heard on that shortly or in due time. This Debtor was paying its claims as they came due before Bankruptcy. There's no reason to think that status quo would change if the Bankruptcy was dismissed. So, that's obviously an option.

As I mentioned, alternatively, the Debtor could abandon its attempt to release these types of claims. And I would say, whereas here, Your Honor, unsecured creditors are firmly opposed to the settlement and are willing to assume the risks of the litigation themselves, the Court can and should, at a minimum, alternatively deny the proposed settlement, abandon such claims, and allow creditors to pursue them.

Your Honor, you could deny the settlement and allow only the Debtor to sell assets. We spent some time at the 363 hearing where I made a number of arguments about how unusual it was. I remember Mr. Mendelson testifying he's never in his long history seen a case or been involved in a case where non-Debtor assets -- where a Debtor was proposing approval of a 363 sale which included non-Debtor assets.

We could revert to that. Let this be a more normal Bankruptcy case. Let the Debtor sell its assets. We haven’t -- the Committee has no objection to that. And it could proceed in that fashion.

Last, Your Honor, I want to talk about the lender, the bank, which is, here, the DIP lender. The DIP lender is the buyer. And obviously, and I don't begrudge it, we've seen some strong-arm tactics. They have deadlines that they're using to compel a certain result. I get it.

I would arguably, in terms of my narrative, Your Honor, say I think that's all been contrived with the parent and the Debtor, frankly. It's all a setup to get to a certain result, and to ensure that result, they build in DIP-milestone deadlines, which we objected to on day one, in order to compel a certain result; compress the time frame, limit the Committee's ability to both root out the facts and object; force, put pressure on the Court for quick resolutions and get in and out as quick as possible with the preordained result.

That's exactly what happened here. And it continues, as you hear from the DIP lender's counsel. Again, don't begrudge them. If I was representing that client, I may do the same. But I would say two things. First, I think the Court has to, when again dealing with this type of, has to take this motion, has to look at it without allowing the pressure of the other pieces of the case to affect its judgment.

I think that's in fairness. I think we're entitled to that. I think the Committee in its objection is entitled to a review of its objection and the Court's review of the settlement without regard to the pressures being put on to

drive a certain result. I think that's inappropriate.

Second, Your Honor, the DIP loan is $8.5 million. That's where the DIP loan stands today. And I know you, I already think I know where, you've asked these questions, which is I want to understand the cash, I want to understand the balance. I think the balance is around $8.5 million. Your Honor, you've entered an interim DIP order, which can be changed, okay, we don't have a final order yet.

And so, I haven't fully thought it out yet, Your Honor, but there's a lot of solutions. $8.5 million, they'll get their $8.5 million. Nobody says they're not entitled to it. They've lent it. They're a secured lender. That's fine. They may have to wait just a little bit. $8.5 million, let's sell the Debtor's assets, let's get them paid off. Debtor's profitable, Debtor can operate.

I haven't gone, I'm not going through all of these, Your Honor, but my point is there's a lot of solutions for this case. You heard the parade of horribles, oh my gosh, if you don't approve the settlement, employees are going to be out on the street. And this -- I was actually, I thought it was kind of interesting, patients are not going to get their drugs because VEEGUM goes into pharmaceuticals.

It's unbelievable, Your Honor. It's a parade of horribles, all right, but it's not going to happen. And I don't think that the Court has to countenance the parade of

horribles because there's a lot of solutions and we've all been in cases, you never know what's going to happen.

Solutions appear. And I think your decision today, or soon, yes, it will influence what happens, but I think there will be some solution and it will not be a horrible solution and all the parade of horribles will not happen. So, Your Honor, I want to thank you, I want to thank your staff, and I would just say, Your Honor, that I think Mr. Belluck, who appeared earlier in this case and is a Committee Member rep, would like to make, has a few words to say as well, and I thank you, Your Honor.

THE COURT: Thank you, Mr. Jonas.

Mr. Belluck?

MR. BELLUCK: Yes, Your Honor. Again, thank you for letting me appear virtually.

At the beginning of this case, before we had a Committee for the work committee lawyers, I said to Your Honor that this company has engaged in a 50-year effort to mislead and minimize and hide the dangers of the asbestos in its talc products.

And I asked you, Your Honor, to not take anything that this Debtor says at face value. I told you we would get our Committee organized, that we would get legal counsel, competent legal counsel, to do the work that was necessary. And I believe that we have done that.

I'm here today on behalf of Linda Weaver, who is the estate representative for her sister, Anna Bishop, who died of mesothelioma, simply because she lived near the talc mine in Gouverneur. Ms. Weaver's other sister, Norma Mashaw (phonetic), also has mesothelioma, simply because she lived next to the talc mine in Gouverneur.

The fact that both of these women who live near that mine developed mesothelioma, I think, speaks quite a bit to the merits of these types of claims. I also speak today on behalf of the thousands of carpenters who used caulk materials with Vanderbilt talc; the thousands and thousands of painters who painted with paint products that included contaminated Vanderbilt talc.

I speak on behalf of the workers that we've represented who worked at the Vanderbilt mine. I speak also on behalf of the community members, like my clients, who simply living there caused them to develop mesothelioma, and the community members who served on the Jury who heard the evidence in the Bishop case. And despite, despite testimony from the person at Vanderbilt, Jeff Nolden (phonetic), who testified that he was the decision maker for Vanderbilt.

Despite his testimony that people would lose their jobs if this Jury of community members entered a punitive damage award, awarded punitive damages. And I think that speaks a lot to what the community in Gouverneur, or the people

who worked at that plant, who had relatives who worked there, who grew up there, think about this company and their conduct.

I also just want to give some context to Vanderbilt's settlement posture in the tort litigation. And I think it's important to understand that up until the day that they filed for Bankruptcy, on a holiday, the Friday before, they settled claims in New York State on behalf of this entity, literally the day before, they were settling these cases with no indication or advising that there was any issue with them settling these claims.

In addition to the Bishop case, my office tried a case in Boston on behalf of the LaPointe (phonetic) family, which settled with Vanderbilt, the amount may be confidential, but suffice to say, it was in the millions of dollars in the fall of 2025, and that claim was paid fully by Vanderbilt within 30 days of that settlement. And I think that's important in understanding how we pursue the claims in the tort system.

So, I have just three or four very brief points. The first is that Mr. Pickering claims to be acting as a fiduciary for creditors in this case and that he maximized the value of the estate. I want to make clear that despite my firm's role in this litigation and the claims that we've had and our role in representing people in Gouverneur and upstate New York, I never received any outreach from Mr. Pickering about these

claims, how they were litigated, how my clients felt about any types of releases.

This company has been in the asbestos litigation since at least the 1980s. As far as I know, they've never talked to me or any member of the Plaintiffs' bar or any of our clients about these claims before Mr. Pickering reached his agreement.

I can assure you that my clients and all the other people we're speaking on behalf of today very much care about losing their rights under any circumstances, but particularly in a situation like this where the Debtor is not receiving any value for these claims.

I want to make clear, Mr. Pickering does not speak for these people. They speak for themselves by filing lawsuits, they speak for themselves by hiring counsel like myself, and they speak for themselves by sitting on juries in the community of Gouverneur and Canton and hearing evidence and issuing jury verdicts.

And I can certainly assure you that my clients and the other tort victims do not think these claims are worthless and we are more than willing to prosecute them in the future as we have been doing for a very long time.

Mr. Pickering also made much of the fact that no one had ever sued the Debtor's parent or affiliates for these types of successor liability, alter ego, or veil piercing claims.

And the answer is, of course we did it, because these are not the types of claims that we would generally be bringing when the claims are being paid and settled by the tortfeasor, by insurance policies, and maybe a small contribution from the company.

There was never any indication at all that this was something that we needed to do. In fact, to the contrary, as I indicated, the day before this company filed this case, they were settling claims. Two or three months before, they settled cases in the millions of dollars with my law office and paid them 100 percent.

So, there was no need or requirement for us to do that. It doesn't mean that these claims wouldn't be successful and that they don't have value. If necessary, we would have exercised our right to try to collect on these theories of liabilities if we and our clients were not getting paid by the Debtor. And we would certainly take the risk now of pursuing these claims rather than letting the Debtor settle them for no money.

They are spending a lot of time in this case trying to settle claims that they think are worthless. And we are more than happy to pursue them.

And finally, Mr. Pickering claims that he can settle these claims based on his business judgment and without approval from the creditors, our clients, my clients. And

frankly, we don't think there's any authorization for him to do that. We would respectfully suggest that the Court not permit that type of collusive agreement and settlement to go forward.

In the Purdue case, the Supreme Court made clear that tort victims' claims can't be bargained away. It would make no sense for the Supreme Court to block the release of those claims without victims' consent in Purdue, but leave the door open for a Debtor to file for Bankruptcy and settle claims that otherwise belong to my clients outside of Bankruptcy without our consent.

Again, Your Honor, I want to thank you for your Courtesy and letting us participate virtually, and that concludes my statement.

THE COURT: Thank you, Mr. Belluck.

Before we hear some rebuttal, I did want to hear from the U.S. Trustee. There was one other objection that was contained in terms of a sub rosa plan.

MR. JONAS: Excuse me, Your Honor, I'm sorry. I think we had one more member rep that wanted to make a statement. I think it was Mr. Thompson. And I just want to make sure we gave him that opportunity. Thank you.

THE COURT: Certainly.

Mr. Thompson?

MR. THOMPSON: Thank you, Your Honor. I appreciate you letting me appear remotely. I represent Heather Colding,

who's a Committee member. I also represent other mesothelioma victims. I'm with Maune Raichle Hartley French and Mudd.

We filed a joinder to the motion to dismiss, which I understand is not what's before the Court today. My partner, Suzanne Ratcliffe, has been admitted pro hoc. And unfortunately, she was in a deposition this morning. I have not yet been admitted pro hoc. I am admitted in the State of New York and other Bankruptcy proceedings.

With your permission, I'd like to say a few things, if that's okay with you.

THE COURT: You have my permission, Mr. Thompson.

MR. THOMPSON: Thank you, Your Honor. So, just briefly, I've been watching everything today. I was paying very careful attention to Mr. Jonas and Mr. Belluck, and I agree with everything they've said, especially about the victims' consent, the victims controlling these claims. They should be the ones deciding how to pursue them, whether to pursue them, where to pursue them.

Ms. Holding's mother, Rebecca Sherman, died from mesothelioma at the age of 58. Ms. Colding, who's on the Committee of Unsecured Creditors, was not even 40 years old, and neither was her sister, when they both lost their mom.

Ms. Sherman was exposed to Vanderbilt's asbestos talc for nearly 20 years as a press operator at a floor tile plant in Lakeland, Florida. Ms. Sherman was not made aware of the

risks that the Vanderbilt family knew existed with their talc containing asbestos. Had she or her employer been aware, she would have been able to protect herself, but she was deprived of that.

And I do not think that her and her family, just as she was deprived of her ability to protect herself from being exposed to asbestos from hazards that only Vanderbilt knew about, she should not be deprived, and her estate, with her passing now, and her family, should not be deprived of the opportunity to pursue non-Debtors for what's been referred to as the alter ego theories of liability or successor liability.

She wanted, Ms. Colding asked me to advise the Court that her mother went to work and worked very hard at her job to give her family a better chance at life. She did not know she was being exposed to a carcinogen every day, and she didn't know because she wasn't warned. And the hardest part for the family members was to have to decide to end the life support for their mother.

And so, I'm sharing this because these are very important cases. They are very serious allegations because we're alleging that there was a preventable death. And we have an entire system that's designed to handle these issues. It's designed to handle these allegations in our civil jury system in State and Federal Courts. And that's where these claims should be litigated and decided.

And unfortunately, the story of Mrs. Sherman is one of many. I know, as Mr. Belluck said, and other firms that have represented Committee reps, there are thousands of people whose lives have been ruined by the asbestos in Vanderbilt's talc.

I know that Mr. Pickering was appointed to negotiate these claims. As Mr. Belluck said, he never approached me. He never approached my law firm. He didn't seek to speak to victims like Ms. Sherman's family or other clients of ours.

My clients are very concerned about losing their rights to pursue companies that are not in Bankruptcy. And the decision to settle these claims should rest with them and not with Mr. Pickering or other Vanderbilt entities.

As Mr. Belluck alluded to, we have not pursued what's been referred to as the alter ego claims because up until the time of its Bankruptcy, the Debtor, just as Mr. Belluck alluded to, was defending and resolving claims with my law firm. We had a case in St. Louis that started a jury trial weeks before the Bankruptcy filing and they resolved that case.

There was no reason to pursue successor alter ego claims given that the Debtor was defending and resolving those claims. And so, I would just end with, from what I've seen, this Debtor has spent a lot of time and money to try to resolve claims that belong to other people. And these are claims that the Debtor and the non-Debtors say are not worth anything.

And if there really truly is an inability to pay these claims by non-Debtors, then they should be in Bankruptcy so the value can be determined. And if they can pay the claims, which I believe they can, and I do believe that the liability for these claims, if it exists, and I believe it does, should be decided by Courts of competent jurisdiction in this country.

And that's what my clients wished to have expressed today. Thank you, Your Honor.

THE COURT: Thank you, Mr. Thompson.

Let's hear from the U.S. Trustee on the sub rosa. I want to make sure that we have a full record for the objections, and then we'll turn it back over to the support for the motion.

So, Ms. Champion, the Court had a specific concern that there wasn't a record you had raised in your objection in terms of the sub rosa plan, given how intertwined this motion is with the sale motion.

So, the Court wanted to make sure it understood that argument, and that hadn't been raised before.

MS. CHAMPION: Thank you, Your Honor. Before I get to that, I do have some other brief remarks to make, and I just want to say first that thank you to Mr. Jonas, and Mr. Thompson, and Mr. Belluck for their comments. And I just want to note that the United States Trustee fully supports those

positions, Your Honor. And I won't restate each one of those positions and arguments, because mine are very similar, but I do have some remarks to make, Your Honor.

Your Honor, before you is a motion stylized as a Rule 9019 motion, but what is really before the Court is far from a true settlement proposal. The facts have demonstrated that this settlement is the centerpiece of a broader restructuring strategy designed to resolve affiliate liability, reallocate estate value without transparency, without independent valuation, and without the procedural safeguards required under the Bankruptcy code.

Your Honor, at the bottom, the Court is actually being asked to approve a result, not evaluate a compromise. And the fundamental issue here is very clear, and it is that the Court can't evaluate what it hasn't been shown. Here, there's no reliable valuation on what the estate is actually receiving.

There's no allocation between Debtor and non-Debtor assets. There's no meaningful quantification of the consideration being exchanged for these extraordinarily broad releases. What is clear, Your Honor, is what the Debtor is giving up, virtually every conceivable claim against affiliates and related parties.

Your Honor, I'm not going to get into all the Iridium factors, but under Second Circuit authority, the Court must

weigh those claims against the consideration received. And here, that analysis is impossible because the record is still one-sided.

That failure is even more significant because this is precisely the type of transaction that demands heightened scrutiny. Where a proposed settlement goes beyond just a compromise, where it's resolving affiliate liability, including sweeping third-party releases, and effectively dictates the outcome of the case, the Court can't simply defer to the Debtor's business judgment, and I think that's been agreed upon, Your Honor.

When a settlement is challenged and has structural consequences of this magnitude, Your Honor, it must be supported by a robust evidentiary record, not conclusory statements as they have been made here.

The Court was presented in the evidence with lots of assumptions, an incomplete analysis, and a transaction to produce a predetermined outcome. Your Honor, I do want to note that in addition to the Kidde-Fenwal case, that same heightened scrutiny standard was also similarly applied by Judge Goldblatt in the recent case of In re Yellow Corporation, and that's 2026 WL 908516 out of the District of Delaware, April 2nd, 2026, noting that when a party in interest challenges a proposed claim settlement, it cannot be approved based solely on deference to the Debtor's judgment.

But again, that doesn't seem to be in dispute, but since the Court asked, I wanted just to make the record clear that the United States Trustee agrees that that is the standard.

Your Honor, the fact that the record is one-sided is compounded here by the lack of independent investigation. Mr. Pickering, acting as a fiduciary conducted no independent analysis. He didn't interview himself, key parties. He did not probe into critical assumptions. He relied on a pre-existing analysis that was prepared before he even was even retained, but before he was even retained.

That is not an independent check, Your Honor. That is a rubber stamp. The Debtor says that the settlement must be approved because everything depends on it. The sale, the DIP financing, the entire transaction. But, Your Honor, that's not a justification. That is leverage.

The Debtor has deliberately constructed a three-legged stool so that if one of the piece fails, the entire structure collapses. And that's designed to pressure the Court into approval, as Mr. Jonas indicated, not to demonstrate that the settlement itself is fair and equitable.

Rule 9019 requires the Court to evaluate the compromise on its own merits, not based on the consequences of rejecting a deal that the Debtor chose to design that way. Your Honor, when viewed as a whole, this is really a sub rosa

plan. It involves claims against affiliates, dictates a sale, and allocates estate value, all without a plan, without creditor voting, and without the protections of Congress, without the protections Congress built into the Bankruptcy Code. And it does something even more troubling. It extinguishes claims that belong to tort victims without their consent.

The Debtor tries to treat those claims as derivatives, but they, derivative claims, but they are not. These are an individualized injuries, personal claims. They belong to the claimants, not the estate. Your Honor, in Katten's presentation yesterday, counsel indicated that Section 524G is irrelevant to the analysis here. But that is exactly the point.

This structure is designed to avoid the requirements of 524G, because the Debtor knows it cannot get consent. And again, Your Honor, if this wasn't a sub rosa plan, the Debtor would present a plan and put the releases in and have creditor voting.

But they're intentionally avoiding doing that because they know that that's a futile exercise. They cannot get the consent of creditors. It goes to the very heart of why the Debtor is doing this. They do not want -- they know that the creditors do not want this settlement. As the evidence demonstrated, the best interests being served here are not of

the tort claimants, but of the affiliates and the related entities. That, Your Honor, squarely is an end around the Supreme Court's decision in Harrington v. Purdue.

If these types of releases are permitted at all, they must be considered through the plan process, not through an expedited settlement that's disguised as a plan. The contrast in the expert record also underscores the problem, Your Honor.

Again, Mr. Pickering informed no independent analysis, but Mr. Atkinson did testify regarding his analysis of decades-long talc claims and projected thousands of future claims and estimated hundreds of millions of dollars in liability.

And based on that work, he concluded that this settlement falls outside the range of reasonableness. And the numbers do bear that out, Your Honor. The Debtor is waiving tens of millions in intercompany claims, granting releases of claims potentially worth hundreds of millions in exchange for a transaction yielding less than $35 million in cash to claimants. That disparity is extraordinary.

And behind all of this are real people, Your Honor, tort victims suffering from serious, often terminal illnesses who have been effectively shut out of this process. And that matters.

And to the argument, Your Honor, that this is a reorganization attempting to save jobs, that's not accurate.

This is a liquidation. There is no guarantee what's going to happen to this business after that sale is completed.

This Court, Your Honor, is not just evaluating a transaction. It is safeguarding the integrity of the Bankruptcy process. If this structure is approved, it's sending a message, and it's the wrong message, that Debtors can obscure value, avoid scrutiny, and sidestep the protections Congress enacted, especially in mass tort cases where the stakes are so high. That is precisely why the Court and the United States Trustee must serve as gatekeepers of the Bankruptcy process.

Finally, Your Honor, as Mr. Jonas indicated, the Court's inquiry regarding the In re Kwok case does not alter any of this analysis. That case involved fundamentally different facts and turned on generalized claims. Here, the injuries are particularized and personal to each claimant.

And even if the Debtor had authority to release such claims, which it does not, again, it cannot do so through a settlement process. Such relief, if permissible at all, must occur through a confirmed plan consistent with Harrington v. Purdue.

Your Honor, Rule 9019 requires, at a very minimum, proof that a settlement is fair and equitable. The record before the Court does not provide that proof. Instead, it reflects a predetermined outcome, a one-sided valuation, and a

structure designed to compel approval while bypassing the Bankruptcy Code.

And, Your Honor, for all of those reasons, the United States Trustee asks that the motion be denied.

THE COURT: Thank you.

Mr. Howard?

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

I've seen a lot of emotion today, a lot of statements about talc liability. I respect everybody's right to be heard. There's no evidence on that in front of the Court today. I know the Committee had a declaration they filed with a bunch of trial exhibits from a talc lawsuit. It was not admitted into evidence. It was all hearsay.

And I'm not here to argue about talc liability. We've got a very difficult situation. We've got a Debtor without a lot of money. We've got non-Debtors without a lot of money. And we have to figure out what to do. We have to figure out what's best. And I think what I'm hearing from the Committee is that everyone on this side of the room is part of some big conspiracy. We all came up with this years ago. Mr. Pickering isn't being honest. Katten isn't being honest. Paul Levine isn't being honest. Bond Schoeneck isn't being honest. Mr. Mendelson at Green Hill isn't being honest. The buyer

isn't being honest.

And that's just not the case. We're all trying to do the best we can with the facts we have. And this idea that this whole thing is just for the parent, I think there's a glaring omission in the record that hasn't been mentioned yet, which is the settlement agreement has always had and has today a fiduciary out.

So, what the settlement does is it supports the stalking horse bid and a floor value. But if any other alternative comes in that's better for the estate, Mr. Pickering can choose to take that at any time, even after today. The settlement order has to be final and non-appealable until that fiduciary out expires.

So, this is not for us. This is so that the company can lock in a $50 million stalking horse bid that allows the company to survive as a going concern, preserves jobs, gives the estate a huge pot of money, much bigger than it is likely to realize in a liquidation.

And then, the estate has, as I'm told, hundreds of millions of dollars of potential insurance here for talc claimants. And honestly, before you today, I believe that is the right outcome. And I'm not going to stand here and tell you you have to defer to Mr. Pickering. I agree with what everyone said. Like, this is up to Your Honor; like, you need to make an independent decision that this is the right thing to

do.

I would note the Kidde-Fenwal case that's been cited here is a slip opinion about the approval of a disclosure statement. And the comments in there about what standard may or may not apply to a settlement that is not exactly like this one were purely dicta and asking the parties to consider that issue in connection with their briefing for confirmation of a Chapter 11 plan, which has been stalled out for over a year as the parties continue to fight and run up professional fees in that case.

On the facts, we've been very open about our financial condition. We've provided the Committee with audited financial statements back to 2013, all of our budgeting, all of our reporting to Wells Fargo, all of our borrowing-based certificates, our current 13-week cash flow of just the non-Debtor entities, our five-year projections.

We're not hiding anything. We haven't tried to. The business is what it is. And even looking back, Your Honor can see it's in paragraph 22 of the Wise Declaration, the sealed version is Docket 407-1 that the Minerals business from 2013 to 2019 significantly outperformed the Chemicals business.

It made way more money I think like $16 million versus $10 million or something like that, I might have it somewhere in my notes. But this was not a business set up to fail. This was a fulsome, operating, mineral business, a lot

of product liability insurance, solid revenues, and the chemicals business wasn't some great business that was trying to be shielded on the other side. It kind of has limped along over the years. It's done okay in some years. It's done not so great in other years.

And this VEEGUM plant that Eric keeps talking about, I mean, it has been part of the chemical operation of this business since 1947. So, this is not some scheme to hive it off on the chemical side of the business to keep it away. That's where it operates. It's at a single, giant chemical processing facility in Murray, Kentucky. There's a satellite photo that's an exhibit to the settlement agreement, if Your Honor wants to look at what the site looks like, there's a red box around the little VEEGUM plant.

Shared workforce, shared utilities, and you can read in the deposition testimony, you'll see that the Chemicals business just earns an eight percent processing fee on VEEGUM. So, all the other profit that Mr. Pickering was talking about yesterday that goes is related to the VEEGUM family products, that belongs to Minerals and always has, and in this transaction, will continue to belong to the Minerals business if the sale is ultimately approved.

I think Your Honor can also look at the defense and indemnity costs related to talc that are in the first day declaration. It's paragraph 53. And you can see how small

they were in those years leading up to 2013. I mean, some years nothing at all, 50,000. I think at most it was 500,000 at one point in the 2005 to 2013 range.

So, the idea that this was all some master plan dating back decades, I just -- there are just fundamental facts on the record that do not support that narrative.

Let me just spend a minute on the veil piercing which has been talked so much about. I think Kwok settles Second Circuit case. I agree with Mr. Barnowski, I won't belabor the point, but as I reread it last night after Your Honor's comments, I mean, one sentence stood out to me, and that is the reason veil-piercing claims belong to the estate in Bankruptcy as opposed to individual creditors, it's at page 15 of the this opinion. The Second Circuit says, and they're quoting Nordlicht in part here, the approach promotes the equitable distribution of assets among creditors by allowing the trustee to exercise the strong-arm power and recover corporate assets for the benefit of all creditors of the corporation, thus preventing a race for assets in which the savviest creditors would reap the greatest rewards.

And I think what's been proposed here as an alternative to the current settlement and sale path is a dismissal of the case where the savviest creditors who race to the Courthouse first would get the benefit potentially of those veil-piercing claims to the detriment of everybody else, all

future claimants, all other claimants who don't act as fast, employees, other creditors of the business in a liquidation.

And I think that's why the claims correctly belong to the estate to settle and not to individual creditors. I think I would just elaborate on the facts in Kwok because they're instructive on veil-piercing. If you look at pages 19 to 20, starting at the bottom, HK, that's the entity where veil-piercing is applying, had no revenue. It had no directors, no officers, no employees. It neither filed tax returns nor maintained a bank account.

It kept no records other than those related to the Lady May (phonetic), just a yacht. It pursued no business other than owning that yacht. The offices housed Mr. Kwok's lawyers and other entities connected with Mr. Kwok. They used the same address when he filled out his personal Bankruptcy petition.

Those are the types of facts where Courts find veil-piercing, and those facts are just not present here. I also went back and looked at just the ten most recent decisions from Delaware where Courts were considering veil-piercing, and I think that's instructive as well.

I mean, the quote that comes up over and over and over again in that case law in Delaware is that veil-piercing is a tough thing to plead and a tougher thing to get, and for good reason; that's Verdantis Advisors, LLC v. Parker

Infrastructure Partners, 2022 WL 611274 at 2, Delaware Chancery Court, March 2, 2022.

So, the recent cases -- and Your Honor can just tell me to stop if I -- if this gets boring. But there's a lot of them, but in each one, Gracey v. Albawardi dismissing veil-piercing brought by an ex-wife against entities of the ex-husband, who was the equity owner, finding that the entities existed decades before the divorce judgment, had a business purpose, had officers and directors, and the fact that transferred funds between the entities and they were sometimes undercapitalized was not sufficient to support veil-piercing.

PXP Producing Co., v. MitEnergy, denying petition for the appointment of a receiver to investigate potential veil-piercing claims, where the petitioner's only evidence of injustice was the company's inability to fund decommissioning obligations and rejecting, quote-unquote, sort of circular reasoning that treats the underlying liability as proof of the injustice for veil-piercing.

I could go on, Your Honor, but, you know, veil-piercing is very rarely granted. These were real operating businesses. They had boards of directors. They had their own employees. And the Minerals business is an extractive business. It's dangerous, right, it has its own set of regulatory overlay.

And the Chemicals business, similarly, is a dangerous

business to be in. And if something, God forbid, had happened on the Chemical side of the business, that would have been segmented on the Chemical side as opposed to bleeding over to the Mineral side.

That's how businesses are supposed to operate. That's good business judgment. That's good management. And there's nothing wrong with having consolidated management services in a holding company or having the back office activities consolidated.

Again, that's throughout the veil-piercing case law in Delaware. And if that's the rule, then effectively every large company in the United States is subject to veil-piercing, and there's no such thing as the corporate form, and that can't be the law.

I would just end with, I guess, sort of where I started, which is this ultimately comes down to the Court. We have not been trying to hide anything. We've been as open as we can be within reason. You know, I think I was actually surprised to even see all the Katten materials.

I mean, normally those aren't forced to be produced because now the alleged adversary, the parent, has the benefit of all the legal work that Katten and Mr. Pickering did, all the pluses and minuses. I have the interview notes, which I'd never seen before, from Mr. Johnson, which, by the way, I do not believe are admissible into evidence.

They're notes taken by a lawyer in an informal interview. They've not been reviewed. No one's verified them on the stand. Your Honor can take note that Mr. Pickering saw them, but Mr. Pickering admitted he was not in that meeting.

So, you know, the vast, overwhelming majority of the evidence that you'll see in the deposition transcripts that you heard directly from Mr. Pickering is that there is no evidence to support that type of claim.

And again, I come back to we're in a very, very difficult spot where there's just a relatively small business on both sides with not a lot of money to go around. And I firmly believe that when Your Honor sits down and looks at all this, you will conclude that this settlement, which has the fiduciary out, is the current best option to maximize value.

I am happy to answer any questions you have about anything that might be helpful to Your Honor in evaluating the settlement.

THE COURT: Mr. Howard, how do you address Mr. Jonas' contention that if you just carved out these alter ego releases, perhaps there would be proper consideration for the transfer of the hard assets to the Debtor?

MR. HOWARD: So, I have Mr. Jonas and his colleagues sitting over here saying that they want to sue my client for $1 billion, $500 million. So, the consideration is the assets. We think they're worth a lot more than what Mr. Pickering

thinks, and we agreed to settle at what they are. I think they're worth, potentially, since you can't sell the business, at least currently, without them, the whole kit and caboodle, $50 million, or at least a very substantial portion of that.

So, the idea that there's no consideration for the releases, I just fundamentally disagree with that. And we can't live with this threat of lawsuits hanging over our head. I would actually point, Your Honor, and I think if you were going to read one case, the case I found helpful thinking about the situation was the Tronox case from the Second Circuit. I can give you a pin cite, hold on -- 855 F3d 84, Second Circuit, 2017.

Again, good co-bad co-situation. Tronox was the bad co that ended up in Bankruptcy two years, two and a half years after it was formed. You know, the Court found it basically had all the liabilities and none of the good assets, and all the good assets went to the parent. Again, not the facts here.

Actually, the Trustee -- the Debtor brought a fraudulent transfer lawsuit, got a huge, I think it was a $5 billion judgment, right, and there was a settlement then at that point with, you know, large cash payment to settle all claims against the parent.

What happened next? The Plaintiffs there, also mass tort plaintiffs, they went after the parent anyway. And the parent had to run through the Bankruptcy Court, the District

Court, all the way up to the Second Circuit to get a resolution that the veil-piercing claims the Plaintiffs were trying to pursue after that settlement had been addressed by the settlement.

And we just, we can't have that in this case. Like, that's just an irrational thing to ask the non-Debtors to agree to, to give up what is effectively some of the most valuable assets we're able to give up without destroying the business, and yet still be subject to potentially years of frivolous, time-consuming, and expensive litigation.

And so, that's the consideration. And I mean, again, this only sets the floor. You know, I thought we were all optimistic when we came in here that if people understood the economic situation, that there would be a competitive auction, and that price would be driven up even further beyond what it is today.

And again, the Debtor gets a large slug of the expected upside until we get to very high scenarios. And so, I believe all of that together is the package, together with all the other support and the things that Katten and Mr. Barnowski ran through in the settlement, that is all the consideration, and that's frankly about all we have to give on our side. And I think that just has to be enough for these claims, which I don't think have any real merit other than nuisance value.

THE COURT: Thank you.

MR. HOWARD: Thank you.

MR. SULLIVAN: Your Honor, if I may, Charles Sullivan, Bond Schoeneck and King for the Debtor.

Your Honor, I'm not going to repeat any of the arguments or points made by the counsel to the Special Committee, but there are a few points that the Debtor should make here, Your Honor.

First of all, the Court inquired yesterday about the cash position of the Debtor. We will be filing on the docket later today a cash outlook report that demonstrates that the Debtor does have sufficient cash available to get through the final hearing date on the DIP. So, that will be filed later today.

I do, however, want to address Mr. Jonas' suggestion that the Debtor can just pay off the DIP lender and pursue a sale of just the Debtor's assets. Well, first of all, Your Honor, we don't have an offer yet by any buyer to acquire only the Debtor's assets.

I would submit that it is a reckless proposition that the Debtor could just pay that off and pursue other alternatives. The Debtor will not survive without the DIP, and if there is a default, that funding will be cut off and the entire amount will be immediately due and owing.

As I reported to the Court yesterday, we presently have no other bids. We have no other prospective DIP lender

who could step into that void. And so, the Debtor has no source from which to pay off the DIP loan if, in fact, there is a default. And I fully expect that Mr. Agay will report to you that Commodore is poised to exercise its rights on default should that happen.

I also want to amplify a point made by Mr. Howard. There has been no discussion in this hearing, because it really isn't relevant to the question at hand, about the substantial assets that will be left in this estate in addition to the sale proceeds that would be derived from the sale to any buyer, such as the stalking horse bidder.

Your Honor, in the Debtor's schedule A-B that have been filed with this Court, there are over seven pages of historical insurance policies that were maintained that provided coverage to this Debtor, including many carriers that this Court is familiar with that were carriers in the Diocese of Syracuse case.

These represent a significant source of additional recovery that has not yet been quantified in any respect. These will not be transferred to the stalking horse purchaser. These assets will remain in the estate for the benefit of claimants, Your Honor.

Finally, Your Honor, there has been a lot of discussion here today about the impropriety of the filing of this Chapter 11 case because of the effect of the automatic

stay on the State Court actions by the tort claimants, Your Honor.

Your Honor, we're obviously very sensitive to those issues, but this case, to be clear, was brought for the benefit of all of those claimants, for all of the talc claimants. We are limiting the proverbial race to the Courthouse, Your Honor, that in this case has been brought to accomplish two fundamental objectives.

First of all, to maximize the value in this estate for all creditors and to increase that distribution to them. And moreover, to provide a mechanism for a fair and equitable distribution to creditors, including all of the future claimants that Mr. Atkinson spoke about in his testimony yesterday.

Your Honor, those were the only points I wanted to add. I do have a procedural point that before we conclude today, I'd like to address with the Court.

THE COURT: Certainly.

MR. AGAY: I think it's good afternoon at this point, Your Honor.

THE COURT: It is.

MR. AGAY: David Agay from McDonald Hopkins on behalf of the Commodore entities.

I'd like to directly address the question you asked Mr. Howard as part of hopefully not more than five to seven

minutes of giving some remarks. But I do want to start with having heard from the talc Plaintiffs and their representatives.

I think it's great whenever you can hear from Committee members, their clients in this case, because I think Your Honor gets complete visibility into the motivations, the goals, et cetera, that sometimes lie behind a lot of the work that Committee counsel does in the case.

Those talc Plaintiffs talked about the horrible injuries that have been done to their clients. And I can't debate that. There have been jury trials. I'm sure they got medical records. That stuff is terrible. Let's be clear.

They say it's worth $525 million. I've struggled since law school that how do you put a number on that? I don't think you can. But that's how the system works, and so be it.

But it's also true, Your Honor, that sometimes the well runs dry, and sometimes bad actors, and I'm not saying anybody's a bad actor here, but even accepting everything that they say is true, sometimes bad actors have to file for Bankruptcy because the well has run dry.

This exercise is about allocating what's the value of the estate at the end of the day. That's the goal of Bankruptcy and what the Bankruptcy Courts, what Your Honor and other Bankruptcy judges wrestle with at the end of the day.

Your Honor, I have to give the U.S. Trustee a lot of

credit because at least they talked about the Bankruptcy Code, the Bankruptcy Rules, and the mission of the U.S. Trustee in this Court. I don't agree with the way that the U.S. Trustee essentially is served as co-counsel to the Creditors Committee in this case. But I understand that. I don't agree with it, but at least they're being honest.

On the other hand, I don't think I heard Mr. Jonas or anybody else from the Creditors Committee throughout this last couple of days one time mention the Bankruptcy Code Section 363 or Section 9019. And it's important that Your Honor heard from those talc Plaintiffs because the reason is they don't want this in Bankruptcy. They hate Bankruptcy.

It totally subverts the civil tort system. It puts a stop to that. And there's a reason for it. Because like I said, Your Honor, at some point the well runs dry. And unfortunately, that's happened here. They don't like the fact that the U.S. Constitution specifically provides that Congress is to enact uniform Bankruptcy laws in the United States. They hate the fact that Congress enacted the Bankruptcy Code. That there's Section 362 and 363 and 364 of the Bankruptcy Code, and Bankruptcy Rule 9019, because that halts litigation. And it puts all the players into one arena, Your Honor.

And that's why we stepped up to sponsor this Bankruptcy case and this transaction, because we understood the Debtor's financial position to be what it was, and we

understand the Bankruptcy Code to be what it is. And it wasn't lost on us that there were tons of talc claims out there and that there could have been mountains of damages.

But we objectively evaluated everything that has occurred, including all the evidence that you've heard over the last couple days, not the specifics, but in generalities. And we said, okay, we're ready to play a constructive role. Of course we want to make money. That's what we're in the business of doing. But this made a lot of sense to us. And we thought, in addition, we can provide a solution here and get to a goal that ultimately provides value to the estate. That might be $50 million, but there's an auction process.

And the market ultimately will determine what the value of this estate is that can be distributed to the creditors. And that's the other thing that these Plaintiffs' lawyers don't like. They don't like the free market. And Your Honor heard testimony -- you know what my client's offer is, so you know what the current value of the Debtor is, right?

Your Honor also heard testimony that R.T. Vanderbilt has $30 million of secured debt and maybe is worth enterprise value of $4 million, which leaves $10 million of equity value. That was Mr. Pickering's testimony, uncontroverted, Your Honor. They didn't provide anything to the contrary.

So, $50 million plus $40 million is $90 million, I'm not a math guy, minus the secured debt; that is what's left for

unsecured creditors after all of the professional fees, okay; that's not going to pay the $525 million of tort claims.

I'm sorry. I wish I had a solution for that. I wish I could establish a fund that pays $525 million to these talc Plaintiffs. I'm not questioning that they deserve it for all of their injuries. I can't make that happen. I can't solve that problem. Nobody can, Your Honor.

And it's for sure the case that if this intercompany settlement does not get approved and the case collapses, well then there's not anything for anybody, Your Honor. And that sort of gets to your question of, well, to Mr. Howard, why not just carve out the alter ego claims?

I've told you before on the record why we think it's important that those be released because we're very concerned about the continuation of R.T. Vanderbilt if those claims proceed. They are going to bring $525 million of claims against R.T. Vanderbilt that R.T. Vanderbilt cannot pay.

So, we are very concerned about all the post-closing agreements and R.T. Vanderbilt ends up in Bankruptcy. So, it's important to us. But in addition, that's just the settlement. I can't blue line a settlement. Your Honor can't blue line a settlement. That's just -- and by the way, if I'm R.T. Vanderbilt sitting here, then of course I'm asking for a release of those things. I am contributing significant value, and you've heard all the testimony on what that value is, into

the estate to provide for a cash pool and a recovery. Of course I want a release from those claims. I don't want to be rewarded for that by just buying myself $525 million of claims. Of course I'm going to ask for that. It's just common sense, and that's the testimony that Your Honor heard.

Your Honor also heard from Mr. Jonas, finally, about the things that could happen in this case if Your Honor doesn't approve the intercompany settlement. You can abandon claims. You can dismiss the case. You could -- what was the other one -- you can pay claims as they come due. You can deny the settlement. You can find another DIP lender.

They've been here for how long? Almost two months now, okay. I asked their expert on the witness stand, what have you done towards this end? Nothing. They haven't approached my client. They haven't approached anything to discuss any of these possibilities, which is mind-boggling, Your Honor, because I'm sure Your Honor would love to see some sort of a settlement of this case and not have to decide all of these issues.

But we've put our deal on the table, and they haven't been focused on any of that, right, they're focused on burning down the house. The only testimony that you heard from Mr. Atkinson's worth, $525 million of claims. That's their banner. So, what that tells you, Your Honor, is in contrast to what the Bankruptcy Code and the Bankruptcy Court and the Bankruptcy

system are supposed to achieve, which is maximizing value, fairly allocating that value among the stakeholders, they're interested in making a point.

And you heard it from their clients, the talc Plaintiffs, they believe that all of this belongs in the civil Court and in the tort system, and not in Bankruptcy Court. That is why they are so allergic to it. And they have said to you, Your Honor, well, they were paying their claims before Bankruptcy. We don't understand it.

Well, you've heard the numbers, $525 million of talc claims. These companies are wildly insolvent based on those numbers, on a balance sheet basis, which is one of the definitions of insolvency under the Bankruptcy Code.

So, they're wildly insolvent. And Your Honor, three times already, by entering the interim DIP orders, has already found that the Debtor needs the DIP loan to continue. That evidence was presented in the first day declarations, along with all of the financial projections, which included not just whatever the costs of the Bankruptcy and professional fees were, operating costs in addition.

That's all in the budget. That's all been before Your Honor. And, Your Honor, by entering those three interim DIP orders, has found, yes, I believe that the Debtor has demonstrated to me that they need this money to continue, which means that absent a funding source, they cannot continue

outside of Bankruptcy. And we don't have to sort of speculate on the parade of, he called it the parade of horribles. It's more than a parade of horribles. It's reality on what happens outside of Bankruptcy to this Debtor, and potentially R.T. Vanderbilt, too.

Which gets to the last point, where Mr. Jonas said, just ignore Commodore. They're here to buy the company. They're here to trade. That's the only reason they gave the DIP loan. True. But we still gave the company $8.5 million based on the DIP facility, based on the DIP orders, and based on the process that everybody outlined.

So, at this point, yes, we are the senior secured creditor of the estate. And I do believe that our position should carry some weight with this Court. And I've already sort of stated for the Court what our viewpoint is if the intercompany settlement fails.

We're ready to collect up what we can of the loan and move on. And I think that's a perfectly commercial, reasonable decision under the circumstances. So, Your Honor, all that's a long-winded way of saying, I think you should approve the intercompany settlement. It's the best solution that's been arrived under the circumstances. And there's still an opportunity for a better solution to present itself to the Court and the other parties of the case through the auction process. If you have any questions for me, I'm happy to answer

them.

THE COURT: I do not. Thank you.

MR. AGAY: Thank you.

MR. BARNOWSKI: I'll be very quick, Your Honor. Dan Barnowski for the Special Committee.

We've heard a lot about veil piercing, about how difficult it is to bring such a claim, about how easy this claim would be, about how all of the Delaware cases tell us that this is disfavored.

I assure you, you heard from the stand that Mr. Pickering took all of that into account. So, as you sit here and you hear all of this going back and forth, it's a difficult analysis. And this man was tasked with doing it. He concluded, in his reasoned business judgment, that those claims could not succeed. Why? Because there's a lot of other elements to the claim than the fact that there may have been dividends approved without a fulsome consideration.

There's siphoning of funds. There's commingling of assets. There's total domination and control. There's effectively running one entity for the benefit of the other. We haven't heard any evidence on any of that. He did. He told you about it. That's what he considered.

But putting that aside, what you never heard, what you still haven't heard is recovery. Recovery. That was Mr. Pickering's job. Not just determine whether they could be

brought, but whether there could be additional money coming out of it, bringing them. And what Mr. Pickering found, and no one has bothered to contradict or even try, is that it would be value destructive to do that.

Not additive to the estate, but value destructive. Now, Province is here. Mr. Atkinson is here. He's been employed, he's been representing the UCC since the beginning. I've worked with Province before. They're completely capable of doing a recovery analysis, of doing an analysis of the assets in an entity. I've used them for that purpose before.

Why didn't they do that here? I think it's obvious. Because the evidence would have supported what Mr. Pickering had to say. That's why he wasn't crossed on this point. That's why no one has bothered to bring that point up. That is the critical point. We can fight about whether a veil-piercing claim might win or not. I think it's pretty clear under Delaware law that it cannot.

If Mr. Jonas disagrees with me, fine, we have a disagreement. Your Honor will have to decide that. But putting that aside, the relevant point isn't whether a claim could be pursued or not. It's whether money could be recovered. And there's no debate that there's no recovery here. They could have put that evidence on. They could have asked Mr. Atkinson to do that work. They didn't.

So, knowing that there's no recovery, that there's no

additive recovery to these creditors, what's this case -- what are these objections about? What's really going on? They're fighting so hard for a value-destructive result.

I would argue it's pretty obvious. Mr. Agay touched on it a little bit. But this case isn't about bringing more money into the estate. Otherwise, we would have heard from Mr. Atkinson how allowing these claims to go forward would bring more money into the estate. He didn't. Why? Because this case on this side of the aisle is about sending a message.

It's about sending a message on behalf of tort cases that these kind of restructurings should not be happening, that you're going to pay, that we are going to fight life and death to defeat these cases. You've seen it in this case from day one. Three days into the case, Mr. Jonas filed a brief. They called that man back there a liar, a cheat, bought and paid for; anything you can think of. No evidence to support that. There never has been.

This case is an agenda-driven case on this side of the aisle. Frankly, on this side of the aisle, it's about maximizing recovery. You've got a good look at Mr. Pickering. Do you really think he's bought and paid for? Did he act like someone who was driven to a result, who was dictated, who was told what to do and then did it, and then took the stand and lied about it? I just don't think there's any evidence on that.

Last point, Your Honor. There was a comment made, the creditors should control these claims. That's obviously not the law. The case law couldn't be clearer who controls these claims, who these claims belong to. In the Adelphia case, every creditor objected to the settlement, every single one. It's actually stated in the opinion.

And what the Southern District, what Judge Gerber wrote in the face of that is, where the settlement proponent is trying to maximize value for all, the fundamental Iridium factors, benefits of settlement, likely rewards of litigation, recovery, costs of litigation, and downside risk plainly trump the headcount in support.

We would ask Your Honor to apply a similar analysis here. I have no other comments unless you have questions for me.

THE COURT: I don't think so, Mr. Barnowski, but I will, when everyone's done, we may take a few minutes and regroup and make sure that I've got everything.

MR. BARNOWSKI: I apologize. I forgot to mention one point. I apologize. There was a statement made by Mr. Jonas that the law is unclear on whether these set-offs were appropriate. I'm not going to waste, I'm not going to spend a lot more time discussing the law on that.

I would point you to page 45 of the January presentation that Katten gave to Mr. Pickering. I assure you

we deeply analyzed those issues. On page 45, it explains how these set-offs occurred and why they're appropriate under the law. I apologize for adding comments after I said I was done.

THE COURT: Not the first time that's happened.

MR. BARNOWSKI: Thank you, Your Honor.

THE COURT: Thank you, Mr. Barnowski.

Is that, has everyone rested?

MR. JONAS: Your Honor, I have no further comments, but before I guess the case is closed, and we rest, I think the parties collectively want to introduce some deposition designations. So, I don't know if you want to take that up now?

THE COURT: Is that what you're coming forward for?

MR. JONAS: Yes.

THE COURT: Okay. I wasn't sure if we had another. Let's hear about that and we'll see. All of these sites and these additional things are making Wednesday look very close.

MR. JONAS: Sorry, Your Honor.

THE COURT: Very, very close.

Go ahead, Counselor.

MR. SELF: So, thank you, Your Honor. Lucas Self of Caplin and Drysdale on behalf of the Committee of Unsecured Creditors, for the record. So, I'm here to discuss the housekeeping of the deposition designations and counter-designations. We are speaking together about this right before

the hearing, so if I misstate anything, I trust they'll speak up.

So, what we do, we have exchanged the designations and counter designations, and we are currently in the process of combining them so that we can submit sort of a collected list to the Court as quickly as possible after we finish combining them and then we provide them for review and sign-off.

So, if the Court is okay with this approach, I guess we would ask that the Court move them into evidence and instruct us on how best to get them before the Court either to email them to Chambers or deliver them to the clerk or some other method.

THE COURT: Are these sealed? Is this testimony subject to a seal or proprietary information that needs to be, these need to be filed under seal?

MR. SELF: Yes, Your Honor.

THE COURT: Is that -- okay.

MR. SELF: Currently, yes.

THE COURT: So, again, the local rule requires an overnighting to the clerk's office and an order. I'm assuming we're kind of on a shortened time request on consent to file these under seal. Is that --

MR. SELF: Please, Your Honor.

THE COURT: -- procedurally what we're making up as

we go along here?

And no objections to any of that and obviously the importance of the Court. So, I guess what we would do is, I'm sorry, Mr. Poon's nodding at me.

Issue an order, take this as an oral application from the parties before it.

MR. HOWARD: I apologize, Your Honor. I think that was the purpose of the protective order and the orders you entered earlier this week. All these transcripts were on the witness and exhibit list.

THE COURT: Okay, wonderful.

MR. HOWARD: So, I don't think, again, I'm happy to do whatever you're on, but I don't think we need another order per se. I think we're just overnighting the clerk's office.

THE COURT: Wonderful. The less orders at this point.

MR. HOWARD: I agree.

THE COURT: So, the Court will deviate from its local rule and will accept emailed copies and then with the understanding that there would also be hard copies overnighted to the clerk's office in accordance with the local rule, just in the interest of time to get those.

How many pages are we talking about?

MR. SELF: Well, each deposition is probably over 100, 150 pages each, and there are five of them.

THE COURT: Well --

MR. SELF: But the designations are fairly concise, I think. Part of the delay was taking out the ones relevant to the motion to dismiss and focusing on the settlement.

THE COURT: Yes, if they're not designated or there wasn't testimony about them, the Court is not independently reviewing 500 pages of things. So --

MR. SELF: Of course, Your Honor.

THE COURT: -- just for the record, and that goes for all the other exhibits as well. That's this Court's regular course of business, that if you hand me a 100-page document, you only talk about one page, I'm looking at that one page.

So, therein lies the whole concept of the designation. So, does that answer your question, Mr. Poon, and his email is, I believe, well known to all of the parties in terms of the applications for shorting notice.

So, if you can email those to Mr. Poon, the Court would appreciate that by close of business today. Is that possible? Are --

MR. SELF: Your Honor, hope springs eternal. We'll do our best. We are going to -- I need to check where my team is on inputting them collectively, and then we'll have to get them to the other side, understanding everyone's traveling. But we will do our best to get it by close of business today.

THE COURT: Thank you, because the Court needs the

weekend. And Monday, Tuesday, and has a regular full Court calendar on Wednesday as well. So, much to the Court's dismay, this is not the only matter that the Court has before it.

So, hopefully, does that answer your question, Mr. Self?

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

THE COURT: Okay, thank you.

I believe, Mr. Sullivan, that you also had a procedural matter?

MR. SULLIVAN: Your Honor, only very briefly. Your Honor, I just wanted to confirm our understanding that to avoid duplication, that the parties may rely upon the record established at this hearing at the motion to dismiss, which will occur next week.

THE COURT: That was certainly the Court's understanding, and the Court was going to confirm that as well.

MR. SULLIVAN: All right. Thank you, Your Honor.

THE COURT: If you just give me one minute.

Mr. Poon reminds me that we think we are missing a couple of orders to seal on a couple of different applications. So, perhaps the parties can just double check whatever they've submitted. And I also do have the interim compensation and ordinary course sitting in my review box. So, we will -- the Court will look to those as well. I don't have the docket numbers, but I would just ask everyone to double check to make

sure the record's clear on that.

So, the question becomes, what next? We have DIP lenders consent to next Wednesday. The Court has a regular calendar next Wednesday. Obviously, we'd want this to be on its own standalone date. We hopefully will be done by 1:30 or 2 next Wednesday with our regular calendar.

So, the Court was going to schedule this at 3:00, and we can do that just by video, recognizing the traveling. The Court will issue an oral ruling with a presumption we'll follow up with a written decision.

The Court would prefer more time, but obviously we have a tight timeframe here and understands that DIP lenders has a already extended deadline. So, the Court will adjourn the matter for an oral ruling to Wednesday, April 22nd at 3:00.

And we will figure out where we go from there, recognizing we also have then the motion to dismiss on the next day. So, I guess to the extent that people want to come in early for that and then attend the motion to dismiss, it's not just by video if you want to come to Court. I guess I should open that up then with the recognition that many will be here for the 23rd as well.

With that said, so we have the final DIP, we have the motion to dismiss on the 23rd. Is there anything else coming or anything else that the Debtor wants to apprise the Court about or the committee or?

MR. SULLIVAN: Your Honor, nothing from the Debtor.

THE COURT: That's some good news.

Anything from the Committee?

MR. JONAS: No, Your Honor. Again, thank you very much to you and your staff. We appreciate it.

THE COURT: Absolutely.

Okay. So, with that, we will adjourn to next Wednesday at 3:00. Thank you.

MR. HOWARD: Thank you, Your Honor.

COURT CLERK: All rise. Court is adjourned.

(Proceedings conclude at 12:30 p.m.)

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C E R T I F I C A T I O N

I, TRACY E. VERGOLLO, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Tracy E. Vergollo DATE: April 21, 2026

TRACY E. VERGOLLO, AAERT CET-836

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