UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WESCO AIRCRAFT HOLDINGS, INC., Debtor.	CASE NO: 23-90611-mi Houston, Texas Thursday, October 3, 2024 8:01 AM to 10:50 AM
WESCO AIRCRAFT HOLDINGS, INC., ET AL., Plaintiffs, Vs. SSD INVESTMENTS LTD, ET AL. Defendants.	CASE NO: 23-03091-mi ADVERSARY

HEARING

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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(Call to Order)

THE COURT: All right. We're going to go back on the record in the Wesco adversary proceeding 24-3091. Hold on one second. All right. Mr. Bennett?

MR. BENNETT: Thank you, Your Honor. And thank you for accommodating us this morning. I kind of have a hard stop at around noon today. It's my 66th birthday and I've got to be back in Los Angeles a party. Otherwise people are going to be --

THE COURT: We'll get you home for your birthday.

MR. BENNETT: -- disappointed. Okay. First of all, as to your questions yesterday, with respect to the documents, we are certainly willing to agree to a post-trial proffer of documents presumably that say something about Section 3.02, but we do want to make sure that we have an opportunity to object to their admission on any basis or their consideration because of the parole evidence rule. So we can figure that out I'm sure hopefully by agreement of the parties.

Separate -- secondly, with respect to the separate ruling on standing, I think I'm going to disappoint you. I think we would like to get a full opinion on all issues. And whether it's a report recommendation because this is a related matter or was the district court on a de novo basis

or on a basis for thinking the whole thing should go, this has already gotten ridiculously expensive because we got mixed up with a case that wasn't ours, and we really (indiscernible). So I apologize if that (indiscernible) more effort --

THE COURT: No, that --

MR. BENNETT: -- earlier for you.

THE COURT: -- that's not a problem. I -- thinking about it overnight, it seems that if you win the standing, a full opinion works. If you lose the standing, there's no point in moving ahead.

MR. BENNETT: Right.

THE COURT: So that -- it may -- it'll depend on what it is, but it'll be a normal opinion, which I think is what you're asking for.

MR. BENNETT: That's --

THE COURT: And I will do that. But I'm just telling you if you should lose the standing, then there's no point in going into everything and then you can take up I think on a report and recommendation, not on a --

MR. BENNETT: Right.

THE COURT: -- an appeal.

MR. BENNETT: Right. I understand that, Your Honor.

THE COURT: Thank you.

MR. BENNETT: And then I hope if that's the way it goes that you remember everything when we come back. Okay. First of all, I do want to note I was feeling very guilty yesterday about the number of slides that we had. We had 154 slides, and I thought that that was a lot. The other side had 160.

THE COURT: I pointed that out yesterday.

MR. BENNETT: So --

THE COURT: We conceded 300 slides.

MR. BENNETT: -- I'm feeling okay this morning. All right. Let's get into this. I -- the first topic I want to talk about is Carlyle inducement. And Your Honor, I provided some materials 15 minutes ago to other counsel so they could look at them in advance. What you have is some excerpts of Mr. O'Connell's and Mr. Bartell's testimony in the first document and then the four cases that were talked about yesterday.

So you had a colloquy with counsel for Carlyle yesterday where you pointed out that it was universally recognized that it would've been better to pick all 2027 notes. And you asked him if there was anything in the evidentiary record that showed why the offer to exchange was not made to all. Counsel for Carlyle said there was not. He then offered that perhaps other just anticipated what Carlyle wanted.

Carlyle counsel also said that the only participation point discussed was inclusion of Platinum. And Your Honor, clearly I did not present enough of Mr. O'Connell's or Mr. Bartell's testimony during my opening yesterday. So let's turn to the document I put on your -- I gave to everybody. And I've highlighted some of it, but I wanted to make sure that there was completeness. So maybe we should read all of it.

So what's in front of the witness is the chart that shows the extra benefit of further participation in the (indiscernible) and the questioner, which at the depo isn't (indiscernible). Calculations -- where it was referring to the calculations at the top of the chart, the annual Platinum cash interest status quo, the annual cash interest pro forma for exchange, and the annual Platinum cash interest savings. These three rows. The witness sees that.

"Question: Those are benefits from Platinum exchanging its 2027 notes. They're not benefits from Platinum exchanging its promissory note, correct?

"Yes, correct. The promissory (indiscernible).

"Okay. And could the company have received the same benefits, just the benefits listed in those three rows from any holder of notes that exchanged their 2027 notes?" And Mr. O'Connell says no. Okay. No leading question. No suggestion of any answer. "Why not?" Perfectly logical

follow-up.

"Because in our negotiations with Carlyle, they would not -- Carlyle was not willing to open up the transaction to other unsecured noteholders other than Platinum." Next page.

"The company asked Carlyle to increase the amount of notes that could be included in the note exchange, correct?

"Correct.

"Okay. And so Carlyle pushed back on the quantum of notes that could be included in the unsecured note exchange, correct?

"No. The way it -- my recollection is Carlyle said we were willing to accommodate Platinum and Senator but not others. It wasn't about aggregate level of holdings.

"Did you ever ask them why they wouldn't, why they were not willing to accommodate others?

"I don't recall specifically asking the rationale as to why, but I think we understood from a commercial perspective their intention was to receive consideration for their holdings as they had a requisite consent on their own." Next page. Now we're at the trial, and now it is my questions. And we -- and the first few lines say we're going to start with the deposition, and so some of it's repetitive to the deposition. So when -- let's skip down to

Line 21. The transcript is in front of the witness. Now keep -- the deposition transcript is in front of the witness.

Now keep this open because we're going to come back to it. "Was the company, sir, prevented from achieving the same benefits from any holder of 2027 notes that were willing to exchange the notes because Carlyle wouldn't let you do it?

"Answer: In our discussion with Carlyle, my recollection was that they were willing to allow Platinum and Senator in but not others. With that said as I just noted, I'm not aware of others asking us at the company level. Whether they asked Carlyle and Greenhill, I don't know.

"Did you recall at your deposition that you on behalf of the company asked Carlyle to "open up" this unsecured exchange and increase the quantum of notes that could be included in the unsecured exchange?

"Yes, I recall saying that.

"And PJT made the request.

"Yes, I believe it was our team.

"And PJT made" -- and I'm interrupted.

"To Greenhill.

"PJT made the request to Greenhill?

"I believe so.

"When did PJT make the request?

"In the back-and-forth at the negotiations. I don't recall a specific date." Okay. Then for completeness we have the proposal and it shows how he understood it. This is the March 1st. This is Carlyle's response. "Carlyle makes a counter-proposal according to this and it's to eligible participants. And they say, okay, really agree except Platinum shall not participate in the exchange and of Platinum debts should be picked for life. No up-gear. Do you see that?

"Yes.

"Is that accurate?

"I assume so.

"Okay. And so the response by the company isn't, well, how about at least other holders? It's pushed back again, same company, 226 Carlyle, Senator, and Platinum, correct?

"Yes, that's correct." Okay. That's kind of background because the next line says:

"Okay. Does this refresh your recollection that at some point in the dialogue over these several days Carlyle said only Carlyle and Senator not Platinum, not anyone else?

"Answer: Yes.

"Okay. So isn't it true that one of Carlyle's

responses was not that only Carlyle, Platinum, and Senator could participate, but the response was only Carlyle and Senator would be eligible to exchange 2027 notes?

"Yes, that seems to be the case. Yes.

"And if you take a look at the amount slide, and I'll let you do it yourself, doesn't it also show that the amount of the 1.25 notes Carlyle said it would permit to be issued was only enough to make an exchange for Carlyle and Senator's 2027 notes?

"Yes, I see that.

"So I'm not aware of any other written response to Carlyle than the ones shown here. Are you?

"Not to my recollection. I don't recall seeing this side by side in the deposition so I haven't seen this in quite some time."

Continuing in the trial testimony, "Who made the decision to counter to Carlyle's refusal to include all 2027 noteholders with a proposal to just add Platinum?

"Witness: I don't recall. I don't recall who specifically made that decision." We of course showed who did.

"Who was involved in the discussion about how to counter to Carlyle's refusal to include all other 2027 noteholders with a proposal to include just Platinum and Senator?

"I don't recall the specific. It seems like there was a day that passed and then we countered. I don't recall the specific discussions. I would imagine it included management that no bank from A&M and our team.

"Did it include other Platinum folks?

"I don't specifically recall." Again, the next pages are included for completeness, but let's skip down to the following page, Line 10.

"And then in counter -- Carlyle's counter proposal on the amount, the counter proposals from Carlyle was to size the basket to account for only Carlyle and Senator's exchange debt. Is that correct?

"Yes.

"And then the company rejected that proposal. Is that the right way to read the proposal over?

"Yes, that's correct." Okay. So what did we learn from that? We learned that the unambiguous testimony of the person who negotiated we say for Platinum acting as its debt, we think we proved that fully understood the negotiations with Carlyle exactly the way I described them, that there was a proposal made, it's kind of ambiguous, but people were talking about it. And everybody understood that what Carlyle was doing was causing the exclusion of noteholders.

When Carlyle says all we did was a Platinum or

non-Platinum, that's one way to interpret the slides, but the percipient witness that was in the negotiations -- and of course the negotiations does not just include the slides. It includes all the discussions that happened around it, he had a clear recollection expressed over and over again that it was -- and again, initially unsolicited, that it was Carlyle that got in the way. It was Carlyle that decided that the company wasn't going to be able to get the full benefit, and then Platinum agreed. That's what happened. That's what the evidence shows.

Now, there's a little more evidence. Mr. Bartells'. Mr. Bartells was asked about the same series -- sequence of events, and for the most part he didn't participate in them. But he was asked did you -- I'm skipping down to Line 24 in the Bartells' excerpt. "Did you hear or was it reported to you at one point Carlyle wanted to propose to limit the exchange only to Carlyle, Spring Street, and Senator?

"I recall discussions around it before --"

"Okay." I'm interrupting him and I apologized.

"-- the transaction happened.

"Do you recall being told that?

"Yes." That's what Mr. Bartells understood. This is testimony that is admitted evidence that the selection was not immaculate, and nothing in the testimony I just read

is inconsistent with the remainder of the evidence -- evidentiary record. As Carlyle's counsel well knows if he was unsatisfied for any reason with any testimony offered at a depo or a trial, he had to either cross-examine the witness on the relevant points or elicit different testimony from another person that had firsthand knowledge of the same events. In this case, that would be someone at Carlyle who negotiated with O'Connell, and that person was probably Neil (indiscernible).

Remember my chart that no one from -- no one who was actually involved in negotiations from Greenhill has testified in this court. And Mr. O'Connell was cross-examined by Mr. Clareman, and no testimony was elicited by them that contradicted the testimony of Mr. O'Connell. Wasn't confronted with any.

Mr. Clareman has spent a lot of time also suggesting that Carlyle gave on many of its initial demands, and that may be true, but it does not change the fact that Carlyle ultimately reached an agreement with Platinum on the exclusion of other holders the opportunity to participate in the exchange. That's an agreement to cause a breach.

As I said before, O'Connell's testimony is unrebutted. It is the record evidence about what happened. All we have now is Mr. Clareman clearly told a story, tried to reinterpret the events, but he is not a sworn witness.

He has no firsthand knowledge of any of the relevant events that surrounded those pieces of paper. He had his opportunity. He didn't prove anything else.

Now, there's a couple of other points that I'd like to make that are related, and we'll shift to conspiracy in a second. Can you put up Carlyle Slide 5? Situation update. Platinum reached out, not Wesco, not any guarantor of the 2027 notes. Platinum. Platinum reached out to ask us to sign an NDA to engage in conversations. Platinum has not made any specific ask of us yet and it is unclear what their goals are. And it's unclear what if any information Platinum will ultimately provide us.

Platinum has indicated they want to talk to us. Carlyle was not confused about who its counterparty was in the negotiations of the unsecured debt exchange. Carlyle 17, please. Testimony that they highlighted for you. Last line. Last question. Sorry.

"How did you respond to the company's proposal for $1.05 billion basket?

"We pushed back on that quite robustly. We wanted the basket to be sized precisely to match Carlyle and Senator's holdings. And you know -- and no more."

Now, I want to skip to something. Let's talk about the basket for a second. The basket used in the future -- the basket useable in the future, not now, doesn't

help anybody. That's the potential for mitigation perhaps, but the default is the failure to make the offer -- same offer at the same time. The existence of a basket for the future only means that someone maybe has the opportunity to use the basket to make an offer to the excluded 2027s. Maybe on the same terms, maybe on different, nobody knows, and maybe not at all. At most it's an opportunity to mitigate. It doesn't say -- it's not an excuse. It's not a defense to the fact of the breach.

And so when Carlyle relents on that, they're only relenting on this hypothetical possibility of mitigation, which of course never occurred. There was no mitigation. There was no subsequent offer. There was no catch-up whatsoever. So the sizing concession has nothing to do with the lack of an (indiscernible) on the exchange. The key words here, "You know and no more." All they wanted is Carlyle and Senator. They made it crystal clear. The evidence is unrebutted.

Okay. Now, conspiracy. I think the argument yesterday was that somehow because Carlyle entered the discussions with different priorities and different terms that it wanted from Platinum that there couldn't be a conspiracy. Well, that's kind of ridiculous. If Carlyle entered discussions with Platinum with different positions doesn't detract from the reality that they reached an

agreement and as a result formed a conspiracy. Because they did reach an agreement.

The fact that they started out with different terms is irrelevant. I'm not aware of any element of conspiracy law that requires that conspirators or potential conspirators have had similar or identical positions before they reach an agreement to conspire or that the agreement is -- that conspire has to include everything each conspirator ever wanted. The facts of this case, there was an agreement, the exchange agreement. There were overt acts to implement the agreement's terms, and at the end of negotiations there was a common plan even if it didn't start out that way. Conspiracy was proven.

Senator appeals to its passivity. Senator's passivity at points in time is completely irrelevant. When the chips were down, Senator agreed to a transaction. It breached the indenture and then caused it to happen by signing the exchange agreement which required the irrevocable instruction to WSFS. That is the inducement. That is Senator's inducement.

Inducement. Inducement -- and I'm now addressing something that Platinum said. Inducement is not only inducement by board meeting. Inducement is not confined to any particular act, status of the inducer, or compacity of the inducer. A tortfeasor doesn't have to wear a special

hat, doesn't have to do it in any particular way. The assertion that Platinum employees with unbelievably lofty titles, Louis Samson, co-president and member of investment committee of Platinum; Michael Fabiano, managing director and global head of credit at Platinum; Malek and Kevin Smith, both managing directors.

The idea that they lack either actual or apparent authority to act for Platinum in connection with debt holdings is beyond silly, and it certainly was never proved. We cited the cases on our Slide 31. I'm not going to repeat it again. You have it. I did actually talk about that slide, about how it -- corporate rules work. Directors who are not officers cannot and do not act for a corporation.

For a given company, officers appointed by the board implement board resolutions. None of the attendees of the meetings or Zooms we discussed were officers of Wesco or any other 2027 note obligor. The assertion that there was a board committee is not supported by any of the minutes much less any resolution of appointment.

And by the way, the idea that any board committee action was involved at the Zoom where it happened is belied by the fact that Kevin Smith was there. Kevin Smith wasn't a director of any of the companies. So now they say they had a board committee but it also included Kevin Smith who wasn't a board member at all? These things are just not

supported. It's ridiculous.

As I said before, Platinum, Carlyle, and Senator induced WSFS to signing the exchange agreement and the instruction called for in the exchange agreement. A document was signed by each defendant. Selective exchange could not happen if they didn't sign it. At the end of the day, that's the conclusion of all the things that have led up to it. You don't even need the things that led up to it, but the things that led up to it clearly show who the actors were, what they did, when they did it. The record evidence shows it. It cannot be explained away.

Economic interest. I wanted to clarify one point that you asked about yesterday. You asked where the economic interest rules applies if Wesco had to get Carlyle to bring in $250 million, which of course net was less than. First, as I explained yesterday, Carlyle is not allowed to induce a breach as a condition to accepting a proposal. And you asked me to put that aside, but I thought about it some more.

Even when I put it aside, excluding other holders, does not even promote Carlyle's economic interest in Wesco, and that's the ultimate test. Remember the relevant act here is the exclusion of other holders. Even if Carlyle's participation provided some benefit, the act of exclusion did not. The breach did not.

THE COURT: Why would it not give Carlyle a greater percentage of the liened assets in the event of a default such that it was in their interest to be a loan in that category or have as few as possible that were looking to the liens?

MR. BENNETT: As I said before, if that's what this was about, promoting their own interest as opposed to the company's interest, it's not an economic interest that generates the defense.

THE COURT: But I just want to be -- you said that it didn't help their own interest. I thought you said that. I think it did help their own interest. As to whether it's protected is a different question.

MR. BENNETT: I'm sorry. Then I misspoke. I'm talking about their -- the interest in Wesco. The lien -- narrowing the lien helps their personal interest. Their interest in Wesco, though, was making sure cash was maximized. Everyone agreed to that. And -- agreed to that. And what they did was basically traded. What they did was, as they said, the company's going to get less relief, less cash relief, which it desperately needs.

THE COURT: Mm-hmm.

MR. BENNETT: So I, outside the company, can get a bigger slice of the lien that the company wants to offer to everybody. That is exactly antithesis --

THE COURT: Right, but I think that's the heart of the question I was asking. And I mean, I think I'm understanding what you're saying. So if someone does have an economic interest in the company, they're acting to utilize that to benefit themselves, not the company.

MR. BENNETT: That's --

THE COURT: Is that protected under the economic interest rule and --

MR. BENNETT: No.

THE COURT: -- what is the case law that says it's not?

MR. BENNETT: It's in our slides, Your Honor, when we talk about economic interest. And I was going to take (indiscernible) finding it, which is --

THE COURT: If it's in the slides, I'll go back and find it.

MR. BENNETT: Oh, it's in the slides.

THE COURT: Okay.

MR. BENNETT: We -- when we set up the economic interest section, we (indiscernible) --

THE COURT: I'll find it.

MR. BENNETT: -- we have the actual quotes that say that, that actually make the -- talk about the difference between protecting the company interest that you have in the company versus protecting your own interest.

The interest you have in the company is the company's success. Your own interest is changing the kind of debt you have. It uses essentially those words. I think they're in bold and they're at the bottom of a page, but I don't remember the page number.

Okay. And last, whether or not Silver Point or PIMCO accepted lower participation in the unsecured exchange, it remained in the company's interest to have greater participation. The breach deprived Wesco of that benefit and it was not helped at all by the limit on participation.

Okay. Now standing. I tried to be economical because Your Honor indicated that you've read the briefing and understood the arguments that there was -- I'm going to try to go through the slides that we had on this super quickly, and of course land on the ones that I think are where the controversy really is. So this is at Page -- starts at Page 135, and I'm going to start on Page 136. Let me get rearranged just for a second.

So first, again, I don't think it's any longer disputed, no party disputes the tortious interference claims can be assigned, and we contend that an assignment happened here. And again, this is another approach to something that we think we've established in many other ways, but -- and I'll come back to one of them in a second. By talking about

this doesn't mean I've abandoned any others. I don't. But I think this one is particularly decisive.

Okay. What Page 137 says, and again I think -- I don't think there's anything to be argued here but maybe there is, all right, the separate documents --

THE COURT: Sorry.

MR. BENNETT: That's okay.

THE COURT: Go ahead.

MR. BENNETT: Separate documents together can be one contract, and here -- and these are -- this is authority for that proposition, the DTC rules we say are part of the indenture. And the next pages show why that's the case. I'm not going to spend the time now, but we've highlighted all the steps that show that the DTC procedures for transfer are in fact specifically referenced and included in the indenture.

And then on Slide 140 it talks about your former position on mouseholes, which generated a beautiful picture of an elephant. But the fact of the matter is that when you go through the indenture specifically with respect to transfers, and now on Page 141, let's go to Page 141, the -- this is in the indenture, the transfer and exchange of beneficial interest in the global notes will be affected through DTC in accordance with the provisions of this indenture and the applicable procedures. Clear as day.

Then what are the applicable procedures? It's right underneath it. It includes the rules and procedures of the DTC that apply to the transfers exchange, and the DTC is mentioned 83 times in the indenture. No one can read the indenture. By the way, it's in our preliminary offering Circular 2. No one can read either document without understanding that the DTC has an awful lot to do with this. Okay.

Then Your Honor noted, we noted that the DTC rules talk about a transfer of the entire interest, and DTC cares about this. They want -- because they realized that they could be in the middle and they could get stuck in the middle. So they wanted to make sure they had everything, and they did make sure they had everything. And so the -- what is left is a discussion of what exactly does entire interest mean. And you were -- you asked Platinum's counsel do you have a case. She said she didn't.

Well, it turns out there are cases, and we have them on Page 144 and Page 145. And it turns out that the words "entire interest" are used in the cases, and entire -- and when it's used in the cases it includes tort claims. That's what these cites show. And in particular, let's look at 145, the (indiscernible) case, the question in this case is whether Commerce Bank has offered sufficient evidence to allow a trier of fact to find that DAF assigned its entire

interest in the notes to Dresner, including therefore its right to sue for fraud. That was the question. Now --

THE COURT: So I just want to be -- the stark difference between you all I think --

MR. BENNETT: Yes.

THE COURT: -- I don't that she's denying the -- and look at the -- that you must look at DTC. But she is saying, different from the case that you're citing here, that when it says entire interest in the notes under New York law, that is different than the entire interest in the transaction. That is her argument. How do you reconcile -- do you want some cough drops? I can handle that.

MR. BENNETT: No, it was just water. Went in the wrong way.

THE COURT: But -- so I --

MR. BENNETT: Let's go turn --

THE COURT: So I do understand the entire interest argument. I also understand her argument that says that when it refers to a note or a security that does not include fraud. So now you're -- and you've given me a case that says it does include fraud, how do I reconcile what I would view as perhaps the inconsistency of those New York cases? I haven't read them all, but from what you've described to me.

MR. BENNETT: You would -- I think the best way to

do this is to go back to basically some cases that we talked about in interpreting 6.06. So let's take a look at Page 126 of the slides, please. So in the context of interpreting 606 -- and by the way, 606, they say that 606 is only a limitation. It actually -- even if this -- all of 606 were relevant, it implies the existence of rights, and then it says you're limited in enforcing them. So it kind of -- the premise is that the rights exist. That's one important thing.

In this case, the rights definitely exist because as Your Honor may recall or may not remember this, I don't know if it came up specifically while you were hearing this case, is that one of the agreements made to allow the bankruptcy court to handle this case as opposed to the New York courts is that all of the defendants weighed the limitations in 6.06. So all that's left in 6.06 for purposes of this case is the reference to the fact that these claims do exist and there are not limitations on their enforceability.

But here's where -- when you talk about entire interest -- excuse me. When you talk about the interpretation of 6.06, courts have had to deal with what does it mean to pursue any remedy with respect to this indenture or the unsecured notes. That's what courts have been asked to say. Does -- do tort claims fit within

respect to this indenture or the unsecured notes? I submit it's exactly the same question you're asking in a different part of the indenture. And what have courts said? Any availability includes all remedies available at law in an equity, permits any lawful means of enforcing the noteholder rights against any individual or entity based on any viable theory of recovery quadrant in the right block.

Where a cause refers to both the indenture and the securities, that's the limit -- they want to say that is the limitation, the security holders' claims are subject to the terms of the clause whether those claims be contractual in nature and based on the indenture or arise from common law and statute.

So what I think this says is that the alleged security reference is not a limitation that carves out claims arising from common law and statute. Claims arising from common law and statute are included in respect to this indenture or unsecured notes. So I think the answer's in another section of the indenture, but the answer is most assuredly there.

Okay. There's more about the DTC rules governing. I think if that's the question Your Honor wants to focus on, that's where I think the answer is and those are the cases you should be looking at.

Okay. I want to turn all of the cases that they

cite now, and I have excerpts of some but not all of them here where it might be appropriate. So the first one, which I do have a copy of the United States Court of Appeals for the Second Circuit in the stack, Pennsylvania Public School Employees Retirement System v. Morgan Stanley. So this case went to two levels, and the -- I think it's important to note that the Second Circuit certified to the New York Court of Appeals the question of whether the evidence supported any assignment of the fraud claim.

The New York Court of Appeals stated, "Our review of the record fails to review any proof of an assignment of fraud or more generally tort causes of action," and then noted that the ultimate purchaser had in fact conceded that there was no explicit assignment of claims. So that's what the result was in the case. It doesn't bear a resemblance to this, and there was not discussion whatever of any DTC assignment.

But the court said a couple of other things, and we have them highlighted. It's on Page 7 of the printout. So first of all, unremarkably, the right to super fraud may be assigned in New York. However, subject to limitations and applicable here, federal courts have defined -- is defined -- excuse me, found an assignment as defined in New York as transfer or setting over of property or some right or interest therein from one person to another unless it in

some way qualified as it is property to transfer of one whole interest in estate or chattel or other thing.

The question in this case is whether Commerce Bank had offered sufficient evidence to allow a trier of fact to find DAF had signed its entire interest in the note to the (indiscernible). That's the question. We have assigned. We have been assigned the entire interest. This case, frankly, helps the analysis. It doesn't hurt the analysis. And then finally, on the one hand New York law is clear that specific incantations of "assignment" are unnecessary to prevent the transfer. We'll put that case aside.

The next case that they cited in their papers was Bluebird Partners. Bluebird Partners is another case where I found that there was no assignment that was effective, and they discussed some of the policy issues. And the court then notes there are respectable arguments on both sides of the issue. And sure there are. As Your Honor pointed out, you can have two systems. One system where claims were assigned and one system where they're not.

And what do you do when you have those choices? Well, the best thing to do is have a contract that chooses, and this contract chooses. This indenture chooses. It opts in all the way to the DTC system, which talks about transfers of entire interests.

Next is Dexia. We also made a copy of the court

opinion in Dexia, and I also think there may be a couple of them. This is the one that was decided by the supreme court in New York County. So what does it say? Under New York law, absent language demonstrating an intent to do so, tort claims do not automatically pass to an assignee. We agree with that. But here, like Cortland, Dexia recognizes that, "New York law does not require specific boilerplate language to accomplish the transfer of causes of action sounding in torts. Rather, any act or words are sufficient to show an intention of transferring the action to the assignee." And more language to that effect is highlighted in the case. I don't think I need to read it, so I'm going to put that one aside.

Royal Park. Again, they cited it for the rule that litigation claims are not automatically assigned with the transfer of a security. We don't argue with that. The court in Royal Park though recognized that standing will necessarily depend on the nature and terms of any assignment. Here too we need to look at the nature and assignment of -- in terms of the assignment in this case. It was an assignment of the entire interest, which they put in (indiscernible).

And then there's Bank Arab, which I think is the right way to pronounce it. And this one comes out our way. The courts -- the Second Circuit held it does not matter

that the lower court found that a seller never specifically or consciously agreed to transfer its tort claims. The language of the assignment was sufficient. Frankly, as I said before, none of this matters if we recognize that the PTC is the holder. No assignment is involved. This just makes clear that if the prior owner is -- to the extent the prior owner tells us anything, it was assigned.

We were also told that there were choice of law difficulties with the DTC system. There are none. First of all, as a practical matter, all of these kinds of instruments are governed by New York or Delaware law. I've been doing this for 43 years. I have never seen an indenture choose Kansas, North Carolina, or New Jersey law. Not once. But it doesn't matter. If the assignment is ineffective under the applicable state law, then it's ineffective.

Doesn't mean that it's not effective in states where it's effective, here in New York. You only have this case before you and the DTC rules are entirely consistent with the governing New York law. It really only goes to what entire interest is and if you're -- if a state that isn't New York has a provision that restricts assignments.

Now requisite intent and the Roche case. This was our Slide 57. So the last paragraph is restatement. It is the -- it states the rule, frankly, that I think Your Honor

believes is the rule. Misinterpreting the provision cannot possibly be a defense to interference. Now, think about this a second. If the rule is anything but the restatement rule, anything but the restatement rule, it will have the following consequences. Number one, intentionally or negligently not reading a contract one knows to exist and is available would arguably be a defense. That cannot be, okay? That cannot be.

Among other things -- you know, also misinterpreting a provision, as Your Honor said, it can't be a defense either. Among other things, if misinterpreting a provision was a defense or if negligence in not reading a contract we knew to exist and had in your possession was a defense, we frankly would encourage the hiring of bad lawyers, and I would submit that's the ultimate bad policy choice. It just makes no sense that any rule other than the restatement rule.

I'll talk about the Roche case in a second. In any event, remember 2,000 plus privilege assertions, okay? In this case, those assertions prevent us from knowing what any defendant really thought about the meaning of the indenture and they have prevented that. So it cannot possibly be that it becomes our problem that they have shielded everything of -- that they really relied upon in interpreting the indenture from ours and your review.

Now the Roche case. I think you were starting to read it. I've given you a copy. It's almost amusing that this is cited for the proposition it cited for because of the -- what the court actually found, and I'm going to read from the bottom of Page 5 where we've highlighted. "At the outset, the court notes that the FAAC styles Enzo claim as one for tortious interference with business relations, which is a different cause of action, different elements than tortious interference with contract." That's number one.

Number two, what exactly was proved in that case? Next quote, "Enzo has not provided evidence that Roche knew about the Affymetrix agreement or that it intended to induce the Affymetrix breach." It didn't even know about the agreement. The evidence was that the agreement was available. It was available. There was no evidence that they actually had it. Very different from our case.

With regard to knowledge, Enzo's evidence does not show that Roche had actual knowledge of the Affymetrix agreement, only that the contract was published in Affymetrix's quarterly filing with the SEC. That was it. The case, Your Honor, does not modify the restatement rule or any other cases expression of what is required. What is required is knowledge of the contract. Here we have knowledge of the contract, possession of the contract, and some very significant portion of more than 2,000

communications between lawyers and clients about it. Nothing more could possibly be required.

Causation of loss. We have some pages on it. I'm going to kind of spin through them really quickly because I'm going to run out of time, but some of the most memorable words in this case, "strongly incentivized". The exchange was strongly incentivized. Everyone offered the exchange. Everyone offered the exchange took it. Moreover, moreover, Senator even made additional unrelated concessions to get the opportunity to participate.

So -- okay. So let's take a look at our Langur Maize slides starting at 64. You're never going to be able to understand this, so I really appreciate it. Okay. I want to start on Page 64. So with respect to the issue of Par and with respect to the issue of causation of loss. Last paragraph on Page 64, "Selected sellers undeniably obtained a secured instrument that was more valuable to the 2027 notes that they held before the transaction. The other excluded 2027 noteholders had no opportunity to obtain that instrument."

I'm going to skip the next page and go to Page 66. Here's record evidence, testimony that there was harm. Mr. O'Connell, he believed Carlyle and Senator would be strongly -- and by the way, and anyone else would be strongly incentivized to support and participate in the selective

exchange as their position in the capital structure would change from unsecured to super-senior second out. (indiscernible). The reality was that net, net, net accepting the limitations of this deal, which obviously meant that some people were unfairly treated. Those some people that he was referring to the 2027 excluded noteholders.

Mr. Frager of Silver Point testified that excluded holders would be relatively worse off on the day after than the day before and that the selected sellers would experience a windfall by their participation. Record evidence. Now, there's some more testimony, but I'm going to skip it in the interest of time, but it's in the slides on the next few pages. Why don't we resume on Page 71?

So on Page 70 there's the list of complaints about how the causation path has been broken, and here's what their arguments were. The first one was Langur Maize's 2027 notes might not have been selected if WSFS used a lottery to select 2027 notes for the purchases under 3.02. Well, I suppose, but that would be -- the probability of that occurring is unbelievably tight. We'd probably end up witness a lottery. They would be allocating across the entire issue of 400 some odd million dollars. And the idea that notes representing a little more than $100 million, that all of them would be excluded as a result of that is

just not believable.

If we need to produce some witnesses for damages purposes, that the law of large numbers and -- would generate that result in like some -- like one trillion --

THE COURT: I tried to ask this yesterday, but I don't think my question came across very clearly, which is if they had followed the indenture, why wouldn't they have just transformed all of the notes into --

MR. BENNETT: That's what you would've done. That's what I would've done. That was not the -- and --

THE COURT: Then you don't have this problem.

MR. BENNETT: Well, of course you wouldn't. Of course you wouldn't. But they are -- to an extent they're right, that if the -- if they really thought the limit was in their best interest and they had to allocate, there would be a lottery. But there's nearly no possibility that that lottery would've come out such that the selected sellers would be selected and --

THE COURT: No, but the evidence is -- I mean, I'm -- I know that I'm sort of making your case for you, but the evidence is unambiguous that the debtor was better off if everyone had been included. So I don't know why you ever resort to a lottery if that was -- had been the decision.

MR. BENNETT: I agree. I'm dealing with the arguments before me.

THE COURT: Okay.

MR. BENNETT: I agree. Next argument. This is that it's speculative that the selective exchange would have occurred if the secured exchange had not occurred. And we point out, as you did, Your Honor, that part of the secured exchange did occur with respect to the 2024 notes. So, "It is speculative" -- next page, 73. "It is speculative whether Langur Maize's predecessors would've participated in the selective change if it had been offered to them."

Well, I just showed you all the testimony where it's not particularly speculative. Everybody that had the -- that is offered the right to do it did it, and some made additional concessions for the opportunity. That's evidence too. But the other part is we could look at this as an option and then we just value the option. And so if it is -- so we could get rid of all this. And the option was unbelievably valuable. It was probably worth -- it was effectively in the money on that date for the full amount of the difference between the value of the two different securities.

So this is not an answer to the only question before you today, which is was there any harm at all. At a minimum, the option was lost. And Langur Maize's predecessors might not have attempted to sell the 1.25 lien notes even if they had received them. That is completely

irrelevant under New York law. We had that discussion about the New York cases. We have a deal with exercises of options that were not -- that were withheld from executives that, you know, kind of go both ways. Actually you probably don't have enough time. Those cases are really fun to read because they actually have really interesting circumstances where it goes both ways, and the New York Court's rule basically says this is easy for us. We have a rule. It's that date. I don't want to hear about what happened afterwards.

Okay. Platinum, Page 63, please. While this was being presented to Your Honor they said no evidence that a breach of Section 3.02 caused predecessors any harm. They said they're talking about harm, not damages. Then the very first they show you is that an element of tortious interference is damages resulting from breach of contract. That's sufficient harm. Their own case says so.

And Your Honor asked a question is there any chance that there are no damages here, and the answer is no, there really isn't any chance that there's no doubt. Just here -- no matter how you want to measure it. We may have a fight over how much, but there's no chance that there's not.

Carlyle Slide 34, this is just a plain out violation of New York law. It says you don't use hindsight from the date of the trial to decide what the damages are.

The damages are as of the date of the transaction. The fact that their scheme didn't work and turned out to be bad for them economically doesn't mean that someone else wasn't damaged along the way. New York law is crystal clear. This slide is irrelevant.

A couple of minor things. Ms. Oberwetter mischaracterized the testimony reported on Langur Maizie's Slide 87. It speaks for itself. There's no reason to talk more about it. I'm told that the economic interest defense case law, by the way, is on Slides 80 to 83. So you'll find them.

And finally, Ms. Oberwetter's interesting contentions that it's unheard of for people to buy planes and then litigate, I just want to offer a colloquial response that there's a book about that. It's called The Caeser's Palace Coup. I recommend that everybody read it. I don't get any royalties.

Concluding, the evidence is uniform and unrebutted. Carlyle, for reasons of its own, induced restricted participation, the breach. Platinum knowingly joined the party and conspired with Carlyle to effect a result. Senator did likewise when it signed the agreement, the exchange agreement. They all saw risk and opportunity to get something different and better than what they had, and they were willing to grab for it even if the rights of

others under the indenture were violated.

They got it done. Witness was brought in when Bank of New York wisely ducked out to -- and WSFS was supposed to do what it's told, what it was told to do, and it did. 2027 noteholders whose rights Langur Maize now own are entitled to enforce for harm, and we will prove how much when the trial resumes. I have four extra minutes.

THE COURT: Thank you, sir.

MR. BENNETT: Thank you.

THE COURT: How much time do you need on your side of the room?

WOMAN: I imagine I'm going to have in the neighborhood of 20 minutes, Your Honor.

THE COURT: Okay. And what time is your -- do you need to leave by?

MR. BENNETT: Noon.

THE COURT: You have until noon to leave?

MR. BENNETT: Yes, I have two 12:00 flights. I --

THE COURT: We're going to --

MR. BENNETT: And I'll have about 15 minutes or so. (indiscernible).

THE COURT: So I'll see you all at 9:45-ish. Something like that.

MR. BENNETT: Thank you, Your Honor.

THE COURT: You'll need to move your stuff. We

will take a short break and we'll resume at 9:00. Thank you.

MR. BENNETT: Are we okay leaving -- do we need to move our stuff or --

THE COURT: You need to move it because I'm going to have other people here.

(Recess)

THE COURT: Ms. Oberwetter?

MS. OBERWETTER: Yes. Good morning, Your Honor. Ellen Oberwetter from Williams and Connelly. I'm on behalf of the Platinum defendants. I'm going to start with standing, which is our threshold issue, and I will start by saying I still don't know the answer to the question of how the tort claims got from Langur Maize's predecessor to Langur Maize and how they got from point A to point B. And I'll talk a little bit about some of the points that Mr. Bennett made and why they just don't answer that question.

I think his theory must be because we don't ever see an assignment from the predecessor, whoever that may have been, to the DTC that the tort claims again somehow live in the note and are not personal to the person who experienced them, which doesn't make sense for all the reasons as a matter of tort law that I talked about yesterday.

There's no limiting principal on such an argument

and we didn't hear one just now. So for example, if the argument is everything that has to do with the global notes lives in the note or lives in the DTC, there's no limiting principal that would account for legal malpractice claims, for fraud claims under whatever state's law those various claims would arise under, which no one would ever know because you don't even know who the predecessor is. So the theory just doesn't make sense under the language, which I'm going to talk about again in a moment.

I made the point yesterday that in all the years since the DTC book entry system has come into effect, where is the single example of a case where the type of claim that Langur Maize is trying to pursue in this case has ever been brought before? It hasn't happened. I'm not saying no one's ever brought an assigned claim. That's of course not the argument that I am making.

I am saying Langur Maize cannot point to a single case where anyone has ever tried, as far as I can find, and succeeded at vindicating tort claims of a prior unknown beneficial owner. The case law is totally devoid --

THE COURT: Is there one where someone has failed or has this just never been tried before in your view? I'm trying to sort that out a little bit in my mind.

MS. OBERWETTER: If you're talking about a case where the global note itself and that whole structure has

been specifically discussed, I'm not sure that we have found one that has dealt with that exactly, but on the more general principle of securities and other fraud and other tort claims not transferring --

THE COURT: Well, sure. Some of those have succeeded and some of those have failed depending upon the language. I'm trying to learn whether you're saying he can't prove on example where it's gone basically through the DTC route and someone has successfully sued, and I'm wondering if there's one where somebody has unsuccessfully tried to do it. Because if I don't have any examples, I'm not sure where that takes me.

MS. OBERWETTER: Well, I think a couple of things. First of all, there aren't competing examples. There are cases going only one way, which is there is no automatic assignment of tort claims unless there is clear --

THE COURT: Through DTC?

MS. OBERWETTER: Well, through DTC. So you have the Park royalties, which I talked about -- or Royal Park. I always get that one confused, Royal Park case, which I talked about yesterday, which did involve DTC book entry claims. So that one goes our way. That's the only one that I am thinking of right now that has any specific reference to a DTC book entry system where it has failed when the court has sort of grappled with some of those issues

directly. So that's the one that I'm thinking of.

The overall policy then is exactly in accord with that principle in terms of tort claims not automatically transferring, and then we'll come back to talk a little bit more about the specific language that he's I think hanging his hat on here. And so if a claim like this had ever been brought, I think it would've been cited to us at this point because it goes to the question of what the market expectations are and how people actually think this works.

If people think they're acquiring tort claims from an unknown, unidentified prior beneficial owner, where is any evidence of that in the market that that's how anybody has ever thought this has worked in the 30 years since we've had, for example, Bluebird Partners, which does as a matter of the policy of the Trust Indenture Act. That's not how this is supposed to work. And that -- what the Trust Indenture Act is concerned with is protecting the rights of the people who were actually injured, not the people who swooped in later to buy securities for pennies on the dollar.

So where's the example? It's been since 1996 that we've had Bluebird Partners. Where is it? It doesn't exist because that's not how people in this marketplace actually think any of this works. I don't feel like I have to pick the fight about whether the DTC rules are or are not

incorporated into the indenture because the language that he is relying on in the DTC rules just doesn't get him there.

What he's really hanging his hat on is a theory that a phrase like the entire interest in a note includes a tort claim is like an entire interest in a note that that is enough to include a tort claim. That is contrary to the list of cases that I cited yesterday. Not with reference to the DTC rules, but in terms of the general principle of separating a note or a security from the torts that someone may experience person to them as apart from the bundle of interest that they're buying under a note.

There's two other cases that we've identified in light of your question yesterday just to make sure if there's more that is out there that we can find on the question of what does it mean to have an interest in a note or an interest in a security. And I think they are largely cumulative of some of the cases we've already talked about.

But there is an older, a much older New York Court of Appeals case called Allen v. Brown. We have a copy of that available if Your Honor would like it.

THE COURT: Please.

MS. OBERWETTER: Which I'm happy to provide if I may approach. And also State of California Public Employees Retirement.

THE COURT: You have to give copies to Mr.

Bennett.

MS. OBERWETTER: Yes.

THE COURT: Thank you.

MS. OBERWETTER: So both of these cases in different places talk about -- so Allen v. Brown is the older one. It's an 1870 court of appeals case, New York Court of appeals. It makes clear that the instruments -- and I'm on Page 5, the instrument assigned the interest of the parties in the notes or the avails. There's further language that the assignment transferred every right of action against the defendant growing out of the receipt of the notes and the refusal to pay the share thereof which belonged to the assigners.

So there was a decision not to include additional types of claims by virtue of an assignment when there was not an express decision to do so. And that's the Allen v. Brown case.

The State of California Public Employees Retirement System case, which is a 2000 -- year 2000 Court of Appeals case, there is some language following Footnote 5 in this opinion, which is useful, where there is another question about what is it that has and hasn't been transferred. And the Court there noted CalPERS maintains that the use of the word "all" in the omnibus agreement evinces an intention by equitable to transfer all claims,

including then unknown but accrued claims against Sherman and Sterling.

The omnibus agreement refers only to rights and interests under the loan documents, including the promissory note between equitable insertions. It does not refer to the overall loan transaction. The omnibus assignment transferred every right of action Equitable had against (indiscernible) growing out of the receipt of the notes and the refusal to pay the share thereof. The assignment does not include a cause of action arising outside the loan documents themselves.

THE COURT: Does this one not arise inside the loan documents?

MS. OBERWETTER: I'm sorry, Your Honor?

THE COURT: It seems like his complaint does arise inside the loan documents if there was supposed to have been a ratable distribution.

MS. OBERWETTER: I don't think that's right, Your Honor. I think that his argument is that he -- is that his predecessor experienced a tort claim. That's his argument. So I'm not -- I want to understand the question that you're posing that --

THE COURT: Well, it's a tort claim for inducing people to violate loan documents.

MS. OBERWETTER: Sure, but it's --

THE COURT: But it is --

MS. OBERWETTER: -- a forfeit

THE COURT: -- still within the loan -- the activity is still within the loan documents. The tort claim may be external to the loan documents, but it pertains to the loan documents, right? What was our example here? What was the complaint about?

MS. OBERWETTER: The complaint -- it was not a tortious interference claim, Your Honor. So I will say that. But to go to your question, I think a tortious interference claim involves, first of all, someone who's not a party to the agreement. And so it is a breach of a duty by one person against another person, and it can't be an interest in the documents because the party you're suing is not a party to the document that you're suing on. So it's -- I guess that's why I'm not fully tracking the question that you're answering, Your Honor.

THE COURT: Well, I mean, I understand that the tort occurs by non-parties to the documents if there was a tort, but the specific language -- and I'm just looking at this very quickly --

MS. OBERWETTER: Yes.

THE COURT: -- but the language that you read is the assignment did not include the cause of action arising outside the loan documents themselves, and this cause of

action arises because of an allegation that the breach of the loan documents was procured by your client.

MS. OBERWETTER: Well, any tort claim, Your Honor, pertaining to a -- then we're left with no limiting principle at all because any tort claim pertaining to a loan document, including the examples I gave yesterday such as legal malpractice or financial fraud or --

THE COURT: But legal malpractice wouldn't arise within the loan documents, right?

MS. OBERWETTER: Well, neither does a tortious interference claim.

THE COURT: Sorry. The legal malpractice wouldn't have caused someone to violate the loan documents.

MS. OBERWETTER: Well, it could have. Could have. You could have that kind of legal -- it depends on what kind of legal malpractice claim you're talking about, but you certainly could have a claim like that where you say I violated the loan documents because my attorney told me it was okay for example. So absolutely you could have that kind of legal malpractice claim and then you're really left with no limiting principle.

You could have a fraud claim. Like I got into this deal because my financial advisor told me it was okay even though they were getting kickbacks on it. You can imagine any number of personalized tort claims that pertain

to underlying loan documents. The question is when there is a sale of a security or an assignment of a note, does the tort travel with that? And does the language and interest in the security or the note carry with it a reference to the tort? And it can't just be, well, if the tort's related to the loan documentation on some way that it carries with it.

We're left then with absolutely no loan -- with no limiting principal, and that's contrary to all of the New York case law that I went through yesterday from the Second Circuit and the New York Court of Appeals and all of those courts. So no, I don't think a tortious interference of a contract claim is something that is arising under the agreement in that way.

THE COURT: Okay.

MS. OBERWETTER: It's duty to -- it's a personalized duty to another person that they allege has been violated. So I think further that we heard a little bit from Mr. Bennett about the Bank Arab case today. We didn't really hear any response to the Dexia case that I talked about at some length yesterday that explains exactly why Bank Arab doesn't actually go their way, even though Mr. Bennett says that it does because it's different.

It has broader language that is the sort of express transfer that encompasses interest in an overall transaction accompanied by the fact that the company that

made the transfer was going out of business and so clearly intended to convey all rights and interest that were related to the note. So Bank Arab helps, in my opinion, us because it draws the kind of distinction that matters in terms of what kind of language is good enough and what kind of language isn't good enough. And the New York courts have confirmed that, for example, in the Dexia case.

I want to go back to a moment from yesterday about the consequences of the theory that they are advancing. Mr. Bennett objected when Mr. Clareman said, well, maybe their notes came from Silver Point and PIMCO in the early 2023 time period when Langur Maize first started buying those notes. He was kind of horrified by that suggestion, and of course he was because it illustrates the absurdity of what it would mean in this kind of situation to say you're standing in the shoes of a beneficial owner without any express assignment, without any of us knowing where that tort claim supposedly came from.

Because of course if he's standing in the shoes of Silver Point and PIMCO for any part of his claims, we would have other defenses to that. We would have an in pari delicto argument based on his theory. We would have an unclean hands argument based on his theory. We would have potentially the ability to say you can't possibly point to other people for inducement if you're standing in the shoes

of Silverpoint and PIMCO.

So we would have a whole host of arguments that by virtue of this kind of magical transfer theory we have no ability to make. It's just one more reason why the concept of an anonymous free-floating assignment from one beneficial owner to another makes absolutely no sense. Let's see.

I do want to talk a little bit -- so he did spend some time talking about Section 6.06 in the indenture. It just doesn't answer the question. So if you're following the rules set forth, for example, in Pennsylvania Public Schools which says you have to have a clear and explicit intent to give somebody tort claims before somebody is going to be found to have an assignment of tort claims, 6.06 doesn't do it. It doesn't accomplish it because it is a limitation on suits that is the title of the section, and it proceeds to list what all the limitation on suits are.

And I'm not saying we didn't have an agreement with them that there are certain hoops they don't have to jump through. That's not part of our argument. We're making an Article 3 standing argument about what claims they do and don't own. But 6.06 just doesn't answer the antecedent question of what claims the holder has or how it got the claims.

It's not trying to answer that question. It is trying to tell you in what circumstances if you are a holder

who was attempting to bring a claim, you have to jump through the hoops. That's all it's telling you. If you want to see an example, as I noted yesterday, as a provision in the indenture that gives -- describes some affirmative rights of the trustee, for example, you can look at -- back at 6.03, which describes some of those types of affirmative rights to bring suit on behalf of current holders. 6.06 just answer -- it just doesn't tell you as a matter of grammar the answer to the question of what the holder in fact owns. It only tells you in this type of situation, if this is the type of claim you're trying to bring, you have to jump through these hoops.

It doesn't tell you the holder owns those type of claims. It doesn't tell you it's a similar type of claims from a prior beneficial owner. It just doesn't answer the question. So that's what I have to say about 6.06 as a matter of grammar.

He cited in connection with that case the Quadrant case. The Quadrant case, which didn't get a lot of airtime but I'll just say it's a pretty dense opinion. It takes a while to unpack it. And at the end of the day, it also doesn't answer the questions we're here to answer. Because what it does is it interprets limiting language in another -- in an analog to 6.06 in another indenture.

And if 6.06 doesn't tell you what claims the

holder has, which it doesn't, Quadrant just doesn't help us because all it's doing is interpreting the language in a 6.06 analog as to the type of claim that could trigger you having to go jump through all of those hoops. So you're welcome to read Quadrant. I don't find it actually all that helpful or illuminating the questions that we're just trying to answer here.

One other point on standing. So they bear the burden of proof on standing. And I was waiting to see what Mr. Bennett would say on ownership of the claims that we're talking about in terms of what notes Langur Maize actually owns.

You may recall the back tort, or you may not because it was a long time ago, back toward the beginning of the trial, you raised some questions about whether Langur Maize in fact owns all of the notes that they're suing on. And the answer that we got from Mr. Bennett at the time was, oh, we made an error in some of our prior interrogatory responses and we'll fix it. And I don't know if we have -- if we could give Mr. Catalanotto control of the screen for a moment.

THE COURT: Sure.

MS. OBERWETTER: I'm responding to the first time to his presentation on standing, Your Honor, because he chose to go second on that issue. So what Mr. Bennett said

at the time, and I don't have the date of the hearing transcript for this, but it's ECF 630 and it's Page 55, was he noted, he agreed, he acknowledged that the claims that were bought in June and July why ostensibly Langur Maize were actually purchased or now owned by an affiliate of Langur Maize. And what he said was it'll be corrected someday. It's the kind of thing that can be cured, but the vast majority, vast majority, more than 90 percent, are all in exactly the right place and have the authorization from DTC and its nominee CEDE and Company.

So there are -- there's a portion -- all of this is to say there was a portion of his claims that Langur Maize doesn't own, and that's perhaps 10 percent of the claims if you look at the table that I used yesterday in terms of the amounts at issue. And so they can't possibly have standing to pursue those claims in this case. And that's a failure of proof on Langur Maize's part. And we can take that down.

I'm going to move onto talking about the Economic Interest Doctrine, which should be an open and shut case, Your Honor, from our standpoint given the overall structure of the transaction, given the purposes behind the transaction, and the uncontested nature of the Platinum defendant's ownership interest. The only thing we can -- and I'll address this relatively briefly, but the only thing

we continue to hear is that somehow it wasn't a good enough transaction. It could've been a better transaction.

That just isn't the test under New York law. That is crystal clear. That's the Trimark case that we talked about yesterday. It doesn't have to be the best deal. It only has to be an act or an action that is taken because we think it will protect your interest in the company, which things like an extension, having people defer additional pick interests certainly would do. It doesn't have to be the best deal, and there is no authority to the contrary on that. I'll touch only briefly on this question of one transaction versus two that came up related to this point yesterday. I --

MR. BENNETT: Excuse me. Also, just for the record, beyond the scope of the rebuttal.

THE COURT: Thank you. Go ahead.

MS. OBERWETTER: So I'm addressing in part a question you had yesterday, Your Honor.

THE COURT: Go ahead.

MS. OBERWETTER: And so of course the exchanges are all part and parcel. There is a single document that refers to both components of the transaction. And so from the standpoint of the Economic Interest Doctrine, there's no question it should all be viewed as one. And it doesn't matter if it's two because the exchange itself also provided

benefits to the company, and that's all the deferrals pick interest that we've talked about.

I wanted to touch briefly on some inducement points. The passages that Mr. Bennett read of Mr. O'Connell's testimony from our standpoint demonstrates the absence of inducement by Platinum. The transaction was approved at the board level. The board agreed to the ultimate terms of the deal and approved them. So the entirety of the theory that Langur Maize is advancing rests on conflating board authority with Platinum, and that is contrary to Delaware corporate law, which is the slides that I used last week in the presentation about the Kobre Group's claims.

I made the point yesterday that they have no authority for the proposition that negotiations through an advisor are not permissible. They don't have anything to counteract that. The case that they've cited doesn't say that. And there's also no case that says that board conversations at less than a quorum somehow mean that you attribute those conversations to some other corporate actor.

There's just no authority for that proposition. So I'm not the one who walked in and said oh it's -- has to be a committee or anything like that. People on the board are allowed to have conversations. The ultimate action rested with the board as a whole, and there's just no basis

in corporate law for attributing those conversations anywhere else. And there's no citation to any such authority.

There's a suggestion that Mr. Bennett said and pointed to a slide today about Platinum reaching out -- about Mr. Ho at Carlyle mentioning that Platinum had reached out to him. There's no evidence in that communication. It's a pretty thin read I would say for disregarding corporate formalities. There's no evidence that Mr. Ho was focused on those. And what Mr. Bennett did not cite was the redirect on that point, which is at Page 161 of the trial testimony.

And I don't have a slide for it, but basically Mr. Ho was asked on redirect were you intending to differentiate or have any kind of formal attribution to Platinum, and he said in effect that was just a shorthand. So that's at Page 161 of the transaction. He wasn't trying to say he had reached a decision about who it was he was talking to.

THE COURT: I need you to wrap up pretty soon. You're pretty well over your 20 minutes.

MS. OBERWETTER: Okay. Yes, Your Honor. So let me just move on. I do want to talk briefly about the Roche case. So Mr. Bennett said that it's actually a case about a different tort. He says about tortious interference with business relations. That's not accurate because that was

one of the claims that the plaintiff brought, but then the court proceeds to talk about tortious interference with the contract. So on analysis, that is in the Roche case that we're citing is about tortious interference with the contract.

And Mr. Bennett omitted the paragraph that I mentioned yesterday about the additional layer of intent that the New York courts have said you have to have in a tortious interference case. I'm going to talk -- I will conclude by talking about causation just for another moment or so.

I want to clarify a point that has come through in a couple of Your Honor's questions on this issue. When in a hypothetical compliant transaction, whether it's a redemption or whether it's a purchase, those are still things that would be put to potential participants as a choice as opposed to things that are compulsory in terms of making them exchange their interests. I think that's actually clear under the documents, and I'm not sure anyone has ever argued otherwise.

And so the causation argument that we're focused on is based on the fact that people would have had a choice to say yes or no if there had been a compliant choice -- a compliant transaction under Your Honor's ruling put to them. And there is no evidence and there will never be any

evidence that the answer to that would have been, yes, I want to participate. Any other answer is inherently speculative. That is fatal. It is absolutely fatal to the two theories of remedies that they have proffered in this case.

Mr. Bennett mentioned a potential theory around, oh, well, they would've had option value. That's still not damages unless the person actually wanted to sell their interest. There's no harm to someone who always wanted to keep the interest that they had because they wanted to continue getting interest payments or for whatever reason. And there's also been no answer to the fact that he can never prove that a party in the hypothetical predecessor shoes could have acted with the necessary speed or had investment committee authority or anything else to take advantage of a deal when offered. So with that, Your Honor, thank you for your patience, and I will conclude my remarks.

THE COURT: Thank you. For those of you that are here on the 10:00 hearing, that's going to obviously -- I'm sorry, for the 10:30 hearing I think we're still okay. Go ahead, Mr. Clareman.

MR. CLAREMAN: Thank you, Your Honor. Billy Clareman from Paul Weiss on behalf of Carlyle and Spring Creek. So Your Honor, I'd like to respond to Mr. Bennett's presentation this morning about the record, Mr. O'Connell's

testimony, and the evidentiary record at trial. And I want to start by saying I absolutely was not running away from Mr. O'Connell's testimony. I put it in my slide. I have an explanation for it.

There is a divergence between the testimony about Carlyle's excluding anybody from Mr. O'Connell and the term sheets that were exchanged. They are not consistent. And so what Mr. Bennett did on his opening was he tried to use the term sheets to match the testimony, but it does not work and is utterly inconsistent. And I say that for the following reasons.

His starting point was -- and we can look at the slides. I'm trying to do this quickly. If you want to look at any of the slides, I really -- I think it's very important because this is a very -- it's a point that I feel very strongly about because we lost this point of the negotiation, which is my point. But when we were presented with the unsecured exchange proposal, not the comprehensive transaction proposal, it was an open proposal to everybody. And so he argues that, well, then we must have come back and said no and they opened to us. No. We --

MR. BENNETT: Objection. I don't argue. That's what the evidence shows.

THE COURT: All right. Go ahead.

MR. CLAREMAN: You get that, Your Honor. The

evidence shows that our counter to that unsecured proposal, which is in black and white, it's in the record, it's there for all of us to see, I've pointed it out, was that everyone could participate in that unsecured exchanged except for Platinum. We wanted different and worse treatment for Platinum. That was our counter to the unsecured exchange proposal.

The first comprehensive transaction proposal that we got, the very first one, the first term sheet identified -- and this is on February 27th just after midnight (indiscernible) showed two things that relate to participate by others. A basket of 1.05 billion for one and a quarter lien notes and three eligible participants, Platinum, Carlyle, and Senator. That's in the term sheet. Again, there was a -- it is an argument because it's not in evidence, it's not the record, that somehow this was all unknown to the ad hoc group that was actually a party to negotiating the transaction.

They signed off on it. Again, the email is in my presentation. It attached that deck with those participants. That's the first thing we got. We then did respond by trying --

THE COURT: So --

MR. CLAREMAN: Yeah.

THE COURT: -- I think his argument is that may be

the first term sheet you got on the secured proposal --

MR. CLAREMAN: Mm-hmm.

THE COURT: -- but there had been conversations in which you demanded it. And so you got a term sheet that was consistent with your oral demands, and that's his point. You're welcome to contradict that, but I don't want to be dealing with sort of shifts passing in the night on the argument.

MR. CLAREMAN: And I'm glad you raised that because the "demand" that we made was in our counter to that proposal. Our counter to that proposal, again black and white, in the term sheet, in the record we said size the basket just for us and Senator. Get out of here, Platinum. You're not included. Only us and Senator. That was our response, and we said limit the -- we don't want this $1.05 billion basket to delete us to smithereens. We want this to be our benefit for doing this.

And then the counter to that was nope, no, Carlyle, not going to -- you're not getting your way. We're going to have $1.05 billion basket. It's not going to be restricted in any way. The eligible participants in the exchange were, again, Platinum, Senator, and Carlyle. And then it went on from there.

And then -- but this is actually extremely important. This is why this -- frankly, it feels like

gaslighting to me because we continued to try to press for restrictions on the basket throughout that negotiation. And again, we can pull up the page if you want to look at it. We were trying to get a consultation right because the basket is the thing that dilutes us. That's the thing that'll -- because once the basket's there, when it's in the contract, and it is inarguably in the contract, the company can exchange anybody for any purpose and we have no ability to say no. We're negotiating an indenture. And once the basket is open, we lose the ability to exclude.

So we negotiated away the ability to exclude. We let them have a basket that was big enough to do this. That's the point I'm making. So I think it is inaccurate and it's not consistent with the documentary --

THE COURT: But again, his argument and yours are passing each other. He acknowledges that there's a basket, but he says his clients -- weren't his clients, were predecessors, weren't given an opportunity to participate in the basket to whereas others got in the basket from day one like you all.

MR. CLAREMAN: Mm-hmm.

THE COURT: And that if they had gotten in the basket on day one, he wouldn't be here. That's his argument. You may not even think that's his argument. I think that's his argument, and that's the one that we need

to deal with, not that there was a basket that maybe them and maybe other people could've participated in. It was that they didn't get to participate upfront in the basket.

MR. CLAREMAN: Yeah. And so my two -- I have a few points on this. One is the evidence is that we got run over on these points on the eligible participant point. Again, because we said no to Platinum. That was our position was no to Platinum, no to basket size. We got run over on those points.

And I showed you the internal dialogue among the ad hoc group. This is Evercore talking to its clients. Carlyle came back with something really aggressive, and then they came back with something more reasonable after PJT pushed back. This is us getting run over on these two deal points. It is much worse from Carlyle's perspective, just from selfishly from Carlyle's perspective. You would rather have the exchange be everybody than just have a basket there that can be used for any purpose.

Because if -- because then the company's able to pay the, you know, full coupon. People who aren't exchanging on day one get the coupon. Clearly a coupon was going to be paid. We were picking our entire accrued interest on the 13 percent. We were not getting an interest payment on May 15th. We were getting two and a half percent on November 11th whereas holders were getting the whole 13

percent.

So my point being is that what we were really focused on in this negotiation was this basket because that is the thing that really affects the company's ability to make choices that would dilute us. And that's why I say we didn't have the ability to choose. And when we tried to effect that deal to them, when we came back and said no to Platinum, we -- the answer was no.

I also want to point out because -- on the collusion point, we twice, twice said Platinum's excluded. Unsecured exchange, get out of here, Platinum. It's a comprehensive transaction. Get out of here, Platinum. That was the Carlyle negotiation. So there's this idea that somehow we were colluding with Platinum when we were negotiating against Platinum in a -- in a way that only we did.

I mean, the initial proposal from the ad hoc group, which he likes because it didn't specify who would participate in the exchange, had the parenthetical, you know, unsecured exchange, including Platinum. A little bit of a, you know, you-who to Platinum. We are taking a different position, which is we thought Platinum should contribute more and in different ways, and we lost that point in negotiation.

So that's not conspiracy. That's not common

scheme design. So I just want to -- because there is this difference between I think the way that the testimony came in and the actual record of negotiations and where Carlyle was successful and where Carlyle wasn't successful. And on that point, because you were handed -- I have some additional clips of testimony that I can hand around because what you were handed clipped some important things. I think maybe we have two copies. We can hand one to the Court and one to Mr. Bennett.

THE COURT: Thank you.

MR. CLAREMAN: Just hand up the two -- well, actually, why don't we hand up all three? Well, just hand up (indiscernible). So there's deposition testimony and there's trial testimony.

THE COURT: Yes. Thank you. Thank you.

MR. CLAREMAN: So this -- that's fine right there. So I'm showing portions of the deposition testimony. Well, let's do the deposition testimony first because this highlights a point that I was making yesterday, and this was excluded from what he handed up earlier. If you go to the deposition testimony, the first pages of 298.

THE COURT: I'm there.

MR. CLAREMAN: If you go to Page 300, Line 22, this is from Mr. O'Connell's deposition. He was asked at his deposition did Carlyle ever ask that Platinum's notes be

excluded from the unsecured note exchange. "Not to my recollection." And I think this is important because that is clearly impeached by the actual record of term sheets that went back, and it shows that his recollection of exactly what happened and among these terms sheets is really not quite right. And what we have thankfully is an actual documentary record.

And again, I'm not faulting him for this. Yesterday we were having a conversation about, oh, what was the position -- what -- how did this come up at the first day of trial on the standing issue, and memory is like that. That's why we have discovery that includes documents and the positions are reflected in the documents. And that's -- and again it -- the reason why I feel this very personally, Paul Weiss was negotiating this transaction and lost -- this basket point, lost the ability to control it, and that's the thing that affects pollution, and that's the reason why I think this is something that -- I just think it's really important to get this right and consistent with the documents. And I think the testimony is not consistent with the documents.

The other portion that was clipped from Mr. Bennett's testimony and -- was from the trial. And if you go to Page 119, Line 14, this is -- question, this is the portion that was excluded from (indiscernible). "Wesco

Aircraft was prevented from achieving these same benefits that you just testified about from any holder of 2027 notes that was willing to exchange their notes wasn't it?

"If I understand the question -- if I understand the question -- Answer: If I understand, the question is you're saying that those that did not exchange, we as the company did not get the incremental cash benefit. That's what the question was.

"Question: Correct?

"Answer: Yes, that's correct.

"But Wesco was prevented from making those exchanges, correct?

"Answer: I wouldn't say it was prevented. I was confused with that term. I would say we did not perceive it, but again, I would think that if somebody were to reach out to us, those notes had favorable terms from the company's perspective, lower cash interest as you pointed out, as well as extended maturity. So I don't think we would've been against that at all. We weren't trying to prevent that."

That testimony is absolutely right. Had unsecured holders at the time organized, did what the Kobre Group was doing, objected to the transaction, said hey, we want in. Company could've done the exchange. Could've done that, and then there would be no lawsuit. But the reality is, judge,

and this goes back, there's a reason why nobody who owned the unsecured notes at the time has ever been there.

Well -- okay. I do also want to point out on this same point because -- so look, I feel very strongly about this because I do feel like the record is clear about the proposals we made, the negotiating stances we took, the fact that we got run over on this point in the negotiation. The only thing we prevailed on, it was a material term in the comprehensive transaction negotiation was the cash -- little bit of cash interest in addition to (indiscernible). That's what we won. Every other point we lost.

And so the idea that we dictated things is just not accurate because we lost those points with negotiation, and the record makes that clear. And Mr. O'Connell testified to that on redirect. The -- so I feel strongly about this just from that perspective.

It also doesn't matter from the economic interest defense perspective. I say that and I would refer the Court -- we have copies to hand up. I think the Trimark decision is a very important decision in light of some of the questions that Your Honor's asked. This is Audax Credit Opportunities Offshore Limited, TMK Hawk Parent Corp., New York Slip Op. 50794U. Can you hand it up? So I'm just going to hand up a copy of this case.

THE COURT: Thank you. I need you to wrap up

pretty quickly.

MR. CLAREMAN: I will, Your Honor. I promise. So this is a decision of the New Trial Court Justice Cohen, a very well respected judge of the commercial division in New York. If I can refer Your Honor to Page 14 of this opinion, there's a passage that I think is very important on the Economic Interest Doctrine. And it's on the right-hand side of the page. Top of the page. So this is -- Judge Cohen in that case concluded that the Economic Interest Doctrine was grounds to dismiss at the pleading stage of the claims.

What the complaint alleges at most is that defendants could have secured a better deal for Trimark had plaintiffs been let into the fold. Even so, plaintiffs cite to no authority holding that the economic interest defense turns on whether the challenged transaction was "the best deal the breaching party could secure at the time". That is not surprising.

Asking whether a company received "the best deal it could secure at the time", licenses judicial second-guessing of rational actors' economic decisions and demands the kind of fact-intensive inquiry that would render tortious interference claims virtually impervious to dismissal at the pleading stage. At bottom, plaintiff's allegations failed to decouple and indeed served to highlight the shared economic interest between Trimark and

in this case the equity sponsors. The same is true here.

I also want to just supply a citation to the Court from the evidentiary record. This is about the interrelatedness between the unsecured exchange and the secured exchange. You'll recall, Your Honor, that there is a fourth supplemental indenture to the unsecured 2027 indenture. That amendment, the amendments contained therein, were necessary to allow for the one that reportedly notes to be issued without breaching the unsecured indenture. So that was one of the things that the four supplemental indenture did.

Paragraph 3, Section 3 to -- and the fourth supplement indenture's in the record in evidence at ECF 601-33, the effectiveness of that amendment was conditioned on the effectiveness of the supplemental -- fourth supplemental indentures to the 2024 indenture and the 2026 indenture. So they are interrelated. It is I think obvious from the comprehensive transaction that was being negotiated that Carlyle was only there because its consent was necessary to allow the new money to come in.

There is no basis in any New York to decouple the overall benefit that was the purpose of the transaction and was integral to the transaction. And part of the consideration we were giving in the transaction from, you know, the liens and that aspect of the transaction, there

was really no basis for that.

And the very last thing I want to -- I do want to touch on, because I actually do recall where we were originally and where we've traveled to now in terms of the question that Your Honor was asking about the rights of the prior holder, we hadn't thought about that issue until Your Honor raised it. I believe it was the first day of opening arguments. And we then had a few days, I think it was maybe over a weekend, to submit briefing on the issue. And we did our best.

Our views at that time were incomplete and unresolved in terms of the -- whether a prior holder would be constrained by the indenture. We have spent a lot more time looking at that. A prior holder who owns the claims that he is trying to prosecute now absolutely has standing, is not constrained by the indenture, has the right to prosecute those claims.

THE COURT: Don't misinterpret the reason I was asking it. It had nothing to do with claiming anybody. It just had to do with me now understanding. I --

MR. CLAREMAN: I just want to make --

THE COURT: This doesn't go to the ultimate merits of their standing argument.

MR. CLAREMAN: Say again?

THE COURT: But it does not -- this doesn't go to

the ultimate merits of their standing argument, but you may recall that part of what I said on that day, again, this is going to be an old memory, was that it just wasn't rational what you all were proposing. And so I'm not upset that you've now landed on something that is totally rational. As to whether it is to law is a different question.

MR. CLAREMAN: Yeah.

THE COURT: But we just weren't in a rational world and so that was what that was about, but --

MR. CLAREMAN: And --

THE COURT: -- I'm not blaming anybody for that at all.

MR. CLAREMAN: Yeah. No, I appreciate that. I just was -- I wanted to explain it because there was --

THE COURT: Okay.

MR. CLAREMAN: -- a deviation and I wanted to make sure the position is absolutely clear that you heard it from me.

THE COURT: Thank you.

MR. CLAREMAN: Having spent a lot of time with that, I -- if I may just one -- a few more words on this. Having spent a lot of time with the question of who has the rights and whether there's an assignment of tort claims, the law is crystal clear in New York on this, and it's cited in our briefs and cited in the presentations. You need a clear

manifestation of intent to transfer anything other than tort claims -- other than contract claims when you are assigning the entire interest in a contract. Crystal clear. All tort claims.

Your Honor asked a question, well, isn't tortious interference different than fraud. It's actually not because they're -- you know, there are all sorts of fraud claims that relate to misrepresentations that are made in the context of indentures. Like in the RMBS context, this was a major issue in those litigations where the representations that were made in those documents about like loan quality knowingly false at the time they were made.

So there are other types of tort or non-contract claims that do relate to the contents of the contract. The line that gets drawn in New York is contract claims are the entire interest in the contract. Tort claims are outside of that interest and require a very clear expression of intent to transfer and assign those tort claims because there's effectively a presumption against them. That's how the law works, and that's the (indiscernible) case. And in (indiscernible) --

THE COURT: I need you to go ahead and --

MR. CLAREMAN: All right, Your Honor. I -- in closing, (indiscernible) I think is very important because it really highlights the distinction between the types of

language that's necessary.

THE COURT: Thank you.

MR. CLAREMAN: Thank you, Your Honor.

THE COURT: Morning.

MR. STEIN: Good afternoon, Your Honor. Matthew Stein, Kasowitz Benson Torres on behalf of Senator. I'll be very brief. I want to focus on intent and failure for a plaintiff to prove intent. First, looking at the elements of a tortious interference claim, the defendant's knowledge of the contract is separate from the intentional procurement of a breach. And therefore knowledge itself has no bearing on whether or not the intentional procurement element has been met.

Second, Mr. Bennett spent a bunch of time on talking about inducement and incentivization citing to Pages 66 of his slide book, Page 73. He focused on the language there it's the debtors incentivizing the note, not the other way around. I think that's important. Senator did not induce the debtor to do anything. It was the debtors inducing Senator to join in to sign on. So that incentivized language does not prove Senator's intent.

Third, Mr. Bennett says, well, Senator executed the document. That's enough to establish intent. And I think the problem there is Mr. Bennett is trying to conflate intent with "have the effect of". And we know "have the

effect of". We've dealt with it in other aspects of this case. Intent is not the same as "have the effect of". It's special language. And how do we know that? Well, Mr. Bennett was fond of citing the Restatement of Court Section 766 focusing on certain comments.

And Your Honor, I'll draw your attention back to a different comment, Comment N. And Comment N provides that one does not induce another to commit a breach of contract with a third party when he merely enters into an agreement with the other with knowledge that the other cannot perform both it and the contract with a third party. More is required than simple -- simply entering into an agreement that has the effect of causing the breach.

The intent is critical here. It's in -- it's on -- all the New York cases require it, and it's more than just, hey, Senator, Platinum, Carlyle executed the agreement.

Mr. Bennett also talks about -- and it's also critical that here it is the plaintiff's burden to prove intent. There's no evidence in the record of any -- of that being established. What there is, is the Milbank opinion letter that establishes the opposite, that Milbank provided advice to WSFS that the amendments to the indenture did not breach the indenture. Nothing else is in evidence.

Finally, Your Honor, there's been no rebuttal to

my argument yesterday that Senator could not have been the but-for cause of the breach. In Mr. Bennett's own words, Senator was immaterial and not necessary. Thank you.

THE COURT: Thank you.

MR. BENNETT: Less than ten.

THE COURT: What's that?

MR. BENNETT: Less than ten minutes, Your Honor.

THE COURT: I've got a 10:30 hearing, so if you want to wait for a few minutes.

MR. BENNETT: I'll wait.

THE COURT: Thank you. I don't think this will be a very long hearing. We'll see.

(Recess)

THE COURT: All right. Let's go back to Wesco. Ten minutes.

MR. BENNETT: Less.

THE COURT: It's 10:40.

MR. BENNETT: I am not going to go over things I said before. I know you will consider them. A couple of things. With respect to the 6.06. Why did I raise 6.06? I raised 6.06 to deal with Your Honor's question about when you say under the securities (indiscernible) when you're enforcing within the securities what that limitation means. And the cases under 6 -- just defining the scope of 606, which is a relatively common indenture term, not exactly

uniform but pretty close, is it had to grapple with the issue of whether tort claims are involved in a situation where you can exercise remedies with respect to securities. And the answer to that question was tort claims are included.

So when I was -- that was the only reason I raised 6.06 in this context was because it helped us with one of the objections that was made by the other side. I didn't think 606 mattered for any other claims. That's not (indiscernible).

Number two, you asked about cases that -- you know, that have enforced DTC transfers or to send it to DTC processes okay. And of course there are, by the way. We cited a bunch and they just basically say that you have the authorization letter and you are done. They don't say actually when the relevant claimant bought the claim or didn't buy the claim. They just say if you have the authorization letter you are done.

There are no cases that talk about the entire interest transfer part of this, but that doesn't mean it hasn't been relied upon before. It may mean that other people looked at it and said pretty clear there isn't something to fight about here. So -- and there's -- Your Honor said -- asked whether there's any cases that say that the entire interest transfer approach doesn't work. Nope.

There isn't.

Are there any cases that say a particular authorization was invalid because of when someone acquired a plane? Not a single one. So you're writing on a slate that, number one, embraces the idea that the DTC process is the right process to look at and it works. And we have showed you how it works from a whole bunch of different ways, and they all point in the same direction.

Royal Park, by the way, which was just mentioned again, it mentions that it was a DTC security and it doesn't say anything else about it. So I don't know what to make about that.

Okay. Particularized duty. I appreciate the effort to be very careful about what we do here because of the effect on future cases. But in this case, no one cared who the other left out 2,027 noteholders were. Their identity didn't matter to anybody. We pointed out that way back at the beginning of the case when PJT was first hired there was an exchange of information, and that exchange of information of course also was included in Mr. Bartels onboarding where it was shown -- we showed that people, if they actually wanted to call people, they knew who to call.

Remember, Your Honor, this process was kept secret. It was announced after the closing. So that people didn't know to come forward is actually a -- something that

was created by the process. So no 2,027 noteholders knew to come forward. No one cared who they were. And frankly, the duties to anyone who happens to hold it because we're in the indenture. Platinum's right. A case involving securities fraud where a representation was made to one person and not another person, yeah, that's different. But you're right. This is about what the indenture says.

The indenture is identity neutral. Everyone expects it to trade. Everyone expects it to trade at every single minute. By the way, that's why when people do make deals they have provisions that deal with trading. And so accordingly, the idea that there's going to be some particularized defense somewhere for this particular complaint, that's crazy.

Okay. With respect to that Mr. Ho's email where he says Platinum, he's talking to Platinum four or five different times and the cross-examination is, you know, whatever is that shorthand for or was that shorthand, I don't remember the exact words. I don't mean to mischaracterize it, Platinum is shorthand perhaps for Platinum Equity Partners.

Platinum is also shorthand for a whole bunch of fun names that start with Platinum that go on for five or six words after that. Platinum is not shorthand for Wesco. Platinum is not shorthand for Incora. Platinum is shorthand

for many things up the equity (indiscernible). It's not a shorthand for the actual companies that should've been the ones conducting a negotiation, the actual debtor, which was Wesco.

Your Honor is right. I think Mr. Clareman and I were passing in the night. I don't think he thought we were, but it is absolutely true as was testified by the witnesses that the advisors were talking. What the advisors said to each other mattered and they influenced what the term sheet said, and they are used -- what they actually said and what showed up in the testimony is the appropriate evidence to use for interpreting ambiguities in the terms sheets. And I pointed out there are ambiguities, okay?

And -- but the -- what these things meant and how -- what -- how people interpreted them at the time, that's the testimony that's there. Now, I pointed out Mr. Clareman had an opportunity to cross-examine both at the deposition and at the trial with respect to Mr. O'Connell. If Mr. Clareman thought that Mr. O'Connell made a mistake on that one question and that he got it wrong, he had an opportunity to go to that question.

He also had an opportunity to call him a liar with respect to every other answer or a person who didn't have a good memory. You heard Mr. O'Connell. Mr. O'Connell had a great memory about lots of things, and he may have screwed

up on one thing. How do we deal with that in our system? We ask questions about the question we have a problem with. And if we want to ask questions about other questions, we can do that too. It didn't happen. But most importantly, this testimony has been around for a while. It cried out to everyone in the case I'm sure. It even persuaded Ms. Oberwetter that it was a -- that the problem originated with Platinum.

But they didn't do anything about it. They left it alone. Tactical, strategic, or because they knew that if they brought Augenstein here that he'd break down. Or they knew that if they tried to push O'Connell he wouldn't break. We have a system for assessing the correctness or incorrectness of witness testimony. It was in full bore here. Everyone had every opportunity to do everything they needed to do, and they left this alone.

They left it alone for one reason. They knew it was true. They knew the witness wouldn't break and he couldn't be contradicted. There is irrefutable and irrefuted evidence as to how this all started, and it started with (indiscernible). I agree with Your Honor that (indiscernible).

Okay. The whole idea of entire interest, I've recited cases that find title interest -- entire interest. There are no cases that say entire interest doesn't include

tort claims. I know that there's a -- that there's, you know, all kinds of history about how -- what kinds of assignments are necessary or not, but New York law is clear. It doesn't require any particular language. It doesn't require magical incantation. We just ask to do is to require a magical incantation. There's nothing in New York law that requires it. Unless Your Honor has any questions, I'm done.

THE COURT: Go have a good birthday party. Thank you.

MR. CLAREMAN: Thank you.

THE COURT: All right. We are in recess until 11:00. Thank you all very much for the argument. We're taking this under advisement. You will not get an oral opinion. This will be a written opinion. I haven't fully crossed the bridge on whether it is a report and recommendation or whether it's a final determination, but I think it's a report and recommendation. So I'm sort of -- that's the only thing I'm going to preview is I think it's going to go that way. But I may be wrong about that, so I reserve the right to revisit it. Thank you all. It was just, by the way, a brilliant six hours' worth of arguments. I very much appreciate what everyone did. Thank you.

(Proceedings adjourned at 10:50 a.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Sonya Ledanski Hyde

Veritext Legal Solutions
330 Old Country Road
Suite 300
Mineola, NY 11501

Date: October 8, 2024

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS

In Re:	Wesco Aircraft Holdings, Inc. and Official Committee Of Unsecured Creditors Debtor	Case No.: 23−90611 Chapter: 11

Wesco Aircraft Holdings, Inc.,
Plaintiff(s),
vs.
SSD Investments Ltd.,
Defendant(s).

Adversary No.: 23−03091

NOTICE OF FILING OF OFFICIAL TRANSCRIPT

An official transcript has been filed in this case and it may contain information protected under the E-Government Act of 2002, and Fed. R. Bank. P. 9037.

Transcripts will be electronically available on PACER to the public 90 days after their filing with the court. To comply with privacy requirements of Fed. R. Bank. P. 9037, the parties must ensure that certain protected information is redacted from transcripts prior to their availability on PACER.

If redaction is necessary, the parties must file a statement of redaction listing the items to be redacted, citing the transcript's docket number, the item's location by page and line, and including only the following portions of the protected information. This statement must be filed within 21 days of the transcript being filed. A suggested form for the statement of redaction is available at https://www.txs.uscourts.gov/.

- the last four digits of the social security number or taxpayer identification number;
- the year of the individual's birth;
- the minor's initials;
- the last four digits of the financial account number; and
- the city and state of the home address.

Any additional redaction requires a separate motion and Court approval.

A party may review the transcript at the Clerk's Office public terminals or purchase it by following the instruction on our website at https://www.txs.uscourts.gov/ or by calling (713) 250−5500 . A party is only responsible for reviewing the:

- opening and closing statements made on the party's behalf;
- statements of the party;
- testimony of any witness called by the party; and
- any other portion of the transcript as ordered by the court.

Redaction is your responsibility. The Clerk, court reporter, or transcriber will not review this transcript for compliance.

Nathan Ochsner
Clerk of Court