

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----X
In re: : Chapter 11
: :
Medley LLC, : Case No. 21-10526 (KBO)
: :
Debtor. :
-----X
MEDLEY LLC LIQUIDATING TRUST, :
: :
Plaintiff, : Adv. Pro. 23-50121-KBO
: :
-against- :
: :
EVERSHEDS SUTHERLAND (US) LLP, :
: :
Defendant. :
-----X

**REPLY DECLARATION OF ADAM D. COLE, ESQ. IN SUPPORT OF
DEFENDANT EVERSHEDS SUTHERLAND (US) LLP'S MOTION
FOR SUMMARY JUDGMENT BASED UPON THE RELEASE**

ADAM D. COLE, ESQ. declares under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following statements are true and correct to the best of his knowledge, information and belief:

1. I am a partner with the firm Chipman Brown Cicero & Cole, LLP, attorneys for the Defendant, Eversheds Sutherland (US) (“**Eversheds**”). I am familiar with the facts set forth herein.

2. To reduce the number of filed pages, attached hereto as **Exhibit 1** is a copy of the *minuscrit* Transcript of the December 16, 2025 Deposition of Anthony Saccullo. We will submit the full-page version of the Transcript should the Court require.

3. Attached hereto as **Exhibit 2** is a copy of the Transcript of the June 12, 2023 Deposition of Anthony Saccullo.



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4. Attached hereto as **Exhibit 3** is a copy of an email Bates Stamped ES00200377-ES00200379 produced in discovery relating to the present Motion.

5. Attached hereto as **Exhibit 4** is a copy of an email Bates Stamped ES00200267-ES00200268 produced in discovery relating to the present Motion.

6. Attached hereto as **Exhibit 5** is a copy of an email and attached letter Bates Stamped MEDLLC0012946-MEDLLC0012948 produced in discovery by the Trust relating to the present Motion.

7. For these reasons and for the reasons set forth in the Opening Brief and accompanying Reply Brief, the Court should grant summary judgment dismissing the Complaint on the ground that the claims set forth in the Complaint are barred by settlement and release.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 30, 2026.

/s/ Adam D. Cole
Adam D. Cole

Exhibit 1

IN THE UNITED BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	CHAPTER 11
)	
MEDLEY LLC,)	Case No.
)	21-10526 (KBO)
Debtor,)	

MEDLEY LIQUIDATING TRUST,)	
)	
Plaintiff,)	Adv. Pro. 23-50121-KBO
)	
Vs.)	
)	
EVERSHEDS SUTHERLAND (US))	
LLP,)	
)	
Defendant.)	

DEPOSITION TRANSCRIPT of ANTHONY M. SACCULLO,
ESQUIRE, taken at CHIPMAN BROWN CICERO & COLE, LLP,
1313 North Market Street, Suite 5400, Wilmington,
Delaware 19801, beginning at 10:00 a.m., on Tuesday,
December 16th, 2025, by and before AMY D. CORTALE, a
Professional Reporter and a Notary Public for the State
of Delaware, duly authorized to administer oaths.

A P P E A R A N C E S:

KELLEY DRYE & WARREN LLP
 BY: RANDALL L. MORRISON, JR., ESQUIRE
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Representing Plaintiff

CHIPMAN BROWN CICERO & COLE, LLP
 BY: ADAM D. COLE, ESQUIRE
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 (302) 295-0191/cole@chipmanbrown.com
 Representing Defendant

ANTHONY M. SACCULLO, ESQUIRE,
 having been first duly sworn, was
 examined and testified as follows:

- - -

E X A M I N A T I O N

- - -

BY MR. COLE:

Q. Good morning, Mr. Saccullo, how are you?

A. Good morning. Good.

Q. This is not your first deposition; right?

A. It's not my first with you.

Q. In fact, we had a deposition back in June of 2023, you recall that?

A. Yes.

Q. So I don't have to go through the rules of the road with you?

A. You do not.

Q. Now, in preparation for your deposition today, did you review that transcript from June of 2023?

A. I did.

Q. Okay. Having reviewed that

I N D E X

WITNESS PAGE
 ANTHONY M. SACCULLO, ESQUIRE

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transcript, is there anything in there, any answer you gave in there, during that deposition, that you'd like to amend today?

A. There is not.

Q. Okay. Now, if you recall, during that deposition, I asked you some background questions about you and your firm, so I just want to add a few questions to that. Is that all right?

A. Sure.

Q. So, you previously testified that you're a lawyer that specialized in restructuring and bankruptcy; is that correct?

A. Yes.

Q. And you're currently the named principal of Saccullo Law?

A. I am. It's A.M. Saccullo Legal.

Q. Saccullo Legal.

And you represented various constituents in bankruptcies, creditors, debtors, things like that?

A. I do.

Q. And your law firm did the same, right, other people in your firm represent different constituencies in bankruptcy?

Page 6

1 A. Yes.
 2 Q. How many lawyers are at the Saccullo
 3 Legal?
 4 A. Five total.
 5 Q. And during those representations over
 6 the years, did you and your firm engage in litigation
 7 on behalf of those constituencies?
 8 A. Yes.
 9 Q. And what types of litigation did you
 10 engage in?
 11 A. All matters of litigation. We do
 12 commercial litigation, breach of contract. We do D&O
 13 litigation, breach of fiduciary duty, just about
 14 everything in-between.
 15 Q. And you did avoidance actions as well?
 16 A. We have.
 17 Q. Both preference and fraudulent
 18 transfer?
 19 A. We have.
 20 Q. So, would you consider yourself
 21 experienced in those areas as a lawyer?
 22 A. I do.
 23 Q. And as part of those litigations from
 24 time to time, did you engage in settlement

Page 7

1 negotiations?
 2 A. Yes.
 3 Q. And how often would you say that
 4 happened over the course of your legal career?
 5 A. A lot.
 6 Q. And in those -- some of those
 7 settlement negotiations resulted in settlement; right?
 8 A. Yes.
 9 Q. And as part of those settlements, you
 10 negotiated the terms of the written document that
 11 ended up being the settlement?
 12 A. Yes.
 13 Q. And during those negotiations and
 14 drafting of written documents, did they typically
 15 include releases?
 16 A. Yes.
 17 Q. So, would you say you negotiated a
 18 release?
 19 A. Again, a lot.
 20 Q. So, you would say you're experienced
 21 in negotiating releases?
 22 A. I am.
 23 Q. Now, in negotiating releases, do you
 24 understand the term Scope of release?

Page 8

1 A. I do.
 2 Q. How would you describe the term Scope
 3 of release?
 4 A. Both the claims to which the release
 5 applies and the parties who are covered by the
 6 release.
 7 Q. And that's typical for most releases;
 8 right?
 9 A. Yes.
 10 Q. And you understand what a general
 11 release is?
 12 A. I do.
 13 Q. How would you describe a general
 14 release?
 15 A. General release is a broad release,
 16 where the litigants are granted a broad waiver of
 17 claims by and between one another.
 18 Q. Now, in your experience in drafting
 19 and negotiating releases, was it typical that the
 20 parties, agents, representatives, affiliates,
 21 attorneys and others, are they typically included
 22 within the definition of release parties?
 23 A. Language like that is very customary.
 24 Q. And that's language that you

Page 9

1 negotiated in the release?
 2 A. Yes.
 3 Q. So, when you see that language in a
 4 release, it's not foreign to you in any way?
 5 A. No.
 6 Q. And when you see that language in a
 7 release, you would know, given your experience, that
 8 it involves the scope of the release; right?
 9 MR. MORRISON: Note my
 10 objection.
 11 You can answer.
 12 THE WITNESS: Why don't you
 13 explain that to me.
 14 BY MR. COLE:
 15 Q. Let me rephrase. It was not a good
 16 question.
 17 A. Sure.
 18 Q. Language that includes agents,
 19 affiliates, attorneys, things of that nature, that
 20 language directly implicates the scope of the release;
 21 right?
 22 A. Along with language that deals with
 23 what claims are being released.
 24 Q. Correct. But as to the component that

Page 10

1 you were talking about related to parties that were
2 released, the language that includes attorneys, agents
3 representatives, affiliates, that would be dealing
4 with the parties that were released; correct?

5 A. Yes.

6 Q. And do you have an understanding as to
7 the reason why those affiliated parties and agents are
8 included within the broad scope of a release,
9 typically?

10 A. I do.

11 Q. What is your understanding?

12 A. To ensure that you can't sue another
13 party for that which you're releasing in the
14 settlement agreement.

15 Q. Now, have you ever served as a
16 mediator?

17 A. I have.

18 Q. How often would you say have you
19 served as a mediator?

20 A. Probably 100's of times.

21 Q. And in connection with your serving as
22 a mediator, I gather there were times where you
23 reached a settlement?

24 A. Yes.

Page 11

1 Q. And those settlements also typically
2 would include releases?

3 A. Yeah. I mean, we generally don't deal
4 with the language of mediation, but, yes.

5 Q. Right. But from time to time, the
6 scope of a release might be something that needed to
7 be negotiated as part of the mediation, isn't that
8 correct?

9 A. Yes.

10 Q. And you were experienced in at least
11 negotiating or at least mediating those questions;
12 correct?

13 A. Yes.

14 Q. Now, you also testified, back in June
15 or so, of 2023, that you have served as a bankruptcy
16 fiduciary, such as a liquidating trustee or other type
17 of fiduciary; is that right?

18 A. Yes.

19 Q. And in connection with that role,
20 similar to the role that you're in now, have you
21 engaged in litigation?

22 A. Yes.

23 Q. And that's the same type of
24 litigation, D&O litigation; right?

Page 12

1 A. Yes.

2 Q. And avoidance litigation?

3 A. Yes.

4 Q. And again, when we refer to the term
5 avoidance litigation, you understand that to be, among
6 other things, preference and fraudulent transfer
7 litigation; correct?

8 A. That's correct.

9 Q. And in a state of fiduciary, you also
10 negotiated settlements from time to time related to
11 the litigation that you were supervising; is that
12 correct?

13 A. Generally, it's done through counsel.

14 Q. Correct.

15 A. I oversee counsel.

16 Q. I want to get into that in a moment.

17 A. Sure.

18 Q. But, you are the party in those -- in
19 most of the circumstances, correct, as a fiduciary?

20 A. That's correct.

21 Q. And let's talk about your process in
22 that role. Okay?

23 A. Sure.

24 Q. I think you mentioned that, typically,

Page 13

1 counsel negotiates the terms of the agreement;
2 correct?

3 A. Uh-huh.

4 Q. You have to say yes.

5 A. Yes.

6 Q. And just typical practice, and we'll
7 get to what you did here, but typical practice would
8 be a settlement in -- a settlement is reached, or a
9 proposed settlement is reached, what happens next in
10 your practice, with regard to who negotiates the terms
11 of the agreement?

12 MR. MORRISON: Just to be
13 clear, this is generally speaking?

14 MR. COLE: Yeah.

15 BY MR. COLE:

16 Q. I said we'll get to what happened here
17 in a moment, I just want to understand your general
18 process as a fiduciary.

19 A. So I'm not sure I understand the
20 difference between a settlement being reached and then
21 negotiating the terms.

22 Q. Okay. Let me -- it's a fair comment.

23 During the course of a negotiation,
24 general terms are arrived at, and then, typically,

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1 there's an agreement written. Is that your
2 understanding?

3 A. Yes.

4 Q. All right. And in reaching just the
5 general terms, the monetary terms, you know, the
6 general terms of the agreement, what's your role in
7 that part of the process, in general?

8 A. So it certainly depends on how the
9 negotiations are going. Generally, it is counsel to
10 counsel. There are times where counsel will ask me to
11 attend a meeting and to negotiate with the principal
12 directly because they think that would be more
13 fruitful, so it really depends on the course of the
14 litigation.

15 Q. Okay. And then, the settlement and
16 principal is reached, and we're in the time where
17 something has to be written down in a formal document,
18 okay, who writes the formal document?

19 A. Generally, counsel for one of the two
20 sides.

21 Q. And in your practice, do you receive,
22 over the course of the negotiation of that document,
23 various drafts and comments, typically?

24 A. That really depends on the case.

Page 15

1 Q. Okay. All right. Let's talk about
2 what happened here.

3 There are a number of agreements that
4 were reached between the time you were appointed, or
5 Saccullo Business was appointed trustee and, say,
6 April of 2023; correct?

7 Let me rephrase so it's an easier
8 question.

9 A. Sure thing.

10 Q. In connection with the Taubes -- and
11 you understand who I mean by the Taubes?

12 A. I do.

13 Q. And you understand what I mean by
14 Medley Management?

15 A. I do.

16 Q. And that's Medley Management
17 Corporation; right?

18 A. Inc.

19 Q. Inc.

20 And then the debtor, I'll refer to
21 Medley or the debtor. Okay?

22 A. Sure.

23 Q. And the Taubes were Seth and Brook
24 Taube?

Page 16

1 A. Yes. I believe there's another Taube,
2 but I think Seth and Brook are the Taubes.

3 Q. Now, in connection with your role, or
4 Saccullo Business roll as trustee, there was a
5 negotiation of a series of agreements with those
6 parties; is that right?

7 A. Yes.

8 Q. Now, the first agreement that I want
9 to refer to is what we call the settlement agreement
10 reached in March of 2022. Do you recall that
11 agreement?

12 A. I do.

13 Q. What was the process that you used --
14 let me rephrase it. Let me start over again.

15 You were appointed in October of 2021?

16 A. That's correct.

17 Q. All right. And upon being appointed
18 on October '21, I gather you hired professionals to
19 help you?

20 A. I did.

21 Q. And which professionals did you hire
22 to help you?

23 A. So Kelley Drye & Warren was hired as
24 general counsel to the trust. Potter Anderson &

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1 Corroon was hired as Delaware counsel to the trust.
2 And Reid Collins & Tsai was hired as special
3 litigation counsel.

4 Q. And just so that I understand
5 everybody's roles, what was Kelley Drye's role as
6 general counsel to the trust? What was -- what were
7 their responsibilities?

8 A. So any essential bankruptcy matters,
9 any issues concerning the administration of the trust,
10 would be handled by Kelley Drye.

11 Q. Was Kelley Drye involved in
12 negotiation litigation settlements as well?

13 MR. MORRISON: Just note my
14 objection.

15 I think you can answer this
16 question without revealing privilege
17 information, but I just direct you to --

18 BY MR. COLE:

19 Q. I'm not asking for any advice. I'm
20 just asking what Kelley -- I'm trying to understand
21 Kelley Drye's role.

22 A. Yes.

23 Q. Okay. And I believe you said that
24 Potter Anderson was, I guess, local counsel; is that

Page 18

1 right?

2 A. Yes.

3 Q. And was Potter Anderson involved in
4 negotiating settlements?

5 A. I don't recall that they were.

6 Q. How did you come to hire Kelley Drye?

7 A. We interviewed Kelley Drye upon my
8 appointment. Kelley Drye had a familiarity with the
9 case and they had familiarity with the trust and the
10 terms and provisions of the plan and the trust
11 agreement. They were a natural hire.

12 Q. Had you ever hired Kelley Drye in the
13 past as a fiduciary?

14 A. I don't believe that I had.

15 Q. What was Kelley Drye's role in the
16 bankruptcy, if any, prior to your appointment as --
17 prior to Saccullo Business appointment as trustee?

18 A. They were counsel to the official
19 committee of unsecured creditors.

20 Q. And your understanding is that Kelley
21 Drye obtained a working knowledge of the case and the
22 structure of the bankruptcy through that role?

23 A. In many aspects, yes.

24 Q. All right. Were you concerned in any

Page 19

1 way about Kelley Drye's experience prior to retaining
2 them as counsel?

3 A. I was not.

4 Q. What did you understand Kelley Drye's
5 experience was as bankruptcy lawyers, other than in
6 this case?

7 A. I've worked around them for 20 some
8 odd years.

9 Q. They're an experienced firm; right?

10 A. They are well-known in the industry.

11 Q. And do you know who Jim Carr is?

12 A. I do.

13 Q. And Jim Carr is a well-known
14 bankruptcy lawyer in the industry?

15 A. He is.

16 Q. And you would consider him an
17 experienced lawyer?

18 A. I would.

19 Q. Now, you also said you hired Reid
20 Collins?

21 A. I did.

22 Q. And that firm is -- you hired as
23 special litigation counsel?

24 A. I did.

Page 20

1 Q. And what was the -- what's the purpose
2 of special litigation counsel?

3 A. In general or in this case?

4 Q. That's fair enough.

5 In this case, you hired Reid Collins
6 as special litigation counsel; right?

7 A. Yes.

8 Q. What did you understand Reid Collins
9 role was as special litigation counsel was in the
10 Medley matter?

11 A. Investigating and prosecuting causes
12 of action against the Taubes, Medley Management, and I
13 believe that's it, certain other officers and
14 directors.

15 Q. Had you previously retained Reid
16 Collins as counsel as a fiduciary?

17 A. I don't recall that I had.

18 Q. How did you come to retain Reid
19 Collins?

20 A. Reid Collins interviewed with the
21 trust, I believe they also interviewed with the trust
22 oversight committee and they were selected as counsel.

23 Q. And at the time, what was -- when you
24 say trust oversight committee, who is that, who is on

Page 21

1 that committee, in general?

2 A. You're talking about in this case?

3 Q. The trust oversight committee in this
4 case, yeah.

5 A. Three creditors.

6 Q. So you're appointed in October of
7 2021, how soon after your appointment did you retain
8 Reid Collins?

9 A. Within the month.

10 Q. And what did you -- what was your
11 understanding of Reid Collins experience in litigating
12 claims, the types of claims that they were being
13 retained for?

14 A. They are a well-known litigation shop.

15 Q. You would consider them experienced in
16 that role?

17 A. I do.

18 Q. And did you have an understanding
19 that, as part of their practice, they negotiate
20 settlements of litigations?

21 A. Yes.

22 Q. And as the estate fiduciary for
23 Medley, you -- did you have an understanding that Reid
24 Collins would know how to negotiate a release?

Page 22

1 A. Yes.

2 Q. Now, during this period of time, I
3 believe you testified that Kelley Drye and Reid
4 Collins were -- withdrawn. You didn't say that. Let
5 me rephrase that.

6 In connection with the settlement
7 agreement that we just discussed a moment ago, who, on
8 behalf of the trust, was negotiating the terms?

9 A. Reid Collins and Kelley Drye, and on
10 occasion, I joined calls as well.

11 Q. Okay. Now, let's go back to the
12 process that you used.

13 A. Uh-huh.

14 Q. I saw in the documents drafts going
15 back and forth, from time to time you were listed as
16 part of it, a lot of times you weren't, all right, you
17 understand that that's in the record -- in the
18 documents; correct?

19 A. I haven't seen the documents.

20 Q. Fair enough.

21 But you would expect that because the
22 lawyers are doing the negotiating; right?

23 A. It does not surprise me, correct.

24 Q. Okay. So, during the negotiations of

Page 24

1 A. I don't recall.

2 Q. So were --

3 A. Certainly in any way we were involved
4 in providing them with the information and providing
5 access. As far as the analysis, I don't recall.

6 Q. Okay. So, you don't recall Saccullo
7 Business -- withdrawn.

8 Does Saccullo Business have, on staff,
9 accounting type people, accountants?

10 A. Yes.

11 Q. Were any accountants from Saccullo
12 Business involved in tracing cash out of the debtor?

13 A. I don't recall.

14 Q. Fair enough.

15 But you will say that at least counsel
16 was involved in analyzing those claims?

17 A. Yes.

18 Q. And when did counsel determine -- and
19 I don't want to know what they said to you, I just
20 want to know a date, approximate date.

21 When, approximately, did counsel
22 determine that there were potential avoidance claims?

23 MR. MORRISON: Note my

24 objection.

Page 23

1 the settlement agreement, I just want to understand
2 the process, you're appointed in October of 2021;
3 right?

4 A. Yes.

5 Q. And the settlement agreement, I
6 believe in your Declaration that we'll get to in a
7 moment, related to avoidance actions; right?

8 A. In part, yes.

9 Q. What else did it deal with?

10 A. There were also, I believe, certain
11 SEC issues that were released in that same settlement
12 agreement.

13 Q. Let's just focus on the avoidance
14 action piece. All right?

15 A. Yes.

16 Q. October 2021, you're appointed, I
17 believe you testified previously that you had access
18 to certain documents and access to certain bank
19 statements. After October of 2021, who analyzed the
20 bank statements and records to term whether or not
21 there were avoidance actions?

22 A. Counsel.

23 Q. Was Saccullo Business involved in that
24 in any way?

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1 I think you can answer this
2 without revealing privileged
3 information, based on the fact that he's
4 asking for a date, but I just caution
5 you not to reveal privileged information
6 in connection with your answer.

7 THE WITNESS: In general?

8 BY MR. COLE:

9 Q. In general, in this case. I mean,
10 you're appointed in October, I want to know when you
11 felt you understood that there were potential
12 avoidance claims.

13 A. So, the first avoidance claims that
14 were flagged were avoidance claims against the Taubes
15 and against other of these sort of directors and
16 officers and affiliated entities.

17 Q. Do you have a general recollection as
18 to when that would have occurred?

19 A. I don't. Certainly before March. As
20 far as when between October and March, I don't recall.

21 Q. Okay. Well, I think we can get to
22 that in a moment.

23 Do you have an understanding, a
24 general understanding, as to how, either a lawyer or a

Page 26

1 accountant, might analyze potential avoidance claims?

2 A. Yes.

3 Q. Okay. How would they go about doing
4 that?

5 A. So, to do it properly, you would look
6 at the bank statements, you would determine what
7 transfers were made within the 90 days prior to the
8 petition, and the two or four years prior to the
9 petition. And you would see if they meet the standard
10 for either a preference or a fraudulent transfer.

11 Q. So, at the time when there was a
12 determination made in this case -- and I know you
13 don't necessarily recall, I'm just asking you based
14 upon your experience -- if somebody indicated to you,
15 whether a lawyer or accountant, indicated to you that
16 there's a potential preference claim, would you, by
17 that point in time, have understood that person to
18 have relied on bank statements and internal documents
19 from the company?

20 A. Yes.

21 Q. And in this case, I believe -- I
22 believe you testified that the lawyers were -- or you
23 remember the lawyers being the persons who evaluated
24 avoidance actions, I gather by that point in time,

Page 27

1 when the lawyers indicated there may be an avoidance
2 action, Saccullo Business had already provided bank
3 statements to those lawyers; is that right?

4 A. I don't recall.

5 MR. MORRISON: Note my
6 objection.

7 But you can answer.

8 THE WITNESS: Yeah, I don't
9 recall.

10 BY MR. COLE:

11 Q. But you would expect that, because
12 otherwise, what document would lawyers be able to
13 refer to; right?

14 A. That's correct.

15 Q. Now, just sticking with the process.
16 So, now, you determine at some point
17 that there are claims against certain parties for
18 avoidance claims?

19 A. Right.

20 Q. So, the process, what process followed
21 that, did the lawyers negotiate at that point the
22 settlement agreement?

23 MR. MORRISON: Note my
24 objection.

Page 28

1 But you can answer.

2 BY MR. COLE:

3 Q. Let me rephrase it.

4 We're talking about the original
5 settlement agreement in March. Okay?

6 A. Okay.

7 Q. I'm trying to understand what your
8 role was in that negotiation.

9 I believe you testified that,
10 typically, it's your practice that lawyers conducted
11 the negotiations; is that right?

12 A. Yes. And at times --

13 Q. And at times you get on the phone?

14 A. -- I'm involved, correct.

15 Q. Okay. So, during the times when the
16 lawyers are negotiating the settlement, where you're
17 not on the telephone, you understand the lawyers would
18 be exchanging various drafts; correct?

19 A. Of the settlement agreement?

20 Q. Yeah.

21 A. Yeah. I mean, long before the
22 settlement agreement, they would also be exchanging
23 different documents, different letters back and forth.

24 Q. And without getting into detail, was

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1 it your practice, or was it the practice in this case,
2 for the lawyers to report back to you about various
3 drafts or various changes being appropriated by your
4 adversaries?

5 A. Yes.

6 Q. And what role did you have -- I'm not
7 asking for specifics, like, what you said, I'm asking
8 what role did you have in commenting on statements
9 made to you by your lawyers about what drafts were
10 being exchanged? In other words -- let me rephrase
11 it.

12 Were you provided with the --
13 withdrawn.

14 When an adversary provided a proposed
15 change to a draft, was it typical, in connection with
16 the settlement agreement, for you to receive those
17 changes and make comments on them?

18 A. Yes.

19 Q. And in making those comments --
20 withdrawn.

21 Do you recall that actually happening,
22 in connection with the settlement agreement, having
23 received drafts from the other side and making
24 comments on it?

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1 A. Specifically?
 2 Q. Yeah.
 3 A. No.
 4 Q. But you would think you did; right?
 5 A. Yes.
 6 Q. All right. And in reviewing those
 7 drafts, did you read the -- is it typical for you to
 8 read the entire draft to see if there was anything
 9 that you noticed that might bother you?
 10 A. Typically?
 11 Q. Yes.
 12 A. Yes.
 13 Q. And you used your experience as a
 14 lawyer -- you brought your experience as a lawyer in
 15 reviewing those documents; is that correct?
 16 MR. MORRISON: Are you talking
 17 about in drafts of the settlement
 18 agreement in this case?
 19 MR. COLE: That's all I'm
 20 talking about right now, yes.
 21 BY MR. COLE:
 22 Q. In connection with the settlement
 23 agreement, you brought your experience as a lawyer in
 24 reviewing each draft that was provided to you by your

Page 31

1 counsel?
 2 A. I only have one read.
 3 Q. Okay. Now, do you recall, in this
 4 case, at least with respect to the original settlement
 5 agreement in March, that there were negotiations
 6 associated with the scope of the release in that
 7 settlement agreement?
 8 A. Specifically?
 9 Q. Yeah.
 10 A. No.
 11 Q. All right. But, again, you would
 12 have -- your process would have included closely --
 13 well, withdrawn.
 14 Your process, however, would have
 15 included reviewing the releases on your own to see if
 16 there's anything in the release that would concern
 17 you; is that fair?
 18 A. Yes. Though, I rely on the advice of
 19 counsel.
 20 Q. Yeah. And at the time, you had two
 21 sets of counsel; right?
 22 A. I did.
 23 Q. And as you said, they're very
 24 experienced in what they did; right?

Page 32

1 A. Yes.
 2 Q. Okay. My question is, notwithstanding
 3 their experience, if you saw something that you had a
 4 question about or a concern about, you would raise
 5 that with those lawyers?
 6 MR. MORRISON: Note my
 7 objection.
 8 You can answer.
 9 THE WITNESS: I do.
 10 MR. COLE: All right. Let's
 11 mark, as Saccullo Exhibit 1, the
 12 Declaration of Anthony M. Saccullo, and
 13 it's signed and dated December 8th,
 14 2025.
 15 (Whereupon, Exhibit Saccullo-1
 16 was marked for identification.)
 17 BY MR. COLE:
 18 Q. Mr. Saccullo, I handed you the
 19 Declaration of Anthony M. Saccullo. I gather you
 20 recognize this document?
 21 A. I do.
 22 Q. Now, this has a typed signature on the
 23 last page. Do you see that?
 24 A. I do.

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1 Q. That, you agree, that's your
 2 signature; right?
 3 A. It is.
 4 Q. Okay. We're going to be referring to
 5 this document along the way, so you should probably
 6 keep it separate. All right?
 7 A. Okay.
 8 Q. Now, you were -- it confirms that you
 9 were retained on October 18, this is paragraph one,
 10 as -- withdrawn.
 11 It confirms that Saccullo Business was
 12 retained as trustee on October 8th, 2021.
 13 How long after that time did you
 14 understand that Eversheds was representing the debtor?
 15 A. So, this confirms October 18th, not
 16 the 8th.
 17 Q. I'm sorry. 18th. I apologize. Let
 18 me rephrase the question.
 19 How long after the Saccullo Business
 20 was appointed trustee did you, or Saccullo Business,
 21 learn that Eversheds had been representing the debtor?
 22 A. Specifically, I don't remember
 23 exactly. It was very shortly thereafter.
 24 Q. And did you ever have -- well,

Page 34

1 withdrawn.

2 In that period of time, shortly
3 thereafter being appointed, did you have an
4 understanding that Eversheds represented others as
5 well, in the SEC matter?

6 A. At the very outset of the case, yes.
7 They had a filing that they needed to submit on behalf
8 of the debtor and others almost immediately after my
9 appointment.

10 Q. Now, we're going to refer to the SEC
11 matter. You understand what that is?

12 A. I do.

13 Q. And that refers to an SEC
14 investigation against Medley Management, Medley and
15 others, relating to the debtors and others business;
16 correct?

17 A. I'm not sure that investigation was
18 against the debtor.

19 Q. Fair enough.
20 How would you describe the
21 investigation? We'll just use your --

22 A. I believe the debtor was an interested
23 party and the SEC was investigating directors and
24 officers.

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1 Q. So, as you sit here today, you don't
2 believe the debtor was being investigated as well?

3 A. I don't remember the official
4 designation of the debtor, whether they were an
5 interested party or actually a subject of the
6 investigation by the SEC.

7 Q. And when did you find out who was the
8 subject of the investigation by the SEC?

9 A. Very shortly after, in the same
10 conversation with Eversheds.

11 Q. So, after being appointed, that's --
12 you learned that Eversheds was representing a debtor
13 and others, and I gather that you had a conversation
14 with Eversheds, in particular, in connection with this
15 submission that Eversheds had to make. Is that fair?

16 A. Yes.

17 Q. And was that the first conversation
18 you had with Eversheds?

19 A. I believe it was.

20 Q. Okay. At that point in time, in
21 October of 2021, I gather it's around October 2021;
22 right?

23 A. Yes.

24 Q. Were you advised that any of the other

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1 parties, any of the parties that were subjects of the
2 investigation, had retained separate counsel?

3 MR. MORRISON: Note my
4 objection.

5 You can answer.

6 THE WITNESS: I don't believe I
7 was.

8 BY MR. COLE:

9 Q. Okay. When did you -- did you ever
10 find that out, that other parties were represented by
11 separate counsel?

12 A. Yes.

13 Q. And when, to your recollection, did
14 you find that out?

15 A. That was through the negotiation of
16 the causes of action that the estate had against the
17 same individuals and entities.

18 MR. COLE: Let's mark as
19 Exhibit 2, this is a letter from Reid
20 Collins dated January 26 of 2022, to
21 various insurers.

22 Let me restart.

23 Let's mark as Exhibit 2, this
24 is a letter from Reid Collins to Bruce

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1 Bettigole, dated January 26, 2022.

2 (Whereupon, Exhibit Saccullo-2
3 was marked for identification.)

4 BY MR. COLE:

5 Q. Mr. Saccullo, I'm showing you what's
6 marked as Saccullo Exhibit 2. Do you recognize that
7 letter?

8 A. Do I recognize it?

9 Q. Yes.

10 A. I mean, I don't have a recollection of
11 it, but I understand what it is.

12 Q. Right. And you see, on the second
13 page it's signed by Eric Madden, and he's from Reid
14 Collins; right?

15 A. Yes.

16 Q. And you are CC'd on that. Do you see
17 that?

18 A. I am, yes.

19 Q. Do you have any reason to believe
20 that, in realtime, Mr. Madden would not have sent this
21 to you?

22 A. No.

23 Q. Now, it says, in the first paragraph
24 that -- and this is -- withdrawn.

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1 So, this is as of January 26, 2022.

2 Do you see that?

3 A. That's the date on the letter, yes.

4 Q. And it says in the first paragraph
5 that -- it introduces Saccullo Business as the
6 trustee. And then, the second sentence, it says
7 Eversheds Sutherland (US) LLP, of course, serves as
8 counsel to Medley, its parent entity Medley
9 Management, and perhaps others.

10 As of January 26, 2022, was that your
11 understanding, that Eversheds had continued to
12 represent Medley Management and the debtor?

13 A. So, Eversheds fired us as a client
14 fairly early on. I don't recall when they did it,
15 visive this letter.

16 Q. When you say us --

17 A. The debtor.

18 Q. The debtor.

19 Do you have a recollection that the
20 SEC made a determination not to proceed against the
21 debtor with any type of enforcement action?

22 A. Yes. We got an action letter.

23 Q. And was it around the time that the no
24 action letter or an indication that the SEC would not

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1 be pursuing a regulatory action against the debtor,
2 that was around the moment that Eversheds fired Medley
3 as a client?

4 A. I actually think they fired the debtor
5 before the no action letter.

6 Q. And do you have an understanding as to
7 why Eversheds fired the debtor?

8 A. No.

9 Q. It says here that Eversheds
10 represented Medley Management. Do you see that?

11 A. I do.

12 Q. As you sit here today -- withdrawn.

13 Were you ever advised that Medley
14 Management had fired Eversheds?

15 A. I was advised that they had other
16 counsel, yes.

17 Q. My question is, were you advised that
18 Medley Management had fired Eversheds?

19 A. I don't recall ever being advised of
20 that.

21 Q. Were you ever told that Eversheds
22 fired Medley Management as a client?

23 MR. MORRISON: Note my
24 objection.

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1 You can answer.

2 THE WITNESS: I don't recall

3 being advised that either.

4 BY MR. COLE:

5 Q. Now, it says here that, refers to
6 perhaps others, with respect to, In Re, Matter of
7 Medley Capital Corporation. Are you aware of
8 Eversheds representing any other individuals or
9 entities other than Medley Management and Medley?

10 A. I am not.

11 Q. So, if I ask you whether or not you
12 know whether Eversheds was ever fired by any of these
13 other people, you wouldn't know; is that right?

14 A. I would not.

15 Q. Now, by this time, January 26, just
16 putting a date on it, is it your understanding, by
17 this period of time, the lawyers for the estate had
18 received information from which they could analyze
19 avoidance actions? Does this refresh your memory on
20 that?

21 A. No. It doesn't.

22 Q. Okay. Now, after this letter was
23 sent, and I know you don't remember this letter
24 itself, but I'm talking about the date, really, did

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1 the estate or the lawyers for the estate receive, for
2 example, the Wells Submissions?

3 A. I don't recall.

4 Q. All right.

5 MR. COLE: Let's mark, as
6 Exhibit 3, this is a Supplemental Wells
7 Submission on behalf of Medley
8 Management and Medley, LLC, dated
9 October 12th, 2021.

10 (Whereupon, Exhibit Saccullo-3
11 was marked for identification.)

12 BY MR. COLE:

13 Q. Mr. Saccullo, showing you Exhibit
14 Number 3, I'll ask if this is refreshes your memory
15 about having seen a Wells Submission submitted by
16 Eversheds?

17 MR. MORRISON: At any point in
18 time?

19 MR. COLE: Yeah.

20 THE WITNESS: Specifically, I
21 do not remember.

22 BY MR. COLE:

23 Q. All right. Fair enough.

24 But I think you testified that you

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1 understood as of, at least January of 2022, that
2 Eversheds continued to represent Medley Management at
3 that moment; is that right?

4 MR. MORRISON: Note my
5 objection.

6 You can answer.

7 THE WITNESS: I'm not sure that
8 I testified to that.

9 BY MR. COLE:

10 Q. Okay. Well, if you didn't, I
11 apologize.

12 As of January 26, 2022, when the
13 letter was sent asking for the Wells notices, you
14 understood that Eversheds had continued to represent
15 Medley Management; right?

16 A. Yeah. I have no reason now to doubt
17 the letter.

18 Q. And who is representing -- withdrawn.
19 And Eversheds representation was in
20 connection with the SEC matter, at least the
21 investigation in the SEC matter; right?

22 MR. MORRISON: Note my
23 objection.

24 You can answer.

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1 THE WITNESS: Their
2 representations of the debtor?

3 BY MR. COLE:

4 Q. Withdrawn.

5 Let's talk about -- Eversheds
6 representation of Medley Management was in connection
7 with the investigation being conducted by the SEC; is
8 that right?

9 MR. MORRISON: Note my
10 objection.

11 You can answer.

12 THE WITNESS: I wasn't involved
13 in Medley Management's direction of
14 Eversheds.

15 BY MR. COLE:

16 Q. Fair enough.

17 As of January 26, 2022, Eversheds had
18 been representing the debtor in connection with the
19 investigation being conducted by the SEC; correct?

20 A. I believe that's correct.

21 Q. All right. And are you aware of any
22 other counsel at that time representing the debtor in
23 the SEC?

24 A. In the SEC investigation?

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1 Q. Yes.

2 A. I am not.

3 Q. Do you know of any other counsel
4 representing Medley Management in connection with the
5 SEC investigation?

6 A. I believe Adele Hogan was representing
7 Medley Management in the SEC investigation.

8 Q. As of January 2022?

9 A. I do not recall the exact date.

10 Q. Okay. And what about the Taubes, who
11 was representing the Taubes in connection with the SEC
12 investigation?

13 A. Doug Koff.

14 Q. Are you aware of any other lawyers
15 representing the Taubes in connection with the SEC
16 investigation?

17 A. I was not.

18 MR. COLE: Let's mark, as
19 Exhibit 4, this is the Supplemental
20 Wells Submission on behalf of Brook and
21 Seth Taube dated October 26 of 2021.

22 (Whereupon, Exhibit Saccullo-4
23 was marked for identification.)

24 BY MR. COLE:

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1 Q. Mr. Saccullo, I'm showing you Saccullo
2 Exhibit 4, and I'll ask you if you recognize that
3 document?

4 MR. MORRISON: Do you have a
5 copy?

6 MR. COLE: I'm sorry. Yes. I
7 do have a copy.

8 MR. MORRISON: Thank you.

9 THE WITNESS: I don't have any
10 specific recollection of this.

11 BY MR. COLE:

12 Q. Prior to January 20th -- withdrawn.

13 As a fiduciary of the debtor, did you
14 ever learn that Eversheds had represented the Taubes
15 in connection with the SEC investigation? We're
16 talking about them individually.

17 A. I believe so.

18 Q. All right. As you sit here today, do
19 you have any understanding as to whether or not the
20 Taubes ever fired Eversheds counsel?

21 A. Any understanding, yes.

22 Q. Okay. What is that understanding?

23 A. I understood that they were replaced
24 by Doug Koff.

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1 Q. Okay. And what is the basis of that
2 understanding?

3 A. Well, Doug negotiated the settlement
4 agreement that resolved the SEC investigation on
5 behalf of the Taubes.

6 Q. Okay.

7 A. And we were part of that negotiation
8 and a party to the -- well, a party to an agreement
9 for which the SEC resolution was an ancillary
10 condition precedent.

11 Q. So, I believe your testimony is, if I
12 understand it correctly, is that Doug Koff was the
13 person who engaged in the negotiation in connection
14 with the settlement agreement with the SEC, among
15 other things; right?

16 A. Yes.

17 Q. My question was, do you have any
18 understanding that Eversheds had been fired as counsel
19 for the Taubes?

20 MR. MORRISON: Note my
21 objection.

22 You can answer.

23 THE WITNESS: I would say the
24 same answer, yes.

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1 BY MR. COLE:

2 Q. Did you ever see -- did anybody even
3 tell you that Eversheds had been fired as counsel for
4 the Taubes?

5 A. No.

6 Q. So, your understanding is based upon
7 who, in essence, who conducted the negotiations on
8 behalf of the Taubes?

9 MR. MORRISON: Note my
10 objection.

11 You can answer.

12 THE WITNESS: Yes. And drafted
13 the documents that we saw and was a
14 party to negotiating those documents,
15 was a party to negotiating the agreement
16 with us that also contained that
17 condition precedent of an ancillary
18 document.

19 BY MR. COLE:

20 Q. Okay. Was there ever any discussion,
21 in your recollection, as to what would happen if no
22 settlement or no agreement had been reached with the
23 SEC?

24 MR. MORRISON: Just note --

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1 MR. COLE: That's a bad
2 question. There's a lot that you can
3 say.

4 MR. MORRISON: Note my
5 objection.

6 BY MR. COLE:

7 Q. Let me rephrase it.

8 A. The world keeps spinning.

9 Q. Among other things.

10 Was there ever discussion that the SEC
11 would proceed with its regulatory investigation and
12 potentially a regulatory matter against the Taubes if
13 no settlement was reached with the SEC? Do you recall
14 any discussion about that?

15 MR. MORRISON: Note my
16 objection.

17 I would just direct you not to
18 reveal -- I think you can answer it by
19 doing so, but I would instruct you not
20 to reveal privileged communications.

21 THE WITNESS: I don't recall.

22 BY MR. COLE:

23 Q. So, as you sit here today, if the SEC
24 proceeded against the Taubes, you can't tell me which

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1 law firm would have represented the Taubes in that --
2 in that litigation; right?

3 A. I can tell you my understanding, is
4 that Koff and Schulte Roth would have handled it.

5 Q. And taking a look at Exhibit 4.

6 A. Yes.

7 Q. This is dated October 26 of 2021,
8 which is shortly after you were appointed as, or
9 Saccullo Business was appointed as trustee; right?

10 A. Yes.

11 Q. And it refers to the law firm
12 representing -- withdrawn.

13 It's entitled, Supplemental Wells
14 Submission on behalf of Brook Taube and Seth Taube.
15 Do you see that?

16 A. I do.

17 Q. And it's submitted -- or withdrawn.

18 The law firm that prepared, or appears
19 to have prepared it, was Wilmer Cutler Pickering Hale
20 & Door. Do you see that?

21 A. I do.

22 Q. Does this refresh your memory that the
23 Taubes had been represented by a law firm other than
24 Eversheds and other than Schulte in conduction with

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1 the SEC investigation?

2 A. It does not.

3 Q. Had you had any understanding that
4 Wilmer Cutler was involved in any way?

5 A. I don't recall.

6 Q. Was there ever a claim made by Wilmer
7 Cutler for legal fees associated with the SEC
8 investigation, that you recall? Withdrawn. Let me
9 rephrase.

10 Did Wilmer Cutler ever make a claim
11 against the estate for legal fees in connection with
12 their work on the SEC matter?

13 A. Not that I recall.

14 Q. Do you recall if Wilmer Cutler ever
15 made a claim to insurance proceeds in connection with
16 its work on the SEC matter on behalf of Seth and Brook
17 Taube.

18 MR. MORRISON: Note my
19 objection.

20 You can answer.

21 THE WITNESS: Again, not that I
22 recall specifically sitting here.

23 BY MR. COLE:

24 Q. So, that doesn't refresh your memory

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1 about Wilmer Cutler at all; correct?

2 A. It does not.

3 Q. And I gather that, because you don't
4 recall Wilmer Cutler even being involved, you don't
5 recall them ever being fired by the Taubes?

6 A. I do not.

7 Q. Okay. All right. Let's go back to
8 your Affidavit.

9 So, we're up to paragraph three. It
10 says, following the effective date, the liquidating
11 trust, through its retained professionals,
12 investigated potential estate cause of action against
13 Medley Management, Brook and Seth Taube, and certain
14 former executives of the debtor. Do you see that?

15 A. I do.

16 Q. And that's what you just testified to
17 just earlier, that almost immediately after being
18 appointed, the trust, the liquidating trustee and its
19 professionals conducted that investigation, right, or
20 began to conduct that investigation; right?

21 A. Yes.

22 Q. Now, the next sentence says, the
23 liquidating trust investigation included potential
24 avoidance actions under chapter 5 of the Bankruptcy

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1 Code and local state and federal law analogues. Do
2 you see that?

3 A. I do.

4 Q. And when you say chapter 5 of the
5 Bankruptcy Code, are you referring to preference and
6 fraudulent claims?

7 A. There are other sections of chapter 5,
8 but, yes, it includes both avoidance actions and
9 preference and fraudulent claims.

10 Q. Let me rephrase the question.

11 In the investigation in connection
12 with -- withdrawn.

13 The investigation referred to in this
14 paragraph, what were the chapter 5 claims that the
15 liquidating trust had investigated after being
16 appointed?

17 A. I believe those would have been
18 preference actions and fraudulent transfer actions
19 against the parties who are listed. So, Brook and
20 Seth, Medley Management, and former officers and --
21 executives, excuse me.

22 Q. And those are the investigations that
23 would be conducted using the bank statements and other
24 financial records of the company; right?

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1 A. Yes.

2 Q. All right. So, is it fair to say
3 that, shortly after being appointed, the trust and its
4 counsel had information sufficient to conduct chapter
5 5 claim investigations against other parties as well?

6 MR. MORRISON: Note my
7 objection.

8 You can answer.

9 THE WITNESS: Yes.

10 BY MR. COLE:

11 Q. It says here, in addition to the these
12 Taube avoidance action claims, the liquidating trust
13 also investigated breach of fiduciary duty and other
14 similar claims. Do you see that?

15 A. Yes.

16 Q. As you sit here today, do you have an
17 understanding as to what those breach of fiduciary
18 duties and other similar claims were?

19 A. Yes.

20 Q. Could you please describe what those
21 claims were?

22 A. So, in high level, they were breach of
23 fiduciary duty and related causes of action against
24 Seth and Brook and Medley Management for, at a high

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1 level, for their inadequate management of the debtor
2 and their use of the debtor, essentially as a piggy
3 back -- a piggy bank, excuse me, for themselves and
4 management.

5 Q. When you say piggy bank, I gather what
6 you mean is that, money was being transferred over the
7 course of time, money had been transferred from the
8 debtor to Medley Management or the debtor to
9 individuals?

10 A. Yes. So there's a very complicated
11 set of facts that I think is outside of the scope of
12 this, that deals with both the pre-April and the
13 post-April ways in which these directors and officers
14 breached their fiduciary duties and how they were
15 managing the affairs and the shift in the management
16 of affairs, all of which breached their fiduciary
17 duty.

18 Q. Okay. And we'll talk -- we'll touch
19 on the pre and post in a little bit.

20 But, in general, I believe, when you
21 refer to the breach fiduciary duty claims, you're
22 talking about money that was once at Medley, at the
23 debtor, that had gone out of the debtor to some other
24 entity for purposes of either dividends or a person as

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1 a fraudulent transfer or things like that; is that
2 right?

3 A. That's one fraction of it, yes.

4 Q. Okay. Were the breach of fiduciary
5 duty claims that were investigated related to the same
6 transfers as the avoidance claims that were being
7 investigated?

8 A. I'm not sure I understand that
9 question.

10 Q. All right. The prior sentence talks
11 about, in this paragraph, talks about the liquidating
12 trust investigation included avoidance actions arising
13 from chapter 5. Do you see that?

14 A. Yes.

15 Q. And you understand that avoidance
16 actions are, under chapter 5, include, the debtor
17 making transfers of property or cash within the 90-day
18 period prior to the debtors' filing for bankruptcy as
19 a preference claim; right?

20 A. Yes.

21 Q. And I believe you testified earlier
22 that, transfers from the debtor, either two or four
23 years prior to the bankruptcy, could also be chapter 5
24 claim in the form of a fraudulent transfer; right?

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1 A. Yes.

2 Q. My question is, in investigating the
3 D&O claims, were the transfers out of the debtor that
4 were investigated as chapter 5 claims, related to the
5 same transfers as the D&O claims?

6 A. The D&O claims don't just encompass
7 transfers out of the debtor. So, they might have been
8 one small subsection of that, but, no, they were
9 separate and discreet from -- that's why we settled
10 them separately.

11 Q. All right. So, I'm not sure I
12 understand. And I apologize for rephrasing the
13 question.

14 A. Sure thing.

15 Q. I understand what you're saying, that
16 the D&O claims as a whole involved not just transfers,
17 but a whole bunch of things, right, I think that's
18 what you're saying?

19 A. Yes.

20 Q. And there was a section where it did
21 involve transfers out of the debtor, isn't that right,
22 where, for example, the executives knew that the
23 company was insolvent, the debtor was insolvent, but
24 then made transfers out of the debtor nonetheless?

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1 A. So, sitting here today, I would have
2 to rely on the mounds of paper that settled these
3 causes of action to see how these lines were drawn.

4 What I know is, we settled the
5 avoidance action claims through a separate agreement
6 while still preserving the breach of fiduciary duty
7 claims, both pre and post-April 2019. And I believe
8 that the way we defined those causes of action were
9 limited in each agreement, such that they were
10 separate and distinction causes of actions.

11 Q. Right. So, in the legal foundation
12 for an avoidance claim, for instance, is in chapter 5
13 of the Bankruptcy Code, correct, generally?

14 A. A part of it, yes.

15 Q. Yes. And I believe, correct me if I'm
16 wrong, I believe what you're saying is, that separate
17 claim can include transfers made from the debtor that
18 fall within that type of cause of action, right, in
19 article 5?

20 A. Give me than one more time.

21 Q. Sure. I believe what you're saying is
22 that, transfers out of the debtor could have -- could
23 have qualified as an article 5 claim based upon the
24 elements of that type of claim, right, like a transfer

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1 when the debtors insolvent, when the transfer within
2 90 days of the bankruptcy --

3 A. Sure.

4 Q. -- those elements are different than a
5 breach of a fiduciary duty claim; right?

6 A. They are. And in our documents, very
7 specifically define, narrowly defined what we were
8 releasing. So, I do not believe there was overlap,
9 sitting here today, but, again, I would have to fall
10 back on the mounds of documents that did this.

11 I believe the avoidance action claims
12 were separate and discreet from both the pre-April '19
13 and the post-April '19 breaches of fiduciary duty. I
14 believe they were all separate conduct.

15 Q. Okay. As far as the dollars, the
16 damages, in connection with the avoidance claims
17 versus the breach of fiduciary duty claims, the dollar
18 amounts, was there any overlap in the dollar amounts?

19 MR. MORRISON: Note my
20 objection.

21 You can answer.

22 THE WITNESS: I don't think
23 there was any overlap between the
24 avoidance action and the breach of

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1 fiduciary duty that were preserved, but
2 I would have to defer to what's in the
3 documents and defines all this.

4 BY MR. COLE:

5 Q. Got it.

6 Now, the next paragraph says, the
7 liquidating trust investigation ultimately unveiled
8 viable Taube avoidance action claims against Medley,
9 the Taubes, Brook Taube Trust, and certain former
10 executives. Do you see that?

11 A. I do.

12 Q. And by this time -- withdrawn.

13 And then it says, in early 2022, I
14 directed the liquidating trust counsel to enter into
15 settlement negotiations with counsel for the avoidance
16 action defendants in an effort to reach a settlement.
17 Do you see that?

18 A. A consensual resolution of the Taube
19 avoidance action claims, yes.

20 MR. COLE: Let's mark, as
21 Exhibit 5, a December 9th, 2021 e-mail
22 from Adele Hogan to Jim Carr and others,
23 including Anthony Saccullo, dated
24 December 9th, 2021.

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1 (Whereupon, Exhibit Saccullo-5
2 was marked for identification.)

3 BY MR. COLE:

4 Q. Mr. Saccullo, I'm showing you Exhibit
5 5. It's not a memory test, but this was sent to you
6 as an e-mail. Do you recall receiving this e-mail
7 sometime around December 9th of 2021?

8 A. This would be a memory test.

9 Q. Okay. But you have no reason to
10 believe you didn't receive it at that time?

11 A. That's correct.

12 Q. It says here, attached is a draft of
13 the settlement agreement. Do you see that, on the
14 front page?

15 A. Yes.

16 Q. And that was written by Adele Hogan;
17 right?

18 A. Yes.

19 Q. And she was from -- withdrawn.
20 Do you understand that she was
21 representing Medley Management at that time; correct?

22 A. Yes.

23 Q. But you also understand that Eversheds
24 was representing Medley Management at that time as

Page 61

1 well; correct?

2 A. Do I understand now or did I
3 understand then?

4 Q. Do you understand now?

5 MR. MORRISON: Note my
6 objection.

7 You can answer.

8 BY MR. COLE:

9 Q. Let me ask it a different way.

10 A. Sure.

11 Q. In December of 2021, did you
12 understand that Eversheds continued to represent
13 Medley Management in connection with the SEC
14 investigation?

15 MR. MORRISON: Note my
16 objection.

17 You can answer.

18 THE WITNESS: In December of
19 2021?

20 BY MR. COLE:

21 Q. Yes.

22 A. I don't believe so.

23 Q. All right. But you recall the letter
24 sent from Reid Collins, in January of 2022, in which

Page 62

1 it says, in Exhibit 2, which it says that Eversheds,
2 of course, serves as counsel to Medley, its parent
3 entity, Medley Management, and perhaps others. You
4 see that; right?

5 A. I do.

6 Q. So, I'll ask you, having seen these
7 two documents, is it your understanding that Eversheds
8 continued to represent Medley Management in connection
9 with the SEC investigation as of December of 2021?

10 MR. MORRISON: Note my
11 objection.

12 You can answer.

13 THE WITNESS: I have no
14 specific knowledge other than what's in
15 these documents.

16 BY MR. COLE:

17 Q. And you have no reason to doubt the
18 documents, do you?

19 A. As we sit here today, no.

20 Q. And in any event, this e-mail is dated
21 December 9th of 2021, it's to Kelley Drye, Reid
22 Collins and you, CC'ing Douglas Koff, who I believe
23 you said was representing the Taubes; correct?

24 A. Yes.

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1 Q. And the second sentence says, thank
2 you for the productive meeting yesterday. Now, in
3 taking a look at that sentence, and you could take a
4 look at the rest of the document if you'd like,
5 there's a draft settlement and release, settlement
6 agreement and release. Do you have any recollection
7 of that early meeting, in December of 2021?

8 A. So, I believe there was a very early
9 meeting where Adele indicated that she would put
10 together a draft settlement agreement long before we
11 actually agreed upon terms of the settlement. Which
12 is why, in this, I'm listed as the honorable, and why
13 there's blanks in all of the material terms. And I
14 think that's what this was. I think this was just
15 Adele getting ahead of the game and trying to resolve
16 something before we actually had meaningful
17 conversations on the resolution, trying to agree to
18 the terms before we actually had a deal in place.

19 Q. Okay. And this is what we were
20 talking about earlier, the difference between
21 documenting the settlement versus reaching the terms
22 of the settlement; correct?

23 A. Correct.

24 Q. Now, if you turn to the first page of

Page 64

1 the settlement agreement, under paragraph H, it says,
2 whereas, the liquidating trustee has maintained their
3 intent to pursue certain avoidance actions and causes
4 of actions -- cause of action against the executives,
5 including discussion that there might be assert in the
6 future alleged cause of action against Medley or
7 executives in their capacity as directors and officers
8 of the stakeholders. Do you see that?

9 A. I do.

10 Q. Now, this is December of 2021, does
11 this refresh your memory that, by December of 2021, at
12 least in part, the trust, liquidating trust,
13 understood that there were avoidance -- potential
14 avoidance actions, avoidance claims, against the
15 executives?

16 A. Give me that question again.

17 Q. Sure. It was a bad question.

18 Was this -- I believe we talked
19 earlier you weren't quite sure when you had an
20 understanding -- withdrawn.

21 I think you testified before that you
22 don't remember when you had an understanding that
23 there were avoidance actions, potential avoidance
24 actions, against certain parties, you couldn't put a

Page 65

1 date on it.

2 A. That's correct.

3 Q. And my question is, does this refresh
4 your memory -- withdrawn.

5 My question is, having remembered the
6 meeting, or at least part of it, and taking a look at
7 this document, does this refresh your memory that, by
8 December 9th of 2021, your professionals had
9 determined that there were avoidance action claims
10 that could be asserted against executives?

11 MR. MORRISON: Note my
12 objection.

13 You can answer.

14 THE WITNESS: Yeah, it doesn't
15 refresh my recollection at all.

16 BY MR. COLE:

17 Q. Do you believe -- do you understand
18 that Adele Hogan was drafting a settlement agreement
19 for claims that nobody knew about at the time?

20 MR. MORRISON: Note my
21 objection.

22 THE WITNESS: No.

23 BY MR. COLE:

24 Q. Okay. If you turn to the first page

Page 66

again. It says, the main draft, this is the third paragraph on the cover e-mail, the main drafting matter relates to the language involving the release and foregoing further financial exposure. Do you see that?

A. I do.

Q. Now, I think I asked you earlier whether or not, in connection with the settlement agreement -- withdrawn. Let me just ask it.

Do you have a recollection, as you sit here today and looking at this document, that the scope of the release in the settlement agreement was a negotiated term?

A. Specific recollection, no. I'm sure it was.

Q. Yeah. It wasn't -- you don't -- withdrawn.

As you sit here today, you don't understand that release that we're here to talk about, was a boilerplate type of release, it was something that was fully negotiated by professionals; right?

MR. MORRISON: Note my objection.

THE WITNESS: Again, specific

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recollection, no. I would imagine it was, yes.

BY MR. COLE:

Q. But at least as early as -- withdrawn.

At least, in connection with this document, this e-mail that you likely received in December, the issue of the scope of the release was already of concern to the parties; is that right?

MR. MORRISON: Note my objection.

THE WITNESS: I'm sure that's correct.

BY MR. COLE:

Q. Okay. Now, I believe you testified earlier that, the ultimate settlement settled avoidance claims and there were certain SEC related matters settled as well; correct?

A. Yes.

Q. In December of 2021, so this is literally two months after you were appointed, were you aware of any negotiations occurring with the SEC?

A. On whose behalf?

Q. Fair question. Let me break it down.

A. Sure.

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Q. As of December of 2021, were you aware of any negotiations occurring with the SEC on behalf of the debtor?

A. No.

Q. Were there ever negotiations with the SEC to reach any type of resolution on behalf of the debtor?

MR. MORRISON: Note my objection.

You can answer.

THE WITNESS: I don't believe so.

BY MR. COLE:

Q. So, without getting too far ahead, is it your understanding that negotiations with the SEC were handled by Schulte and Adele, and that your group was negotiating with Schulte and Adele separately?

MR. MORRISON: Note my objection.

BY MR. COLE:

Q. Let me rephrase it.

A. Sure.

Q. In connection with the settlement agreement, was the trust, the liquidating trust, in

Page 69

any way involved with direct negotiations with the SEC?

A. I believe we had conversations with the SEC to discuss the mechanics behind what would happen with any money that was paid in and where that money would go --

Q. Right.

A. -- whether it flowed through the estate or whether it flowed through the Fair Funds and the SEC. So, I believe we had direct negotiations with the SEC because we, obviously, wanted that money to come to the estate because it would be distributed out to bondholders directly, rather than having to go through the Fair Funds process, which disproportionately awards certain bondholders over others.

Q. Okay. So, let me just break that down a little bit.

So, the intent was for the SEC -- and again, I'm getting ahead of myself, we'll get to there.

A. Sure.

Q. The intent ultimately was for the SEC to issue an order requiring somebody, whether it be

Page 70

1 the Taubes or someone else, to pay money in the form
2 of a penalty; is that right?

3 A. I don't know what form the money took.
4 I don't recall.

5 Q. But it was a certain dollar amount;
6 correct?

7 A. That's correct.

8 Q. And the idea was that that certain
9 dollar amount would be -- would be owed under this
10 agreement with the SEC, but the Taubes or Medley
11 Management or whoever would pay the money into an
12 account for the estate to use to distribute to
13 bondholders?

14 A. Correct.

15 Q. And when you say that you that your
16 direct negotiations between the trust or the estate
17 and the SEC, those negotiations were strictly the
18 mechanics of that to give the SEC comfort that the
19 money would actually go to bondholders?

20 MR. MORRISON: Note my
21 objection.

22 You can answer.

23 THE WITNESS: It was to give us
24 comfort as well, right. We were

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1 representing the interest, essentially
2 the unsecured creditors here, our
3 bondholders, we were representing the
4 interest of the entire pool of
5 bondholders. If that money didn't flow
6 through the estate, it would have been
7 subject to Fair Fund claims with the
8 SEC, which certain bondholders would
9 make, others would not. Especially,
10 these were, you know, baby bonds, they
11 were very small amounts, so people who
12 had very small amounts at stake might
13 not have been following what was going
14 on with the SEC process and they would
15 have, essentially, foregone their
16 distribution.

17 BY MR. COLE:

18 Q. Got it.

19 A. So we were involved to ensure that
20 there was a fair distribution of that money among all
21 of the bondholders.

22 Q. And really, the discussions, the
23 direct discussions, were the mechanics of how it be
24 done and whether or not both sides agreed to the

Page 72

1 mechanics?

2 A. Yeah. I think it would be more the
3 mechanics. I think we were involved in fairly
4 significant conversations with the SEC to get them
5 comfortable with the fact that a process that flowed
6 through the trust would be more beneficial than a
7 process that flowed through the Fair Funds Act.

8 Q. And who, on behalf of the estate, was
9 negotiating with the SEC?

10 A. That would be counsel. So, I believe,
11 Jim Carr and Brandon and Eric from Reid Collins.

12 Q. Just one final question on this
13 exhibit -- two final questions.

14 On the first page, it does talk about,
15 again, the main drafting matter related to the
16 release. And I gather, between December of 2021 and
17 March 2022, there were drafts that flew back and forth
18 as to the scope of the release; is that right?

19 A. Among every other provision. I don't
20 think the final document looks a whole lot like this.

21 Q. Right. And I gather that, by this
22 point in time, because paragraph H refers to avoidance
23 action, the trust did not conclude yet that there were
24 potential D&O actions?

Page 73

1 A. Did you say paragraph 8?

2 Q. H.

3 A. H. I'm sorry, give me that question
4 again.

5 Q. The paragraph H, as we saw before,
6 refers to certain avoidance actions and cause of
7 action against executives. By this point in time, in
8 December of 2021, had the estate determined, or had
9 the trustee determined that there were potential D&O
10 actions against individuals?

11 A. I believe we had. Though, a specific
12 recollection on a date would be very difficult. This
13 is four plus years ago.

14 Q. Fair enough. Want to take a quick
15 break?

16 A. Please.

17 (Whereupon, a brief recess was
18 taken.)

19 BY MR. COLE:

20 Q. Welcome back, Mr. Saccullo. Can you
21 turn back to your Affidavit, or your Declaration,
22 please?

23 A. Yes.

24 Q. And I believe we were on paragraph

Page 74

four, where it says, the liquidating trust investigation ultimately unveiled viable avoidance actions against the Taubes and others. Do you see that, first sentence?

A. In summary, yes.

Q. And it says, the next sentence, in early 2022, I directed the liquidating trust counsel to enter into settlement negotiations in sum and substance; fair?

A. I do.

Q. Does Exhibit 5 refresh your memory that it was actually in early December that you made that instruction?

MR. MORRISON: Note my objection.

You can answer.

THE WITNESS: Again, I'm not sure how significant to those initial conversations were. I believe that was Adele getting out in front of herself, but it certainly could have been late 2021 and not very early 2022.

BY MR. COLE:

Q. Okay. Now, then it says, in the next

Page 75

sentence, at the time, I understood that Schulte Roth represented the Taubes and Lucosky represented Medley Management, right, in sum and substance?

A. Yes.

Q. And that's consistent with what you said earlier?

A. Yes.

Q. And then the last sentence says, to my knowledge, Eversheds had no representations in these negotiations. Eversheds sole involvement in these negotiations was to protect its own interest in collecting the administrative fee claim from the insurance policies or the liquidating trust through the negotiation of the Eversheds letter and forbearance agreement. Do you see that?

A. I do.

Q. Now, at this point in time, was Eversheds advised by you that these negotiations had been occurring?

A. No.

Q. Is it your testimony that, by this point in time, you understand that Eversheds had fired the debtor?

MR. MORRISON: Note my

Page 76

objection.

You can answer.

THE WITNESS: I think I said I don't recall when they fired us.

BY MR. COLE:

Q. As you sit here today, you don't know whether it was fired before or after the negotiations started for the settlement agreement?

A. I would have to refer to the actual communication.

Q. Fair enough.

Based upon your experience, and also as a lawyer, could Eversheds represent any of the parties in this negotiation?

A. Could they?

Q. Yeah.

A. In what respect?

Q. Well, Eversheds was -- had represented the trust, the debtor before; right?

A. Yes.

Q. And Eversheds represented Medley Management before; right?

A. Yes.

Q. And Eversheds represented the Taubes

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before; right?

A. Yes.

Q. So, would you find it odd if Eversheds can represent any party and not be in conflict?

MR. MORRISON: Note my objection.

You can answer.

THE WITNESS: I would not.

MR. COLE: Let's mark, as Exhibit 6, this is another letter from Reid Collins, dated January 26, which I think is the same date as the prior letter. It's Reid Collins to three insurers, dated January 26, and signed by Eric Madden.

(Whereupon, Exhibit Saccullo-6 was marked for identification.)

BY MR. COLE:

Q. Mr. Saccullo, showing you what's been marked as Exhibit 6. I'll ask you to turn to the last page, and it seems that you were CC'd on this document. Do you have a recollection of having received this document?

A. Do you mind if I get my reading

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1 glasses out?

2 Q. I have them, why not.

3 Take a look at the letter and see if
4 it refreshes your memory, if you've seen it before.

5 A. Okay.

6 Q. So, the question is, do you recall
7 seeing this?

8 A. Specifically, no.

9 Q. You have no reason to believe -- well,
10 withdrawn.

11 Do you have any reason to believe you
12 didn't receive it at that time?

13 A. No.

14 Q. Now, I believe you testified earlier
15 to the whole -- the entire settlement being very
16 complex, as it applied to transfers, because there was
17 some pre-April 30th transfers -- 2019 transfers and
18 post, right? Do you remember talking about that?

19 A. Yes.

20 Q. And this letter refers to those types
21 of transfers, isn't that right?

22 A. Yes.

23 Q. All right. Now, this is January 26 of
24 2022.

Page 79

1 A. Yes.

2 Q. So, I gather, by January 26, 2022, the
3 trust, the liquidating trust, had determined that
4 there existed some D&O claims against individuals;
5 right?

6 A. Yes.

7 Q. Now, on the second page, second full
8 paragraph, it refers to -- in the second sentence
9 says, namely, the trust has claimed against those
10 officers relating to transactions that occurred on or
11 after April 30th of 2019. Do you see that?

12 A. Yes.

13 Q. And so, if I recall what you testified
14 to, that there were certain types of transactions that
15 occurred prior to April 30th, 2019, then, different
16 types of transactions that may have occurred after?

17 A. Yes.

18 Q. And this letter's just dealing with
19 the after?

20 A. Correct. These insurance carriers
21 only insured from after April 30th, 2019.

22 Q. Was the April 30th, 2019 dependent on
23 the insurance carriers or there was really truly
24 different types of claims?

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1 MR. MORRISON: Note my
2 objection.

3 You can answer.

4 THE WITNESS: There were truly
5 different types of claims.

6 BY MR. COLE:

7 Q. Okay. Now, in the next paragraph, it
8 talks about -- it identifies various Medley officers.
9 Do you see that?

10 A. Yes.

11 Q. And then it says that they owed Medley
12 fiduciary duties of care, loyalty and good faith. Do
13 you see that?

14 A. I do.

15 Q. And then talks about, just
16 summarizing, it talks about \$14.7 million of transfers
17 being made, between May 1st of 2019 and March 2021.
18 Do you see that?

19 A. I do.

20 Q. So, by, at least January 26 of 2022,
21 the liquidating trustee and its professionals had bank
22 statements and other information to determine
23 transfers as far back as May of 2019?

24 A. Yes. And again, likely before.

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1 Q. Okay. And those would be transfers
2 to, not just to the individual officers, but
3 information -- transfers to anybody, isn't that right?

4 A. Anybody might be too general, but,
5 yes. It would be more than just --

6 Q. Let me rephrase it, because that's a
7 good point.

8 A. Sure.

9 Q. The liquidating trust would have
10 information in the form of bank statements that would
11 reflect transfers, at least that reflected in the bank
12 statements; right?

13 A. Uh-huh.

14 Q. Yes?

15 A. Yes.

16 Q. And that would include, not only the
17 Medley officers, but it could include anybody else
18 reflected in those bank statements; correct?

19 A. Correct.

20 Q. And as you sit here today, do you
21 recall whether or not those bank statements reflected
22 transfers having been made to Eversheds?

23 A. I don't recall.

24 Q. Okay. But these would have been bank

Page 82

1 statements that were the debtors bank statements?

2 A. Yes.

3 Q. And if I recall your testimony
4 correctly, Saccullo Business would accumulate the bank
5 statements and provide it to professionals to analyze
6 as to whether or not there were claims?

7 A. Yeah, we would assist. I mean,
8 counsel could have done it themselves.

9 Q. Then it says, the next paragraph, it
10 says, these transfers were wrongful for many reasons;
11 right?

12 A. Yes.

13 Q. And it says just one example, Medley's
14 audit financial statements reflect it was insolvent by
15 January 2016 and remained insolvent thereafter. Why
16 was that important?

17 MR. MORRISON: Note my
18 objection.

19 THE WITNESS: I believe, if you
20 read the next sentence, it tells you why
21 it's important.

22 BY MR. COLE:

23 Q. The law prohibits an insolvent company
24 from making distributions and it prohibits that

Page 83

1 company's fiduciary from participating in those
2 unlawful transfers. That's the reason why it's
3 important?

4 A. Yes.

5 Q. Then it goes on to say, the law
6 further prohibits an insolvent company's officers for
7 effecting transfers of the company's property from
8 less than -- for less than reasonably equivalent value
9 or with intent to hinder any of the company's
10 creditors.

11 In your experience dealing with
12 reasonable equivalent value and intent to hinder any
13 of the company's creditors, what types of claims is
14 that referring to?

15 A. So that certainly could be referring
16 to fraudulent transfers under section 548.

17 Q. Then it says, the law also prohibits
18 an insolvent company and its officers from preferring
19 one set of creditors to the detriment of the creditor
20 body, especially when the preferred creditors are
21 insiders. What type of claim does that refer to?

22 A. So, again, that could be a standard
23 breach of fiduciary duty, as could the other. It also
24 could be a preference.

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1 Q. Okay. Now, does this refresh your
2 memory that \$14.7 million that's referred to in this
3 letter, as having been transferred to insiders,
4 overlaps between avoidance claims and potential D&O
5 claims? When I say overlaps, at least some or all of
6 it is the same dollars?

7 A. I don't know that to be true.

8 Q. Well, as you sit here today, would
9 there be any reason to separate what is referred to
10 here as, in lots of language, fraudulent transfer and
11 preference claims from D&O claims?

12 A. Yes.

13 Q. What's the reason?

14 A. One is insured, the other is not.

15 Q. Right. So is it your testimony that
16 you might have split those claims to plug one into the
17 insurance and one into preference claims?

18 MR. MORRISON: Note my
19 objection.

20 You can answer.

21 THE WITNESS: No.

22 BY MR. COLE:

23 Q. Okay. So, again, it's really -- it's
24 more likely that it was a difference in cause of

Page 85

1 action, one being insured and one not being insured,
2 and the dollars are likely the same or close to the
3 same?

4 MR. MORRISON: Note my
5 objection.

6 THE WITNESS: I don't know that
7 to be true. Again, I would have to
8 defer to the mountain of documentation.

9 BY MR. COLE:

10 Q. Fair enough.

11 MR. COLE: Let's go to the next
12 Exhibit, this will be Exhibit 7. It is
13 a letter from Reid Collins, dated
14 February 23rd of 2022, to two other
15 insurers.

16 (Whereupon, Exhibit Saccullo-7
17 was marked for identification.)

18 BY MR. COLE:

19 Q. Mr. Saccullo, showing you Exhibit 7.
20 Take a look at that document and see if you recognize
21 the document.

22 A. Okay.

23 Q. And you notice, sir, on the last page
24 that you're CC'd; is that right?

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1 A. I do. I am.
 2 Q. And it's signed by Eric Madden; right?
 3 A. It is.
 4 Q. I gather you don't have a specific
 5 recollection of having received this letter?
 6 A. I do not.
 7 Q. But do you have any reason to believe
 8 you did not receive it?
 9 A. I do not.
 10 Q. Now, taking a look at the second page,
 11 second paragraph, it, again, refers to various Medley
 12 officers. Do you see that?
 13 A. I do.
 14 Q. And it says, as officers of Medley,
 15 they owed Medley fiduciary duties, nonetheless,
 16 between January 2016 and May 2019, the Medley officers
 17 caused Medley to funnel over \$80.3 million to
 18 insiders. Do you see that?
 19 A. I do.
 20 Q. So these would be the pre-April 30th
 21 claims?
 22 A. Yes.
 23 Q. Okay. And having seen both letters,
 24 does this refresh your memory as to the difference

Page 87

1 between the two sets of claims?
 2 A. Not sure I understand that question.
 3 Q. Okay. I may be misremembering, but I
 4 thought you testified earlier that the claims that
 5 were pre-April 2019 and post-April 2019, were
 6 different in type from each other, or did I
 7 misunderstand that?
 8 A. Yeah, no. They're different in time
 9 and also different in type, yes.
 10 Q. So, how are they different in type?
 11 A. So, again, I would defer to the
 12 documents where we lay this out. But there were
 13 differences in the payment mechanisms and how these
 14 accounts were used. One, if I recall correctly,
 15 relied upon Medley paying creditors directly on behalf
 16 of others. And the other time period had money
 17 funneled into Medley Management and then Medley
 18 Management paying that money out.
 19 Q. Okay. I think you might have
 20 misspoke.
 21 The first being, money paid to, not to
 22 creditors, but to insiders or to creditors?
 23 A. No. I believe the latter portion of
 24 the claims, the post-April 30th. And again, it has

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1 been a while since I touched these. I believe the
 2 post-April 30 dealt with payments made directly by
 3 Medley, LLC to creditors of nonMedley entities,
 4 whereas, pre-April 30, 2019, related to illegal
 5 dividending.
 6 Q. They were paid to creditors -- you
 7 said that the earlier -- the later claims were
 8 payments made to creditors of nonMedley entities?
 9 A. Entities other than the debtor.
 10 Q. Entities other than the debtor.
 11 So, Medley, LLC was covering creditor
 12 claims, for example, Medley Management?
 13 A. I believe that's correct.
 14 Q. All right. How did you go about
 15 determining that Medley, in the latter, in the --
 16 after April 2019 claims, how did you determine that
 17 Medley, LLC had been paying creditors of, for example,
 18 Medley Management?
 19 A. That was done through counsel.
 20 Q. So, as you sit here today, you don't
 21 know the mechanism or the evidence that was compiled
 22 to show that, those transfers?
 23 MR. MORRISON: Note my
 24 objection.

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1 You can answer.
 2 THE WITNESS: Do I know the
 3 evidence?
 4 BY MR. COLE:
 5 Q. Well, let me rephrase it.
 6 A. Sure.
 7 Q. If Medley, and correct me if I'm wrong
 8 because I've never been a fiduciary. Okay?
 9 A. Sure.
 10 Q. If Medley, LLC had paid money to
 11 insiders, say, the Taubes --
 12 A. Yes.
 13 Q. -- you could look at a bank statement,
 14 and you somewhat determined that money went from the
 15 bank to the Taubes directly; fair?
 16 A. Yes.
 17 Q. Okay. When you're dealing with
 18 determining that the debtor paid expenses on behalf of
 19 a third party --
 20 A. Yes.
 21 Q. -- you would need to know the
 22 recipient?
 23 A. Yes.
 24 Q. And you'd need to know that that

Page 90

1 recipient was a creditor of the third party?

2 A. Correct.

3 Q. If you know, how -- what information
4 did you have to determine that the third party was a
5 creditor -- I'm sorry, withdrawn.

6 What information did you have that you
7 could use to determine that the creditor who received
8 the transfer was a creditor of a third party?

9 A. That analysis was done through
10 counsel.

11 Q. Okay. Do you know what documents or
12 evidence were provided to counsel to make that
13 determination?

14 A. Yes.

15 Q. What types of documents would have
16 been provided to counsel to help them make that
17 determination?

18 A. Broadly speaking?

19 Q. Yes.

20 A. Bank statements and invoices.
21 Potentially, internal correspondence as well.

22 Q. Now, during -- in the post-April 2019
23 claims, when there was a determination made that
24 payments were made to creditors of a third party, were

Page 91

1 you able to identify the creditor themselves from the
2 invoices?

3 Withdrawn. Let me rephrase that.

4 A. Thank you.

5 Q. Were there any particular creditors of
6 the third party you were looking for in connection
7 with these types of claims?

8 MR. MORRISON: Note my
9 objection.

10 You can answer.

11 BY MR. COLE:

12 Q. For example, was it any invoice that
13 was paid to the creditor of a third party that was
14 included in the post-April 2019 period or was it
15 selected types of creditors?

16 A. So, these weren't massive operations.
17 They didn't have 1,000's upon 1,000's of transactions
18 every month, so I'm not sure that it started out with
19 a need to funnel down transactions. I believe that
20 counsel looked at the vast majority of transactions.

21 Q. Did counsel look at transfers --
22 withdrawn. I won't ask that question.

23 A. Thank you.

24 Q. Was it your understanding that, that

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1 transfers to Eversheds were evaluated during that
2 period of time?

3 A. Which period of time?

4 Q. Fair enough.

5 We're talking about a letter, do you
6 recall the letter?

7 A. Sure.

8 Q. Dealing with the post-April period,
9 April 2019 period.

10 A. Yes.

11 Q. And it had -- it had a dollar amount,
12 I think it was \$14 million or something.

13 A. Yes.

14 Q. Are you aware whether or not that \$14
15 million included transfers to Eversheds?

16 A. I am not aware. We would not have
17 been looking, at that point, the transfers to
18 Eversheds.

19 Q. And why is that?

20 A. We would have had no reason.

21 Q. Okay. So, back to my question. There
22 was specific types of creditors you'd be looking for
23 to make a determination as to whether or not there
24 were transfers on behalf of creditor for a third

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1 party?

2 A. Yes.

3 Q. Okay. At some point you did take a
4 look at transfers being made to Eversheds; right?

5 A. Yes.

6 Q. And when do you recall that occurring?

7 A. I believe it was the summer of 2022,
8 shortly before we sent Eversheds a letter.

9 Q. And what, in the summer of 2022, made
10 the liquidating trust look further into transfers made
11 to Eversheds?

12 A. The discovery --

13 MR. MORRISON: Note my
14 objection.

15 You can answer.

16 THE WITNESS: The discovery of
17 the material accuracy and the
18 disclosures made by Eversheds in their
19 retention documents.

20 BY MR. COLE:

21 Q. Okay. And I don't want to get too
22 deep into this because it's part of the last
23 deposition.

24 A. Sure.

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1 Q. But I just want to ask this one
2 question: Just, refresh my memory, what were the
3 misrepresentations that were discovered in the summer
4 of 2022 that made you -- made the trust look further
5 into transfers to Eversheds?

6 A. So, from my recollection, it was a
7 misstated dollar amount, I believe the dollar amount
8 was half of what was actually transferred. I believe
9 it was also a misstatement about the party who
10 actually made the payment to Eversheds. And I believe
11 it was also the failure to include a statement about
12 the ultimate beneficiary of the legal work that
13 Eversheds performed, but that is from my recollection.

14 Q. Okay. And how -- just, how did you
15 determine, in the summer of 2022, that those
16 misrepresentations had occurred?

17 MR. MORRISON: Just note my
18 objection.

19 I would caution you not to
20 reveal privilege information, but I
21 think you can answer that question
22 without doing so.

23 BY MR. COLE:

24 Q. Or you can't.

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1 A. Other than to say it was done through
2 counsel, I'm not sure that I can go further into that.

3 Q. Okay. Now, with respect to the
4 pre-April 30th, 2019 claims, it refers to over \$80
5 million to insiders. Do you see that?

6 A. Yes.

7 Q. And I gather, from what you just
8 testified to, that that \$80 million was initially
9 funneled to Medley Management and then went out as --
10 went out after that from Medley Management to the
11 individuals?

12 A. Yeah. I don't think that is true of
13 the entire \$80.3, but that is -- it was, essentially,
14 illegal dividending.

15 Q. And I gather you had -- you had the
16 bank statements of Medley Management to make that
17 tracing; is that right? So the money went to Medley
18 Management and then Medley Management dividend out to
19 whoever?

20 A. So, again, that was done through
21 counsel. I'm not sure what they were looking at, at
22 the time.

23 Q. Right. But Saccullo Business was the
24 entity that accumulated the information, isn't that

Page 96

1 right?

2 A. Sure. Again, counsel would have been
3 able to request documents on its own as well. We
4 would have piled what we inherited.

5 Q. I gather what you're saying, as you
6 sit here today, you don't know whether or not the
7 documents that counsel would need to make that tracing
8 came from Saccullo Business or was the subject of a
9 separate subpoena?

10 A. Correct.

11 Q. Okay. Now, it talks about, in the
12 next paragraph, similar to the prior letter, it talks
13 about the company's insolvency, this time in January
14 2016. Then it refers to reasonably equivalent value,
15 and you understand that reasonably equivalent value
16 part of it to refer to a potential fraudulent
17 transfer; is that right?

18 A. I think that's one portion of what
19 reasonably equivalent value referring to.

20 Q. What's the other portion to?

21 A. It certainly could point to just the
22 standard breach of fiduciary duty.

23 Q. But would the breach of fiduciary duty
24 be based on a fraudulent transfer action by a D&O, is

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1 that the claim?

2 A. So, the next sentence, I think says it
3 pretty well. Moreover, the Medley officers were
4 invest in the power and duty to prevent unlawful
5 distributions and self-dealing by their fellow
6 insiders. I think that would summarize it fairly
7 well.

8 Q. And as you sit here today, are you
9 aware that any of the \$80.3 million overlapped with --
10 withdrawn.

11 As you sit here today, do you have an
12 understanding that any of the \$80.3 million referred
13 to in the letter overlapped with avoidance dollars
14 related to avoidance claims that were ultimately
15 settled in the settlement agreement?

16 A. I don't believe it does.

17 Q. All right.

18 MR. COLE: Let's mark, as
19 Exhibit 8, this is an e-mail from
20 Douglas Koff to Eric Madden, dated March
21 6 of 2022.

22 (Whereupon, Exhibit Saccullo-8
23 was marked for identification.)

24 BY MR. COLE:

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1 Q. I'm handing you what's been marked as
2 Saccullo Exhibit 8. This is an e-mail that you were
3 CC'd, or sent to you, according to the e-mail.

4 Let's take a look at the e-mail and
5 tell me if you recall receiving it.

6 A. Okay.

7 Q. I believe you testified earlier, when
8 I asked you about direct negotiations with the SEC, I
9 think you referred to, in part, the mechanics of how
10 money would flow through the estate to bondholders.
11 Do you remember that?

12 A. That is correct, yes.

13 Q. Now, this is dated March 6 of 2022.

14 By March 6 of 2022, do you have an
15 understanding that most of the material terms of the
16 settlement agreement had been received?

17 A. I guess that depends on what you would
18 consider a material term.

19 Q. All right. Let me rephrase it then.

20 A. Sure.

21 Q. Are there any components of -- by
22 March -- withdrawn.

23 By March 6 of 2022, were there any
24 components of the settlement agreement, that was

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1 ultimately signed later in March, that had not been
2 fully negotiated, that you can recall?

3 A. Just based upon this letter, it
4 appears that we were still working with the SEC to
5 talk about where that \$10 million would go, and
6 ultimately, whether or not it was flowing through the
7 estate, the bondholders, or if it was flowing through
8 the Fair Funds Act.

9 Q. Do you recall -- does this refer to
10 the meeting that you're referring to earlier that you
11 had with the SEC?

12 A. I would imagine this is one such
13 meeting.

14 Q. So are you saying that there were more
15 than one meeting with the SEC, that you recall?

16 A. That I specifically recall, no. If I
17 were to speculate, which is dangerous, I think we had
18 multiple.

19 Q. Now, it says here that the -- during
20 the call, this is in the first page, third sentence,
21 it says, during the call, we will be able to resolve
22 the mechanics of how the \$10 million payment to the
23 liquidating trust would work and the offset so that is
24 documented in a way that works for all parties in our

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1 settlement agreement.

2 Now, what did you understand was meant
3 by the offset?

4 A. So, if I recall the mechanics of the
5 settlement correctly, the \$10 million was used both as
6 a penalty from the SEC and a credit for the funds that
7 were paid into the trust against that penalty so that
8 when they were paying \$10 million into the trust, it
9 was also satisfying the SEC claims.

10 Q. So, just to break that down a little
11 bit.

12 A. I would defer to the actual settlement
13 agreement.

14 Q. Fair enough.

15 A. This is all very dense and well set
16 forth.

17 Q. I will show it to you. I don't think
18 you have it wrong. I just want to make sure our
19 understanding is consistent.

20 A. Sure.

21 Q. So, the SEC -- withdrawn.

22 The idea was that the SEC would enter
23 into a settlement agreement or some type of agreement
24 with the Taubes, or whoever, for \$10 million in the

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1 form of a penalty, and the Taubes, or whoever, would,
2 theoretically, pay the \$10 million into an account
3 held by the estate and that that \$10 million payment
4 would be a credit against the penalty that was issued
5 by the SEC?

6 A. So, I would defer to the documents,
7 but I believe that is, roughly, correct.

8 Q. Okay. And so, that was -- so the --
9 withdrawn.

10 Is it fair to say that the settlement
11 with the SEC was a crucial part of the ultimate
12 settlement agreement that estate reached with the
13 Taubes and Medley Management?

14 MR. MORRISON: Note my
15 objection.

16 You can answer.

17 THE WITNESS: If I'm not
18 mistaken, I think it's a condition
19 precedent.

20 BY MR. COLE:

21 Q. Yes. But was there ever an attempt to
22 settle with the Taubes or Medley Management separate
23 from the SEC?

24 A. Was there ever an effort, there may

Page 102

1 have been, I don't recall.

2 Q. And when you say it was a condition
3 precedent, which I agree with you, do you understand
4 that the settlement agreement was dependent upon the
5 SEC settlement occurring?

6 A. Yes. The effectiveness of the
7 settlement was conditioned upon the SEC settlement, I
8 believe.

9 Q. Now, during -- by this March 6 period,
10 were the releases fully negotiated in the settlement
11 agreement?

12 A. I don't recall.

13 Q. Well, let's find out.

14 MR. COLE: Let's mark, as
15 Exhibit 9, an e-mail from Brandon Lewis
16 to Doug Koff, dated March 13th. And
17 attaches what purports to be a Medley
18 settlement agreement.

19 (Whereupon, Exhibit Saccullo-9
20 was marked for identification.)

21 BY MR. COLE:

22 Q. Mr. Saccullo, I'm going to show you
23 Saccullo Exhibit 9. And this was not sent to you,
24 this particular e-mail, so I'll ask you to take a look

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1 at the attachment and tell me if you recall ever
2 seeing this working draft of a settlement agreement.

3 A. You want to know if I recall seeing
4 this specific draft?

5 Q. Yes. So, this is a draft that
6 occurred right in somewhat close in time to your
7 meeting with the SEC.

8 A. This is a week later.

9 Q. Right. And I just want you to flip
10 through it and tell me if you recall seeing it.

11 A. I have no recollection of seeing this
12 specific draft.

13 Q. Okay. Going back to the process that
14 we were talking about earlier today, was it the -- was
15 it the process that, if Brandon Lewis received
16 something like this, that he would either forward it
17 to you or show it to you for your input?

18 A. Yes.

19 Q. All right.

20 A. There certainly may have been times
21 that he knew something was not acceptable to us and he
22 just marked it up and sent it back. There was no need
23 to involve me.

24 Q. But, in general, he either had

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1 information from you as to how to respond or he or one
2 of his people would send you whatever draft came
3 through; is that right?

4 A. Yes.

5 Q. And if I understand, your process
6 would be then to read what the draft was, and if you
7 had any comments or questions, that you would -- you
8 would make those comments or questions to your
9 counsel; is that right?

10 A. Generally speaking, yes.

11 Q. All right.

12 A. Without touching on the actual
13 attorney-client relationship.

14 Q. Yeah, I'm not asking you for
15 communications --

16 A. Sure.

17 Q. -- specific, I'm just asking you just
18 the process.

19 A. There could certainly be instances
20 where that process was a little different, generally
21 speaking, yes.

22 Q. All right. And if you turn to the
23 next page, which is page two of the attachment, there
24 is a paragraph I and a paragraph J. Do you see that?

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1 A. I do.

2 Q. All right. Paragraph I says, whereas,
3 the liquidating trustee asserts that the liquidating
4 trust has causes of actions against one or more of the
5 Taube release parties, defined in section 6.1 below,
6 for wrongful acts that they allegedly committed as
7 insured persons, and then it uses the descriptive
8 term, Preserve claims. Do you see that?

9 A. I do.

10 Q. All right. Now, at this point in
11 time, which is in March, early March, March 13th, do
12 you recall there being negotiations about the term,
13 Preserve claims?

14 A. I remember that term being heavily
15 negotiated.

16 Q. Right.

17 A. I don't remember the time period.

18 Q. Fair enough. Then the paragraph J
19 says, whereas, the liquidating trustee asserts that
20 the liquidating trust has other causes of action
21 against one or more of the Taube release parties, in
22 addition to the preserve claims, and it defines those
23 as release claims. Do you see that?

24 A. I do.

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1 Q. And do you recall that term being
2 heavily negotiated as well?

3 A. I'm sure.

4 Q. Now, why were those terms heavily
5 negotiated as part of the settlement agreement?

6 A. I believe the Taubes and other Medley
7 parties wanted to avoid paying for a release and then
8 being sued again with regard to different causes of
9 action. And we wanted to ensure that preserve causes
10 of action were not released.

11 Q. So, the definition of preserve claims
12 and release claims was important because it directly
13 tied to the scope of the actual release provision?

14 A. Among other things, yes.

15 Q. Now, in footnote one, it says, for the
16 avoidance of doubt, preserve claims and release claims
17 are mutually exclusive and this agreement does not
18 release preserve claims. Now, I don't want to fool
19 you, this was not the ultimate term, we'll get to the
20 ultimate term in a few minutes, but this was a
21 footnote that was put in to this particular draft.
22 What is meant by that they're not -- they are mutually
23 exclusive, in your mind?

24 A. In my mind, it means one does not

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1 overlap with the other.

2 Q. Now, if you turn the page to page
3 three, I believe that this is what we were talking
4 about before, where the SEC being a conditioned
5 proceeded. Do you see that in paragraph two? The SEC
6 agreement being a condition proceeded.

7 A. Yes.

8 Q. All right. And it has these terms,
9 and then, under paragraph two, and then there's
10 paragraph three, which refers to a 13 --
11 approximately, \$13 million payment, settlement
12 payment. Do you see that?

13 A. I do.

14 Q. Now, the first component of that
15 settlement agreement was \$10 million called the Class
16 3 payment. Do you see that?

17 A. I do.

18 Q. And I gather that's the \$10 million
19 that -- withdrawn.

20 I gather, Class 3 payment, as it's
21 defined in 3.1, is the payment that was going to be
22 made to noteholders?

23 A. Correct.

24 Q. And that was what you were talking

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1 about before, making sure that the money would come in
2 and go directly to noteholders instead of having to go
3 through the SEC process; right?

4 A. That's correct.

5 Q. Is it your understanding that that \$10
6 million was connected with the \$10 million that the
7 Taubes were to pay as a penalty to the SEC?

8 MR. MORRISON: Note my
9 objection.

10 You can answer.

11 THE WITNESS: If by
12 connected --

13 BY MR. COLE:

14 Q. That's fair enough.

15 A. -- you mean what we spoke about
16 earlier --

17 Q. Is that the offset?

18 A. Yes.

19 Q. Then it says -- it has -- it refers to
20 a \$2,575,000.00 as the trust payment, what was that
21 going to be used for?

22 A. That was paid into the trust to be
23 distributed in accordance with the trust agreement.
24 Essentially, it was used for trust fees and expenses.

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1 Q. And then there was a \$575,000.00
2 payment to Schulte, what was that going to be used
3 for?

4 A. That I don't recall.

5 Q. Okay. Do you recall there being a
6 charging lien as part of these negotiations?

7 A. I do not.

8 Q. Okay. By March 13th of 2022, you may
9 have answered this already, but just so that I'm
10 clear, had you learned that Eversheds had been fired
11 by Medley Management to defend the SEC action if the
12 SEC settlement did not occur?

13 MR. MORRISON: Note my
14 objection.

15 You can answer.

16 MR. COLE: You said asked and
17 answered?

18 MR. MORRISON: Yeah.

19 BY MR. COLE:

20 Q. Okay. Now that I just asked it again,
21 do you have any recollection?

22 A. Give me the question again.

23 Q. Sure. By March 13th of 2022, when
24 this draft agreement went around, did you have any

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1 understanding that Eversheds had been fired by Medley
2 Management to defend Medley Management had the SEC
3 settlement fallen through?

4 A. It was our understanding that Adele
5 was handling the SEC matter for Medley Management.

6 Q. But, again, you didn't have any
7 specific recollection of seeing a document or nobody
8 specifically said to you that Eversheds had been
9 fired?

10 A. I have no recollection.

11 Q. Okay.

12 MR. COLE: Let's mark, as
13 Exhibit 10, this is a e-mail from
14 Brandon Lewis to Adele Hogan dated March
15 14th, 2022.

16 (Whereupon, Exhibit Saccullo-10
17 was marked for identification.)

18 BY MR. COLE:

19 Q. Before we go there, let's go back to
20 Exhibit 9 again. Turn with me to page 6 of the
21 attached agreement. And this is where the initial
22 draft of the release -- or withdrawn.

23 This is -- this refers to the
24 litigating trust releases. Do you see that, 6.1?

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1 A. The liquidating trust releases, yes.

2 Q. I'm sorry, the liquidating trust
3 releases, yes.

4 And this release talks about, a third
5 of the way down, it releases any and all released
6 claims; right? Do you see that?

7 A. I see the defined terms release
8 claims, yes.

9 Q. And that's what we were referring to
10 before when we said that the definition of released
11 claims, at least in part, ties to the release itself;
12 right?

13 A. I'm sorry.

14 Q. That's okay.

15 A. One more time, please.

16 Q. I think this refers to what we were
17 talking about before, the term release claims, the
18 defined term release claims, in the whereas provision
19 in item J ties directly to the release itself;
20 correct?

21 A. Subject to everything that comes after
22 it, yes.

23 Q. Right. Right. But I'm just saying it
24 ties?

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1 A. Correct.

2 Q. And so that, in your mind --
3 withdrawn.

4 So that at that time, the definition
5 of release claims was a very important part of
6 defining the scope of the release; right?

7 A. As limited by everything that comes
8 afterwards, yes.

9 Q. Correct. Now, this release, or this
10 version of the release, also has a provision at the
11 end that starts with the words provided however. Do
12 you see that?

13 A. Yes.

14 Q. And in your experience that we
15 discussed earlier, what is meant by a term provided
16 however, what does that indicate?

17 A. Are you asking me for just grammar?

18 Q. Well, in the term -- in a release, do
19 you understand that to be an exception?

20 A. It's an exclusion, yes.

21 Q. Exclusion. Right. And it says --
22 withdrawn.

23 The exclusion is something that would
24 be fully negotiated as well; right?

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1 A. Yes.

2 Q. And that's to allow for anybody who
3 reads this or relies on it to know what claims are
4 released and what claims certainly are not released,
5 that's something you referred to before; right?

6 A. I'm sorry, give me that one more time.

7 Q. The provided however provision
8 clarifies what is not released; correct?

9 A. Yes.

10 Q. Okay. And it refers to preserve
11 claim; right?

12 A. Yes.

13 Q. And that was what, I believe you
14 testified, was a heavily negotiated term during the
15 course of negotiating the settlement agreement; right?

16 A. Yes.

17 Q. And the reason for that is, it was
18 important to establish which claims survive the
19 release; right?

20 A. Among other reasons, yes.

21 Q. All right. What are the other
22 reasons?

23 A. Well, certainly the understanding
24 between what was a potentially insured claim and what

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1 was not a potentially insured claim.

2 Q. Fair enough.

3 A. Among others.

4 Q. Right. But at least, with respect to
5 a release, the release portion of it, it's talking
6 about what claims survive the release?

7 A. Yes.

8 Q. Now, I gather that --

9 A. To the extent those claims are
10 otherwise encompassed by the language of the release,
11 yes.

12 Q. Okay.

13 A. So there are lots of claims that
14 aren't within the definition of the release that also
15 survive the release.

16 Q. Okay.

17 A. I think what that exception says is,
18 even if you are covered by the release, there is an
19 exception for these things. It's a clarification
20 that, under no circumstances does that fall into the
21 release, even if it may definitionally.

22 Q. So if understand what you're saying
23 is, there's the potential that the way this release is
24 written, that somebody could view preserve claim as

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1 falling within the scope of the release, and the
2 purpose of the provided however is to make sure
3 there's no misunderstanding. Is that what you're
4 saying?

5 MR. MORRISON: Note my
6 objection.

7 You can answer.

8 THE WITNESS: Why don't I try
9 again.

10 BY MR. COLE:

11 Q. Please.

12 A. I think there are lots of claims that
13 aren't asserted against Taube release parties and
14 aren't released claims that are outside of the scope
15 of this release. I think there are claims that are
16 arguably preserve claims that are asserted against the
17 Taube released parties that we wanted to clarify do
18 not fall into the scope of this release. So there are
19 lots of other claims that are outside of the scope of
20 this release other than just this exception.

21 Q. Fair enough. So, if there are claims
22 that fall outside the scope of the release, you would
23 not put a provided however provision?

24 A. Correct. Definitionally, they don't

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1 fall within the scope of the release.

2 Q. So, the provided however provision, is
3 for claims that potentially could fall within the
4 release?

5 A. Correct.

6 Q. Okay. I'm sorry. Let's go back to
7 marking Exhibit 10, which was the e-mail from Brandon
8 Lewis to Adele Hogan, dated March 14th.

9 And I will, Mr. Saccullo, this is
10 showing you what's been marked as Exhibit 10. This is
11 another e-mail that you were not a party to, but I'll
12 ask that you just take a quick look at that and see if
13 you remember seeing this before?

14 A. Do I recall seeing this, is that the
15 question?

16 Q. Yes.

17 A. I have no recollection of seeing it.

18 Q. All right. Do you recall there
19 being -- I'm not asking for specifically what was
20 said, but do you recall there being a preserve claim
21 verse release claim issue, in or about March 14th of
22 2022?

23 A. Again, I think, as I testified, these
24 are heavily negotiated. As far as the time frame, I

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1 would have to defer to the right documents.

2 Q. Well, you know the date of the
3 ultimate settlement agreement, is like March 24th or
4 something in that area; right?

5 A. In that area, yes.

6 Q. And this is March 13th, so it's only
7 10 or 12 days before it?

8 A. This is March 14th.

9 Q. 14th, I'm sorry. About 10 or 12 days
10 before. Do you recall there being a preserve claim
11 verse release claim issue that was going back and
12 forth between the parties?

13 MR. MORRISON: Note my
14 objection.

15 You can answer.

16 THE WITNESS: Again, I think I
17 would answer it the same way.

18 BY MR. COLE:

19 Q. Okay. But, again, I think your
20 testimony is that this is just further indication that
21 it was that heavily negotiated term?

22 A. Yes.

23 MR. COLE: Let's mark, as
24 Exhibit 11, this is an e-mail dated

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1 March 16th of 2022, attaches Medley
2 settlement agreement from Brandon Lewis
3 to Adele Hogan. We can mark that as
4 Exhibit 11, please.

5 (Whereupon, Exhibit Saccullo-11
6 was marked for identification.)

7 BY MR. COLE:

8 Q. I'll ask you to take a look at Exhibit
9 11. It's an e-mail attaching Medley Settlement
10 Agreement. This draft was from Reid Collins to Adele
11 Hogan.

12 A. Okay.

13 Q. Now, just before we go to this one, go
14 back to Exhibit 10 for a second.

15 Do you have an understanding that this
16 was -- withdrawn.

17 It says, we think we have a
18 resolution -- this is from Brandon Lewis -- we think
19 we have a solution on the preserve claim verse the
20 release claim issue.

21 From your recollection, do you -- was
22 there an attempt to reach some compromise as to the
23 scope of the terms preserved claims and released
24 claims going back and forth?

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1 A. I don't recall what the issue was
2 specifically.

3 Q. Okay. But in the whereas provision
4 that's the third bullet point, it says, whereas, the
5 liquidating trustee on behalf of the liquidating trust
6 has other causes of action against one or more of the
7 Taube parties, in addition to the preserve claims,
8 including those arising under chapter 5 of the
9 Bankruptcy Code, local, state and federal law
10 analogues that avoid, discourage and compel
11 restitution of monies received from the debtor.

12 Is it your understanding from that,
13 you know, that recommendation or that proposal, that
14 this whereas provision relating to other causes of
15 action is limited to chapter 5 claims?

16 A. Are you asking me based upon my
17 recollection? I have no specific recollection of it.

18 Q. Okay. Based upon your experience
19 negotiating settlement agreements, where it says
20 including those arising out of chapter 5 of the
21 Bankruptcy Code, does that provision -- is that
22 provision limiting to claims under the Bankruptcy Code
23 or is broader?

24 A. Well, I mean, it goes on to say, and

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1 local, state and federal law analogues logs.

2 Q. My question is, I'll read it again, it
3 says, whereas, the liquidating trustee on behalf of
4 the liquidating trust, as other causes of action
5 against one of more of the Taube release parties, in
6 addition to the preserve claims, right? That could be
7 any causes of action, right, that are defined in the
8 agreement, right, up to that point, and then we'll go
9 to the second half?

10 A. Depending on the definition of
11 preserve claims, yes.

12 Q. And then it says, comma, including
13 those arising under chapter 5 of the Bankruptcy Code.

14 Based upon your experience, does that,
15 comma, including those arising on the chapter 7 of
16 Bankruptcy Code, limit the scope of the causes of
17 action that fall within the whereas clause?

18 A. It's chapter 5 of the Bankruptcy Code,
19 not chapter 7.

20 Q. Chapter 5.

21 A. I'm sorry, what was the question?

22 Q. Sure. This refers to causes of
23 action, then it says, comma, including those arising
24 under chapter five of the Bankruptcy Code and the list

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1 goes on, and defines in those release claims. Do you
2 see that?

3 A. I do.

4 Q. When a provision like this says,
5 comma, including, do you view that as limiting the
6 term causes of action to only claims under chapter 5
7 of the Bankruptcy Code and local, state and federal
8 analogues?

9 A. No.

10 Q. And then -- okay. Let's go to Exhibit
11 11.

12 Now, this is the next e-mail relating
13 to a settlement agreement or any and all related to
14 the settlement agreement, based on a working draft,
15 dated March 15 of 2022. Do you see that?

16 A. Yes.

17 Q. And if you turn to page two.

18 A. Page two of the agreement?

19 Q. Of the agreement, I'm sorry. Yes.

20 Do you see, under paragraphs I and J,
21 that the terms we were just talking about from the
22 e-mail were incorporated? Do you see that?

23 A. I'm sorry, give me that question
24 again.

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1 Q. Sure. Turning to paragraphs I and J
2 of the whereas provision, on page two, do you see that
3 the, terms that we were just referring to the e-mail
4 in Exhibit 10 were, then, incorporated into the draft
5 agreement?

6 MR. MORRISON: Note my
7 objection.

8 You can answer.

9 THE WITNESS: I think this is
10 completely different than Exhibit 10,
11 other than the words preserve claim and
12 release claim, everything about this is
13 different.

14 BY MR. COLE:

15 Q. Okay. Take a look at Exhibit 10 and
16 third bullet point. The third bullet point, other
17 than the footnote to the bullet point, are you saying
18 that the third bullet point is different than
19 paragraph J?

20 A. The third bullet point in paragraph J.

21 Q. No. The third bullet point in Exhibit
22 10.

23 A. Sure.

24 Q. In paragraph J is different?

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1 A. They both rely on preserve claim,
2 which is materially different between the second
3 bullet point in Exhibit 10 and subparagraph I in
4 Exhibit 11. And the footnote is different.

5 Q. All right. Maybe I'm not -- can I see
6 your version, because maybe I'm looking at a different
7 version?

8 A. Sure.

9 Q. Okay. All right. Look at paragraph J
10 in Exhibit 11 and the third bullet point of Exhibit
11 10.

12 A. Uh-huh.

13 Q. All right. What's, other than the
14 footnote, what's the difference between the two? It
15 may just be me, and if it is, I apologize.

16 A. So, again, the difference is, they
17 both incorporate preserve claims, but the definition
18 of preserve claims in subparagraph I and the second
19 bullet point of Exhibit 10 are materially different.

20 Q. I got it. Okay. I understand now. I
21 understand. So let me limit the question, then.

22 A. Okay.

23 Q. Other than the definition of preserve
24 claims, right, which is paragraph I --

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1 A. Correct.

2 Q. -- paragraph J was incorporated word
3 for word from the e-mail, other than the footnote?

4 MR. MORRISON: Note my
5 objection.

6 You can answer.

7 THE WITNESS: With the
8 exception of both the footnote and the
9 definition of preserve claims in I, yes.

10 BY MR. COLE:

11 Q. Other than the --

12 Okay. Now, there is a change in the
13 footnote, which is reflected on the cover of page of
14 the e-mail, which Mr. Lewis says is a small tweak. Do
15 you recall this small tweak occurring?

16 MR. MORRISON: Can we just, for
17 the record, are you referring to the
18 cover e-mail on Exhibit 11?

19 MR. COLE: Yes.

20 THE WITNESS: Oh, the cover
21 e-mail on 11?

22 BY MR. COLE:

23 Q. Yes. It says with one small tweak, we
24 accepted your framework to resolve the preserve and

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1 verse the release claim issue, but then it changes the
2 footnote mark. And it highlights the change in that
3 first paragraph of the e-mail. Do you see that?

4 A. I see the e-mail, yes.

5 Q. All right. And the footnote is
6 changed to add the phrase, released claims, on the
7 other hand, include all claims for which loss is not
8 covered by any of the policies pursuant to the terms
9 of the policies. Do you see that?

10 A. Yes. And then it also takes out in
11 addition.

12 Q. And it takes out in addition released
13 claims, includes all claims that are not covered by
14 the policy. It changes the wording; right?

15 A. Yes.

16 Q. And so, all claims refers to --
17 withdrawn.

18 All claims which loss is not covered
19 by the policies would include chapter 5 claims; right?

20 A. I'm sorry, ask that again. I'm not
21 sure I understand the question.

22 Q. It says released claims, on the other
23 hand, include all claims for which loss is not covered
24 by the policies, pursuant to the terms of the

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1 policies. Do you see that?

2 A. Yes.

3 Q. And if you take a look at page two at
4 the footnote, that language is actually added to the
5 draft?

6 A. Correct.

7 Q. And when it refers to all claims which
8 loss is not covered by any of the policies, that would
9 include chapter 5 claims; right?

10 A. To the extent they're not included by
11 the policies, yes.

12 Q. And would include other claims, other
13 potential claims that are not included -- that are not
14 covered by the policies, right, when it refers to all
15 claims?

16 A. It says all claims that are not
17 covered by the policies, by any of the policies, yes.

18 Q. And you understand what the word All
19 means; right?

20 A. I would hope so, yes.

21 Q. Well, in your experience, when you see
22 the word All, that refers to everything that is not
23 excluded; correct?

24 A. No.

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1 Q. Okay. Well, how would you define All?

2 A. It would have to be within the
3 definition of released claims. So, if it's in the
4 definition of released claims, and it's not covered by
5 the policy, then it is all claims for which loss is
6 not covered by any policy.

7 Q. So to determine what a released claim
8 is, we refer back to item J?

9 A. Yes.

10 Q. Okay. Subject to the definition of --
11 well, this is the proper definition of preserve claim,
12 at least in this exhibit, right? It refers to -- the
13 reference to preserve claims in this draft, you don't
14 have a question as to whether or not there's been some
15 kind of problem here; right?

16 MR. MORRISON: Note my
17 objection.

18 BY MR. COLE:

19 Q. Withdrawn.

20 The preserve claims in J refers to I?

21 A. Yes.

22 Q. And at least as of this draft, item J
23 talks about causes of action; correct?

24 A. Causes of action is in subparagraph J,

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1 yes.

2 Q. And as we discussed before, they
3 include chapter 5 claims; right?

4 A. Causes of action is initial capped
5 here, right, I'm assuming it's defined someplace.

6 Q. We'll get there. But I think you just
7 testified that, after the comments as including, but
8 that's not limited to chapter 5 claims; right?

9 A. Which paragraph are we in now?

10 Q. J.

11 A. Okay. Including is not limited,
12 correct.

13 Q. And then if you turn to Bates number
14 8088.

15 A. Okay.

16 Q. This talks about causes of action --
17 cause of action. Do you see that on the bottom there?

18 A. I do.

19 Q. And this defines what the cause of
20 action -- withdrawn.

21 This defines the term cause of action
22 that's used in paragraph J of the whereas provision.
23 You understand that; right?

24 A. I do.

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1 Q. And you understand that -- withdrawn.

2 It says, it means any claims,
3 defenses, remedies, et cetera, et cetera, and then it
4 says, of any kind or character whatsoever, whether
5 known or unknown, foreseen or unforeseen, existing or
6 hereinafter arising, then it goes on.

7 Do you have an understanding as to
8 what the provision known or unknown means?

9 A. I do.

10 Q. Okay. How would you describe the term
11 known or unknown?

12 A. I would describe it, in plain English,
13 parlance. It's either known or it's not known. I'm
14 not sure that we have other words we would use there.

15 Q. So, is it fair to say that it releases
16 claims, whether or not at the time of signing the
17 agreement, the signatory on the release knew or did
18 not know the existence of a claim?

19 A. Yes.

20 Q. Then it goes on to define different
21 claims, and then it says, include, but not limited to,
22 colon; and then it has rights of set off and other
23 items there. Do you see that?

24 A. I do.

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1 Q. And the last part of it says, such
2 claims and defenses as fraud, mistake, duress and
3 usury, and any other defenses set forth in 558 of the
4 Bankruptcy Code.

5 Do you understand that the term
6 release claim includes any claim or defense of fraud;
7 right?

8 A. Yes.

9 Q. All right.

10 MR. COLE: Let me just give
11 everybody a highlight of where I am.

12 MR. MORRISON: Off the record?

13 MR. COLE: Yeah, off the
14 record.

15 (Whereupon, a brief discussion
16 was held off the record.)

17 BY MR. COLE:

18 Q. Let's go back to the Declaration.
19 We're up to paragraph 5.

20 It says, in early March, liquidating
21 trust and the Taube avoidance action defendants agree
22 to settle the liquidating trust Taube avoidance
23 claims. Do you see that?

24 A. I do.

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1 Q. All right. And that's referring to
2 the settlement that we've been discussing during this
3 deposition?

4 A. Yes.

5 Q. Okay.

6 MR. COLE: Let's mark, as
7 Exhibit 12, an agreement dated March 9th
8 of 2022.

9 (Whereupon, Exhibit Saccullo-12
10 was marked for identification.)

11 BY MR. COLE:

12 Q. Mr. Saccullo, I'm handing you what's
13 been marked as Exhibit 12. And I'll ask that --
14 whether or not your signature is on the last page
15 there?

16 A. It is.

17 Q. All right. And do you recognize this
18 document?

19 A. I believe I do.

20 Q. Would you please briefly describe what
21 the document is?

22 A. This is an agreement between Eversheds
23 and the trust regarding a waiver, essentially,
24 allowing payment to bondholders and dealing with, I

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1 believe, payment of their administrative bond.

2 Q. When you say and it deals with
3 payments to bondholders, I gather that refers to
4 paragraph one of the -- on page two?

5 A. That's a portion of it, yes.

6 Q. All right. What was the reason for
7 this agreement with Eversheds -- between Eversheds and
8 the trust? Why was it necessary?

9 A. So my recollection, but I would
10 certainly defer to the actual documents, is that the
11 \$10 million that came in from the March settlement,
12 were to be paid to bondholders directly. And in order
13 for that to happen, Eversheds needed to waive
14 entitlement to payment under that money, otherwise we
15 would not have been able to pay the \$10 million to
16 unsecured creditors.

17 Q. Were there any other law firms or
18 administrative creditors that signed an agreement like
19 this?

20 A. I don't recall.

21 Q. And if I understand correctly what you
22 just said, the \$10 million was the \$10 million that
23 the Taubes and Medley Management were to pay to the
24 account that's held by the trustee, that would then be

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1 credited towards the SEC settlement?

2 A. Yes. It was paid through an
3 intermediary, according to one of the prior documents,
4 but, yes.

5 Q. So if Eversheds -- withdrawn.

6 And I gather that the reason why that
7 was a concern, was that if money came into the estate,
8 that Eversheds, theoretically, would have priority to
9 some of that money as an administrative claimant?

10 A. That's correct.

11 Q. And so, if Eversheds did not enter
12 this agreement, then, could the trustee satisfy the
13 SEC, that all \$10 million dollar it was receiving
14 through the intermediary, from the Taubes and Medley
15 Management, would make its way to bondholders or
16 noteholders?

17 A. Could we have, sitting here today, I
18 don't recall.

19 Q. But that was the design, the design
20 was to make sure that the money that the Taubes and
21 Medley Management paid to the intermediary that was
22 being credited against the SEC settlement would make
23 its way to noteholders?

24 A. Yes.

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Q. And on page two of the agreement, it says, under the last whereas clause, for these reasons, the terms and conditions of this agreement are integral and inextricable to the chapter 5 settlement. Do you see that?

A. I do.

Q. And the chapter 5 settlement is the March settlement that we've been talking about, the March '22, settlement that we've been talking about?

A. I believe it is.

Q. And I gather that, consistent with your general process, you read this before signing it?

A. Yes. I would have.

Q. Did you have an understanding of what was meant by the terms of this agreement, being integral and inextricable to the chapter 5 settlement, what that meant?

A. I believe this is a condition precedent to the other settlement agreement.

Q. And so, if Eversheds did not sign this agreement, the settlement -- the settlement agreement that we've been discussing for March 2022, would not be able to become effectuated or --

A. It was a condition precedent, I

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believe.

Q. Okay.

A. Though, again, I would defer to the actual documents.

Q. Fair enough.

MR. COLE: Let's mark, as Exhibit 13, mark the settlement agreement and release for March of 2022.

(Whereupon, Exhibit Saccullo-13 was marked for identification.)

BY MR. COLE:

Q. Mr. Saccullo, I'm handing you Saccullo Exhibit Saccullo-13. I believe you've seen this document before. You can take a look at it.

A. I have to take your word to the fact that this is the executed version of the March agreement.

Q. So if you go to page 12 of the March agreement -- you beat me to the punch. That's your signature; right?

A. Yes.

Q. And attached to the March agreement are schedules and other referenced agreements. Do you see that?

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A. Yes.

Q. Now, turning back with me to page two. These are the final terms of the agreement, in particular, paragraphs I and J that we've been focused on; right?

A. There is paragraph I and then paragraph J on this page, yes.

Q. And paragraph I refers to preserve claims; right?

A. It does.

Q. And defines preserve claims?

A. It does.

Q. And paragraph J defines release claims; right?

A. It does.

Q. And then there's the footnote, that we discussed as well, down at the bottom there. Do you see that?

A. I do.

Q. All right. So this was the final version of those defined terms. And again, they tie to the release on page 6; right? So the litigation trust releases refers to released claims, and as you point out, release claims is defined and dependent on

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the definition of preserve claims; right?

A. Yes.

Q. And this refers to -- well, why don't I just read some of it. It refers to the liquidating trust release releasing parties, which is the liquidating trust and the debtor; right?

A. Liquidating trustee and the debtor.

Q. Right. And it says that releases claims against Medley, the Taubes, BTT, and the executives; right?

A. Uh-huh.

Q. You have to use yes or no.

A. What's that?

Q. You have to use words.

A. Yes.

Q. And then it talks about affiliates, subsidiaries, family members, et cetera. Do you see that?

A. I do.

Q. And then it says, all other entities owned or controlled by them and their officers, directors, financial and legal advisors, and all employees, representatives, agents, vendors and attorneys of each of the foregoing. And that's

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1 defined as Taube release parties. Do you see that?

2 A. I do.

3 Q. And I gather your point has been that
4 Eversheds does not fall within that definition of all
5 attorneys?

6 A. Well, so, legal advisors or attorneys,
7 correct.

8 Q. So, again, but it says, all of their
9 respective and all employees, representatives, agents,
10 vendors and attorneys reached the foregoing, you're
11 saying --

12 A. It's says all employees.

13 Q. Representatives.

14 A. Then representatives, agents, vendors
15 and attorneys, correct. So they don't fall under the
16 definition of attorneys or...

17 Q. So you're saying the term All does not
18 apply to attorneys?

19 A. Grammatically that's correct, yes.

20 Q. Okay. Why is it grammatically
21 correct, are you saying the comma after vendors?

22 A. Correct. Well, the comma after
23 employees. It's all their employees, representatives,
24 agents, vendors and attorneys.

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1 Q. And so, you're -- is that the reason
2 why you say that Eversheds does not fall within the
3 release provision, because of the grammar?

4 A. No.

5 MR. MORRISON: Note my
6 objection.

7 You can answer.

8 BY MR. COLE:

9 Q. Okay. What's the reason why you say
10 Eversheds does not fall within the release provision
11 of section 6.1?

12 A. So that would rely upon guidance of
13 counsel.

14 Q. But you read this in realtime; right?

15 A. I did.

16 Q. And you understood it in realtime;
17 right?

18 A. I did.

19 Q. I'm asking for your understanding.

20 A. I read and understood it with the
21 guidance of counsel as well.

22 Q. That's fair enough. I'm asking your
23 understanding.

24 A. My understanding, as I've pointed out,

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1 is that Eversheds is not in the definition of
2 attorneys or, I believe it's also legal advisors.

3 Q. And my question is, based upon your
4 understanding --

5 A. Yes.

6 Q. -- when you read this --

7 A. Yes.

8 Q. -- was it because of the grammar or
9 because of something else?

10 A. That is one portion of it, and others
11 are based upon guidance of counsel.

12 Q. Now, by March 23rd of 2022 --

13 A. Okay.

14 Q. -- which is the date that this
15 agreement --

16 A. Okay.

17 Q. -- did the liquidating trust have bank
18 statements and other information sufficient to analyze
19 transfers, all the transfers, to Eversheds?

20 A. As you asked the question, transfers,
21 yes. All transfers, I don't know sitting here today.
22 I would suspect so, I don't know. It wasn't a -- it
23 was not a priority of ours.

24 Q. Right. The transfers that are

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1 referenced in the Complaint in this case are
2 preference transfers, and then fraudulent transfers
3 going back in time, I guess, I think it's about four
4 years.

5 With that in mind, as of March 23rd,
6 did the liquidating trust have sufficient information
7 to be able to determine the transfers made to
8 Eversheds that are reflected in the Complaint?

9 A. I have no specific recollection. I
10 would suspect the answer's yes.

11 Q. Okay. Now, again, let's take a look
12 at the definition section, which is, if you go to
13 page -- go to the last page, on page 12. It's the
14 next page over. And you see that the term cause of
15 action is down at the bottom there?

16 A. I do.

17 Q. And again, it incorporates, under item
18 D at the end, defenses, such as fraud, mistake,
19 duress and usury. Do you see that?

20 A. I do.

21 Q. And those would be defenses because --
22 withdrawn.

23 It refers to section 558 of the
24 Bankruptcy Code, those are the defenses of the estate;

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1 right?

2 A. Without seeing it, I don't know what
3 section 558 does there.

4 Q. Do you have an understanding that
5 these are defenses of the estate that's referred to
6 there?

7 A. I do not.

8 Q. Okay. All right. And on page three,
9 paragraph three, this remains unchanged from the prior
10 version also, right, it's \$10 million for Class 3
11 payments; right?

12 A. Whether this -- is the question does
13 this remain --

14 Q. Let me make just it simple.

15 A. Okay.

16 Q. This provision says, refers to \$10
17 million to fund the Class 3 payment; right?

18 A. Well, it says as described -- as paid
19 in the manner described in section 3.1. I would have
20 to look down further, but I would imagine that's true.

21 Q. But it's defined Class 3 payment;
22 right?

23 A. That's correct.

24 Q. And I guess Ancora was the escrow

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1 agent for that; right?

2 A. Yes.

3 Q. And the class 3 payment, I think we've
4 established is the notes -- is the bondholders or
5 noteholders; right?

6 A. Noteholders, yes.

7 Q. And the \$2.6 million was the trust
8 payment that, I believe you said was going to be used
9 to fund the trust; is that right?

10 A. 2.65, yes.

11 Q. And then the 575, you still don't
12 understand -- you don't know what that referred to
13 relating to a payment made to Schulte; right?

14 A. So I believe the \$575,000.00 was tied
15 into a future settlement, that it would have been made
16 available to the extent that we settled in the future
17 for other causes of action.

18 Q. Okay. And one of those cause of
19 action was -- did that relate to a claim by Potter
20 Anderson? Did Potter Anderson have any claim against
21 the estate?

22 A. Not that I'm aware of.

23 Q. Did any other law firm -- does this
24 refresh your memory that a law firm had a charge lien

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1 that they were asserting?

2 A. I'm not aware of any law firm with a
3 charging lien.

4 Q. All right. Let's go to the next
5 document.

6 MR. COLE: Let's mark this, as
7 Exhibit 14. This is the Order
8 Instituting Cease-and-Desist Proceedings
9 Securities and Exchange Commission.

10 (Whereupon, Exhibit Saccullo-14
11 was marked for identification.)

12 BY MR. COLE:

13 Q. I'm showing you what's been marked as
14 Exhibit 14. Mr. Saccullo, do you recognize this
15 document?

16 A. Do you want me to review this entire
17 thing?

18 Q. No. But do you recognize this
19 document as the order, the order and -- the
20 cease-and-desist order and settlement with Medley
21 Management, Brook Taube and Seth Taube?

22 A. That appears to be what it is, yes.

23 Q. All right. If you take a look at page
24 23 of the order, under item 5 at the bottom there.

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1 A. I'm sorry, 23 item --

2 Q. Roman numeral five -- four, I'm sorry.
3 It's at the bottom.

4 A. What am I missing? Oh, I'm sorry.
5 Yes.

6 Q. This is the section that includes the
7 payments we made in connection with the agreement with
8 the SEC. Do you see that?

9 A. It appears to be that, yes.

10 Q. And it refers to Medley Management.
11 And if you turn the page, Medley Management was going
12 to provide \$4 million -- had to pay \$4 million under
13 this agreement; right?

14 A. That appears to be correct.

15 Q. And I believe, earlier on today you
16 said you weren't sure if it was a penalty or something
17 else. Does this refresh your memory that it was a
18 penalty?

19 A. It says that it's a civil money of
20 penalty.

21 Q. And then, Brook Taube was required to
22 pay a \$4 million penalty, right, that's under item B?

23 A. Yes.

24 Q. And then, Seth Taube was required to

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1 pay the \$2 million penalty under item C; right?

2 A. Yes.

3 Q. Is this the \$10 million that we've
4 been referring to as being connected to the settlement
5 agreement?

6 A. This is the \$10 million, for which
7 they would be entitled to an offset dollar for dollar
8 with what they paid into the estate, pursuant to the
9 other agreement, yes.

10 Q. And so, that's referred to at the top
11 of page 24, in subparagraph three, referring to the
12 bankruptcy case; right?

13 A. Yes.

14 Q. And so, this is the agreement that had
15 to be entered with the SEC that was a condition
16 precedent to the settlement agreement?

17 A. I believe that to be correct.

18 Q. So, now, March 23rd -- okay. Turning
19 back to your Affidavit and Declaration. We're going
20 to go down to paragraph nine, which is on the bottom
21 of page three. It says, following the execution of
22 the settlement agreement, the liquidating trust
23 embarked on its effort to resolve the preserved
24 claims.

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1 Those were the breach of fiduciary
2 duty claims that were not resolved as part of the
3 settlement agreement; right?

4 A. Yes.

5 Q. And by that time, by March of 2023,
6 had negotiations towards that agreement occurred?

7 Or, in other words -- let me rephrase
8 it.

9 Were there negotiations occurring
10 relating to the preserve claims prior to entering the
11 settlement agreement?

12 A. Yes.

13 Q. All right. And who represented the
14 estate in those negotiations?

15 A. That was Kelley Drye and Reid Collins.

16 Q. And who represented the Taubes?

17 A. That was Doug Koff.

18 Q. And that was Schulte Roth; right?

19 A. Schulte Roth, yes.

20 Q. And who represented Medley Management?

21 A. That would have been Adele Hogan.

22 Q. Okay. All right.

23 MR. COLE: Let's mark, as the
24 next exhibit, this is an e-mail from

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1 Abbey Walsh at Schulte to Eric Madden at
2 Reid Collins. And this is Exhibit 15.

3 (Whereupon, Exhibit Saccullo-15
4 was marked for identification.)

5 BY MR. COLE:

6 Q. I'm showing you what's been marked as
7 Saccullo-15. I'll ask if you've ever seen that e-mail
8 and the attachment before.

9 A. Have I ever seen this e-mail?

10 Q. Yes.

11 A. I don't know.

12 Q. But this is July of 2022, I gather, at
13 this point in time, you're starting -- again, you're
14 negotiating a pre and post, post-April of 2019
15 preserve claim; is that right?

16 A. Yes.

17 Q. Now, at this point, this is -- at this
18 point, is there any agreement with the insurance
19 companies to enter into a negotiation, in July of
20 2022?

21 A. So you would have to divide up the
22 insurance companies, because the different towers had
23 very different agreements.

24 Q. All right. Let me rephrase it, then.

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1 Were there negotiations occurring, as
2 of July 2022, with any of the insurance companies
3 relating to the preserve claims?

4 A. I believe there were. I don't recall,
5 but I believe there were.

6 Q. Now, this agreement, if you turn to
7 page three of this draft agreement, refers to a
8 settlement payment of \$6.7 million.

9 A. Uh-huh.

10 Q. Do you see that?

11 A. I do.

12 Q. And who is to fund that \$6.7 million?

13 A. Here, it's the Medley's D's and O's.

14 Q. Was this agreement ever entered, where
15 the Medley D's and O's paid \$6.7 million to the
16 estate?

17 A. The Medley D's and O's did not pay
18 \$6.7 million to the estate directly.

19 Q. Ultimately, the payment made into the
20 estate was paid from insurance companies after a
21 mediation; is that right?

22 A. There were two -- there were three
23 separate deals, and I don't know, just looking at the
24 face of it, which one this relates to.

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1 Q. Let's take a look at page five of the
2 draft agreement. And again, this is a draft from red
3 line from, what looks like, Schulte. Do you see that
4 in the top right-hand corner?

5 A. Yes.

6 Q. All right. And there's a footnote
7 there that said -- that Schulte added, for the
8 avoidance of doubt, nothing in this agreement or the
9 first settlement agreement shall constitute a release
10 by Medley, and I'm sorry, M-D-L-Y, or any of the D&O
11 release parties of any claims and causes of action
12 against any of their prior attorneys, notwithstanding
13 the fact that any of those prior attorneys may also
14 have been attorneys for the debtor, the debtor's
15 direct and indirect wholly subsidiaries, the
16 liquidating trust or the liquidating trustee. Do you
17 see that?

18 A. I do.

19 Q. Now, I believe, in your Affidavit, you
20 refer to this footnote in paragraph nine, but this is
21 the first instance that I found that this type of
22 footnote was added.

23 Do you have an understanding as to why
24 Schulte was the entity that proposed the footnote?

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1 MR. MORRISON: Just note my
2 objection.

3 You can answer.

4 THE WITNESS: So this footnote
5 is materially different than the ones
6 which I was referring. I have a
7 suspicion why they put this in.

8 BY MR. COLE:

9 Q. Okay.

10 A. Based upon the fact that they later --
11 Schulte didn't, but certain of their client's later
12 sued Lowenstein Sandler for malpractice.

13 Q. Why was this footnote necessary, if
14 lawyers, all lawyers were not included in the release?

15 A. You would have to ask Schulte Roth.
16 That was their insistence, not ours.

17 That release that you're talking about
18 is also a release from the trust. This confirms that
19 Medley is not releasing their attorneys. Different
20 language.

21 Q. Right. So are you saying that
22 Medley -- that Lowenstein represented Medley?

23 A. So I don't have to say it, there's a
24 whole bunch of litigation about it. And they were

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1 disqualified from representing the debtor in
2 bankruptcy based upon prior representations, all of
3 which was made the public. I would defer to the
4 public record on who they represented.

5 Q. But your recollection was that, the
6 reason why this language first showed up, was the
7 interest of the Taubes or Medley Management to sue
8 Lowenstein?

9 A. Why this language showed up in their
10 draft?

11 Q. Yes.

12 A. Yes.

13 Q. And who is representing Medley
14 Management in this circumstance?

15 A. I believe that was Adele.

16 Q. And could you tell me why Adele is not
17 referred to in this e-mail?

18 A. I cannot.

19 Q. All right.

20 MR. COLE: Let's go to the next
21 exhibit, which is -- it's a July 11
22 e-mail from Brandon Lewis to Doug Koff,
23 dated July 11th. It refers to Medley
24 draft agreements.

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1 (Whereupon, Exhibit Saccullo-16
2 was marked for identification.)

3 BY MR. COLE:

4 Q. Mr. Saccullo, I'm showing you what's
5 been marked as Exhibit 16. I gather you haven't seen
6 that before or don't remember seeing it?

7 A. I have no specific recollection of
8 seeing it, this e-mail anyway.

9 Q. This is a draft of -- from Brandon
10 Lewis, which was your counsel; right?

11 A. Yes.

12 Q. And if you take a look at page four,
13 the footnote was changed, although, I don't have the
14 red line to it, says for avoidance of doubt, nothing
15 in this agreement or the first settlement agreement
16 shall constitute a release of any claims or cause of
17 action by any prior attorney of MDLY, Medley, or any
18 of the D&O related parties, notwithstanding the fact
19 that those prior attorneys may have also been
20 attorneys for the debtor, the debtor's direct and
21 indirect wholly subsidiaries, the liquidating trust or
22 the liquidating trustee. Do you see that?

23 A. Yes. For the record, there were a
24 couple reading mistakes, but, yes.

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1 Q. Do you understand that Reid Collins
2 was expanding the scope of this carve out?

3 A. They put it in there, yes.

4 Q. And I think before you said the
5 purpose of the -- you understood the purpose of the
6 footnote was because the Taubes or Medley Management
7 wanted to sue Lowenstein; is that right?

8 A. Yes.

9 Q. What was the reason for adding it
10 there?

11 A. So, at this point, I believe there
12 were possible causes of action against Fredericks,
13 which we were potentially preserving, though, I don't
14 think that made the final draft.

15 Q. Okay. Were you trying to preserve any
16 other claims against lawyers? This is July of 2022.

17 A. At this point, I don't know. I don't
18 know if we -- I don't know if, as of this draft, we
19 were specifically also preserving against Eversheds.

20 Q. By the ultimate agreement, you were
21 trying to preserve against Eversheds attorneys?

22 A. I think the language very specifically
23 includes potential causes of action against Eversheds.

24 Q. Okay. Let's take a look at that.

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1 A. Yep.

2 MR. COLE: Let's mark, as the
3 last exhibit, 17, the settlement
4 agreement. And it is post-April 30th
5 claim. I know there's another one for
6 pre-April 30th, but I think they're
7 similar for what we're going to look at.

8 And just for the record, it
9 says Exhibit C in the front, because I
10 received this off of the Court's docket
11 in connection with the motion to approve
12 the agreement.

13 (Whereupon, Exhibit Saccullo-17
14 was marked for identification.)

15 BY MR. COLE:

16 Q. Mr. Saccullo, I'm showing you what's
17 marked as Exhibit 17. I gather you recognize this
18 document, although, this is the unsigned version
19 because it was attached as Exhibit C to the motion.

20 A. Sure. I'll take your word. I see the
21 CNCF label across the top.

22 Q. Okay. Now, if you turn to page four
23 with me. It's in a footnote 10. Do you see that?

24 A. I do.

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1 Q. It says, notwithstanding anything to
2 the contrary, it's nothing in the section 7, which
3 refers to releases, or elsewhere in this agreement, or
4 in the March 22nd settlement agreement, shall
5 constitute a release waiver or covenant not to sue
6 regarding any claims or cause of action by a settling
7 party, the debtor or MDLY, as defined in the schedule
8 next hereto, against any attorney or law firm other
9 than John Franks, with respect to post-April 30th
10 claims, that may have represented such settling party,
11 the debtor or Medley.

12 So this extends it even further;
13 right?

14 A. It does.

15 Q. And this would include claims against
16 Eversheds?

17 A. I think you say include, I would say
18 exclude, but, yes. It would clarify that nothing was
19 intended to release Eversheds.

20 Q. So you say exclude, that's --

21 A. Correct. You're excluded from a
22 release, included in this provision.

23 Q. Got it. Right. So I was saying that
24 Eversheds is one of the entities that is the subject

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1 of this provision; right?

2 A. Eversheds represented the debtor and
3 MDLY.

4 Q. And why was this provision necessary?

5 A. I think this provision clarifies that
6 there is an exclusion from the releases here, just in
7 case there's any doubt, where Eversheds, among others,
8 including Lowenstein, are not being released in this
9 agreement. And it was not the intent to the parties
10 to do anything to release them from the prior.

11 Q. And why would this footnote be needed
12 if the grammar was correct in the prior?

13 A. Whether it's necessary or whether it's
14 avoidance of doubt, belt and suspenders are two very
15 different things.

16 Q. So you view this as avoidance of
17 doubt, belt and suspenders?

18 A. I do.

19 Q. You don't view this as an amendment to
20 the prior agreement, do you?

21 A. I do not.

22 Q. Okay. And just so, to be clear --
23 actually, you did sign it on page 11?

24 A. Yes. Yes.

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1 Q. That's your signature?

2 A. Well, yes. That's -- yes. That's the
3 DocuSign signature of my signature, I guess, so we're
4 clear for the record.

5 MR. COLE: That's all I have.

6 MR. MORRISON: I didn't want to
7 interrupt Mr. Cole, when he was using
8 the language, he said John Franks, it's
9 Fredericks. You can just correct it.

10 THE WITNESS: I felt bad
11 pointing out another reading error, so
12 just left it alone.

13 MR. MORRISON: And I have no
14 questions.

15 THE COURT REPORTER: Do you
16 want an electronic version of the
17 transcript?

18 (Whereupon, the oral
19 examination concluded at 1:37 p.m.)
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LAWYER'S NOTES

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

1 I, AMY D. CORTALE, a Court Reporter and
2 Notary Public, in and for the State of Delaware, do
3 hereby certify the foregoing to be a true and accurate
4 transcript of my original stenographic notes taken at
5 the time and place hereinbefore set forth.
6
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10

11 -----
12 Amy D. Cortale, Court
13 Reporter-Notary Public
14 in and for the State of
15 Delaware
16

17 Dated: 12-22-2025
18
19
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21 (The foregoing certification or reproduction of this
22 transcript does not apply to any of the same by any means,
23 supervision of the certifying shorthand unless under the
24 direct control and/or reporter.)

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Exhibit 2

1
2 IN THE UNITED STATES BANKRUPTCY COURT
3 FOR THE DISTRICT OF DELAWARE

4 -----
5 In re:

6 MEDLEY LLC,

7 Debtor.

8 Case No. 21-10526 (KBO)
9 -----

10 June 12, 2023

11 1:04 p.m.

12
13
14 VIDEOCONFERENCE DEPOSITION of
15 ANTHONY SACCULLO, pursuant to Notice, held
16 at the offices of SACCULLO BUSINESS
17 CONSULTING, LLC, 27 Crimson King Drive,
18 Bear, Delaware before Wayne Hock, a Notary
19 Public of the State of New York.
20
21
22
23
24
25

A P P E A R A N C E S:

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ALSO PRESENT:

NICHOLAS CHRISTAKOS, ESQ.
(via videoconference)

* * *

1
2 A N T H O N Y S A C C U L L O, having
3 been first duly sworn by a
4 Notary Public of the State of
5 New York, upon being examined,
6 testified as follows:

7 EXAMINATION BY

8 MR. COLE:

9 Q. Good afternoon, Mr. Saccullo.
10 How are you?

11 A. Good.

12 Q. My name is Adam Cole. I
13 represent Eversheds Sutherland in
14 connection with the motion that your firm
15 as liquidating trustee filed with regard
16 to Eversheds' retention and the final fee
17 application.

18 We've never met before; is that
19 correct?

20 A. I believe that's correct.

21 Q. Now, have you ever had your
22 deposition taken before?

23 A. I have not.

24 Q. But you're a lawyer though;
25 right?

1 A. Saccullo

2 A. I am.

3 Q. And I gather that you've taken
4 or at least defended depositions in the
5 past?

6 A. Both, yes.

7 Q. So there's no need to go through
8 all the background initial rules with you;
9 is there?

10 A. I should be okay.

11 Q. Now, you said you're a lawyer.
12 What's the name of your law
13 firm?

14 A. AM Saccullo Legal, LLC.

15 Q. And how long have you been a
16 lawyer?

17 A. Twenty-two years.

18 Q. And during those twenty-two
19 years, have you developed any areas of
20 specialty?

21 A. Yes.

22 Q. And how would you describe those
23 areas of specialty? What are they?

24 A. Corporate bankruptcy and
25 commercial litigation. Corporate

1 A. Saccullo

2 litigation as well.

3 Q. You said corporate bankruptcy.

4 Is that representing debtors,
5 creditors, various constituencies in
6 bankruptcy cases?

7 A. Yes.

8 Q. And how long have you been
9 representing the various constituencies in
10 bankruptcy cases as a lawyer?

11 A. Since day one.

12 Q. During -- as a lawyer, have you
13 ever represented a Chapter 7 trustee?

14 A. I have.

15 Q. And how often in the past have
16 you done that as a lawyer?

17 A. Oh, many, many times for the
18 first ten or eleven years of my career.

19 Q. And how about liquidating
20 trustees, have you ever represented a
21 liquidating trustee as a lawyer?

22 A. Yes.

23 Q. When I use the term "liquidating
24 trustee", you understand what I'm talking
25 about; right?

1 A. Saccullo

2 A. I assume you're talking about a
3 post-confirmation trustee?

4 Q. Yes.

5 So if use the term "liquidating
6 trustee", would you rather me use
7 post-confirmation trustee or "liquidating
8 trustee"? If I use them interchangeably,
9 you'll know what I'm talking about?

10 A. I will.

11 Q. Now, I understand that --

12 MR. COLE: Withdrawn.

13 Q. Are you the sole principal or
14 owner of your law firm?

15 A. I am.

16 Q. Now, I understand that you also
17 are a principal of Saccullo Business
18 Consulting?

19 A. I am.

20 Q. And what is the business of
21 Saccullo Business Consulting?

22 A. Overwhelmingly it is acting as
23 what we call last person standing.

24 Q. Can you describe for me what
25 that is?

1 A. Saccullo

2 A. Sure.

3 So liquidating trustees, plan
4 administrator, wind down officer,
5 receiver.

6 Q. And how long has Saccullo
7 Business Consulting been in business?

8 A. Thirteen years.

9 Q. Can you give me a ballpark of
10 how many engagements as a liquidating
11 trustee or plan administrator Saccullo
12 Business Management [sic] was hired for?

13 A. Dozens.

14 Q. It's more than one.
15 You have experience; correct?

16 A. Correct. We have ten going on
17 right now.

18 Q. Prior to --

19 MR. COLE: Withdrawn.

20 Q. We're here on the Medley
21 bankruptcy.

22 You understand that; right?

23 A. Yes.

24 Q. And prior to being retained or
25 being hired in the Medley bankruptcy as

1 A. Saccullo

2 the liquidating trustee or
3 post-confirmation trustee, were you
4 involved or was Saccullo Business
5 Consulting involved as a liquidating
6 trustee?

7 A. I'm not sure I understand --

8 Q. That was a garbled question.

9 Prior to being retained in the
10 Medley bankruptcy as liquidating trustee,
11 I gather Saccullo Business Consulting had
12 served as a liquidating trustee prior to
13 that?

14 A. Yes.

15 Q. Now, prior to being retained in
16 the Medley bankruptcy, can you describe
17 for me what -- what the intake process is
18 at Saccullo Business Consulting when it's
19 retained as a liquidating trustee or plan
20 administrator? From day one, what
21 happens?

22 A. When we're appointed?

23 Q. Yes.

24 A. So once the plan becomes
25 effective, we coordinate with counsel to

1 A. Saccullo

2 gather the books and records of the
3 company, assess the assets of the company,
4 assess what litigation might be out there,
5 determine what we need to do in the go
6 forward of the case.

7 Q. Now, typically I gather that the
8 constituency that contacts you is either a
9 creditor's committee or a debtor; is that
10 right?

11 A. Generally, yes.

12 Q. And so prior to being retained
13 and approved by the bankruptcy court,
14 there's a period of time that I gather
15 Saccullo Business Consulting discusses the
16 case with the debtor or the committee; is
17 that right?

18 MR. ROBBEN: I object to the
19 form.

20 Q. I'm talking about in general.

21 In general, the constituency
22 that contacts you to appoint you or seek
23 to appoint you as a liquidating trustee or
24 a post-petition fiduciary --
25 post-confirmation fiduciary, I gather you

1 A. Saccullo
2 discuss the case with that entity; is that
3 right?

4 MR. ROBBEN: Objection to the
5 form.

6 THE WITNESS: Yes.

7 Q. And do they tell you a little
8 bit about the scope and retention
9 typically or no, in most instances?

10 A. Generally, sure, yes.

11 Q. And you understand in most
12 instances, most instances part of what
13 Saccullo Business Consulting is retained
14 for is to, in fact, take a look at
15 potential litigation that the liquidating
16 trust can pursue; is that right?

17 A. I would say many if not most,
18 yes.

19 Q. And part of the litigation that
20 Saccullo would be hired for, when hired
21 for that purpose, would be avoidance
22 cases; is that right?

23 MR. ROBBEN: I object to the
24 form.

25 THE WITNESS: Yes.

1 A. Saccullo

2 Q. And when I use the term
3 "avoidance case" or "avoidance claims",
4 you'll understand that in general to be a
5 preference or fraudulent transfer type
6 claim?

7 A. Correct.

8 Q. Now, you're contacted, you
9 discuss the -- Saccullo Business
10 Consulting discusses the case, and you're
11 retained.

12 Prior to being retained, does
13 Saccullo Business Management [sic] conduct
14 a conflict check?

15 A. Yes.

16 Q. I was remiss in asking two other
17 questions.

18 Are you the sole principal of
19 Saccullo Business Consulting?

20 A. I am.

21 Q. Any other owners?

22 A. No.

23 Q. Do lawyers from your law firm
24 work as consultants at Saccullo Business
25 Management [sic]?

1 A. Saccullo

2 A. Consulting.

3 Q. Consulting.

4 A. Yes.

5 Q. Now, I asked you about conflict
6 checks.

7 So you said, when Saccullo
8 Business Consulting is contacted and is
9 discussing potentially being a liquidating
10 trustee, that it conducts a conflict check
11 to determine whether or not it has
12 conflicts; correct?

13 A. Yes.

14 Q. And does that conflict check
15 flow into the law firm as well to make
16 sure the law firm has no conflicts?

17 A. It's all combined, yes.

18 Q. So there's sort of an overlap at
19 least with respect to the conflict check;
20 right?

21 A. The conflict check covers
22 conflicts of both entities.

23 Q. Typically who provides you with
24 the names to check to see if there's a
25 conflict?

1 A. Saccullo

2 A. Whomever's looking to retain us.

3 Q. So it would be either the
4 committee or the debtor or some other
5 constituency that's asking about
6 retention; is that right?

7 A. Correct.

8 Q. Now, in your experience
9 typically --

10 MR. COLE: Withdrawn.

11 Q. I gather that the conflict
12 checks typically have the name of the
13 debtor, the name of certain creditors; is
14 that correct?

15 A. The major constituencies, yes.

16 Q. Does the conflict check
17 typically have the names of potential
18 litigation targets?

19 A. If there were litigation
20 targets, it may, yes.

21 Q. So for instance, if there were
22 -- if the committee or the constituency
23 that contacted you identified potential
24 claims against third parties, those are
25 the types of parties that you would search

1 A. Saccullo

2 in your conflict check?

3 A. If we receive them, yes.

4 Q. Now, with respect to the
5 avoidance claims that we talked about, as
6 a post-petition trustee or a post-petition
7 liquidating trustee, was --

8 MR. COLE: Withdrawn. Let me
9 phrase it differently.

10 Q. Prior to being appointed
11 liquidating trustee for Medley, did
12 Saccullo Business Management [sic] have
13 experience in investigating avoidance
14 actions in the cases for which it was
15 retained?

16 A. Certain cases, yes. Many cases
17 at this point, by the time we get them,
18 avoidance actions have been sold.

19 Q. I'm sorry, I missed the last
20 piece. It may have been garbled.

21 A. In many cases where we're being
22 retained in, especially now, the avoidance
23 actions are sold by the time we get them.

24 Q. When you say "sold", they're
25 sold to a third party to litigate; is that

1 A. Saccullo

2 right?

3 A. Generally as part of a general
4 asset sale in a bankruptcy.

5 Q. Now -- but you did say that
6 there were cases that Saccullo Business
7 Consulting was retained in which it
8 conducted its own investigation of
9 avoidance claims; is that right?

10 A. We oversee the investigation,
11 yes.

12 Q. And you say "oversee the
13 investigation".

14 What are the steps that are
15 taken to investigate avoidance claims that
16 Saccullo had experience in engaging prior
17 to Medley?

18 MR. ROBBEN: I object to the
19 form.

20 THE WITNESS: Generally
21 speaking, we put together the books
22 and records, cull the information from
23 what's given to us by the debtor, and
24 we then take that information and hand
25 it over to the attorney who is running

1 A. Saccullo

2 the investigation.

3 Q. I believe, Mr. Saccullo, you
4 testified that Saccullo Business
5 Consulting, in its role as a liquidating
6 trustee, would supervise professionals in
7 evaluating or would accumulate information
8 from the books and records of the company
9 and deliver it to professionals who were
10 handling potential claims; is that
11 correct?

12 MR. ROBBEN: I object to form.

13 THE WITNESS: Yes.

14 Q. Now, let's take the first step.
15 Typically prior to being named
16 liquidating trustee at Medley, where would
17 you obtain the books and records from
18 which to determine transfers out of the
19 debtor?

20 A. I'm not sure I understand the
21 question.

22 Q. Well, the avoidance claims that
23 I gather that Saccullo Business Consulting
24 investigated are claims of money being
25 transferred from the debtor to a third

1 A. Saccullo

2 party prepetition; correct?

3 A. In most instances, yes.

4 Q. Where would Saccullo Business
5 Consulting obtain the information to
6 determine when and to whom the transfers
7 were made?

8 A. So not in Medley, just in
9 general?

10 Q. In general.

11 A. Two sources. Ultimately one is
12 bank records directly from the bank for
13 the debtor's books and records.

14 Q. And I believe you said you would
15 accumulate the information and deliver it
16 to whoever the professional was that may
17 or may not commence the action; correct?

18 A. Sure.

19 Q. What format do you deliver that
20 information typically to the professional?

21 A. Oh, I don't think we have a
22 typical format. Whatever people ask for
23 we give them.

24 Q. Well, do you prepare a
25 spreadsheet, for example, of dates and

1 A. Saccullo

2 transfers?

3 A. We have, sure.

4 MR. ROBBEN: I object to the
5 form.

6 Q. And when you do those
7 spreadsheets, I gather that the -- they
8 show a particular recipient set forth by
9 recipient; is that right?

10 MR. ROBBEN: I object to the
11 form.

12 Q. Well, you identify the recipient
13 of a fraudulent or preferential transfer,
14 correct, when you give it to your
15 professional; is that right?

16 MR. ROBBEN: I object to the
17 form.

18 THE WITNESS: Yes.

19 Q. And you list the dates of
20 various transfers; is that right?

21 A. Yes.

22 MR. ROBBEN: I object to the
23 form.

24 Q. And that's important because you
25 need to know the dates to determine, for

1 A. Saccullo

2 instance, if it was within the preference
3 period; correct?

4 A. Yes.

5 Q. And you also list the notes that
6 were transferred and the dates on which
7 they were transferred during the ninety
8 days in a preference case; correct?

9 MR. ROBBEN: I object to the
10 form.

11 THE WITNESS: Yes.

12 Q. And you say you either -- you
13 might create a chart or you'd provide
14 other types of information to the
15 professional.

16 What other types of information
17 would you typically or would Saccullo
18 Business Consulting typically provide to
19 the professional to support a preference
20 or other type of avoidance action?

21 MR. ROBBEN: I object to the
22 form.

23 THE WITNESS: If we're talking
24 strictly about preference, we would
25 look at pre-preference period payments

1 A. Saccullo

2 and give them information on the
3 payment history. We would give them
4 any of the information that they
5 needed to meet their pleading
6 requirements for the actual preference
7 itself as well.

8 MR. ROBBEN: Adam, I just want to
9 make sure I understand.

10 Are you asking about what's done
11 at the investigatory stage or are you
12 talking about what's done later on?
13 Like what phase are we in?

14 MR. COLE: We were talking about
15 the investigatory stage, but I'll
16 clean it up.

17 Q. Mr. Saccullo, I believe I asked
18 you where you would obtain the information
19 to provide to professionals to determine
20 whether or not there's a valid preference
21 or other type of claim, and I believe you
22 said you would obtain that information in
23 from the company's books and records and
24 from bank statements; is that right?

25 A. Bank records, yes.

1 A. Saccullo

2 Q. Bank records?

3 A. Including statements.

4 Q. And just so I'm sure I
5 understand when you say the company's
6 books and records, would you typically
7 have a general ledger to help you
8 determine those transfers?

9 A. A portion of it, yeah. We
10 generally are able to access all of the
11 accounting software from the debtor and
12 manipulate that data.

13 Q. And when you say manipulate the
14 data, you can sort it in a way that you
15 can show transfers out of the debtor by
16 recipient, transfer recipient; right?

17 A. I'm confident we can do that in
18 general cases, yes.

19 Q. Right.

20 And when you manipulate the data
21 from the company's books and records, you
22 can show the dates on which each transfer
23 was made; correct?

24 A. Sure.

25 Q. And this is part of, I think to

1 A. Saccullo

2 go to Mr. Robben's point, this is that is
3 right of your investigative function after
4 being appointed liquidating trustee, for
5 instance; correct?

6 A. Yes.

7 Q. Now, how soon after -- generally
8 -- and we'll get to Medley.

9 Generally, how soon after being
10 appointed does Saccullo Business
11 Consulting start the investigation of
12 potential avoidance claims?

13 A. So I think that very much
14 depends on where we are with regard to the
15 institute of limitations and what other
16 tasks need to be accomplished on a higher
17 priority.

18 Q. That's a fair answer, and we'll
19 talk about those items when we get to
20 Medley.

21 And I believe just to round it
22 out, once the information is compiled from
23 the books and records of the company in
24 general, it's at that point you send that
25 information, whether it be in a summary

1 A. Saccullo

2 format or the backup as well, to the
3 professional; is that right?

4 A. Correct.

5 Q. Does Saccullo Business
6 Management [sic] prepare any type of
7 memorandum of its opinion concerning
8 whether or not the facts show a potential
9 avoidable transfer?

10 A. So we're Saccullo Business
11 Consulting.

12 Q. I'm sorry, consulting.

13 If I call it Saccullo --

14 A. That's perfectly fine as well.

15 Q. I'm going to call it Saccullo
16 and call you Mr. Saccullo; is that fair?

17 A. Yes.

18 Q. Do you have the question in
19 mind?

20 A. I do.

21 I think generally we would have
22 that analysis done by the attorney who's
23 going to prosecute it.

24 Q. And then I gather that the
25 attorney would then confer with you about

1 A. Saccullo

2 the potential for the claims and then
3 you'd make a decision as to whether or not
4 that claim should be commenced; fair
5 enough?

6 A. That's correct.

7 Q. And obviously you keep an eye
8 out for the statute of limitations;
9 correct?

10 A. Correct.

11 MR. COLE: Let me mark -- I don't
12 know if your counsel provided you with
13 access to the electronic version of
14 what I'm about to mark or I also sent
15 a PDF version. I'm going to use the
16 electronic version. If you can access
17 it, that would be great. Otherwise,
18 please feel free to access the PDF
19 version. And I'll do this the best I
20 can, but sometimes it doesn't work.

21 (Whereupon, a document entitled
22 Notice of Selection of Proposed
23 Liquidating Trustee was marked Exhibit 1
24 for identification.)

25 Q. So do you see the exhibit on

1 A. Saccullo

2 your screen there?

3 A. I do now, yes.

4 Q. So I'm marking as Exhibit 1 the
5 notice of selection of proposed
6 liquidating trustee. It's dated -- it was
7 filed August 24 of 2021 and it was filed
8 by Potter Anderson and Kelley Drye.

9 Do you see that?

10 A. I do.

11 Q. Now, you understood that Kelley
12 Drye at the time and Potter Anderson at
13 the time were counsel for the official
14 committee; is that right?

15 A. Yes.

16 Q. And again, this is dated
17 August 24 of 2021. I'd like to focus on
18 the period prior to August 24, 2021 and
19 ask you first do you recall who contacted
20 you or someone at Saccullo with regard to
21 acting as liquidating trustee for Medley,
22 LLC?

23 A. So I believe it was Jim Carr
24 from Kelley Drye.

25 Q. Had you worked with Jim Carr

1 A. Saccullo

2 previously?

3 A. That's a good question. I do
4 not know.

5 Q. And how long in advance of
6 August 24, just using August 24 as a
7 guidepost, how long in advance do you
8 recall Mr. Carr contacting you?

9 A. I don't remember.

10 Q. Now, I gather, consistent with
11 your experience, Mr. Carr explained a
12 little bit about the case; is that right?

13 A. Yes.

14 Q. And did Mr. Carr -- was it your
15 understanding, from speaking with Mr.
16 Carr, that you -- that Saccullo would
17 potentially be retained as the liquidating
18 trustee for Medley, LLC?

19 A. Yes.

20 MR. ROBBEN: Anthony, you can
21 answer that yes or no.

22 MR. COLE: I'm sorry, Phil?

23 MR. ROBBEN: I was going to
24 instruct the witness he can answer the
25 question but answer it yes or no.

1 A. Saccullo

2 Q. And during those conversations,
3 did Mr. Carr -- yes or no -- Mr. Carr
4 explain the scope of what would be needed
5 as liquidating trustee for Medley, LLC?

6 MR. ROBBEN: I object to the
7 form.

8 THE WITNESS: I'm sure we had a
9 conversation about the case, yes.

10 Q. Now, were preference and
11 avoidance claims, not individual
12 preference and avoidance claims, but was
13 the -- were preference and avoidance
14 claims discussed as part of the scope of
15 the retention or potential retention at
16 that time?

17 MR. ROBBEN: I'm going to
18 instruct Mr. Saccullo not to answer
19 the question on the basis that it
20 would reveal privileged information
21 and work product.

22 Q. And obviously at that time --
23 well, let me ask about that.

24 Mr. Saccullo, at that time you
25 were being --

1 A. Saccullo

2 MR. COLE: Withdrawn.

3 Q. At the time you first spoke with
4 Mr. Carr and communications with Kelley
5 Drye leading up to August 24, 2021, you
6 understood that Kelley Drye lawyers were
7 representing the committee; correct?

8 A. Yes.

9 Q. And you understood from your
10 experience or Saccullo's experience as a
11 liquidating trustee that typically you're
12 being retained as successor to the debtor;
13 is that right?

14 A. Yes.

15 Q. Now, when Mr. Carr contacted
16 you, did he in any way suggest that you
17 would be retained to represent the
18 committee?

19 A. No.

20 Q. So I'll ask again, were
21 avoidance actions part of the scope of
22 responsibility Mr. Carr spoke to you about
23 in that conversation or any conversation
24 between that first conversation in August
25 of 2021?

1 A. Saccullo

2 MR. ROBBEN: I'm going to
3 instruct Mr. Saccullo as before to not
4 answer the question on the grounds
5 that it would reveal privileged and
6 work product information.

7 Q. You believe you testified that
8 typically, when Saccullo was approached to
9 become liquidating trustee or
10 post-confirmation trustee, that Saccullo
11 would conduct a conflict check; is that
12 right?

13 A. Yes.

14 Q. At some point between that
15 initial conversation with Mr. Carr and
16 August 24 -- I believe it was August 24
17 that Saccullo was chosen as liquidating
18 trustee were you provided or was Saccullo
19 provided with a list of names to conduct
20 -- from which to conduct a conflict check?

21 A. I don't recall specifically. I
22 would assume so. It's the general
23 practice. But I don't recall.

24 Q. What, if anything, did you do
25 after you spoke with Mr. Carr to gain an

1 A. Saccullo

2 understanding about the Medley bankruptcy
3 prior to August of 2022?

4 A. And I think stepping back may be
5 helpful.

6 When we have an initial outreach
7 with counsel to the committee, we
8 generally deal with pretty sophisticated
9 counsel. They're not going to give us
10 material nonpublic information. So when
11 we're getting an overview on whether or
12 not a case would be good for us, it is by
13 and large based upon publicly available
14 information. So Mr. Carr and I would have
15 had a conversation largely on what is in
16 the disclosure statement. I would have
17 then taken a look at the disclosure
18 statement and plan to get an understanding
19 of sort of what was going on in the case.

20 Q. And then looking at the
21 disclosure statement and plan, you would
22 get an understanding of what the scope of
23 Saccullo's retention would be; correct?

24 A. Yes.

25 Q. So back to my question.

1 A. Saccullo

2 I believe you testified that you
3 don't remember whether or not you were
4 provided with a list of names from which
5 to conduct a conflict check.

6 You don't recall one way or the
7 other?

8 A. That's correct.

9 Q. But, as you sit here, you
10 believe some level of conflict check would
11 have been conducted; is that right?

12 A. Yes.

13 Q. And does Saccullo preserve its
14 conflict checks in its records?

15 A. We generally do not.

16 Q. So if I were to ask you what
17 names you served in your conflict check
18 for Medley, LLC, are you saying that it's
19 likely that you would not have that
20 information?

21 A. I would have to go back and see
22 what information you were provided.

23 Q. Those are two different things.

24 The question I have is the
25 conflict check itself you don't know if

1 A. Saccullo

2 you would have get or you say typically
3 you don't keep?

4 A. Correct.

5 Q. But you are saying that Saccullo
6 would have represented or probably kept --

7 MR. COLE: Withdrawn.

8 Q. Did Saccullo keep the
9 information provided by Kelley Drye from
10 which to do a conflict check?

11 A. Well, I said I don't recall
12 receiving the information from Kelley
13 Drye. I would just assume that we did.

14 Q. But that would be Saccullo's
15 practice to retain the information from
16 which to conduct a conflict check, whether
17 it's from Kelley Drye or somewhere else?

18 A. Correct.

19 Q. In this case, do you recall one
20 way or the other whether or not the
21 conflict check included checking for
22 potential targets of avoidance litigation?

23 A. I do not.

24 Q. But if you kept the document
25 from which you conducted the conflict

1 A. Saccullo

2 check or Saccullo kept the document in
3 which it conducted a conflict check, the
4 names would be on that document; is that
5 right?

6 A. Yes.

7 Q. And it would have been
8 Saccullo's practice to search every name
9 on the document, on the list Saccullo was
10 provided; is that right?

11 A. Yes.

12 Q. Well, let's see if I can refresh
13 your memory.

14 When was the first time, in
15 connection with the Medley case, that you
16 heard of Eversheds, the entity that is the
17 subject of the motion?

18 A. In any capacity?

19 Q. In any capacity.

20 A. Very, very recently after my
21 appointment. There was apparently a
22 submission due to the SEC and they needed
23 us to sign on.

24 Q. But is that the first time that
25 you can remember hearing about Eversheds

1 A. Saccullo

2 in the Medley case?

3 A. Yes.

4 Q. Do you recall conducting any
5 conflict check with regard to Eversheds?

6 A. No.

7 Q. When was the first time you
8 learned that Eversheds would potentially
9 be the target of an avoidance claim?

10 A. Probably last summer.

11 Q. When you say, "last summer",
12 you're saying the summer of 2022?

13 A. Correct.

14 Q. We'll get back to that.

15 A. Okay.

16 Q. Now, you said that you
17 understood that Kelley Drye was
18 representing the committee. We're still
19 in this pre-August period, August 24
20 period. You said that you understood that
21 Kelley Drye was representing the
22 committee.

23 Were you advised by Kelley Drye
24 that it had conducted an analysis of
25 potential preference claims?

1 A. Saccullo

2 A. No.

3 Q. Were you aware that the
4 committee had hired its own financial
5 advisor?

6 A. I was aware of that, yes.

7 Q. Are you aware in that pre-August
8 period or you came to be aware of it
9 later?

10 A. I don't have a specific
11 recollection.

12 Q. Fair enough.

13 Now, there was a period --

14 MR. COLE: Withdrawn.

15 Q. Using August, I think it was
16 August 24 of 2021 as the guidepost, how
17 long in advance of that date do you recall
18 Saccullo was advised it would be the
19 liquidating trustee, proposed as
20 liquidating trustee?

21 A. It would have been -- I don't
22 have a specific date, but it would have
23 been very quickly prior to that.

24 Q. Now, the filing that we just
25 looked at was August of 2021.

1 A. Saccullo

2 You understood that the plan was
3 confirmed and went effective on August 18
4 of 2021; correct?

5 A. Yes.

6 Q. So during the end of August
7 through October of 2021, what, if any,
8 role did Saccullo take in connection with
9 the Medley bankruptcy?

10 A. From the -- give me that time
11 again?

12 Q. Prior to the plan confirmation
13 but after that August date, so --

14 MR. COLE: Withdrawn.

15 Q. On August 24 there's a filing
16 that says Saccullo was chosen as the
17 liquidating trustee.

18 You saw that; right?

19 A. Yes.

20 Q. And then October 18 was the
21 effective date. So there's a period of
22 time there.

23 What did Saccullo do, if any, in
24 connection with the Medley case during
25 that period of time?

1 A. Saccullo

2 A. I don't recall. But prior to
3 the effective date, we wouldn't have had
4 an official appointment to fall back on.

5 Q. So during the period between the
6 notification date and the effective date,
7 was Saccullo provided economic information
8 or financial information regarding Medley?

9 A. I'm not sure I understand.
10 In what context?

11 Q. Well, let me ask it this way.
12 Was Saccullo provided access to
13 Medley's financial books and records prior
14 to October 18 of 2021?

15 A. I don't believe so, no.

16 Q. Was Saccullo provided any
17 information that was generated by the
18 committee's financial advisor prior to
19 October 18 of 2021?

20 A. Not that I recall.

21 Q. Was Saccullo ever provided
22 information from the committee's financial
23 advisor regarding Medley?

24 A. Ever? I'm sure, yes. But I
25 have no specific recollection of were we

1 A. Saccullo

2 provided this document. But we generally
3 would have received a debriefing from the
4 committee's financial advisor.

5 Q. In the case, I gather that would
6 have occurred after October 18; fair
7 enough?

8 A. Yes.

9 Q. Do you recall that debriefing
10 from the committee's financial advisor?

11 A. Specifically, no.

12 Q. Did Saccullo have a debriefing
13 with the debtor's financial advisor?

14 A. Can you refresh my recollection
15 on what the debtor's financial advisor
16 was?

17 Q. I don't recall myself. I'm just
18 wondering if you recall.

19 A. Well, if you gave me the name,
20 it may refresh. Otherwise I don't
21 remember.

22 Q. Fair enough.

23 A. Again, I'm sure we would have.

24 Q. Now, I believe you testified
25 that typically when Saccullo's appointed

1 A. Saccullo

2 as a liquidating trustee, it gains access
3 to the financial records of the debtor; is
4 that right?

5 A. Yes.

6 Q. So we're up to this October 18,
7 2021 date in which the plan becomes
8 effective. I could show you the plan if
9 you want to see it, but I'm sure you're
10 familiar with it. And you understand
11 though that, as of the effective date,
12 Saccullo, as liquidating trustee, goes
13 live. They're now the liquidating
14 trustee; correct?

15 A. Yes.

16 Q. And how many people from
17 Saccullo worked on the Medley matter at
18 that beginning period of time?

19 A. So I don't remember specifically
20 in Medley. If you want to know our
21 general practice, it would normally be
22 four, maybe five.

23 Q. So let's talk about general
24 practice.

25 The four or five people that

1 A. Saccullo

2 Saccullo typically uses in a liquidating
3 trustee engagement I gather includes some
4 of the lawyers from your law firm; is that
5 right?

6 A. No.

7 Q. So what are the titles and roles
8 of the people that you typically use at
9 Saccullo when retained as a liquidating
10 trustee?

11 A. So I generally bring in Doug
12 Squasoni. He's my managing consultant.
13 He basically oversee the administration of
14 cases.

15 We have consultants who
16 specialize in transfer of IT.

17 We have consultants who
18 specialize in gaining access to books and
19 records.

20 We have consultants who
21 specialize in HR transfer, human resource
22 information.

23 That would generally be the team
24 that we put on in that initial -- in that
25 initial time frame.

1 A. Saccullo

2 You also should keep in mind,
3 and I'll go beyond the question to give
4 you a little bit more of the specific
5 here, this was a very unique case because
6 you had operating subsidiaries that we had
7 to oversee the wind down and termination
8 of operating subsidiaries. So the
9 operating subs still had their own
10 management team, they still had their own
11 books and records, they still kept their
12 books and records, and they were very much
13 commingled.

14 You also, to be fair, had a
15 parent who considered itself still
16 operating as well whose books and records
17 were all commingled.

18 Q. You said books and records were
19 all connected; is that what you said?

20 A. Commingled.

21 Q. It just got a little garbled.

22 A. Sorry, it's allergies.

23 Q. You said a lot there and I want
24 to ask about every piece of it.

25 But just going back to my

1 A. Saccullo

2 original question, you identified
3 different consultants that you would use
4 in that early period of time in a typical
5 liquidating trustee assignment.

6 A. Sure.

7 Q. And you believe -- and correct
8 me if I'm wrong -- but you believe you
9 would have done something similar here; is
10 that correct?

11 A. I don't remember, and the reason
12 I don't remember is because of the
13 uniqueness of this situation.

14 Q. Well, in the remainder of your
15 answer, you did talk specifically about
16 the unique situation being, among other
17 things, that there were books and records
18 both at the debtor and at subsidiaries and
19 at the parent; correct?

20 A. Uh-huh.

21 Q. You have to verbalize it yes or
22 no.

23 A. Yes.

24 So it's actually one -- I
25 believe it was one commingled set of books

1 A. Saccullo

2 and records.

3 Q. So based upon your review, did
4 the parent and the subsidiaries and the
5 debtor report their financial statements
6 on a consolidated basis?

7 A. That's not an easy answer
8 either.

9 So very shortly prior to the
10 bankruptcy, management of the parent
11 caused a change in control of the debtor
12 whereby it was no longer a pass-through
13 disregarded entity that was wholly owned
14 by the parent, so very shortly before the
15 bankruptcy it started filing its own taxes
16 based upon its operations.

17 Q. When you say shortly before
18 bankruptcy, can you give me a sense as to
19 how shortly before?

20 A. I don't remember. It was within
21 months, but I don't remember.

22 Q. Was it within the ninety-day
23 preference period?

24 A. Oh, I don't think so.

25 Q. When you say it was a

1 A. Saccullo

2 pass-through disregarded entity, can you
3 just tell me what that is?

4 A. Sure.

5 It was an LLC -- prior to the
6 change, it was an LLC that was wholly
7 owned by the parent. So for tax purposes,
8 it would be a disregarded entity that was
9 filed on the parent's tax returns. It
10 didn't file tax returns of its own.

11 Q. Fair enough.

12 Just going back to the original
13 question, you said that you brought in
14 various consultants.

15 Were those employees of Saccullo
16 or is that -- or were they third parties
17 that you brought in as independent
18 contractors?

19 A. So all of the consultants at
20 Saccullo Business Consulting are
21 independent contractors.

22 Q. Now, I don't want to go into all
23 of the detail here, but I gather, based
24 upon the uniqueness of this case that you
25 described at least in part with regard to

1 A. Saccullo

2 how the books were kept, you had at least
3 a books and records person, some person
4 that helped you with the books and
5 records; is that right?

6 A. We also got support from the
7 existing management team of the
8 subsidiaries.

9 Q. What about the parent? Did you
10 have access to the parent's books and
11 records?

12 A. So to the extent the parent's
13 books and records were commingled, yes.
14 We did not have cooperation from the
15 parent the way we did the subsidiaries.

16 Q. Now, again, the date -- the
17 effective date is October 18 of 2021.

18 When was Saccullo provided
19 access to the debtor's books and records?

20 A. I don't recall exactly.

21 Q. Well, you said that -- I believe
22 you said earlier that one of the first
23 things -- if I'm misstating it, please
24 tell me. One of the first things that
25 Saccullo would do as part of its typical

1 A. Saccullo

2 engagement as a liquidating trustee was
3 gain access to the debtor's books and
4 records.

5 In this case, I know it's a
6 unique case, but can you give me even an
7 estimate as to when Saccullo would have
8 gained access to the debtor's books and
9 records?

10 A. It would have been shortly after
11 our appointment. We generally don't
12 linger very long without records.

13 Q. And these are records that
14 are --

15 MR. COLE: Withdrawn.

16 Q. Among the records that you,
17 Saccullo, would have had access to shortly
18 after the appointment would be records
19 that would show money being transferred
20 out of the company's bank account; is that
21 right?

22 A. Yes.

23 Q. And shortly after being
24 appointed liquidating trustee, Saccullo
25 would have had access to Medley's records

1 A. Saccullo

2 showing money flowing into its bank

3 accounts; correct?

4 A. So depending on the record that
5 you're talking about in both instances, it
6 generally takes us a while to get bank
7 records. But as far as the books and
8 records as they're recorded by the debtor,
9 that we get very quickly.

10 Q. So let's just make sure we're on
11 the same page here.

12 A. Sure.

13 Q. When you refer to -- I think you
14 were very careful about this earlier.

15 When you referred to bank
16 records, I believe you testified that
17 Saccullo typically would go to the bank
18 and obtain historical bank records; is
19 that right?

20 A. Yes.

21 Q. But in addition to that, the
22 company, whatever the debtor is, whoever
23 the debtor is, typically would maintain
24 books and records of its own accounts; is
25 that right?

1 A. Saccullo

2 A. Correct.

3 Q. And in this case, shortly after
4 being appointed in October of 2021, you
5 understood that Medley maintained books
6 and records of its own bank accounts. You
7 maybe needed to confirm them with bank
8 statements, but you know that there was a
9 record; correct?

10 A. Yes, and we one hundred percent
11 needed to confirm them with bank records.

12 Q. Fair enough.

13 But the records that existing at
14 the time concededly not confirmed by you
15 yet, but the records that Saccullo had
16 access to in October or shortly thereafter
17 in 2021 included accounting records that
18 showed money flowing in and out of the
19 debtor's bank accounts; correct?

20 A. Yes.

21 Q. Now, I believe you said that --
22 MR. COLE: Withdrawn.

23 Q. You testified that you also
24 wanted to confirm the debtor's books and
25 records with bank account records, and you

1 A. Saccullo
2 went to the debtor's bank to obtain those
3 records; correct?

4 A. Yes.

5 Q. When did Saccullo go to the
6 debtor's -- request from the debtor's bank
7 the bank account records?

8 A. I'm sorry, give me that question
9 one more time?

10 MR. COLE: That wasn't a good
11 question.

12 Q. When did Saccullo request the
13 historical bank records for the debtor
14 from the debtor's bank?

15 A. I don't recall.

16 Q. Do you have a sense as to how
17 long after Saccullo was appointed?

18 A. So I think those records were
19 actually requested as part of the
20 investigation of the officers and
21 directors, and I think that would have
22 been a couple of months later.

23 Q. So -- and I'm not asking for
24 detail.

25 There came a point in time when

1 A. Saccullo

2 you, Saccullo, as liquidating trustee,
3 conducted or supervised an investigation
4 of officers and directors of the debtor;
5 correct?

6 A. Supervised, yes.

7 Q. And using October 18, 2021 as a
8 guidepost, can you give me a sense as to
9 how long thereafter that investigation
10 occurred?

11 A. Oh, it would have started fairly
12 quickly.

13 Q. And I believe your testimony is
14 that, in connection with that
15 investigation, Saccullo requested the
16 debtor's historical bank records, account
17 statements, from the debtor's bank;
18 correct?

19 A. It would have been either us or
20 retained counsel.

21 Q. Fair enough.

22 And so is it fair to say that --
23 and I know you don't have a specific date.
24 But is it fair to say that Saccullo or its
25 counsel requested the debtor's bank

1 A. Saccullo

2 records from its bank and received them
3 before year-end 2021?

4 MR. ROBBEN: I object to form.

5 THE WITNESS: It would have been
6 around year-end if not shortly after.

7 Q. And did you ever -- did Saccullo
8 or you have a chance to review those bank
9 records?

10 A. I believe I did, yes.

11 Q. And I gather that those bank
12 records that Saccullo as liquidating
13 trustee obtained approximately by year-end
14 of 2021 showed money that was transferred
15 in or out of the debtor's accounts;
16 correct?

17 A. Yes.

18 Q. Other than Medley, LLC records,
19 the debtor's records, did Saccullo obtain
20 bank records from any of the other
21 subsidiaries or the parent?

22 A. I don't believe so, but I don't
23 recall.

24 Q. Fair enough.

25 Now, the next thing I wanted to

1 A. Saccullo

2 ask you about with respect to the books
3 and records of the company, if you know,
4 is what was the process of obtaining those
5 books and records? In other words, in my
6 experience, sometimes liquidating trustee
7 would obtain a Quick Books file or
8 something like that and then retain that
9 copy or -- of that Quick Books file from
10 which to manipulate that information.

11 How did that work when it came
12 to Medley?

13 A. So in the early stages, we did
14 have existing management who would feed us
15 information. I believe we also kept a
16 copy for ourselves just in case something
17 happened. But ultimately still to this
18 day the subsidiaries are being wound down,
19 and though prior management has left, we
20 have a cooperative relationship with the
21 management of the subsidiary who will give
22 us information and manipulate it to the
23 extent we need it.

24 Q. I may have misspoke.

25 I believe you said you maintain

1 A. Saccullo

2 a copy of books and records and I believe
3 you said that they were commingled to some
4 extent.

5 Is the copy of the books and
6 records that the liquidating trustee
7 obtained and preserved the commingled
8 books and records?

9 A. I believe so, yes.

10 Q. So that would include the books
11 and records of the debtors and at least
12 some if not all of the subsidiaries?

13 A. Correct.

14 Q. But not the parent?

15 A. It could also be the parent as
16 well. Honestly, I don't have a
17 recollection of it, but it may well be.

18 Q. Is when you say the parent, what
19 entity are you referring to?

20 A. Medley Management, Inc., the
21 publicly traded MDLY.

22 Q. And I gather Medley Capital was
23 one of the subsidiaries you were referring
24 to?

25 A. It is.

1 A. Saccullo

2 Q. Now, you said you -- let me see
3 if I have this correctly.

4 You said that management at the
5 subsidiary --

6 MR. COLE: Withdrawn.

7 Q. Was there -- were there any
8 management people at the debtor level that
9 helped you with obtaining financial
10 information or did that overlap with the
11 subsidiary management?

12 A. No, at the debtor level
13 management would have been displaced by
14 the plan and confirmation around the
15 effective date.

16 Q. Is it fair to say though that
17 the management at the subsidiary level
18 could conduct -- conducted searches and
19 compiled information and distilled
20 information that existed in the commingled
21 financial set; is that right?

22 A. Yes.

23 Q. And I gather the reason why you
24 used existing management was that those
25 individuals were just more familiar with

1 A. Saccullo

2 the financial records of the company;
3 correct?

4 A. Correct.

5 Q. And that was to be efficient;
6 correct?

7 A. Yes.

8 Q. Now, during the period of time
9 of October through --

10 MR. COLE: Withdrawn.

11 Q. You said that even as of today
12 the liquidating trustee, Saccullo, relies
13 on the management team at the subsidiary
14 to provide financial information from the
15 company's financial books and records; is
16 that right?

17 A. Yes. So we have an obligation
18 in the plan to oversee the wind down of
19 the subsidiaries, though not perform the
20 wind down. So as part of the process of
21 overseeing that wind down, there is a
22 very, very skeletal crew down at the
23 subsidiary levels who are indeed acting on
24 behalf of the subsidiaries and acting to
25 wind them down.

1 A. Saccullo

2 Q. During the time period between
3 this October, 2021 period where about the
4 liquidating trustee obtained access to the
5 books and records and even the present,
6 did management at the subsidiary ever deny
7 Saccullo, as liquidating trustee, access
8 to the books and records?

9 A. Outright deny, no. Delay, sure.
10 Outright deny, no.

11 Q. When you say, "delay", what does
12 that mean?

13 A. Well, listen, prior to a
14 management turnover, there were management
15 who was sort of legacy and they weren't
16 always as responsible as the managers who
17 we have in place now.

18 Q. And when was the management turn
19 over that you're referring to?

20 A. So it coincided with the closing
21 of the sale of Sierra, and I think it was
22 early to mid '22.

23 Q. And as of early to mid 2022,
24 you're saying that there was a new
25 management team or a management team that

1 A. Saccullo

2 wasn't beholden to the old management
3 team; fair enough?

4 A. So it's not a team anymore, it's
5 one manager working with an absolutely
6 skeletal crew at this point, nobody full
7 time, I don't believe.

8 Q. Can you tell me the instances,
9 to the best of your recollection, of when
10 old management delayed delivering
11 information?

12 A. Oh, there were lots of requests
13 for documents, information, and compiling
14 information to old management that was
15 delayed in being responded. Can I think
16 of a specific instance? No. But prior
17 management was far less responsive than
18 current.

19 Q. Now, other than delays, did
20 prior management or any management during
21 the entire period between October of 2021
22 and the present prevent Saccullo from
23 obtaining access to information from the
24 company's financial records?

25 A. No. We would have sought court

1 A. Saccullo

2 intervention if they did.

3 MR. COLE: We've been going about
4 an hour now.

5 Would you like to take a short
6 break?

7 THE WITNESS: That would be
8 great.

9 MR. COLE: Why don't we take a
10 short break then.

11 (Whereupon a break was taken)

12 Q. When we broke, we were talking
13 about this period of time after Saccullo
14 was appointed and its access to the
15 company's books and records.

16 I believe you testified that, in
17 connection with the D&O investigation
18 which was -- which started shortly after
19 your appointment or Saccullo's
20 appointment, that either Saccullo or its
21 lawyers went out and obtained bank
22 records; is that right?

23 A. Yes.

24 Q. What, if anything, did Saccullo
25 do with the bank records that it obtained

1 A. Saccullo

2 from the debtor's bank?

3 A. So I believe those --

4 MR. ROBBEN: I object to the
5 form.

6 THE WITNESS: I believe those
7 records were utilized by counsel
8 certainly more directly than they were
9 utilized by us.

10 Q. I believe you testified that or
11 you inferred -- and I may be mistaken --
12 that one of the reasons to obtain those
13 books and records was to determine or test
14 the accuracy --

15 MR. COLE: I'm sorry, withdrawn.

16 Q. I think you testified that one
17 of the reasons why Saccullo or its counsel
18 went out and obtained bank records was to
19 enable Saccullo or its counsel to test the
20 accuracy of the financial records of the
21 debtor; is that right?

22 A. That's definitely one reason.

23 Q. And so what, if anything, did
24 Saccullo do -- and let's just take your
25 counsel separately; okay? What, if

1 A. Saccullo

2 anything, did Saccullo do to use those
3 bank records to test the accuracy of the
4 books and records of the debtor?

5 A. Again, I'm not sure if it was
6 done by us or by counsel.

7 Q. As you sit here today, did the
8 bank records that you obtained from the
9 bank, were they inconsistent with the
10 records maintained by the company as they
11 reflected money flowing in and out of the
12 company's bank account?

13 A. I don't recall.

14 MR. COLE: Let's mark as the next
15 exhibit, Exhibit 2.

16 (Whereupon, a document entitled
17 Complaint to Avoid and Recover
18 Transfers was marked Exhibit 2
19 for identification.)

20 Q. This is the complaint to avoid
21 and recover transfers pursuant to 11 USC
22 Sections 544, 547, 548, and 550 that the
23 liquidating trust filed against Eversheds
24 Sutherland.

25 And I'll ask you, sir, if you

1 A. Saccullo

2 recognize this document.

3 A. It looks like the filed version
4 of the complaint.

5 Q. And again, if you would rather
6 look at it as a PDF, that's fine, but I
7 wanted to ask you just a few questions,
8 background questions, that are reflected
9 in the complaint.

10 First I'd like to refer you to
11 paragraph twenty, which is on page seven
12 of Exhibit 2. And tell me when you get
13 there.

14 A. Yes.

15 Q. Now, if you recall, we talked
16 about what the trust --

17 MR. COLE: Withdrawn.

18 Q. We spoke about what Saccullo --
19 Saccullo's practice was with respect to
20 Medley once it was appointed. And I
21 believe you testified that at that point
22 Saccullo typically conducts an
23 investigation of whatever's necessary at
24 that point in time.

25 This paragraph says, "upon the

1 A. Saccullo

2 effective date" -- that's the October date
3 -- "pursuant to the authority afforded the
4 trust under the plan documents, the trust
5 undertook to investigate liquidating trust
6 assets which include, without limitation,
7 the debtor's records and causes of
8 action".

9 Do you see that?

10 A. I do.

11 Q. Now, I believe you testified --
12 MR. COLE: Withdrawn.

13 Q. You testified typically as
14 liquidating trustee that Saccullo would
15 conduct an investigation supervising
16 counsel of preference claims; right?

17 A. Supervised counsel, yes.

18 Q. And is that something -- did
19 Saccullo supervise counsel in
20 investigating preference claims in the
21 Medley case?

22 A. Yes. I mean, there were very
23 limited preferences.

24 Q. The second sentence says,
25 "through this process, the trust

1 A. Saccullo

2 concluded, among other things, that the
3 retention application and declaration,
4 Defendant misrepresented both the amounts
5 and source of the petition payments it
6 received".

7 Do you see that?

8 A. So two reading errors, but yes,
9 I see the sentence.

10 Q. If I made a reading error, it's
11 of record. Don't worry, I'm not trying to
12 fool you.

13 When did the trust begin its
14 investigation or supervision of
15 investigation to determine the potential
16 avoidance actions in the Medley case?

17 A. The analysis of the potential
18 avoidance actions was all wound up in the
19 analysis of the D&O litigation. Portions
20 of that investigation against the
21 directors and officers included fraudulent
22 transfers which, as you know, is a much
23 longer look-back period. So that was all
24 wrapped up as part of the same
25 investigation.

1 A. Saccullo

2 Q. And I believe you testified that
3 that investigation occurred in the summer
4 of 2022; is that right?

5 MR. ROBBEN: Objection to form.

6 THE WITNESS: In the summer of
7 2022, we realized that the information
8 that was in the declarations was
9 incorrect.

10 Q. My question was a little
11 different. We'll get to the point that
12 you just made.

13 A. Okay.

14 Q. My question was -- well, I
15 believe you testified that the liquidating
16 trustee -- the liquidating trustee's
17 investigation with regard to avoidance
18 actions occurred alongside the
19 investigations of the directors and
20 officers; is that right?

21 A. It was a portion of it, yes.

22 Q. And that investigation of
23 avoidance actions in connection with its
24 investigations of the Ds and Os included
25 an investigation of other avoidance

1 A. Saccullo

2 actions such as with regard to Eversheds;
3 correct?

4 A. Correct.

5 Q. And just to make sure I
6 understand, that occurred in the summer of
7 2022; correct?

8 A. No.

9 MR. ROBBEN: I object to the
10 form.

11 Q. When did the investigation
12 occur?

13 A. So we started the investigation
14 shortly after my appointment. In the
15 summer of 2022, we realized that there was
16 material misrepresentations in
17 declarations based upon the investigation
18 that had occurred up until that point.

19 Q. I see. I was mistaken.

20 So just so I understand the
21 chronology, Saccullo is appointed in
22 October of 2021 and shortly thereafter
23 between October of 2021 and say December
24 of 2021 Saccullo commences an
25 investigation of directors and officers

1 A. Saccullo
2 and potentially other avoidance actions;
3 correct?

4 A. Correct.

5 Q. And in conducting that
6 investigation, Saccullo obtained
7 information from the books and records of
8 the company that it had possession of or
9 access to beginning in October of 2021;
10 correct?

11 MR. ROBBEN: I object to form.

12 THE WITNESS: Beginning in
13 October of 2021 referring to what?

14 MR. COLE: Let me rephrase the
15 question. It was a bad question.

16 Q. Part of the information compiled
17 as part of Saccullo's investigation that
18 began sometime shortly after Saccullo was
19 appointed was obtained from the books and
20 records of the company; correct?

21 A. Part of it was, yes.

22 Q. And those books and records --

23 MR. COLE: Withdrawn.

24 Q. Saccullo had access to those
25 books and records shortly after it was

1 A. Saccullo
2 appointed as liquidating trustee; correct?

3 A. Yes.

4 Q. And I believe part of the
5 information Saccullo or its counsel
6 compiled in connection with its
7 investigation were the bank records that
8 it obtained from the debtor's bank
9 account; right? Debtor's bank; right?

10 A. Correct.

11 Q. And those bank records were
12 obtained sometime between October of 2021
13 and say December of 2021; right?

14 MR. ROBBEN: I object to form.

15 THE WITNESS: Yeah, the bank
16 records would have come in as a
17 rolling basis. Like I said last time,
18 it might have been a little into the
19 new year, but it all would have been
20 within Q1.

21 Q. Other than the bank records and
22 the financial records of the company, what
23 other information did Saccullo compile
24 with regard to investigating claims
25 against Eversheds?

1 A. Saccullo

2 A. It would have all been based
3 upon bank records and invoices.

4 Q. So it's fair to say you may not
5 have realized it but that Saccullo had the
6 information it needed to determine the
7 accuracy of motions and affidavits filed
8 by Eversheds as of early 2022?

9 MR. ROBBEN: I object to form.

10 THE WITNESS: Yes.

11 MR. COLE: What's the objection?
12 I need to know what the objection is.

13 MR. ROBBEN: It's the "you might
14 not have realized it".

15 Q. My question, sir, is that you
16 understood -- you understand, as you sit
17 here today, that Saccullo or its
18 professionals had the information to
19 determine that affidavits filed by
20 Eversheds were inaccurate as of early
21 2022; correct?

22 A. So I believe that is true for a
23 portion of the lies and omissions in those
24 affidavits. With regard to other
25 portions, we do not, we would not have had

1 A. Saccullo

2 that information back in early 2022.

3 Q. With regard to the dollar amount
4 referenced in the initial retention
5 application, by early 2022, the
6 liquidating trustee had sufficient
7 information to determine that that number
8 was incorrect?

9 A. The dollar amounts which you're
10 referring to is the preference payment?

11 Q. Yes.

12 A. We did have access, I believe,
13 to information by Q1 2022 to show that
14 that was incorrect.

15 Q. Now, you said that there were
16 other misstatements or misrepresentations
17 that you didn't have information as of Q1
18 of 2022.

19 Can you just tell me what
20 misrepresentations you're talking about?

21 A. So any representations with
22 respect to whether or not the services
23 were rendered solely for the debtor is
24 something that we would not have had
25 information to support. Indeed, I would

1 A. Saccullo

2 imagine we're still developing information
3 to determine what, if any, services were
4 rendered for the debtor versus rendered
5 for other entities or individuals within
6 the Medley group.

7 Q. Any other misrepresentations
8 that you say the trustee did not have
9 information as of Q1 of 2022?

10 MR. ROBBEN: Adam, I just want to
11 understand, are you asking him with
12 reference to the adversary proceeding
13 in which discovery hasn't started yet,
14 or are you asking him with reference
15 to the discovery on the motion to
16 vacate?

17 MR. COLE: We're here on a motion
18 to vacate. I referred him to the
19 complaint because in paragraph twenty
20 it talked about what's at issue in the
21 motion. So we're here on the motion,
22 unless we're doing discovery on a
23 motion we haven't answered yet.

24 MR. ROBBEN: I just want to be
25 sure.

1 A. Saccullo

2 MR. COLE: Let me ask the
3 reporter, did the witness answer the
4 question before Mr. Robben made his
5 comment?

6 Q. Mr. Saccullo, do you know what
7 the question was?

8 A. I do. You asked me what other
9 misrepresentations existed that we didn't
10 have the information to potentially
11 discover back in Q1 of 2022.

12 Q. Yes.

13 A. So if I'm generally looking at
14 the lies that were in the declaration, I
15 would put them into three categories. One
16 would be the amount of the payment, two
17 would be that the payments came from the
18 insurance companies, the insurers, and
19 three would be that services were
20 rendered -- payment was given for services
21 rendered to the debtor.

22 With regard to one, the amount,
23 we certainly had that information
24 available by Q1 of 2022.

25 And with regard to the payment

1 A. Saccullo

2 coming from the insurance company, which
3 it did not, again the bank records would
4 have shown us that in early 2022 as well.

5 Q. Just so that I'm clear about the
6 two items you did have, we spoke about the
7 amount of the payment and you referred to
8 money coming from the insurance company.

9 I gather you're referring to a
10 statement made in one or more of the
11 affidavits that suggest that, to you at
12 least, that money was paid directly from
13 the insurance company to Eversheds; is
14 that the reference you're talking about?

15 A. Yes.

16 Q. And I believe your testimony is
17 that you had access to the information
18 necessary to determine that incorrect in
19 the Q1 2022 period; correct?

20 A. Yes.

21 Q. Now, the piece that you were
22 saying you didn't have accurate records
23 for as liquidating trustee was whether or
24 not the debtor was paying for services
25 that were rendered to other parties; is

1 A. Saccullo

2 that right?

3 A. Yes.

4 Q. Who are the other parties that
5 you're referring to?

6 A. So I believe your client was
7 representing multiple parties that they
8 called the Medley group, my guess would be
9 former directors and officers, the Taubes
10 included, and Medley Management, Inc., the
11 corporate parent.

12 Q. What, if anything, did you, as
13 liquidating --

14 MR. COLE: Withdrawn.

15 Q. What, if anything, did Saccullo
16 do as liquidating trustee to determine
17 what obligation Medley, LLC had to pay
18 legal fees associated with those
19 individuals and entities?

20 A. That would have all been done
21 through counsel.

22 Q. As you sit here today, do you
23 have one -- do you have an understanding
24 one way or the other concerning whether
25 Medley, LLC had an obligation to pay the

1 A. Saccullo

2 legal fees incurred by these third parties
3 that you've identified? Do you have an
4 understanding?

5 A. I do not. I do not believe they
6 do.

7 Q. So when you say -- just so we're
8 clear on the record, are you saying that
9 your understanding is that Medley, LLC did
10 not have an obligation to advance legal
11 fees and expenses on behalf of these third
12 parties that you referenced?

13 A. Correct.

14 Q. And I gather --

15 MR. COLE: Withdrawn.

16 Q. Did you or anybody at Saccullo,
17 separate from your counsel, do anything to
18 analyze that issue?

19 A. No.

20 Q. So your understanding of whether
21 or not --

22 MR. COLE: Withdrawn.

23 Q. Just yes or no, do you have an
24 understanding as to whether or not the
25 entity -- Medley, LLC has an obligation or

1 A. Saccullo

2 not to advance fees on behalf of the third
3 parties you're referring to? Do you have
4 an understanding?

5 A. Yes, I have an understanding.

6 Q. And I gather you're going to
7 tell me that understanding comes from
8 counsel?

9 A. One hundred percent, yes.

10 Q. When you say first quarter of
11 2022, I gather you mean somewhere between
12 January and the end of March of 2022; is
13 that right?

14 A. Correct.

15 Q. If you turn with me in Exhibit 2
16 to paragraph twenty-five --

17 A. Yes.

18 Q. -- am I correct in understanding
19 your testimony to be that you had the
20 information reflected in the chart on
21 paragraph twenty-five as of the first
22 quarter of 2022?

23 MR. ROBBEN: I object to the
24 form.

25 MR. COLE: I'll rephrase the

1 A. Saccullo

2 question.

3 Q. Is it fair to say that Saccullo
4 Management [sic] or its professionals had
5 the information reflected in paragraph
6 twenty-five of Exhibit 2 during the first
7 quarter of 2022?

8 MR. ROBBEN: I object to form.

9 THE WITNESS: Saccullo

10 Consulting. And yes.

11 Q. I'm sorry, Saccullo Consulting.

12 If you turn back with me to
13 paragraph twenty-one, it says that the
14 trust's investigation revealed that
15 Defendant was not, in fact, compensated
16 prepetition by insurers.

17 Do you see that?

18 A. Yes.

19 Q. And that's the second
20 misrepresentation referred to before?

21 A. Correct.

22 Q. And then it refers to a
23 January 4, 2021 agreement, so funding
24 agreement.

25 Do you see that?

1 A. Saccullo

2 A. I do.

3 Q. And are you familiar with the
4 funding agreement?

5 A. I've seen it, yes.

6 Q. When was the first time you saw
7 the funding agreement?

8 A. I don't recall.

9 Q. Is that something that Saccullo
10 became aware of in the first quarter of
11 2022 as well?

12 A. That I don't recall.

13 Q. Would you understand that the
14 funding agreement provided for money from
15 Berkshire to one of the Medley entities;
16 is that right?

17 MR. ROBBEN: I object to the
18 form.

19 THE WITNESS: I believe it was.

20 Q. I believe we spoke over each
21 other.

22 What was your answer?

23 A. I believe that the funding went
24 to the parent, Medley Management, Inc.

25 Q. Now, you said that the books and

1 A. Saccullo

2 records of the parent were commingled with
3 Medley, LLC.

4 As of the first quarter of 2022,
5 did Saccullo have access to information
6 that showed the parent's receipt of the
7 cash from Berkshire?

8 A. I don't know. We did not make
9 it a regular practice to look at
10 management's books and records.

11 Q. But at the time -- just to make
12 sure I understand.

13 Because they were commingled,
14 you had access to the information that
15 would have shown the Berkshire payment to
16 the parent?

17 A. So they were commingled, not
18 consolidated. So in looking for
19 information for us, we would not have, I
20 don't believe, stumbled upon the payments
21 information to the parent.

22 Q. Let's take a look at that
23 funding agreement for a second.

24 A. Is that going up as an exhibit?

25 MR. COLE: I'm trying to get it

1 A. Saccullo

2 here. Hold on.

3 (Whereupon, a document entitled
4 Exhibit B was marked Exhibit 3
5 for identification.)

6 Q. Do you have it now?

7 A. Yes.

8 Q. So this is Exhibit B to the
9 motion to vacate filed by the liquidating
10 trustee.

11 A. Yes.

12 Q. It's marked as Exhibit 3 to the
13 deposition.

14 I'll ask you, now that you see
15 this document, does it refresh your memory
16 as to when you learned about it?

17 A. No.

18 Q. Now, in connection with your
19 role as --

20 MR. COLE: Withdrawn.

21 Q. In connection with Saccullo's
22 role as liquidating trustee, was one of
23 the items -- one of the things that
24 Saccullo did was obtain the company's
25 director and officer liability policies?

1 A. Saccullo

2 A. Yes.

3 Q. Do you have a sense as to when
4 Saccullo obtained the director and officer
5 liability policies?

6 A. That would have all been done
7 through counsel.

8 Q. But give me a sense as to when
9 that would have happened.

10 Would that have happened --

11 MR. COLE: Withdrawn.

12 Q. You testified that early on in
13 the process you commenced an -- you
14 started an investigation of Ds and Os.

15 As part of the investigation,
16 did Saccullo obtain and analyze a copy of
17 the director and officer liability
18 policies?

19 A. That was done through counsel.

20 Q. Well, did you have an
21 understanding as to -- in the first
22 quarter of 2022, did you have an
23 understanding as to what the coverage
24 limits were in the D&O policy?

25 A. Yes.

1 A. Saccullo

2 Q. And did you have an
3 understanding or did Saccullo have an
4 understanding as to the amount of the
5 self-paid retention reflected in the
6 insurance policy?

7 A. I believe so, yes.

8 Q. Now, if you take a look at page
9 three of Exhibit 3 under paragraph 1A, it
10 talks about the money that Berkshire would
11 advance to Medley.

12 A. Uh-huh.

13 Q. On or before January 20 of 2021.
14 Do you see that?

15 A. I do.

16 Q. And have you ever -- has
17 Saccullo ever determined the -- how the
18 \$2.338 million was arrived at that's
19 reflected in paragraph 1A?

20 A. I'm not sure I understand what
21 you're talking about.

22 Q. Well, according to this
23 document, I think you submitted exhibits
24 with the motion and I'll show them to you
25 in a moment, Berkshire paid \$2.338 million

1 A. Saccullo

2 to Medley Management; correct?

3 A. Yes.

4 Q. And my question, sir, is whether
5 Saccullo ever did a calculation to
6 understand the -- how that \$2.338 million
7 was arrived at, was calculated.

8 A. I believe it's right in
9 paragraph A here.

10 Q. And you understood -- you
11 understand that the \$2.338 million is the
12 net of the total invoices minus the \$1.5
13 million retention?

14 A. I believe that's set forthright
15 in the document, yes.

16 Q. Now, as you sit here today, you
17 understand that the \$1.5 million retention
18 was met prior to the petition date; right?

19 A. I believe that to be correct.

20 Q. And you also understand that the
21 \$1.5 million retention was met prior to
22 the preference period; correct?

23 A. That I don't know.

24 Q. That wouldn't surprise you
25 though; would it?

1 A. Saccullo

2 A. I don't know.

3 Q. Well, if you go back to
4 Exhibit 2 which was the complaint and you
5 turn with me to paragraph thirty-two.

6 Do you have that paragraph?

7 A. Yes.

8 Q. I believe this is the paragraph
9 of transfers that Saccullo is pointing to
10 as having been fraudulent for a fraudulent
11 transfer claim; is that right?

12 MR. ROBBEN: I object to form.

13 MR. COLE: Well, let me rephrase
14 that.

15 Q. I gather the amounts in
16 paragraph thirty-two are transfers that
17 the trustee contends were from Medley, LLC
18 to Eversheds prior to and including 12/1
19 of 2020.

20 Do you see that?

21 A. Yes.

22 Q. So does this refresh your memory
23 that the self-retention was met prior to
24 the ninety-day preference period?

25 A. Assuming that payments from

1 A. Saccullo

2 Medley, LLC acted to satisfy Medley
3 Management, Inc.'s self-insured retention,
4 then yes.

5 MR. COLE: Let's mark as the next
6 exhibit this document.

7 (Whereupon, a document entitled
8 Cover Sheet to the (I) Final Fee
9 Application of Eversheds Sutherland
10 (US) LLP was marked Exhibit 4
11 for identification.)

12 Q. This is the final fee
13 application of Eversheds dated December 1
14 of 2021.

15 A. Okay.

16 Q. And I gather you've seen that
17 before; right?

18 A. I have.

19 Q. Now, you understand that this
20 final fee application was seeking payment
21 of fees that were generated post-petition;
22 correct?

23 A. Yes.

24 Q. Now, if you turn with me to
25 paragraph ten, it refers to potential

1 A. Saccullo

2 conflicts that may arise during the course
3 of the investigation. The affiliates have
4 also retained separate counsel,
5 collectively other professionals, in
6 connection with the investigation.

7 I believe you testified that you
8 only learned later on that Medley, LLC was
9 paying fees associated with Eversheds'
10 representation of not only Medley, LLC but
11 others, and you found that out later on in
12 the case; is that right?

13 A. I'm not sure I understand that
14 question.

15 Q. I believe you testified that you
16 only found out late that Medley, LLC was
17 paying fees on behalf of or for services
18 that Eversheds provided with respect to
19 not only Medley, LLC but others as well;
20 right?

21 A. I'm still not sure I totally
22 understand the question.

23 Q. When did Saccullo determine that
24 Medley, LLC was paying Eversheds' fees
25 that related to Eversheds' representation

1 A. Saccullo

2 of Medley, LLC and others?

3 A. I would say we're still in the
4 process of making that determination.

5 Q. So as you sit here right now,
6 you don't know one way or the other if
7 that happened?

8 A. Oh, I believe we're pretty
9 confident. I believe we just don't know
10 the quantum of the fees that were
11 attributable to Medley, LLC versus the
12 others within the Medley group.

13 Q. When did you determine that
14 Medley, LLC was paying fees in connection
15 with its representation of entities and
16 people other than Medley, LLC?

17 A. We determined that in the
18 process of prosecuting and investigating
19 this motion.

20 We would have assumed that a
21 debtor would have only been billed for the
22 services that were specifically related to
23 the debtor. We would have assumed that
24 there would have been other billable
25 matters that would handle those fees and

1 A. Saccullo

2 expenses that should have been paid by
3 other entities that were nondebtors. And
4 I believe we learned that that was not the
5 case through prosecuting this motion.

6 Q. And you're referring to fees
7 that were paid post-petition; correct?

8 A. Right.

9 Q. And every one of those fees that
10 were paid to Eversheds to date came from
11 an insurance policy; correct?

12 MR. ROBBEN: I object to the
13 form.

14 THE WITNESS: No.

15 Q. I'm talking about post-petition.

16 A. In other words, did the debtors
17 make any post-petition payments to
18 Eversheds?

19 Q. Yes.

20 A. I do not believe they did.

21 Q. And any payment Eversheds ever
22 received post-petition came from an
23 insurance company; correct?

24 A. I believe that is correct. I do
25 know not if they were otherwise

1 A. Saccullo

2 compensated from management or any of the
3 other officers and directors directly.

4 Q. I believe you said you obtained
5 the director and officer policies;
6 correct?

7 A. Correct.

8 Q. And as the trustee, you
9 understand that those director and officer
10 policies provide for coverage of
11 individuals that were management of
12 Medley, LLC and other Medley entities;
13 correct?

14 A. That is in part correct. There
15 are three different towers of insurance
16 policies here that are rather complex in
17 who they cover, but it's partially
18 correct, yes.

19 Q. But with respect to the money
20 that was already paid to Eversheds
21 post-petition, those towers covered
22 directly the third parties that we've been
23 talking about having been paid, having
24 been represented; correct?

25 A. I believe that to be correct.

1 A. Saccullo

2 Q. Turn with me to paragraph
3 seventeen of the exhibit.

4 A. This is the fee application?

5 Q. Yes, please.

6 It says, "at present, the amount
7 of Eversheds Sutherland's unpaid fees is
8 \$2,921,965".

9 Do you see that?

10 A. I do.

11 Q. And then the unpaid costs, five
12 hundred seventy-one thousand four hundred
13 twenty-three.

14 Do you see that?

15 A. Yes.

16 Q. And those numbers, you don't
17 have a challenge --

18 MR. COLE: Withdrawn.

19 Q. Those numbers are amounts that,
20 as trustee, you were able to independently
21 verify; isn't that right?

22 A. I believe very early on we asked
23 for the invoices that formed the backup
24 for this. I do not recall the actual
25 independent verification of that.

1 A. Saccullo

2 Q. It then says, "Eversheds
3 Sutherland has received some prepetition
4 payments from insurance".

5 Do you see that?

6 A. I do.

7 Q. And I believe that's one of the
8 misstatements that you've been referring
9 to in this deposition; is that right?

10 A. I believe this refers to
11 post-petition.

12 Q. Do you think that was incorrect,
13 that statement?

14 A. I believe the statement that
15 they received some payment on
16 post-petition amounts from insurance
17 companies is correct.

18 Q. This is a statement that says
19 Eversheds has received some prepetition
20 payments from insurance.

21 A. Oh, I apologize.

22 Yes, I believe that statement is
23 incorrect.

24 Q. But you do know that Eversheds
25 received prepetition -- Eversheds received

1 A. Saccullo
2 payments for prepetition invoices from
3 insurance; correct?

4 A. No, I do not know that.

5 Q. Then it says --

6 MR. COLE: Withdrawn.

7 Q. So your assertion is that this
8 is incorrect because it refers to
9 prepetition payments as opposed to
10 payments on prepetition invoices; correct?

11 A. It is my understanding that both
12 prepetition payments and payments on
13 prepetition invoices were not made through
14 insurance. Certainly the prepetition
15 payments did not flow through insurance,
16 so this statement, to the extent that it
17 says -- and it does -- Eversheds
18 Sutherland has received some prepetition
19 payments from insurance, I believe that is
20 incorrect.

21 Q. If Eversheds received payments
22 on prepetition invoices but post-petition,
23 did that -- would that harm the debtor in
24 any way?

25 A. It would diminish the insurance

1 A. Saccullo

2 proceeds available for post-petition
3 services, yes.

4 Q. Has Saccullo done an analysis to
5 determine whether or not the insurance,
6 the remaining insurance that's part of the
7 insurance towers is sufficient to pay
8 covered post-petition expenses?

9 A. That analysis was done through
10 counsel.

11 Q. So there has been an analysis?

12 A. Yes.

13 Q. As you sit here today, do you
14 believe -- do you understand that the
15 remaining policy amount is insufficient to
16 cover post-petition covered expenses?

17 A. I'm sorry, could you rephrase
18 that?

19 Q. As you sit here today, is it the
20 trustee's contention that the remaining
21 amount of coverage on the insurance towers
22 is insufficient to cover covered fees and
23 expenses?

24 A. I believe that's ultimately
25 inconclusive depending upon how the fees

1 A. Saccullo

2 and expenses break out by entity, since
3 different towers cover different entities.

4 Q. Other than Eversheds, what other
5 professionals are covered under the
6 debtor's D&O policy?

7 A. Perhaps my answer was vague or
8 misleading.

9 Different entities within the
10 Medley group are covered by different
11 insurance towers. So depending on how
12 Eversheds would allocate properly its fees
13 by and among the debtor and the other
14 entities within the group will determine
15 whether or not there's sufficient proceeds
16 available.

17 Q. Are there any fees and expenses
18 being incurred that are covered by any --
19 currently incurred that are covered by any
20 of the D&O insurance towers?

21 A. By whom?

22 Q. That's my question.

23 In other words, are there any
24 professionals or -- any professionals
25 seeking coverage for fees that are

1 A. Saccullo
2 currently being generated seeking coverage
3 from the D&O policies?

4 A. I believe the answer to that is
5 yes.

6 Q. Okay.

7 A. Though I don't have proof of
8 that, I've been told the answer is yes.

9 Q. With respect to which actions?

10 A. So with regard to the litigation
11 that we brought against the directors and
12 officers that we never actually commenced,
13 we resolved through a 9019 that was filed,
14 counsel for the officers and directors I
15 believe have demand a payment for payment
16 from the insurance policies. I believe
17 that is all that I know of right now.

18 Q. But as you sit here today,
19 there's no further rundown of the policies
20 at least with regard to expenses and fees
21 currently being generated; is that right?

22 A. So I wouldn't know what they are
23 currently generating. I would hope not,
24 but I don't know the answer to that.

25 Q. And were you provided or do you

1 A. Saccullo

2 have a breakdown of the allocation that
3 you were referring to before to determine
4 whether or not there was sufficient
5 coverage in each of the towers?

6 A. Which allocation?

7 Q. You said -- when I asked you if
8 there was sufficient coverage to cover
9 expenses and fees, you said it depends on
10 -- because each tower's a little
11 different, it depends on how the fees are
12 allocated.

13 A. That would be the Eversheds
14 fees.

15 Q. Did you prepare an analysis of
16 that allocation to determine whether or
17 not Eversheds' fees would be covered?

18 A. I don't believe Eversheds has
19 ever allocated its fees. They charged
20 everything to the debtor.

21 Q. My question is did you or
22 Saccullo ever conduct that analysis.

23 A. No.

24 MR. COLE: Let's mark the next
25 exhibit. I just have a few other

1 A. Saccullo

2 questions.

3 (Whereupon, a document entitled
4 Exhibit D was marked Exhibit 5
5 for identification.)

6 Q. I'm marking as Exhibit 5, it's
7 Exhibit D to the motion to vacate.

8 And I'll ask you, sir, if you've
9 seen this before. Just take a quick look
10 at it.

11 A. Give me one second to get it up.
12 (Reviewing).

13 I have, yes.

14 Q. And this is -- this looks like a
15 set of reconciliation journals and bank
16 statements and I'll ask you, sir, are
17 these the type of financial records that
18 the subsidiary management can provide you
19 if you ask for it?

20 A. Yes.

21 Q. When did you obtain the
22 documents that are attached as Exhibit D?
23 When I say you, I mean Saccullo.

24 A. I believe these are all obtained
25 by counsel with us coordinating.

1 A. Saccullo

2 Q. And do you have a sense as to
3 when these documents were accumulated?

4 A. I do not.

5 Q. Now, if you take a look at the
6 second page of the exhibit which is the
7 first reconciliation posting journal, do
8 you see that?

9 A. Page two of the as-filed but the
10 first actual page?

11 Q. Correct.

12 A. Yes.

13 Q. This is entitled Medley Capital
14 Reconciliation Posting Journal.

15 Do you see that?

16 A. Yes.

17 Q. Do you have an understanding as
18 to the reason this particular document was
19 created in the books and records of Medley
20 Capital?

21 A. I believe Medley Capital may be
22 the title holder for all of the books and
23 records.

24 Q. I see.

25 A. I think that is a function of

1 A. Saccullo

2 the holder of the account rather than who
3 pays for the account and what books and
4 records are being held.

5 Q. I see.

6 So when you talked about where
7 the books and records were and
8 accumulating the books and records and you
9 talked about how they were commingled,
10 they were commingled under the title of
11 Medley Capital; is that correct?

12 A. So it's fairly complicated
13 because then they would be stored on
14 servers that I believe were paid for by
15 Medley, LLC. There was a significant
16 amount of commingling of assets and
17 resources here and not the attention to
18 detail that you would often see when it
19 came to corporate separateness.

20 Q. When you take a look at this
21 posting journal based on your experience
22 as a liquidating trustee, do you feel
23 comfortable understanding what it says,
24 what it reflects?

25 A. Yes.

1 A. Saccullo

2 Q. Now, this posting journal was I
3 think created in January of 2021.

4 Do you see the top left-hand
5 corner?

6 A. Yes.

7 Q. And I gather that's when -- you
8 understand that that's when the
9 information was posted into the books and
10 records of the company; right?

11 MR. ROBBEN: I object to the
12 form.

13 THE WITNESS: Yeah, I'm not sure
14 I understand what you mean by posted,
15 but that's fine.

16 MR. COLE: I'll ask it a
17 different way.

18 Q. This information that's on this
19 page and the next few pages was placed
20 into or reconciled as of a particular
21 date; is that fair enough?

22 A. Correct.

23 Q. And based upon your experience
24 -- I know you're not absolutely sure.
25 Based on your experience, you can

1 A. Saccullo

2 determine that that reconciliation
3 occurred on January 6 of 2021?

4 A. Yes.

5 Q. Now, if you go down to the next
6 set of information, it says audit trail
7 code.

8 Do you see that?

9 A. Yes.

10 Q. And then across from that it
11 talks about bank statements -- bank
12 statement balances and the relevant dates.

13 Do you see that?

14 A. I do.

15 Q. And so you understand this
16 reconciliation journal as being a
17 reconciliation of the bank statements as
18 of the end of December, 2020; is that
19 right?

20 A. Yes.

21 Q. Now, then if you look to the
22 right, it identifies the company as
23 company number one hundred twenty.

24 Do you see that?

25 A. Yes. I'm sorry, yes.

1 A. Saccullo

2 Q. And then it says checkbook ID
3 120 OPR.

4 Based upon your evaluation of
5 Medley, LLC's books and records and your
6 experience in the case, does that refer to
7 Medley, LLC's operating account?

8 A. I believe that is an internal
9 designation of the operating account, yes.

10 Q. And so in your experience in
11 working with -- in the Medley case, the
12 Medley, LLC entity in the company's books
13 and records was company number one hundred
14 twenty?

15 A. I don't think it's a counter, if
16 that's what you're asking. In other
17 words, it's not the one hundred twentieth
18 company that's there.

19 Q. I'm just trying to identify the
20 account. I hear you that it's not the one
21 hundred twentieth company.

22 Just so that we're clear, when
23 you see one hundred twenty, you connect
24 that in your mind with Medley, LLC?

25 A. Yes.

1 A. Saccullo

2 Q. Now, if you turn the page to
3 page four, this is page four of the filed
4 document.

5 A. Uh-huh.

6 Q. And this is a listing of credits
7 and debits in the Medley, LLC operating
8 account.

9 Does that sound right?

10 A. Yes.

11 Q. And if you'll turn to page six,
12 you'll see a connected bank statement.
13 And you don't have to do it, but the
14 debits and credits are the same.

15 A. Okay.

16 Q. I wanted to ask you about -- go
17 back to page four. I wanted to ask you
18 about a few of these entries.

19 Again, this is attached as
20 Exhibit D to the trustee's motion to
21 vacate.

22 A. Yes.

23 Q. If you look down at the bottom
24 of the listings on page four, it refers to
25 three transfers. One on December 10, one

1 A. Saccullo

2 on December 18, and one on December 29.

3 Do you see that?

4 A. I do.

5 Q. And the first transfer from is
6 from the one hundred operating account.

7 Do you see that?

8 A. I do.

9 Q. And that one hundred operating
10 account I gather is Medley Capital? Is
11 that Medley Capital's account?

12 A. I do not know.

13 Q. And then it says transfer to a
14 ten operating account.

15 Do you see that?

16 A. Yes.

17 Q. And do you have an understanding
18 as to which entity was the ten operating
19 account?

20 A. I do not.

21 Q. If you had the -- do you have
22 the ability to determine what the hundred
23 and what the ten operating accounts were,
24 which company they refer to?

25 A. Do I have the ability to?

1 A. Saccullo

2 Q. Yes.

3 A. In what way?

4 Q. In other words, could you find
5 out which company's operating account is
6 the one hundred operating account?

7 A. Sure.

8 Q. But is your testimony -- your
9 testimony is that, as you sit here today,
10 you don't know what the hundred operating
11 -- what company the hundred operating
12 account refers to?

13 A. I could not with certainty
14 testify to it, no.

15 Q. Well, you couldn't with
16 certainty, but do you have a hunch?

17 A. Yeah, I don't want to speculate
18 on that.

19 Q. Did that amount -- did that
20 number account ever come up, to your
21 recollection, as part of your work as the
22 liquidating trustee?

23 A. So this is an internal
24 designation for the company. We on my end
25 would never call it 0100 -- 010 or one

1 A. Saccullo

2 hundred.

3 Q. I'm not saying you did this.

4 I'm saying, in a lot of

5 accounting records, they identify various

6 subsidiaries and intercompany transfers by

7 identifying the company by a number and my

8 question was strictly have you ever made a

9 determination as to which company

10 transferred into this account the

11 \$976,485?

12 A. I don't know. I don't know that

13 sitting here today.

14 Q. But you do understand that a

15 company, not Medley, LLC, transferred into

16 the Medley, LLC account on December 10

17 \$976,485? That's how you read this?

18 A. Yes.

19 Q. And then on the same day Medley,

20 LLC transferred out the identical amount

21 of money to Eversheds.

22 Do you see that? Just scroll

23 up, I don't know, five or six or seven

24 entries.

25 A. Yes.

1 A. Saccullo

2 Q. Do you see the debit there;
3 right?

4 And so did you ever do a -- make
5 a determination as to what the source of
6 the \$976,485 that was ultimately sent to
7 Eversheds, what the initial source of that
8 money was?

9 A. The initial source of the money
10 would have I believe been the insurance
11 policy.

12 Q. So your understanding on this
13 document is that the nine hundred
14 seventy-six came from an insurance policy
15 and then was paid to Eversheds Sutherland
16 on December 10, 2020?

17 A. I believe, but I would have to
18 confirm that.

19 MR. COLE: Let's mark the next
20 exhibit.

21 (Whereupon, a document entitled
22 Supplemental Declaration of Mark D.
23 Sherrill was marked Exhibit 6
24 for identification.)

25 Q. This is marked as Exhibit 6.

1 A. Saccullo

2 It's the supplemental declaration of Mark
3 D. Sherrill in support of the debtor's
4 application for an order authorizing the
5 retention and employment of Eversheds as
6 special counsel and was filed on April 26
7 of 2021.

8 Do you see that?

9 A. I do.

10 Q. In connection with your work as
11 liquidating trustee, when was the first
12 time that you reviewed this affidavit?

13 A. Oh, I don't recall.

14 Q. Did you ever have a discussion
15 with anybody about the circumstances
16 surrounding this affidavit and why it was
17 filed?

18 A. The circumstances surrounding
19 it?

20 Q. You understand that in April of
21 2021 that Eversheds submitted a
22 supplemental declaration that expanded
23 upon a disclosure of the entities and
24 individuals it was representing? You
25 understand that; right?

1 A. Saccullo

2 A. I do.

3 Q. My question is do you have an
4 understanding, as you sit here today, of
5 the reason Eversheds submitted the
6 supplemental affidavit?

7 A. I do not.

8 Q. But this is something -- this
9 affidavit would be something you would
10 have had --

11 MR. COLE: Withdrawn.

12 Q. When you were appointed in
13 October of 2021 as --

14 MR. COLE: Withdrawn.

15 Q. When Saccullo was appointed as
16 liquidating trustee in October of 2021,
17 was there a review done of the filings in
18 the docket?

19 A. Yes.

20 Q. And do you have any recollection
21 as to whether or not this is one of the
22 documents that was reviewed by Saccullo?

23 A. Ordinarily it would not be.

24 Q. But it is one of the documents
25 that you contend that was incorrect as

1 A. Saccullo

2 part of the motion that you filed to
3 vacate; right?

4 A. I believe we said that it did
5 not correct the prior incorrect
6 statements.

7 Q. Did you have a --

8 MR. COLE: Withdrawn.

9 Q. Were you aware that in April of
10 2021 there was a disclosure made in this
11 affidavit by Eversheds of the various
12 individuals and entities that Eversheds
13 was representing in connection with the
14 SEC investigation?

15 A. Is the question am I currently
16 aware? Yes, I'm currently aware.

17 Q. And of course, in October of
18 2021, this affidavit was available to you;
19 isn't that correct?

20 A. It was available, yes.

21 Q. And this affidavit referred to
22 each of the individuals and entities that
23 Eversheds was representing in connection
24 with the SEC enforcement investigation;
25 correct?

1 A. Saccullo

2 A. I would assume. My version does
3 not have the schedules.

4 Q. Let's see if it's on the screen
5 here. That's odd. I don't know why it
6 doesn't have the schedules.

7 But you do see it refers to the
8 schedules of individuals?

9 A. It refers to them, yes.

10 Q. And if you turn to paragraph
11 twenty-eight [sic] --

12 A. This is an eleven-paragraph
13 document.

14 Q. Paragraph eight.

15 A. Excuse me, I thought you said
16 paragraph twenty-eight.

17 Q. It says, "Eversheds represents
18 the Medley complex: Medley Management,
19 Inc., Medley, LLC, and Medley Capital, and
20 several current former officers,
21 directors, and employees".

22 Now, do you know what the
23 company code in the financial records was
24 for Medley Management?

25 A. I do not.

1 A. Saccullo

2 Q. But this is the disclosure of
3 all the entities, assuming schedule two
4 has them, of all the entities that
5 Eversheds was representing as of April 26
6 of 2021? You understand that; right?

7 A. It purports to say that, yes.

8 Q. Now, did you ever learn that the
9 committee had a concern about Eversheds'
10 fees as of April 26, 2021?

11 A. Did I learn it as of April?

12 Q. No, did you learn, ever learn
13 that the committee had concerns about
14 Eversheds' fees when this document was
15 filed?

16 A. I'm not aware of what the
17 committee's concerns were, no.

18 Q. Did Kelley Drye ever tell you
19 that it had conducted an analysis of
20 prepetition payments made to Eversheds in
21 April of 2021?

22 MR. ROBBEN: I'm going to
23 instruct the witness that he should
24 not answer the question because it
25 seeks attorney-client or work product

1 A. Saccullo

2 information.

3 MR. COLE: And I would disagree.

4 The information was related to actions
5 that Kelley Drye conducted when it was
6 counsel for the committee.

7 Q. Are you going to follow your
8 counsel's advice?

9 A. I am, yes.

10 Q. You said that you had a download
11 or you had a meeting with FTI at some
12 point after being -- after Saccullo was
13 appointed as liquidating trustee.

14 Do you remember telling us that?

15 A. Yes. I said I don't
16 specifically remember, but I'm sure we
17 did.

18 Q. Do you recall FTI explaining to
19 you as a representative of Saccullo any
20 work that FTI conducted in analyzing
21 prepetition payments made to Eversheds?

22 A. No, I do not recall.

23 Q. You understand that FTI
24 evaluated prepetition payments made to
25 Eversheds in around April or May of 2021;

1 A. Saccullo

2 right?

3 A. I don't.

4 MR. ROBBEN: I object to form.

5 Q. Sorry?

6 A. I don't have an understanding
7 one way or another on that.

8 Q. As liquidating trustee, is that
9 something that you would have liked to
10 have done?

11 MR. ROBBEN: I object to the
12 form.

13 THE WITNESS: Give me what "it"
14 was one more time.

15 Q. Sure.

16 As liquidating trustee who filed
17 a motion contending that a law firm
18 engaged in fraud that was not discovered
19 until much later, would you have wanted to
20 know that FTI conducted an analysis of the
21 prepetition payments made to Eversheds
22 back in April of 2021?

23 MR. ROBBEN: I object to the
24 form.

25 THE WITNESS: Depending upon

1 A. Saccullo

2 what that analysis said and what it
3 was, sure.

4 Q. Now, going back to the
5 representations that you say were
6 incorrect that make up the trustee's
7 motion, I just want to ask you a few final
8 questions about that, and then we'll
9 probably wrap up.

10 You said that the first
11 misrepresentation was the amounts of
12 payments the debtor made to Eversheds
13 during the preference period, prepetition
14 preference period; correct? That's the
15 first misrepresentation; right?

16 A. Yes.

17 Q. And I believe you also testified
18 that you've been a lawyer for what, twenty
19 or so years as a bankruptcy lawyer, maybe
20 longer?

21 A. Twenty-two.

22 Q. Twenty-two years.

23 And you'll agree with me that
24 amended affidavits supporting retention
25 applications are filed all the time;

1 A. Saccullo

2 right?

3 A. Yes, generally for supplemental
4 disclosures not previously made.

5 Q. And so if --

6 MR. COLE: Withdrawn.

7 Q. You were even involved in cases
8 where that occurred, right, where
9 supplemental affidavits were filed by
10 professionals to update information or to
11 correct information?

12 A. I'm sure.

13 Q. In the FTX case, that happened;
14 correct?

15 A. Yes.

16 Q. That was a pretty big one, too;
17 huh?

18 A. The twenty-two cents that was
19 unknown by an attorney at my firm, yes.

20 Q. I'm not talking about your firm,
21 I'm talking about other firms in that
22 case.

23 A. Oh, sure. Yeah.

24 Q. I wasn't talking about the fact
25 that you, yourself, filed a supplemental

1 A. Saccullo

2 affidavit.

3 A. Yes, sure.

4 Q. And so it wasn't a surprise to
5 you that Eversheds would move to file
6 supplemental affidavits, it wasn't a
7 surprise?

8 A. No.

9 Q. And it isn't a surprise to you
10 that law firms, particularly larger law
11 firms, make mistakes from time to time,
12 right, in what they put in their
13 affidavits and that's the reason why they
14 update them; right?

15 A. Generally it's because there's
16 an additional supplement that's required.

17 Q. Are you telling me in the twenty
18 or more years that you've been a lawyer
19 that you've never seen a supplemental
20 affidavit correcting a mistake by a law
21 firm in its retention application? Is
22 that what you're saying?

23 A. No. "Ever" and "generally" are
24 two very different things. I'm sure it's
25 happened.

1 A. Saccullo

2 Q. And it's happened in your
3 experience; correct? You even identified
4 -- it's minuscule but you even identified
5 an amount that you supplemented; correct?

6 A. Sure. That was something that
7 was learned about after the declaration,
8 not something that existed at the time of
9 the original declaration. It was truly a
10 supplement, not a correction.

11 Q. I think the amount of money that
12 you're referring to as being misstated was
13 about \$976,000 that should have been
14 included in the affidavit that was not; is
15 that right?

16 A. That's roughly correct.

17 Q. And did you do an analysis as to
18 what any of the constituencies would have
19 done had that \$976,000 actually been part
20 of the retention application? Do you
21 think there would have been an objection?

22 A. I don't know.

23 Q. Did you ask anybody?

24 A. No, it's something we'll never
25 know because it wasn't done of the after

1 A. Saccullo

2 the actual order approving the fees was
3 done.

4 Q. As you sit here today, you don't
5 know one way or the other whether or not
6 anybody would have objected to the
7 retention if that \$976,000 was disclosed;
8 correct?

9 A. They were not given that
10 opportunity, correct.

11 Q. You don't know whether or not
12 they would have objected; correct?

13 A. I do not.

14 Q. You understand that the debtor
15 and its counsel had an opportunity to
16 review the submission by Eversheds; right?

17 A. Which submission?

18 Q. The retention
19 application-related affidavit.

20 You understand that the debtor
21 and its counsel reviewed that before it
22 was filed?

23 A. I had no understanding. I would
24 have to assume.

25 Q. Because that happens a lot. The

1 A. Saccullo

2 debtor takes a look at it before it's
3 filed; correct?

4 A. Sure.

5 Q. And certainly the debtor had the
6 information available to determine whether
7 or not the dollar amounts paid prepetition
8 was accurate; correct?

9 A. Again I would have to assume. I
10 don't know.

11 Q. And you --

12 MR. COLE: Withdrawn.

13 Q. Now, you have an understanding
14 as to what Eversheds' role was as of the
15 petition date; correct? You understand
16 that Eversheds was SEC counsel; correct?

17 A. Yes.

18 Q. And did you have an
19 understanding as to how long Eversheds
20 served as SEC counsel?

21 A. I do not.

22 Q. But I gather you understand that
23 it was a substantial period of time and
24 millions of dollars was spent on that
25 counsel; correct?

1 A. Saccullo

2 A. It appears correct.

3 Q. If the correct amount of money
4 paid to Eversheds was disclosed in the
5 original retention affidavit, you're not
6 saying that Eversheds would have been
7 fired and the debtor would have hired
8 somebody else; are you?

9 A. I have no idea what would have
10 happened if the disclosures were correct.

11 Q. There still would need to be SEC
12 counsel for the debtor; correct?

13 A. I believe that to be correct.

14 Q. And the debtor would have to pay
15 for that new SEC counsel, correct, if
16 Eversheds was fired?

17 A. Absent insurance coverage and
18 whether or not it's done by the debtor on
19 behalf of all the entities or if the
20 debtor is just paying for the debtor's
21 representation would be something that we
22 would like to know as well.

23 Q. But if Eversheds was fired, a
24 new lawyer would have to come in and that
25 new lawyer would have to be paid; correct?

1 A. Saccullo

2 A. On behalf of the debtor, that
3 would be correct, except that is a much
4 more limited engagement than what
5 Eversheds had here.

6 Q. By the way, in your role as
7 liquidating trustee, did you -- did
8 Saccullo review the organizational
9 documents of Medley, LLC?

10 A. We have reviewed many, many
11 different organizational documents of the
12 Medley enterprises, yes.

13 Q. So you're familiar with the
14 Medley, LLC limited liability company
15 agreements?

16 A. Yes.

17 Q. And you're familiar with the
18 Medley, LLC limited liability company
19 agreement that was in effect at the time
20 of the SEC investigation; correct?

21 A. Am I fluent in it sitting here
22 today? No.

23 Q. I understand.

24 But you reviewed it?

25 A. I did.

1 A. Saccullo

2 Q. And I think we talked about
3 this, but you understand that Medley, LLC
4 had certain obligations to advance fees on
5 behalf of its directors and officers under
6 that LLC agreement?

7 A. I believe we did.

8 MR. ROBBEN: I object to the
9 form.

10 Q. I'm sorry?

11 A. I believe we talked about it. I
12 believe I said that I had an understanding
13 that that's not true and I believe I said
14 that that understanding was the genesis of
15 counsel.

16 Q. Now, the second
17 misrepresentation you say is that
18 Eversheds received the payments from
19 insurance prepetition.

20 Do you remember that?

21 A. I do.

22 Q. And you understand that money
23 was paid to the debtor post-petition for
24 -- wait a minute, did you say that the
25 debtor -- you don't know whether or not

1 A. Saccullo

2 the debtor was paid post-petition for
3 prepetition invoices?

4 A. I said I didn't know if
5 Eversheds was paid.

6 Q. If Eversheds was paid
7 post-petition for prepetition invoices by
8 the insurer, was the only harm that you
9 say Eversheds suffered -- I'm sorry, the
10 debtors suffered the allocation of the
11 insurance that you were talking about
12 before?

13 A. Yes.

14 Q. That's the harm? Is there any
15 other harm that you can identify that the
16 debtor suffered?

17 A. Sitting here today, no.

18 MR. COLE: Let's take five
19 minutes and I'll come back. I may
20 have a few more questions.

21 (Whereupon a break was taken)

22 Q. Mr. Saccullo, did -- yes or no,
23 did you speak with your counsel during the
24 break?

25 A. No.

1 A. Saccullo

2 Q. I just want to follow up with
3 two quick questions, and it's probably
4 just because my notes are inconsistent.

5 You testified earlier that
6 Saccullo had access to Medley, LLC's books
7 and records that -- books and records of
8 Medley, LLC and its subsidiaries shortly
9 after Saccullo was appointed and certainly
10 before December of 2021; right?

11 A. Yes.

12 Q. And I think you said that during
13 that period of time that there were bank
14 records requested so that Saccullo or its
15 counsel could determine the accuracy of
16 the records that were maintained by
17 Medley's management; right?

18 A. Yes.

19 Q. And you're not sure when you
20 received those bank records, but it was
21 certainly within the first quarter of
22 2022; right?

23 A. Yes.

24 Q. And I don't know if I asked you
25 this, and if I did, I apologize, but after

1 A. Saccullo

2 reviewing those bank records, did Saccullo
3 determine that there was any inconsistency
4 between the money flowing in and out of
5 Medley, LLC's accounts and its books and
6 records?

7 A. I believe you asked and I
8 believe I said I don't recall.

9 Q. And throughout this deposition I
10 think you've referred to my client as
11 having lied on its applications, on its
12 application and affidavit, and I'd like to
13 know what evidence you have of any
14 misrepresentation or any representation
15 that you say is incorrect that it was done
16 deliberately or intentionally.

17 Do you have any evidence of
18 that?

19 A. I do not have any evidence of
20 intent.

21 Q. And as you sit here right now,
22 you can't point to any evidence that
23 Eversheds deliberately attempted to
24 mislead the court or the debtor or any
25 other constituency as to any of the

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A. Saccullo
representations you say were incorrect; is
that right?

A. I just know that they misled. I
do not know if it was deliberate.

MR. COLE: I have no further
questions. Thank you for your time.

THE WITNESS: Thank you.

MR. ROBBEN: I don't have any
questions.

But Mr. Saccullo will review the
transcript and sign.

MR. COLE: Thank you.

(TIME NOTED: 3:46 p.m.)

_____ (Signature of witness)

Subscribed and sworn to
before me this _____
day of _____,
2023.

* * *

I N D E X

WITNESS	EXAMINED BY	PAGE
A. Saccullo	Mr. Cole	3

E X H I B I T S

FOR ID	DESCRIPTION	PAGE
Exhibit 1	Document entitled Notice of Selection of Proposed Liquidating Trustee	24
Exhibit 2	Document entitled Complaint to Avoid and Recover Transfers	60
Exhibit 3	Document entitled Exhibit B	79
Exhibit 4	Document entitled Cover Sheet to the (I) Final Fee Application of Eversheds Sutherland (US) LLP	84
Exhibit 5	Document entitled Exhibit D	96

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Exhibit 6	Document entitled Supplemental Declaration of Mark D. Sherrill	106

* * *

CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the
State of New York, do hereby certify:

That the testimony in the within
proceeding was held before me at the
aforesaid time and place;

That said witness was duly sworn
before the commencement of the testimony,
and that the testimony was taken
stenographically by me, then transcribed
under my supervision, and that the within
transcript is a true record of the
testimony of said witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, that I am not
interested directly or indirectly in the
matter in controversy, nor am I in the
employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto
set my hand this 16th day of June, 2023.

Wayne Hock

1 PHILIP ROBBEN, ESQ.

2 probben@kelleydrye.com

3 June 16, 2023

4 In Re: Medley Llc

5 6/12/2023, Anthony Saccullo (#5963941)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 CS-NY@veritext.com

16
17 Return completed errata within 30 days from
18 receipt of testimony.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21
22 Yours,

23 Veritext Legal Solutions
24
25

In Re: Medley Llc

Anthony Saccullo (#5963941)

E R R A T A S H E E T

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Anthony Saccullo Date

1 In Re: Medley Llc

2 Anthony Saccullo (#5963941)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Anthony Saccullo, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10
11 _____
12 Anthony Saccullo

_____ Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20____.

16
17
18 _____
19 NOTARY PUBLIC

[& - access]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

Exhibit 3

Message

From: Bettigole, Bruce [BruceBettigole@eversheds-sutherland.us]
Sent: 12/17/2021 5:10:24 PM
To: Walsh, John H. [JohnWalsh@eversheds-sutherland.us]; Adam Pollet [adampollet@eversheds-sutherland.com]; Siadatpour, Payam [PayamSiadatpour@eversheds-sutherland.us]; Boehm, Steven [StevenBoehm@eversheds-sutherland.us]; Christakos, Nicholas [NicholasChristakos@eversheds-sutherland.us]
Subject: Fwd: Call today

FYI, I just spoke to Brook, Doug Koff, and Adele - Brook said MDLY wants me to talk to Adele before incurring any more expense for MDLY. I agreed, and also explained that other than the ongoing reduced costs for maintaining our database, we are just waiting for word from the SEC for all our clients and not billing for any of the time we are spending on the insurance issues. It was a very gracious discussion, that ended with Brook and me chatting about my move to NYC, his experiences as a violinist (amazing!), and that we should definitely get together in NY for a drink when this is all over. Seriously.

Bruce

Sent from my iPhone

Begin forwarded message:

From: Adele Hogan
Date: December 17, 2021 at 4:53:12 PM EST
To: "Koff, Douglas", "Bettigole, Bruce"
Cc: Brook Taube
Subject: Re: Call today

Bruce,

It was good to connect today. I'm in NYC and can be reached at 917-402-3688 and ahogan@lucbro.com.

I hope you have a good weekend.

Best regards,

Adele

Adele Hogan

Partner



111 Broadway Suite 807 | New York, NY 10006
tel 732 395 4412 | direct 917 402 3688 | fax 732 395 4401

[Website](#) | [Email](#) | [LinkedIn](#) | [Biography](#) | [Year in Review](#)

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From: Koff, Douglas
Sent: Friday, December 17, 2021 4:31 PM
To: 'Bettigole, Bruce'
Cc: Brook Taube ; Adele Hogan
Subject: RE: Call today

Great, what number should we use?

Douglas I. Koff
Partner
212.756.2773 office
917.862.9871 mobile

Schulte Roth & Zabel LLP
www.srz.com

From: Bettigole, Bruce
Sent: Friday, December 17, 2021 4:29 PM
To: Koff, Douglas
Cc: Brook Taube ; Adele Hogan
Subject: Re: Call today
-CAUTION: EXTERNAL EMAIL from brucebettigole@eversheds-sutherland.com
Do not click any links or open any attachments unless you are expecting the email and know the content is safe.
Sure
Sent from my iPhone

On Dec 17, 2021, at 4:09 PM, Koff, Douglas <Douglas.Koff@srz.com> wrote:

Can you speak at 4:45 for 5 minutes? I have copied Brook and Adele to close out one item.

Douglas I. Koff
Partner
212.756.2773 office
917.862.9871 mobile

Schulte Roth & Zabel LLP
www.srz.com

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Exhibit 4

Message

From: Bettigole, Bruce [BruceBettigole@eversheds-sutherland.us]
Sent: 3/31/2022 12:39:25 PM
To: Siadatpour, Payam [PayamSiadatpour@eversheds-sutherland.us]; Walsh, John H. [JohnWalsh@eversheds-sutherland.us]; Pollet, Adam [AdamPollet@eversheds-sutherland.us]; Boehm, Steven [StevenBoehm@eversheds-sutherland.us]; Christakos, Nicholas [NicholasChristakos@eversheds-sutherland.us]; Sherrill, Mark [MarkSherrill@eversheds-sutherland.us]
Subject: RE: Medley settlement with SEC

That's my understanding re the SEC - though it will be interesting to find out if and when the SEC is willing to issue closing letters for each of them.

Bruce Bettigole | Partner | T: +1.212.287.7071

*Admitted in New Jersey and the District of Columbia. Practicing under the supervision of New York State Bar members.

From: Siadatpour, Payam
Sent: Thursday, March 31, 2022 12:37 PM
To: Bettigole, Bruce ; Walsh, John H. ; Pollet, Adam ; Boehm, Steven ; Christakos, Nicholas ; Sherrill, Mark
Subject: RE: Medley settlement with SEC

Thanks Bruce. This is great news. I assume the others are free and clear?

Payam Siadatpour | Partner | T: +1.202.383.0278

From: Bettigole, Bruce <BruceBettigole@eversheds-sutherland.us>
Sent: Thursday, March 31, 2022 12:22 PM
To: Walsh, John H. <JohnWalsh@eversheds-sutherland.us>; Pollet, Adam <AdamPollet@eversheds-sutherland.us>; Siadatpour, Payam <PayamSiadatpour@eversheds-sutherland.us>; Boehm, Steven <StevenBoehm@eversheds-sutherland.us>; Christakos, Nicholas <NicholasChristakos@eversheds-sutherland.us>; Sherrill, Mark <MarkSherrill@eversheds-sutherland.us>
Subject: Medley settlement with SEC

Good news! **Still highly confidential**, but Koff just told me that the SEC staff is fully signed off, and the Commission consideration should occur imminently (he said he thought possibly today, but it sounded more likely it would be in the next two weeks). 17(a)(2) and (3) [negligent misrepresentation and omission - just like we have been predicting for many months]. Koff also said that many of the potential disqualification provisions will not be imposed, but as usual he was unclear about that in his description to me. The Taubes apparently are paying the \$13+ million that was reflected in the agreement with the Trustee that we have already seen, with no additional financial penalty.

No date yet for the mediation, and no agreement on the mediator. But Koff is hoping that the mediation will occur in "mid-May." As for the Starr payment to us and to Wilmer, Koff said he is going to draft something that Starr apparently wants (seems like belt and suspenders given what everyone has already agreed to in the forbearance agreement), but hopefully we will receive at least that \$600,000 + relatively soon (June?). After that, the real fun begins with Travelers re the rest of our fees . . .

Bruce

Bruce Bettigole | Partner | Eversheds Sutherland (US) LLP

T: +1.202.383.0165
[Biography](#) | [vCard](#)

www.eversheds-sutherland.com

Eversheds Sutherland

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Exhibit 5

From: Eric Madden [emadden@reidcollins.com]
Sent: 1/26/2022 5:27:48 PM
To: brucebettigole@eversheds-sutherland.com; adampollet@eversheds-sutherland.com; johnwalsh@eversheds-sutherland.com
CC: Anthony Saccullo [ams@sacculloconsulting.com]; Carr, James [JCarr@KelleyDrye.com]; Smith, Whitney M. [WSmith@KelleyDrye.com]; Brandon Lewis [blewis@reidcollins.com]
Subject: Medley
Attachments: Medley -- Letter to Bruce Bettigole dated 1-26-22.pdf

Bruce – As a follow-up to our call today, please see the attached letter. Thanks.

Eric D. Madden, *Partner*

reid | collins

Reid Collins & Tsai LLP
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Eric D. Madden | Partner
Direct: 214.420.8901
emadden@reidcollins.com

January 26, 2022

Via E-Mail

Bruce M. Bettigole, Esq.
Eversheds Sutherland (US) LLP
700 Sixth Street NW, Suite 700
Washington, DC 20001
brucebettigole@eversheds-sutherlands.us

Re: *In re Medley LLC*, Case No. 21-10526 (KBO) (Bankr. D. Del.)

Dear Mr. Bettigole:

Thank you for the call today. As we mentioned, our firm represents Saccullo Business Consulting, LLC, as the liquidating trustee (the "Trustee") of the Medley LLC Liquidating Trust and the manager of Medley LLC ("Medley") under its Modified Third Amended Combined Disclosure Statement and Chapter 11 Plan (the "Plan"), which was confirmed in the above case on October 14, 2021. Eversheds Sutherland (US) LLP ("Eversheds"), of course, serves as counsel to Medley, its parent entity, Medley Management, Inc. ("MDLY"), and perhaps others with respect to *In the Matter of Medley Capital Corporation*, SEC File No. NY-10045 (the "SEC Matter").

By this letter, we request that Eversheds produce the following documents in its possession, custody, or control related to its work for Medley and MDLY: (a) transcripts and exhibits from witness testimony in the SEC Matter; (b) presentations made by Eversheds to the Securities and Exchange Commission in the SEC Matter; (c) presentations made by Eversheds to its clients in the SEC Matter; and (d) documents cited in the Wells Submission prepared by Eversheds in the SEC Matter. We ask that these documents be produced within 21 days of your receipt of this letter.

Our request is supported by the relevant legal authority. For instance, Rule 1.4(c) of the District of Columbia Rules of Professional Conduct states that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Indeed, comment 2 to Rule 1.4(c) states that "[a] client is entitled to whatever information the client wishes about all aspects of the subject matter of the representation."

Letter to Bruce M. Bettigole, Esq.
January 26, 2022
Page 2

The Bankruptcy Code, moreover, contemplates this transfer of information to the client following bankruptcy. Specifically, section 542(e) of the Bankruptcy Code provides as follows:

Subject to any applicable privilege, after notice and hearing, the court may order an attorney . . . that holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee.

In addition, the Trustee may seek authority to issue a subpoena compelling the production of this information under Federal Rule of Bankruptcy Procedure 2004.

With respect to privileges, the Trustee holds Medley's attorney-client privilege and right to work product under applicable law and Article VII(E) of the Plan. *See, e.g., Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 353 (1985); *see also In re Hechinger Inv. Co.*, 285 B.R. 601, 613 (D. Del. 2002) (holding that debtor's attorney-client privilege was controlled by liquidating trust established under the confirmed plan). Thus, your firm's production to the Trustee should include those files that would otherwise be subject to the attorney-client privilege and/or work-product doctrine.

Finally, the Trustee is likewise entitled to any communications or other materials provided by or to Medley's co-clients, such as MDLY. *See* D.C. R. Prof'l Conduct 1.7 cmt. 15 ("With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach.").

Please contact me at your earliest convenience so that we may discuss the logistics of this production. I appreciate your assistance and look forward to hearing from you.

Very truly yours,



Eric D. Madden

cc: Anthony M. Saccullo
James S. Carr
Whitney M. Smith
Brandon V. Lewis