26-cv-495 (JLH)

United States District Court
for the District of Delaware

In re APPLE TREE LIFE SCIENCES, INC., *et al.*,
Debtors.

RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP,

Appellants,

v.

ATP LIFE SCIENCE VENTURES, L.P., ATP III GP, LTD., and OFFICIAL COMMITTEE OF UNSECURED CREDITORS,

Appellees.

On Appeal from the United States Bankruptcy Court for the District of Delaware,
No. 25-12177
(Hon. Laurie Selber Silverstein)

APPENDIX IN SUPPORT OF APPELLANTS' OPENING BRIEF

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
	Case No. 25-12177 (LSS)
APPLE TREE LIFE SCIENCES, INC., *et al.*,	(Jointly Administered)
	Courtroom No. 2
	824 North Market Street
Debtors.	Wilmington, Delaware 19801
	Thursday, February 19, 2026
	10:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
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(Proceedings commenced at 10:02 a.m.)

THE COURTROOM DEPUTY: Please rise.

THE COURT: Please be seated.

Ms. Good.

MS. GOOD: Good morning, Your Honor.

THE COURT: Good morning.

MS. GOOD: Katie Good of Potter Anderson & Corroon on behalf of Apple Tree Life Sciences, Inc., and its affiliated debtors and debtors-in-possession.

We're here on an omnibus hearing today with quite a few contested matters going forward. So, I thought, at the outset, it might be helpful just to kind of run through our agenda and plan for the day.

Looking at the agenda -- and I don't know if Your Honor has a copy handy.

THE COURT: I don't but I don't need one.

MS. GOOD: We had, you know, several items that were resolved or withdrawn; those are Items 1 through 6. Our major contested items that we have going forward today are our funding motion and, depending on how the Court rules on that, our conditional DIP motion. Those are the most critical items for today and where we would propose to start our hearing.

Depending on time, then we would move to the Quinn Emanuel and B. Riley retention applications, which Rigmora

also contests. There is some overlap on the issues together, so we would take those two retention applications at the same time. Then the final item that is a contested matter today with a filed objection is the stay enforcement motion which we would keep at the end.

We do have a few other more ministerial items, some matters where we had filed certifications; those are schedules, extension, a sealing motion, and a rejection motion. Then we have a few more sealing motions that have been filed by Rigmora. I think we can deal with those --

THE COURT: Well, we need to talk about that --

MS. GOOD: Okay.

THE COURT: -- because everything I'm getting is filed under seal and that can't be. And you guys are going to have to figure out how to not do that, and the courtroom is open and is going to remain open. So, I don't want everything under seal because I end up getting under seal, redacted, then somehow not anything redacted. I'm getting three copies of everything and -- so, nothing under seal. I don't understand why things are under seal.

MS. GOOD: Understood, Your Honor. And we will endeavor to work through that.

In terms of organization for the funding motion, the debtors would propose to call Ms. Meenu Karson, Dr. Paul Eisenberg, Dr. Seth Harrison and Mr. Perry Mandarino for our

case in chief. Rigmora has deposed each of these witnesses along with four others.

Ms. Karson and Dr. Eisenberg are likely to be shorter examinations. So, we would propose to take those first with the Court's permission and then, hopefully, allow them to be excused from the remainder of the hearing before we move onto to Dr. Harrison and Mr. Mandarino. Much of that testimony would go to the DIP as well, which is conditional and we would be seeking approval of that only to the extent that the funding motion is denied. So, those evidentiary items, we believe, can largely travel together.

And I understand that Rigmora has some witnesses they wish to call. And as you can see from the letters we have submitted to your Chambers, there is some disagreement over those witnesses. So, we're happy to address those issues at the outset or if you would propose, we can address those when those witnesses are proposed to be called.

THE COURT: You can address them when they're proposed to be called.

MS. GOOD: Sounds good.

With that, Your Honor, I would turn the -- I think rather then starting with openings we will just move directly into evidence. So, I would turn the podium over to Mr. Winston who would start with, I believe, Ms. Karson or Dr. Eisenberg first.

THE COURT: Very good.

MR. WINSTON: Good morning, Your Honor. Eric Winston of Quinn Emanuel on behalf of the debtors.

With Your Honor's permission, we would like to call Ms. Karson to the stand.

THE COURT: Ms. Karson.

MEENU KARSON, DEBTOR WITNESS, SWORN

THE COURTROOM DEPUTY: Please state your full name and spell your last name for the record.

THE WITNESS: Meenu Karson, K-A-R-S-O-N.

THE COURTROOM DEPUTY: Thank you. You may be seated.

MR. WINSTON: May I proceed, Your Honor?

THE COURT: You may.

MR. WINSTON: Thank you.

DIRECT EXAMINATION

BY MR. WINSTON:

Q Good morning, Ms. Karson.

A Good morning.

Q How are you today?

A Good.

How are you?

Q Doing well. Thank you.

Would you tell the Court your current job title?

A Yes. I am the CEO of Evercrisp Biosciences since

September of 2024.

Q And prior to joining Evercrisp, did you have any positions in any life science companies?

A My entire career has been in life sciences, both in large pharma as well as in biotech. In fact, the lion's share of my 25 plus year career has been in early-stage biotechnology companies; 18 of those years has been spent as a biotech CEO in companies that were of very comparable size and stage to Evercrisp.

Q Would you briefly just describe some of the work you have done as a CEO in these prior experiences?

A Yes. In the last two CEO roles that I've had, where both were seven plus years.

The first one was a company called Allozyne based in Seattle. It had venture capital funding, was a deeply pre-clinical or early-stage protein engineering platform company. We worked hard to get programs into the clinic, identified interesting therapeutic opportunities. And that company concluded with a sale to MedImmune, which is now AstraZeneca.

The second CEO opportunity was a company called Proteostasis Therapeutics. I joined when it was less then 15 people. Venture capitalists had funded the company. This was a seven-year run where we ended up taking the company public in order to fund our clinical programs, put together a couple of pharma partnerships that were very validating to the

technology, and that company concluded by merging into another biotech company.

Q Have you also served as a board director of any life science companies?

A I have. So, after Proteostasis concluded I actually took the next couple of years to serve on a number of different public and private company boards in various roles, including board chair of both public and private companies, as well as serving on the various subcommittees, whether it was compensation or audit committee.

Q And I think you testified you joined Evercrisp in September of 2024?

A Correct.

Q When you joined, can you briefly described what was Evercrisp's business?

A Yes, of course. So, Evercrisp is, if I had to say it very briefly, focused on targeted delivery in genetic medicine. And I think it's important here to just take a step back and establish some context because I know these concepts can seem a bit science fiction.

So, the way I like to think about is if you turn the clock back 30 years and you receive a cancer diagnosis, at that time that diagnosis also felt like a death sentence and not because medicines didn't exist, chemotherapy existed, it's because the chemotherapy it killed cancer cells but it

also indiscriminately killed healthy cells. And what that leads to for patients is intolerability, meaning hair loss, immune system collapse, and many patients needed to figure out how they could even bear or tolerate chemotherapy long enough in order for it to actually have time to work.

And then, as is often the case in our industry, innovation struck and scientists started figuring out that cancer cells come with a very unique molecular fingerprint and they could design targeting moieties, candidates, drugs to seek out exactly those fingerprints. And then they figured out how to attach a payload, mainly this chemotherapeutic, to that targeting agent to be able to kill just the cancer cells and spare the healthy ones. This has been a transformative time. It created the dawn of precision oncology and this was all driven by the targeting revolution.

So, now you come to the realm of genetic medicine and its at the very same inflection point that cancer research was a few decades ago. And in genetic medicine we have a similar type payload. An example would be, for instance, CRISPR-Cas9, which one of our scientific co-founders at Evercrisp received the Nobel Prize for a couple of years ago, Dr. Jennifer Doudna.

What this CRISPR-Cas9 can do, it's an extraordinary tool, it can go into the cell and it can find the DNA that carries this disease-causing mutation and it can fix it.

Think of it as a pair of molecular scissors. So, its snip and patch. And, again, I know this sounds like science fiction; however, there is already an approved product using CRISPR technology and that is incredibly validating. And it tells us that this payload works.

Now, much like how cancer was treated before the era of precision oncology, genetic medicine with CRISPR still suffers from the same issues that happened in cancer treatment, and that is there is no delivery. What do I mean by that? So, taking a genetic medicine today you can expect most of it to go to the liver. That is our main clearance or filter in our bodies. And very little is left to actually be deployed to the cells that need repair; whether its brain cells in a child with a neurological disease, muscle cells in someone who has muscular dystrophy, lung cells in someone who has CF.

The way physicians who are treating professionals contend with that challenge is by compensating with a higher dose. A higher dose leads to intolerability, it triggers severe immune reactions, horrible ones such that you can usually only give these treatments once in a patient's lifetime and that would be the only shot it has to work. This also comes with a huge burden in terms of the patient experience with these adverse events. These are very expensive treatments to manufacture and, therefore, are also

not affordable.

So, this brings us then to what the Evercrisp solution is to all of this and we're focused squarely on targeted delivery of genetic medicines. So, the way I like to understand it is think of if you had a life saving letter and you needed to get it to one house in a city with a trillion houses. Currently, the way this field is practiced is you would print off a million copies of the letter and you would drop it from an airplane and, yes, some would go to the right address but most would go to the wrong address and the city would see real damage with this infusion of mail.

At Evercrisp, we are working on a technology that allows an envelope to be printed that has the exact life saving letter inside, the payload, CRISPR or other genetic medicines, but the envelope has the address of the specific house you need it to be delivered to. And we would like to be able to deliver to the brain, to muscle, to kidney, to heart and what that helps with is this targeted delivery allows you to then have a more potent drug, which means you have a lower dose, which means its likely to be safer, which means if you need to redoes you could, which means its likely cheaper to make and, therefore, more affordable.

So, because we're targeting, sort of, the GPS component versus the actual vehicle, we're getting to the root cause of the issues that every player in genetic medicine is

contending with right now and we're doing so in a very comprehensive way by solving the targeting problem, the payload piece, and getting it to the right destinations.

Just to put a little bit of additional context, in the last 18 months or so there has been over a billion dollars in capital deployed to companies that are trying to solve exactly this issue, this delivery issue in genetic medicine.

Q So, that brings me to my next question. Thank you so much for that passionate explanation.

We're here today on a funding motion of which $3.5 million is to be provided to Evercrisp. Other companies are getting more or less but Evercrisp gets $3.5 million. You understand that is the ask for Evercrisp?

A I do.

Q Okay. What will Evercrisp do with those funds if the Court authorizes the partnership debtor to provide it?

And you probably heard Your Honor say about this is an open courtroom. So, think about if there is anything super confidential try not to disclose it because this is public.

A Understood. Appreciate the guidance.

So, with this funding of approximately $3.5 million we would like to deliver two specific data sets. And I can also talk about what those data sets would support and, again, put it back into what the overall market opportunity looks like as well.

So, the first data set we would like to produce is to complete our animal data package that shows with our mini protein binders, these special envelopes that we can print. These mini protein binders that they are able to preferentially go to different parts of the body. We're interested in the brain, the heart, and muscle. This data set would allow us to clearly show that.

Another piece in this upcoming data set is that these binders have a very special feature. We call them their cross reactive; meaning, they are testable in mice, in monkeys, and in humans. And what that allows us to do is to chart the path to how we want to establish this framework towards clinical testing, towards filing our IND to give us a green light to go ahead and test no humans.

The second data set is really built off of the work that we have already done. Because we have shown in initial data sets that we can show preferential targeting to different tissues, because we have been able to attach our payload, whatever compound genetic medicine we're interested in, to the targeting moieties and show that it can remain intact, now we want to be able to show that it can get to its destination and do what it is intended to do. So, what we call a "functional readout."

This specific issue is something that the field has been working on for many years and have failed. We believe

the reason there has been this failure is because many companies have been tackling only one piece of the puzzle at a time whereas Evercrisp is providing that comprehensive total solution of the targeting stability of the payload and getting it to its intended destination.

This data set bears the promise of being able to deliver in vivo editing, in vivo knockdown. It would be an extremely attractive data set to be able to resume our discussions with potential investors as well as pharma collaborators.

Q Why didn't Evercrisp pursue these two, I think you said, data sets last year?

A They were on our list of our 2025 corporate goals. This is the mantra that runs the company, if you will. That is how I have always done it in my years of experience that you work with your venture capital partner to provide regular updates. There is a lot of collaboration. There is a lot of thorough dialog and as the year goes you are able to then distill into a very crisp set of activities of how you would like the company to evolve in the coming year.

So, this I all captured in our '25 corporate goals. And, unfortunately, in the middle of the year we lost our funding and we were unable to continue to build out these data sets.

Q If you received the funding, because the Court has

authorized it, would you be basically undertaking what you planned to do last year?

A Yes.

Q Okay. What effect, if any, was there on losing the funding opportunity last year on Evercrisp?

A What worries me intensely is that in this business, I think I shared that over a billion dollars of capital have gone into companies trying to solve the delivery problem. And what worries me deeply is every day where we're not pursuing these data sets we're basically at a standstill. We are losing ground against our potential competitors.

So, it would be a real shame for us to continue in this way because I do believe that we are on the bring, we're on the precipice of getting these data sets that could revolutionize how we think about genetic medicine just the way precision oncology revolutionized how we thought about cancer.

Q After learning about the loss of funding last year, did Evercrisp either have to let people go or did people leave?

A Yeah. So, our team is of comparable size to when I joined these other companies that I described. So, hovering at around 15 to 20 full time employees. We had to take our team down to four FTE's, full-time employees, including myself. And it put us in hibernation mode, if you will. So, it was a real loss.

Q Did Evercrisp have to either like shut down any facilities or anything like that?

A So, as the funding disappeared, we also had to give up our lab and this is where we generated a lot of our material, we did a lot of characterization before it goes into animal study so we could understand the property side, so we could also portend to the potential outcomes of these animal studies. There is a tremendous amount of rigor that goes into all of this. And we had to give up our lab to continue in this standstill or hibernation.

Q So, if Evercrisp does not receive the funding that has been requested, what do you expect to happen?

A If Evercrisp didn't receive the funding, we would likely, as I said, lose ground on potential competitors who could beat us to the finish line with a breakthrough and that would be a real loss because the substrate that has gone into the company, the caliber of scientists that have driven the science here, or the caliber of our co-founders is world class.

We're working with, obviously, Nobel Laureate Jennifer Doudna but the person who was the germination point of our mini protein binders is a protégée of yet another Nobel Laureate, Dr. David Baker, who won the prize in '21 for ML based protein design.

So, this company, from how it was set up, was set up to

succeed. And this unbelievable headwind on the funding piece is leaving to value disruption.

Q Does Evercrisp use outside vendors for its work?

A We do and for getting to these data sets that I've described in this funding motion, we would have to rely exclusively on outside vendors to generate these results because we don't have our own facilities.

Q If Evercrisp cannot pay its outside vendors, would it risk losing data sets or information?

A It would all be gone.

Q Can Evercrisp simply just go into sleep mode and maintain its IP, whatever its IP rights are? Can it just do that?

A You can always exist that way but I like to think of it as, because I'm a big fan of analogies, a little bit of a fruit that's dying on the vine. Its withering away needlessly so. There is IP that we could protect but that isn't why this was set up. We're working to get medicines to patients who need them.

If you think specifically of this arena of genetic medicine, I mean I could go on all day about it, I can simply start with this: today, we know that there are 7,000 genetic rare diseases. From a drug development perspective when you're dealing with genetic rare disease that is probably one of the lowest bars for success. Why? Because the vast

majority of these diseases have no treatment options.

We know there are a number of companies that are trying the same. And we firmly believe that we hold the comprehensive solution to be able to address that market that right now is sitting there as a plum opportunity.

Q Last question. You joined in September 2024 before these headwinds hit.

A Yes.

Q Headwinds have hit and you're stuck testifying in a bankruptcy court. Why are you sticking around?

A I am sticking around for the absolute same reason that I joined. I mean, look at what we're talking about here. This could very well be the next revolution in medicine. You're thinking about people who 30 years saw a cancer diagnosis as a death diagnosis.

I'm sharing with you today that there are millions of people who have these genetic rare diseases that have absolutely no treatment options. I've shared with you the good bones that went into setting up this company and how thoroughly the science was adjudicated. This is one of those plum opportunities that doesn't happen very often in early-stage biotech that is set up to succeed.

I also know, from my time with the company, that there are a number of pharma parties and investors who are interested in joining on this journey with us. So, if we

could just have the funding to get to these data sets then we can take an informed next step on how to create value and that is why I'm here because the original premise hasn't changed at all, in my mind, from a scientific perspective.

MR. WINSTON: No further questions, Your Honor. Pass the witness.

THE COURT: Thank you.

Cross.

MR. DUTZ: Good morning, Your Honor. Sebastian Dutz of Debevoise & Plimpton.

THE COURT: Good morning.

CROSS-EXAMINATION

BY MR. DUTZ:

Q Good morning, Ms. Karson.

So, I will start with where you ended at being in bankruptcy court. You are the CEO of Evercrisp, correct?

A Yes.

Q And you have been driving Evercrisp's strategic direction since you became CEO in September 2024, correct?

A Correct.

Q But it was not your decision to file Evercrisp for Chapter 11 bankruptcy, correct?

A So, in my role decisions are seldomly made as a committee of one. This was a decision that was made together with ATP.

MR. DUTZ: Danny, could you bring up Deposition Transcript 92, lines 12 to 13.

BY MR. DUTZ:

Q Ms. Karson, we had a deposition on Monday, correct?

A Yes, we did.

Q And at that deposition I asked you was it your decision to file for Chapter 11 bankruptcy, correct?

A Mm-hmm.

Q And your answer was no, it was not my decision, correct?

A Correct.

Q That was your testimony, correct?

A And I went onto provide the same explanation I just did that these decisions are not made just by one person. It's a collective decision.

Q You did not testify -- it was not your decision alone, correct?

A Correct.

Q And you signed Evercrisp's Chapter 11 petition, correct?

A I did sign, yes.

Q You signed that after discussion with ATP, correct?

A Yes.

Q And before that discussion and that decision, you had never considered filing Evercrisp for Chapter 11 protection,

correct?

A That is correct.

Q Turning to Evercrisp's science and progress, Evercrisp was founded in 2021, correct?

A Mm-hmm.

Q And over $20 million has been invested in Evercrisp since then, correct?

A Correct.

Q When you joined Evercrisp as CEO, one of Evercrisp's board members informed you that he felt the company was a solution looking for a problem, correct?

A Yes.

Q And at the time you joined Evercrisp you were aware that the company was projecting and submitting and investigational new drug application, an IND, to the FDA by 2025, correct?

A That was a target.

Q And I think you referred to that as the "green light" to human testing?

A That is the green light to human testing.

Q So none of Evercrisp's research has been tested in humans yet, correct?

A That is correct.

Q And across all of its programs, Evercrisp does not have a development candidate molecule, correct?

A We're working towards one. We do not have one.
Q You do not have one today, correct?
A We do not have one today.
Q And a development candidate molecule is the precursor to the IND application to the FDA, correct?
A That is correct. And if these milestones that I'm asking to have funded do get funded, that would get us to a precursor.
Q So, the funding you are seeking for Evercrisp is for a precursor to the development candidate which is, in turn, a precursor to the IND application, correct?
A That is correct. That is convention in our industry. That isn't an Evercrisp specific issue.
Q And you estimate the additional spend to get to selecting a development candidate would be another $5 to $10 million, correct?
A That is correct.
Q And a development candidate could be obtained, at the earliest, in the first quarter of 2027, correct?
A That is correct.
Q And Evercrisp is, at least, two years away from filing an IND for any of its programs, isn't it?
A And, again, that is the convention in the industry. Its not an Evercrisp specific issue.
Q And based on your years of experience as a biotech

executive and understanding of the industry, getting to filing that IND would likely cost Evercrisp another $40 to $50 million, correct?

A I believe in my deposition, Sebastian, I also noted that if we wanted to prioritize our approach on just one opportunity maybe we could do that with a little bit less. And, please, also remember that given the avid interest we have in the company, large pharma partners could join us along the way to either help expedite that timeline and also provide non-dilutive funding.

Q In your deposition -- your concern -- I'm sorry, excuse me.

The $40 to $50 million across the programs that is a conservative estimate, right?

A Well, given the opportunity at hand with the science, yes, that is conservative.

Q A conservative estimate of the amount it could cost, correct?

A Yes, because the science is so plentiful you could easily build a pipeline of multiple opportunities and, therefore, the number would be higher.

Q The cost would be higher to develop them?

A The cost would be higher, yes.

Q I think you mentioned one of Evercrisp's research programs is focused on targeting delivery to cardiac tissue,

correct?
A Correct.
Q For its cardiac tissue program, Evercrisp presently does not have any data establishing technical feasibility of delivery, correct?
A That is incorrect. We have in vitro data that supports technical feasibility but we do not have animal data.
Q Evercrisp does not have that data establishing technical feasibility in mice, correct?
A That is correct.
Q And mice would come before monkeys, correct?
A Mm-hmm.
Q And monkeys would come before humans, correct?
A Mm-hmm.
Q One of Evercrisp's other research programs is focused on targeting delivery to the brain, correct?
A Mm-hmm. Correct.
Q For delivery to the brain, Evercrisp does not have any present data establishing technical feasibility of delivery to mice, correct?
A That is correct.
Q One of Evercrisp's other programs you testified about is focused on targeting delivery to the kidneys, correct?
A That is correct.
Q And for delivery to the kidneys Evercrisp does not have

any data establishing technical feasibility of delivery to mice, correct?

A That is correct. And the reason is because our funding disappeared in the middle of last year but we are actively pursuing all of these approaches.

Q The last of Evercrisp programs is focused on targeting delivery to muscle tissue, correct?

A Correct.

Q And the furthest Evercrisp has progressed that research is showing that delivery is almost technical feasible in mice, correct?

A That is incorrect. We have technical feasibility in mice where we can show that we can deliver a genetic medicine payload and provide a finishing response.

MR. DUTZ: Danny, could you bring up the transcript at 25, 3 to 8, please.

BY MR. DUTZ:

Q At your deposition I asked do you have data showing that it is technically possible in mice to deliver the payload to muscle type cells.

A Yes.

Q You answered almost.

A Is there something prior to these lines?

THE COURT: Give her a copy of her deposition, please. Showing her three lines is not helpful.

THE WITNESS: Thank you, Judge.

If we scroll --

MR. DUTZ: May I approach?

THE COURT: You may.

THE WITNESS: -- up, is it -- can we show where we talk about what payload we're talking about here because a payload, meaning the genetic medicine payload, makes a big difference.

We have in vivo technical feasibility established with a specific payload that targets RNA, which is a proxy of DNA if you will. And we are working towards getting technical feasibility with a DNA payload.

BY MR. DUTZ:

Q I'll move on.

I believe you mentioned in your testimony potential interest from third parties, correct?

A That is correct.

Q Sitting here today you do not have any term sheets or binding agreements from any third-party investors in Evercrisp, correct?

A That is correct; however, the way to get to meaningful term sheets and business discussions is by spending time to establish, first of all, credibility with these interested parties, identifying who the critical stakeholders are in these very large organizations, and then also figuring out

what kind of data sets these parties need to see to be able to deploy their resources to start diligence and then get to term sheets.

So, even though we don't have term sheets today, we certainly have done a ton of speed work in establishing these discussions identifying the stakeholders and identifying which data sets need to be generated to resume discussions. Those are exactly the ones that I hope get funded through these next two milestones.

Q Those discussions have not resulted in an actual offer term sheet, correct?

A Not yet.

Q Turning to Evercrisp's current condition, you are the only member of Evercrisp's management team, correct?

A That is correct.

Q And Evercrisp currently only has three employees, correct?

A That is correct.

Q And Evercrisp has not active contracts with third party contract research organizations, correct?

A They are on hold.

Q And on May 30th you conducted a winddown analysis for Evercrisp, correct?

A Correct.

Q And when you did that analysis you did not identify any

specific assets Evercrisp held at that time that you could attribute a dollar value to, correct?

A Any winddown analysis to be able to attribute dollar value in an early stage company is an analysis driven by valuing the IP. And that is not something that we did because at the end of the day if you were going to put yourself through a process to try to put value on IP, it really is an extraordinary mismatch from the value that could be created if the work could be resumed.

Q And you have not valued that IP since then, correct?

A That is correct.

Q You think Evercrisp's IP has some positive value but you don't know what that value is, correct?

A That is correct.

Q Evercrisp has a written operational plan for its research program, right?

A Mm-hmm.

Q And you last updated that program in January of this year, correct?

A That is the -- that is what I used to keep stakeholders informed and the last version of it was at the end of January, yes.

Q And as of this Monday you had not shared that operational plan with Dr. Seth Harrison, correct?

A That is correct. I did share it with Dr. Spiros Liras,

who is my closest collaborator at Evercrisp from ATP.

Q And as of this Monday you had not shared that operational plan with the chief restructuring officer, Mr. Perry Mandarino, correct?

A No, not directly. No.

Q And you did not speak with Mr. Mandarino directly about Evercrisp's funding request or needs before the second funding motion was filed, correct?

A When was the second funding motion filed?

Q January 29th, I believe.

A That is correct.

Q By the way, is Dr. Harrison a board member of Evercrisp?

A He is.

Q But Dr. Harrison does not attend Evercrisp board meetings, correct?

A Nor would I expect him to given the fact that I know he's available when I need to speak with him when he's deeply engaged in the science.

Q Evercrisp recently received approximately $1.5 million from ATP, correct?

A I think it was $1.4.

Q Roughly, approximately $1.4 million.

A Yeah.

Q Evercrisp has not spent all that money, correct?

A We have not and the reason why is because under Perry's leadership we are working hard to abide by the rigor that needs to be put in place given that we're in Chapter 11. So we want to be very responsible, careful, and transparent with how we're dispensing those funds.

Q So, as of this Monday Evercrisp still had that $1.4 million of cash on hand, correct?

A Correct.

Q You mentioned concerns around losing ground to potential competitors, correct?

A Yes.

Q And those competitors have received over one billion in investment over the past year in your analysis?

A That is right.

Q But you have not assessed the incremental harm of a delay of six weeks further in restarting that research, correct?

A The way scientific breakthroughs work, and I tried to describe this as well in some of my opening remarks, is breakthroughs happen fairly critically and it's a very competitive field. We have the good fortune of working with co-founders who are very close to scientific innovation.

So, we do our best to try to anticipate when competitors will beat us, if you will, but you can't really predict in the next six weeks is there going to be a

scientific breakthrough or not. So, doing that analysis, in my opinion, would be futile. It would be better to focus on trying to get these studies funded so we could grab our milestones.

Q You testified that if you don't receive the funding requested data held by third party contract organizations would all be gone. Did I hear that correctly?

A It wouldn't be data. It would be materials needed to run the studies.

Q As of Monday, when we were discussing, was there an imminent risk that that material would be deleted?

A It could be because we haven't paid those vendors what we owe to them because we haven't had funding. And we're counting exactly on those vendors to help deliver the milestones that I have described.

Q Are third parties holding any data of Evercrisp in addition to materials?

A There is historical in vitro and in vivo data that these parties do have, yes.

Q But there is no imminent risk that those parties would delete that data, correct?

A Well, if we don't pay these vendors and they decide they want to move onto other partnerships, then the risk is always there. Said another way, Sebastian, I don't think we have any guarantee that they wouldn't delete the data.

MR. DUTZ: Thank you for your time, Ms. Karsan. As well for your time on Monday, on the holiday, for deposition.

THE WITNESS: Of course.

MR. DUTZ: I have no further questions.

THE WITNESS: Thank you.

THE COURT: Any redirect?

MR. WINSTON: No redirect, Your Honor.

THE COURT: Thank you for your testimony. You may step down.

THE WITNESS: Thank you.

(Witness excused)

MR. BERDON: Good morning, Your Honor. Andrew Berdon from Quinn Emanuel.

THE COURT: Good morning.

MR. BERDON: The debtors call Dr. Paul Eisenberg.

THE COURT: Dr. Eisenberg.

PAUL EISENBERG, DEBTOR WITNESS, SWORN

THE COURTROOM DEPUTY: Please state your full name and spell your last name.

THE WITNESS: Paul Richard Eisenberg.

THE COURT: Can you spell your last name.

THE WITNESS: Sure, E-I-S-E-N-B-E-R-G,

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. BERDON:

Q Good morning, Dr. Eisenberg.

Dr. Eisenberg, you understand that we're here today to request authorization to fund 10 portfolio companies of Apple Tree Partners, correct?

A Yes.

Q Are you affiliated with Apple Tree?

A Yes, I am.

Q And what is your current title with ATP?

A I'm a venture partner at ATP as well as serving as the firm's chief medical officer.

Q Do you have a degree in medicine?

A Yes, I do.

Q Can you tell us about your professional activities since you received your medical degree?

A Certainly. So, I subsequently, after receiving my medical degree, went to Washington University & Barnes Hospital in St. Louis where I trained in cardiology, pulmonary medicine and critical care, and in boarding and cardiology and pulmonary. I also subsequently was involved in running the cardiac intensive care unit at Barnes Hospital and served on the pulmonary intensive care unit.

I established a basic and clinical research center at Barnes and had the good fortune to be involved in reference to this instance and to birth, essentially, the biotechnology

industry working with Genentech in one of the first biotech products and subsequent products with other biotech companies, and served as a consultant for biotechnology companies. I also had the good fortune during that time to lead with a company in Australia, a biotech company, one of the first administrations of a human monoclonal antibody (phonetic) to subjects as am imaging agent for blood clots which came out of research in my laboratory.

Yes, I'm sorry. Am I going to long?

Q Its incredibly dense with information and --

A Yeah, I was going to stop there.

Q -- its all relevant.

A Sure.

Q Did there come a time when you left academic medicine and joined industry?

A Yes. Absolutely.

Q And can you tell us about your experience in the industry?

A Sorry, if it's a little long. I always call that my moment of, I don't know, a little bit of craziness. I love drug development and I was recruited to Eli Lilly and I left my tenured position as a professor of medicine at Washington University and took over the drug discovery; that is the group that develops new drugs at Lilly. 150 scientists in Lilly research laboratories, which is where I was employed.

I led the translation group.

I subsequently led the -- I was the chief medical officer for development of infectious disease and plurable cardiovascular drugs for Lilly. And then I had an interesting cardiovascular safety in my background. Your Honor, I was in public health as well and I was very concerned about public health issues and I became involved in cardiovascular safety and actually reestablished cardiovascular safety standards for the industry.

I subsequently was recruited after I established the global safety organization for drugs at Lilly to Amgen where I spent the next 14 years of my career both in global drug safety and also in establishing Amgen's global drug and regulatory safety organization. And was responsible for the approval of all of Amgen's drugs from 2005 to 2014. Then I assumed the role of chief medical officer at Amgen and was responsible for the worldwide use of Amgen's drugs from 2014 till I retired from Amgen in 2019 -- well, '18 actually. Then I joined ATP in March of 2019.

Sorry if that's a little long.

Q No, very helpful and very condenses. Thank you.

You used a term that I think is important here and that is the translational group. Will you please explain to the Court what translation means in the context of medical research?

A Sure. Essentially, when we look at an idea there's an evolution. You look at an idea of a scientist, you heard about that in the last testimony, around a drug target. What is a pathway we believe we can impact for human disease. The next step is that drug target gets translated into experiments and research that ultimately hopefully yields candidates. We heard that term earlier.

Candidates are molecules or biologics that can impact that pathway. The trick is, and this is not very straightforward, how do you take that idea and those experiments and turn them into a drug that would be successful in the clinic. That is, essentially, what we call translational science. That is focusing on that transition from when you have that candidate. You have shown that its effective and safe in your preclinical systems but now you want to take it into the clinic and demonstrate it has the same efficacy you anticipated will be useful for human disease.

Q As part of your job responsibility at Amgen, did you participate in the decision-making process that would provide a go/no go from preclinical research into the clinic?

A Yes. Absolutely. Two levels. As was the case at Lilly, I served on the committee that determined whether we would do the research, whether it was worth doing, whether the scientists had made enough progress to advance it into a

program we would then invest in to bring to the clinic because its expensive to do the work that brings it to an IND, as you hard, the investigation new drug application. It costs on the average of $10 to $15 million.

Then once we did that we had a committee that reported to the CEO, and I was involved in that at Amgen as well as at Lilly, where we would make the decision doing thus what is now -- so, we spent on average $15 to $20 million to get to the point where you're making a decision on your portfolio. Now you're going to be spending in the order of $50 to anywhere up to $300 million to bring that product to the market.

So that decision making committee was where I participated and was a valued member of the senior -- vice president at Amgen. I was a valued member of the team that made that decision.

Q Thank you.

Are you currently involved in the boards of any of ATP's portfolio companies?

A Yes.

Q Which ones?

A I am involved in Apertor and Nereid recently, only since last year. That would be it currently.

Q Are you involved at the board level for Deep Apple?

A Excuse me, yes, Deep Apple as well. I am also the chief

medical officer there. I forgot.

Q And are you involved in a substantive way at Red Queen?

A I am the chief medical officer at Red Queen.

Q And are you involved at Marengo?

A At Marengo I just joined the board a couple of months ago. So, I am returning to the board.

Q Understood.

Have you ever heard of a portfolio company at ATP called Corvidia?

A Yes. Absolutely.

Q And what was Corvidia?

A Corvidia was a company that had an interest in developing an anti-inflammatory antibody for treatment of cardiovascular disease. I was a board member there and I also worked intensely with that group, the team there, their chief medical officer on a strategy to bring that into a phase to a trial. The data were quite impressive in the phase two trial and Corvidia was acquired by Novo Nordisk for $2.2 billion.

Q Have you ever heard of an ATP portfolio company called Chinook?

A Yes.

Q Were you involved with Chinook?

A Yes. Chinook I was a board member and also involved with the strategy of Chinook to both evaluate their ongoing

research, which many of the programs got discontinued, but we then licensed a product Atrasentan, a drug that effects a specific receptor that was involved in renal disease and that drug we took into phase two and developed an attractive data set.

That -- the situation with Chinook was a little different because of the data and the interest in continuing to develop Atrasentan. Chinook underwent a reverse merger that allowed it to enter the public markets. And we made a decision -- and when I say "we" Seth Harrison and myself made a decision after we had the -- went through the reverse merger and have, what we call, an exit.

So, we had a very good return on our investment. That it was a good time to, essentially, leave our share of the company and I stepped out of the board at that time and ATP, I believe, I can't say for sure, but I believe ATP sold all of its shares at that time and returned them to the fund.

Q Turning back for a minute to your involvement in the current portfolio, for companies where your not chief medical officer, not on the board of directors, are you also involved with them in other aspects of their science?

A Not all of them. To some extent the ATP model, Seth brought in a team that was very expert, including myself, in drug development. So, we were involved in the due diligence of all of these companies. So, I provide a lot of advice

around regulatory issues as well as translational development issues.

Q Are you involved at all with a company called Aethon?

A Aethon I was involved in the due diligence and some of the strategy relating to the development. How do you development that drug, the translation.

Q And how about Aulos?

A Aulos I was involved in the due diligence and I have been looking at the data throughout their development both from how do you translate it and what does the future indications look like in value and regulatory paths.

Q Do you consider yourself to be relatively up to date in the progress that Aulos is making the clinic?

A I have seen data within -- I'm trying to recall at the moment. Certainly within this calendar year. I don't remember the exact date. I have seen some updates of their data, yes.

Q And are you involved at all with a company called Replicate?

A Replicate I have provided mostly regulatory advice to and some translational advice but I'm not up to date on their current status.

Q Are you familiar with the current status at Red Queen?

A Red Queen I am deeply familiar with because I'm still the chief medical officer.

Q And you testified a little earlier about Apertor.

Are you involved -- can you describe for the Court your current involvement at Deep Apple?

A Certainly. At Deep Apple I am the chief medical officer and board member, and also, I am their scientific advisory board. So that takes advantage of my translational capability. Deep Apple is working on drugs for obesity, which I have deep familiarity with, I have worked on for literally 23 years, as well as a program I am advancing right now into the clinic which is a novel drug that is involved in your allergic responses. And this target is quite attractive. A number of companies are looking at it. There is no clinical evidence yet as to how it will work in human disease but there is a lot of data that suggests it could be quite interesting.

Q And based on your understanding of the going's on at Deep Apple is there outside investment, research collaborations going on at Deep Apple?

A I am not sure I understand the question.

Q Has Deep Apple signed a pharma collaboration agreement?

A So, in the obesity portfolio there was considerable interest based on Deep Apple's platform and, yes, they signed a collaboration agreement with Novo. I am not directly involved with that. Its mostly on the basic side but I can't comment because its proprietary. But they have advanced a

target that others have not.

On the program I'm working on, the clinical trial, and hope to file in the second quarter of this year to start the first studies in humans, we have been actively involved with what we call strategic partners, pharma who would like to invest and I'm optimistic that if we can get to the clinic that many of them are waiting for us to complete that all important last step before filing, which is the toxicology study. When they know that its safe then they have an interest or, at least, they say they have an interest.

Q And if you received funding over the next three to six months, would that funding go towards advancing this clinical lead towards IND?

A Yeah. The -- well, we have enough funding in the budget, and I know that budget pretty well, to take us through, what we call, the good laboratory -- GLP studies and toxicology. So, what that is are the studies with the drug you plan on using in humans. Its developed under the same commercial criteria. That is GMP, good manufacturing practice. So, the short answer is, yes, we would have enough to get to file but we need funding to do the phase one trial.

MR. BERDON: Your Honor, I actually misspoke. We don't have Deep Apple in the current funding request. Deep Apple has, from what I understand, sufficient resources on

its balance sheet right now to get through the next three to six months. So, I actually misspoke when I asked Dr. Eisenberg that question.

BY MR. BERDON:

Q Dr. Eisenberg, can you tell the Court about what the current status is at Nereid?

A At Nereid?

Q Yes.

A So, Nereid, as I've said, I joined the board at the time we were going through the winddown. So, the board meeting I attended was primarily focused on looking at cash on hand and how to maintain the work that was ongoing at a very minimal level. So, that was my first board decision.

However, the chief scientist at Nereid did provide me with an update of the scientific programs, it was relatively brief. I have not had a chance to dig into the data at a deep level. I am familiar with what they have done and they have a candidate molecule that they believe can be advanced to candidate status and to the GLP tox. It targets a pathway that would be effective in several tumor types, several cancer types. Its been shown to be effective in the animal models.

From what I saw of the presentation, again not deep information, I think it has the potential to be quite interesting and important based on the science they have in

Nereid, which is also quite novel.

Q And if asked, would you recommend to ATP that Nereid continue -- be continued and be given funding.

A Yes. Absolutely. The mechanism of action is compelling. It works. Its been shown in animal models to work at several different tumor types. They have not seen any toxicology yet but its still required to go through the important GLP tox study.

Q And are you aware of where the science that Nereid is based on comes from?

A It comes from a professor who is leading in the field. I always mispronounce his name at the University of Princeton, Professor Brangwynne.

Q At Princeton.

A Yeah, Princeton. He was a leader in the field. I remember when we looked at the company initially. It's an area of considerable interest for multiple companies.

Q Understood.

Can you tell the Court what is going on at Apertor?

A So, Apertor is quite interesting. So, Apertor is based on targeting a pathway that is well-known to be important in human disease and there are approved drugs that target that pathway. This is the mTOR pathway. It's an interesting cellular pathway that has been implicated in immunology. So, it's used with drugs for transplant rejection. Its used in

cancer. And actually, there are -- you probably have heard of companies that are focusing on aging. There are companies that think this is a pathway you might want to modulate for aging. So, the target was based on mTOR. That is the name Apertor.

The science there is quite unique because these molecules are very large and they're unusual in that respect because what they do in the cell is they engage mTOR as well as engage other molecules in the cell to have action. So, they're very specific. And these molecules are very hard to synthesize in the laboratory. So, when you do traditional chemistry, because of the complexity of these molecules, its hard to synthesize novel molecules. So, the molecules such as Apertor that -- there are molecules that Apertor has that are very similar to molecules that are approved. Sirolimus being an example.

In any case, the important point is they developed the technology to develop novel molecules in living cells. And that allows them to develop structures that are not approachable by chemistry. So, they have been able to develop a number of molecules that are quite unique and can be adjusted to have, in the case, in the area I have provided some advice, potentially greater safety and at the same time they've been able to engage in molecules that have efficacy that have not been achieved by other molecules in that class.

Q And if asked, your professional view in terms of the go/no go in terms of taking Apertor's work forward, do you have a view on that?

MR. SALTZMAN: Objection, Your Honor. I certainly have not objection to the question if he's asked did you provide these views but if he's being asked would you provide your views it appears he's giving expert testimony and not fact lay testimony.

THE COURT: Response.

BY MR. BERDON:

Q Dr. Eisenberg, have you had any conversations with your colleagues at ATP about whether the work at Apertor is worth continuing?

A I can only comment that at the board meeting last April when we reviewed the data, along with other experts in the field, more expert then myself, I'm not an expert in this biology -- Bob Abrams, for example, had been at Pfizer and was deeply involved with this. We made the recommendation to proceed with evaluating 4E-BP1, their lead candidate to the studies required to file an IND.

Q Has anything changed since then about your view of the validity of the science and the value of moving forward?

A No.

Q Can you tell the Court what is going on with Red Quenn?

A So, Red Queen, we completed a phase one clinical trial

in COVID. It was actually quite unique in that we were able to convince FDA because of the nature of the Red Queen mechanism of action how it works to prevent COVID, that we should be able instead of sending healthy volunteers, which is what is done 99.9 percent of the time in a clinical phase one trial first in human, we actually were given the permission to study patients with COVID.

FDA required us to study relatively healthy patients with COVID but fortunately because of all the variants that have emerged many -- there was still many, many patients who actually enrolled the trial faster than normally would have anticipated because patients were still getting COVID but they were healthy patients. This is an important part. And they received no other therapy.

That trial -- I'm sorry.

Q Please, finish your answer.

A I will try to keep this very short. The trial, essentially, was successful in enrolling the patients. We demonstrated it was a safety trial. We demonstrated, as we saw in the preclinical studies that there was no absorption into the bloodstream of the drug, that it was completely safe and looked no different then placebo. And we had evidence measuring the end points we had determined. So, it was a challenge to develop this drug.

I have to say, I've been doing this a long time. I have

never had to develop a drug where I couldn't actually measure its action in the bloodstream or by another means. I had to measure it -- and I couldn't measure it in the nose, which is where it was administered.

So, what we did instead is we did many (indiscernible) of the virus in the nose, the COVID virus, SARS-CoV-2 in the nose, and looked to see whether when we administered the drug in the nose was the drug eliminating the virus. That was the basis of the study.

The challenge in the study is these were healthy individuals and we have all -- as I think we recognize now, COVID is not as severe. So, most of us are able to clear COVID, the virus, without any help. We have enough immunity, we have been vaccinated, etc. And as a consequence, it was very hard to show that given the drug cleared the virus faster but, in fact, we did show that in efforts.

Q Since COVID then was viewed as less of an imminent public health threat, did Red Queen carry forward its work on COVID treatment?

A We did not. Two reasons. Would you like me to elaborate?

Q If we can keep it brief.

A I will keep it short. I apologize. I will keep it very brief.

Reason number one was that we were working on a new way

to give the drug. What we call a dry powder formulation. Why was that important? Because we studied the laboratory formulation. It had to be frozen. The dry powder could be kept on the shelf at room temperature until its needed. That was ongoing.

The second reason we didn't continue was we didn't have funding to do the trial I wanted to do.

Q If funding is made available to Red Queen through this motion, are there programs that you and your colleagues at ATP recommend moving forward with?

A So, we have two other programs other then COVID. We have -- we would need external interest to advance COVID. That is what we refer to as RQO-1 (phonetic). We have a program RQO-2 which targets RSV and multiple other viruses. RSV is a very important viral pathogen particularly in neonates and infants. And we have a program called RQO-3 which is really quite interesting and a true innovation that was discovered at Red Queen that targets influenza A and B.

What is remarkable, all three of these programs share the same means of how the drug works, which is to prevent the virus from entering a cell and progressing the infection. In that way it differentiates vaccines and the so-called anti-viral therapy. It is a completely different mechanism.

Q And have you supported re-engaging Red Queen in the research of its drug candidates?

A Absolutely.

Q Can we talk -- actually, bear with me one moment.

(Pause)

Q Dr. Eisenberg, do you have any involvement with Nine Square?

A No, not really. I know the concepts but no.

MR. BERDON: I pass the witness, Your Honor.

THE COURT: Cross.

MR. SALTZMAN: I think its still good morning, Your Honor.

Can I approach with binders to give the witness?

THE COURT: You may.

CROSS-EXAMINATION

BY MR. SALTZMAN:

Q Its good to see you again, Dr. Eisenberg, this time in the flesh. Zoom doesn't do it justice.

Are you the chief medical officer of Red Queen?

A Yes.

Q And you have been driving the strategy at Red Queen for quite some time, correct?

A Correct.

Q And you are well aware of every aspect of the strategy at Red Queen, correct?

A With respect to RQO-1.

Q With respect to RQO-1, are you aware of every aspect of

the strategy at Red Queen?

A I'm sorry, I don't understand the question. I thought I answered it.

Q I just want to make sure that is clear. So, you are not aware of every aspect of the strategy as to RQO-2 and RQO-3?

A Correct.

Q You were told that Red Queen was going to file for bankruptcy, correct?

A Yes. I'm the chief medical officer. I was informed, yes.

Q And prior to learning about the decision to file Red Queen for bankruptcy, you had never considered filing Red Queen for bankruptcy, right?

A No, that is not true. We had financing decisions we considered after RQO-1 failed to attract external investor interest. Whether -- how we would proceed with the company because we had funding for RQO-3 from Barda, which was ongoing, and we had funding commitments to close out the RQO-1 trials. So, we looked at the cash in hand and we considered very carefully whether that would be sufficient to complete our commitments both to Barda and to closing out the clinical trial, and whether that would be the end of Red Queen after that was done at the end of '25.

Q Dr. Eisenberg, I took your deposition, I think it was

Friday.

A Yes.

Q If you could -- we can pull up page 23, and you can turn, I believe its Tab 1 of your binder to page 23.

A Okay.

Q And if we could put up lines 12 through -- I guess let's do 12 to the bottom of the page, really.

And I asked you:

Prior to learning about the decision to file Red Queen for bankruptcy, had you ever considered filing Red Queen for bankruptcy?

You answered: No.

I asked: Why not?

I said: So I think the technology -- you answered: So, I think the technology is very promising.

And I said: You didn't think you needed to file for bankruptcy until you were told you would be filing for bankruptcy?

You answered: I wasn't aware. I don't know about filing for bankruptcy again.

And then you can go to 24 and 25, you continue --

A Yep.

Q -- was that your testimony?

A Absolutely.

Q Okay. As of last Friday, you've never spoken to

Mr. Mandarino, correct?

A Yes.

Q On your direct, you were asked a few questions about the RQ-01 program. Now, I'm going to ask you some follow-up, but first, I just want to establish a basic fact about Red Queen.

Red Queen was founded in October 2021, right?

A Yes.

Q And even a lawyer like me can see that's over four years ago.

A Correct.

(Laughter)

BY MR. SALTZMAN:

Q I'm glad I can make the witness laugh.

You don't know if Red Queen currently has any employees, right?

A I don't know the status of current employees.

Q And you discussed that Red Queen has three programs, correct?

A Yes.

Q And those are RQ-01, RQ-02, and RQ-03?

A Yes.

Q And the only program to progress to the clinical stages are RQ-01, right?

A Yes.

Q And you wouldn't describe RQ-01's phase 1 clinical data as compelling, would you?
A No.
Q In fact, the phase 1 data was not statistically significant to cross the population pool of the study, right?
A Across the broader population, it was not statistically significant.
Q And this phase 1 data, it was shared with strategic partners, correct?
A Yes.
Q And none of those strategic partners has provided funding to Red Queen, have they?
A No.
Q In fact, no third party has given Series B funding to advance RQ-01, correct?
A Series B, no.
Q And since 2022, RQ-01 has sat on the shelf, ready to come out of hibernation, if there is future interest in it, correct?
A I'm sorry, did -- could you restate that; I don't think that was correct.
Q Sure.
Since September of 2024, RQ-01 has sat on the shelf, ready to come out of hibernation, if there's future interest in it, correct?

A Not entirely correct.

I -- so, Your Honor, the FDA requires an investigational new drug application to study the product, so we have not done any additional studies. But I renewed, just recently, the investigational new drug application with FDA, so it is still an active drug.

Q Okay.

MR. SALTZMAN: And I -- can we just pull up -- and this is page 66 of your deposition. And, again, you can make reference to the whole page, but I'm going to call out lines 6 through 9.

BY MR. SALTZMAN:

Q I asked you:

"In roughly since September 2022 --" sorry, strike that.

"And, roughly, since September of 2024, RQ-01, as we've discussed sort of sat on the shelf, ready to come out if there's future interest in it."

And you answered, "Correct."

A Yes, it's not been developed, but it's still -- as far as the FDA is concerned, it still is an active drug.

Q Okay.

MR. SALTZMAN: Thank you, Your Honor. (Indiscernible), thank you. Will you take that down.

BY MR. SALTZMAN:

Q And you do not believe there will be any interest from strategic partners in RQ-01 unless Red Queen gets phase 2 data, correct?

A No, I don't actually believe that.

I think, currently, sitting here today; yes, I think we would need additional phase 2 data. But there are factors external to us, right. I mean, if we have a new coronavirus pathogen like SARS, MERS, and COVID, if tomorrow there's a new variant that affects many people's lives, I think there will be considerable interest in the technology, particularly given the current environment around vaccination.

Q Fair enough.

Sitting here today, given the situations that are currently -- the world, as we have it today --

A As we sit today, I need Phase 2 data, yes.

Q Okay. And the proposed budget does not seek to spend any money on Phase 2 -- on a Phase 2 study for RQ-01, correct?

A Correct.

Q I believe you were asked about RQ-02.

Is any of the proposed funding -- sorry, strike that.

Does any of the requested funding, is that proposed to be used for RQ-02?

A No.

Q So all of the requested funding is to be used for

RQ-03?

A That's my understanding, yes.

Q And you understand that the funds in the funding motion would be used for developing the candidate molecule for RQ-03 into a form that could be used in toxicology studies and eventually taken to the clinic, right?

A Yes.

Q But it's impossible for you to say whether the requested funding is sufficient to complete the toxicology study, because you do not know the manufacturing costs, correct?

A Correct.

Q And then if you wanted to get to phase 1 data, there would be additional costs beyond the requested, the amounts that have been requested in the funding motion, correct?

A Yes, the -- the funding would complete the GLP toxicology, and I said I don't know the manufacturing costs that would be required to make the drug that would support the phase 1 study.

Q And if everything went perfectly and you got the money to get through phase 1 data, you wouldn't know, roughly, until 2029 whether you have attractive phase 1 data, correct?

A Yes.

Q In March of 2024, Sanofi informed you that it did not have interest in RQ-03, correct?

A Yes, though, they had been approached, primarily, about RQ-01, but yes, that's true.
Q And in March 2024, Daiichi Sankyo passed an RQ-03; is that right?
A Yes.
Q And Daiichi Sankyo is a large pharmaceutical company?
A Yes, it is.
Q Sanofi did not cite any concerns about Russian investors and passing an RQ-03, did it?
A No, they cited their own drug failings, and portfolio, they had acquired Tamiflu and had no interest in it strategically.
Q And Daiichi Sankyo did not cite any concerns about Russian investors and passing an RQ-03, correct?
A Not that I'm aware of.
Q Has any investor told you that the existence of Russian LPs is the reason why they are not interested in providing investments?
A No.
Q You have no firsthand knowledge as to the work on RQ-03 since August 2024, correct?
A Correct.
Q All of your information about RQ-03 since August 2024 comes from conversations with other people?
A Yes.

Q And you'd agree with me that whatever the scientific merit of the Red Queen program, discussions about managing an investment portfolio is different from the discussion of the scientific merit of any particular portfolio company?

A In broad terms, yes.

Q Let's switch companies; let's talk about Apertor for a little bit.

I think you testified on direct that you sit on the board of Apertor; is that correct?

A Correct.

Q And Apertor was wound down in April or May of 2025; is that right?

A Yes.

Q You don't recall that bankruptcy was one of the options that was discussed in connection with discussions over winding down Apertor in April or May of '25, right?

A I reviewed the board meetings since the deposition and it was one of the options was whether the company would be shut down. Now, I don't know if that's bankruptcy. It was determined and the board meeting was shut down.

Q Okay. I see.

So at the time -- you'll agree at the time I took your deposition, you couldn't recall whether bankruptcy was one of the options discussed --

A Yes.

Q -- correct?

Sorry, I didn't hear.

A Yes, at the time of the deposition, I didn't recall. I went back and reviewed that board note.

Q And you saw there was a reference to a shutdown?

A Shutdown was the reference, I believe, yeah.

Q And you're not sure whether "shutdown" was a reference to bankruptcy or not?

A Yes.

Q And you don't believe that Apertor would have made a capital call in May of 2025, right?

A I don't know, honestly; it wasn't discussed at the board.

Q And I think you testified, you told me that if capital was called, you don't know what the purpose of that call would have been, right?

A Not specifically.

Q But you do know that Apertor's board authorized severance and paying off debt in May of 2025, right?

A Yes.

Q And other than the virtual meeting in December to file -- that resulted in the bankruptcy filing, the board did not meet since April or May of 2025, correct?

A Yes.

Q And you don't know who made the decision to file

Apertor for bankruptcy, do you?
A No, I don't know.
Q But you recall that ATP's general counsel recommended that Apertor be filed for bankruptcy, right?
A That was the recommendation to the board.
Q Apertor -- the Apertor Board did not consult its own counsel before filing for bankruptcy, correct?
A I'm not aware of that, no.
Q And you do not know the financial position of Apertor in May or June of 2025, as compared to its financial condition in December of 2025, correct?
A Correct.
Q If Apertor had to sell its IP assets, your guess is that it could get very little, correct?
A Yes, that's what I stated.
Q And you believe that it makes sense to continue funding Apertor, even though you don't know who Apertor's current competitors are, correct?
A Again, you highlighted several competitors I was not aware of in the deposition. I have not tracked all of the competitors. I actually don't -- didn't consider it relevant.
Q And you do know that there are already drugs on the market that, on a broad level, do what the mTORC program at Apertor aims to do, but the hope is that the Apertor program

would do it more efficiently or with less side effects?
A Absolutely. That's why we developed, that's why we initiated the program, is because there's clinical evidence that it works.
Q Dr. Eisenberg, can I ask you to turn to Exhibit 14, which is Tab 8 of your binder. Oh, I think I've got the wrong exhibit number, too. Let me make that Exhibit 157.
A I'm sorry, what?
Q It's Tab 8 of the binder, Exhibit 157.
MR. BERDON: Hold on. You're on the (indiscernible).
MR. SALTZMAN: Oh, I'm sorry. My apologies.
THE WITNESS: We're -- okay, yes.
MR. BERDON: I'm sorry, can you please --
MR. SALTZMAN: Yeah, take your time to -- Tab 8.
THE COURT: Tab 8.
MR. BERDON: I appreciate it.
MR. SALTZMAN: Just let me know when you're ready.
(Pause)
MR. SALTZMAN: This is not -- let's go to Tab 9. That would be Exhibit 156.
THE WITNESS: Tab 8, I have now.
MR. SALTZMAN: Choose your own adventure.
THE WITNESS: All right. Tab 9. Here we go, 156?
MR. SALTZMAN: Yes.

MR. BERDON: Counsel, this is not Red Queen.

MR. SALTZMAN: I know it's not. I'm --

MR. BERDON: Oh, okay. Sorry. Go ahead.

BY MR. SALTZMAN:

Q Do you recognize this document as an email from yourself to Zhen Su, dated October 28th, 2025?

A Yes.

MR. SALTZMAN: Okay. I'd like to move this document into evidence.

Any --

MR. BERDON: No objection.

THE COURT: It's admitted.

(Rigmora Exhibit 156 received into evidence)

BY MR. SALTZMAN:

Q Okay. And do you see, you write an email to Zhen.

Who is Zhen Su?

A Zhen Su is the CEO of Marengo.

Q And there's a list of bullet points.

MR. SALTZMAN: Can we just blow up those bullet points?

THE WITNESS: Yes.

BY MR. SALTZMAN:

Q I'll give you a second. I know --

A I see them.

Q -- there are a lot of bullet points there --

A Yeah.
Q -- so I'll give you a second to look at them.
A Uh-huh. Yeah, I remember them.
MR. BERDON: It's not the same thing on the screen.
MR. SALTZMAN: There we go, thank you.
THE WITNESS: I'm not seeing on the screen what I'm looking at on the page, I'm sorry.
MR. BERDON: What's on the screen doesn't match the (inaudible).
MR. SALTZMAN: Are we on 9?
MR. BERDON: The screen has little dots and this has numbers.
MR. SALTZMAN: Yeah, we're on the wrong thing on the screen. Can we go to Tab 9, which is Exhibit 156. Sometimes the old-fashioned way is better.
THE COURT: Uh-huh.
THE WITNESS: That looks correct.
MR. SALTZMAN: There we go.
(Laughter)
MR. SALTZMAN: Okay. Let's blow that up so you can look at that.
THE WITNESS: Yes.
(Pause)
BY MR. SALTZMAN:

Q Dr. Eisenberg, you've had a chance to look at these bullet points, now?
A Yes.
Q Okay. And these are bullet points asking for information you felt you needed to know to be an effective board member?
A Correct. I had been a board member of the company that Marengo was developed from called Elstar, so I was very involved with the development of their science since 2019 and -- but I had not been involved in the clinical programs they executed at Marengo, so in rejoining the board, I wanted detailed information across the program, also, what had occurred in the interim between my involvement with Elstar.
Q And this is information you felt you needed to express your opinion in the board meeting as one of the board members, right?
A As a board member, yes.
Q Okay.
MR. SALTZMAN: We can take that down.
BY MR. SALTZMAN:
Q And if you could turn to Tab 7 of your binder, which is Exhibit 155.
And this is an email you sent in October 28th, 2025 to Paul DaSilva-Jardine, do you see that?
A Yes.

MR. SALTZMAN: And I'd like to move this exhibit into evidence.

MR. BERDON: No objection.

THE COURT: It's admitted.

(Rigmora Exhibit 155 received into evidence)

BY MR. SALTZMAN:

Q I want to focus on the email that Mister -- probably Dr. Jardine sent to you.

MR. SALTZMAN: If we could just blow up that.

BY MR. SALTZMAN:

Q And, in particular, I want to focus on the sentence that begins the sort of second line at the very end, "It is the strangest thing..."

Do you see Dr. Jardine wrote to you:

"It is the strangest thing with ATP companies," and that's a plural, "but I see strategies," plural, "around budget and cash options," plural, "and raising new money, but I don't see any plans," plural, "to exit and make money."

Do you see that?

A Yes.

Q And it's your testimony that that sentence is not about ATP companies, but simply about Marengo, correct?

MR. BERDON: Objection; calls for speculation.

THE WITNESS: No, what my comment was --

THE COURT: Hold on, please.

THE WITNESS: -- that this email --

THE COURT: Hold on. Doctor, hold on, please.

THE WITNESS: Oh, there's -- I'm sorry.

THE COURT: What's the objection?

MR. BERDON: He's being asked a question about what Paul DaSilva-Jardine meant when he wrote an email and I don't think there's a foundation that's been laid that he has knowledge of what Dr. Jardine meant.

MR. SALTZMAN: I believe the question was his understanding of the email, but I can also -- maybe I'll try to clean it up.

THE COURT: Why don't you clean it up.

MR. SALTZMAN: Can you go to the top of that email.

BY MR. SALTZMAN:

Q You wrote, "Thank you, agree."

Do you see that?

A (Inaudible.)

Q So, you agreed with what Mr. Jardine sent to you, correct?

A Not that sentence.

Let me -- am I allowed to elaborate?

Q Maybe I'll ask you a question and if it doesn't give you --

A Okay.

Q -- to opportunity to elaborate, I'm sure counsel will give you that opportunity.

So your testimony is that Mr. Jardine wrote what he wrote in that sentence and you disagree with that sentence; is that your testimony?

A That -- what I agreed with was that it was important, and if you look at the other email that you cited, that we specifically ask Mr. Su, Zhen Su, the CEO to consider the partnerships and exits from Marengo. This was a discussion about Marengo. It was preceded by a telephone discussions, because we had agreed, actually Paul and I, with Seth, that it was important to do a full, deep review, which is why we were put on the board of the science and what the findings were.

And I took Paul's point that it was important to also ask him what his plan for the exit was; that was what I agreed with.

Q So -- and just your understanding of this email when Mr. Jardine wrote, is it the strangest -- it is the strangest thing with ATP companies, plural; your understanding was that that was just a reference to Marengo?

A That is what I was interested in. That's what I agreed with.

Q Okay.

MR. SALTZMAN: No further questions, Your Honor.

THE COURT: Thank you.

Redirect?

MR. BERDON: No redirect, Your Honor.

THE COURT: Thank you, Doctor.

THE WITNESS: Thank you.

THE COURT: You may step down.

(Witness excused)

MR. BERDON: Andrew Berdon, again, for the debtors.

The debtors call Dr. Seth Harrison.

THE COURT: Dr. Harrison?

MR. BERDON: Your Honor, Dr. Carson and Dr. Eisenberg both came here to testify today from the West Coast --

THE COURT: Uh-huh.

MR. BERDON: -- and I was wondering if they could be released from court today and allowed to travel home?

THE COURT: Yes, as long as they're not going to testify again.

MR. BERDON: Thank you, Your Honor.

THE CLERK: Raise your right hand.

SETH HARRISON, DEBTORS' WITNESS, SWORN

THE WITNESS: I do.

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Seth Harrison. H-a-r-r-i-s-o-n.

THE CLERK: Thank you.

You may be seated.

DIRECT EXAMINATION

BY MR. BERDON:

Q Good afternoon -- good late morning, Dr. Harrison.

A Good afternoon.

Q You and I had an extensive series of questions and answers about the activity at various portfolio companies during your last appearance here and I'm not going to go over that again. I'd like to ask you some quick questions that are a little more macro, instead of micro.

Up until funding to the portfolio was essentially cut off in May of 2025, was ATP successful, in your view, in creating value for its limited partners?

A Yes.

Q And why do you say that?

A Well, our returns speak for themselves.

Q And can you tell the Court what the most significant measures of returns are that you use in talking about ATP's business?

A There's something called TVI -- TVPI, which is total value to paid in, and that's essentially the multiple on invested capital that you can take from the amount that's been distributed and the amount that's held. There's also

DPI, or distributed to paid in, and that is the amount that's been distributed, as opposed to the amount invested. And then there's IRR, which is the overall return on those invested funds with the return measured by those two components, essentially.

Q Starting with the first, TVPI, as of December 31st, 2024 do you recall what the TVPI was that you kept track of at ATP?

A I believe it was 2.7.

Q And do you recall, as of December of 2024, what the DPI was?

A I believe it was approximately 1.

Q And that means that for every dollar in there had been a dollar distributed; is that right?

A Yes.

Q And do you recall what your IRR was as of December 31st, 2024?

A I believe since starting the fund, the current fund in 2012, it was 22 and a half percent, something like that.

Q Dr. Harrison, what, in your view, has been the most important driver of success at ATP?

A Selectivity of deals and team members who could source the deals and drive the deals. And then giving them the right combination of freedom so they could be entrepreneurs and control, so that we made sure that investments,

generally, more or less, not all the time, but more or less, were commensurate with the goals that we had to develop value for a given opportunity.

Q And do you get involved in each company along the way?

A Absolutely.

Q And what's the overview, the nature of your involvement with these companies, generally?

A It tends to be in the initial selection; in the major staffing; in the titration of capital amounts to projects; in reviewing the selection of projections as they emerge from research or research platforms; giving them my guidance, for what it's worth, on their strategies and their approaches to various long-term goals, and sitting down with them and giving them a lot of critique based upon, you know, 35 years of experience.

Q And you talked earlier about creating a team at ATP.

Is Dr. Eisenberg a member of your team?

A Yes.

Q And can you tell us the other, what you would consider to be the core team members, in terms of helping to supervise and manage the portfolio companies?

A There's Paul Eisenberg; there's Paul Jardine; there's Spiros Liras; Joe Yanchik, although, he doesn't have a technical background, has been a biotech CEO and has been instrumental, particularly in these times; and we had two

losses due to the financial straits we've been in. There were two other core team members, but we have managed without.

Q And who were the departed team members?

A We lost Mike Ehlers and we lost Raj Chopra. We also lost a principal that we were, frankly, developing to become a partner. I'm leaving out Neena Kadaba, who is an entrepreneur in residence, but we elevated to senior principal, to help work within the fund, and she's also been instrumental.

Q Do you have any shares in the portfolio companies, themselves?

A No.

Q And do you receive a management fee that is keyed off of the amount invested at ATP?

A No.

Q Do you receive the standard "two and twenty" compensation structure that one hears about in private equity?

A No.

Q Do you receive a set percentage of the profit in the fund overall?

A I have, effectively, profits, interests in the pools, each pool, which are different.

Q And for each pool there's a slightly different

percentage of carried interest that you have been allotted?
A Correct.
Q And who controls the amount of carried interest that you have in each pool?
A The limited partnership agreement, which, during peacetime, we've discussed and negotiated; "we" meaning myself and what we used to call the "family office," now, we call the "Rigmora LPs."
Q For the companies that you've had exits, which ones do you consider to be the most prominent exits that have happened at ATP?
A Stoke, Akero, Corvidia, Chinook, Syntimmune, Tendyne. I may be leaving a few out.
Q And has each of those companies' progress through its research and development phase, been uncomplicated?
A No, absolutely not.
This is a very difficult game that's impossible to predict at any given time. And it requires constant realignment of capital flow with emerging business and business-science reality on all levels.
Q And what are the factors that you take into consideration when determining whether to continue funding a business that is facing struggle?
A It depends on the struggle. We've faced mighty regulatory struggles, like, in the case of Braeburn, where we

had three independent FDA rejections called "CRLs," complete response letters, where they completely respond that they're not approving you. And we dealt with them over five or six years, doggedly, and that was part of the uncomplicated, and Braeburn, in aggregate, is worth about 2.9 to $3 billion in done DCF value.

Every single company that exited was met with tremendous complications in trying to understand how it would do a given piece of research, until there was a breakthrough that showed, lighted a path, essentially, to what would be the success. And then we drove down that path and the success followed.

Q So, in deciding whether to move forward with funding for a preclinical company, what are the things that you look for before deciding to invest limited resources in any investment environment in a particular preclinical company or project?

A It really depends on the stage. What I'm looking for is stage-appropriate, I think. So if we're starting with a research platform, the first capital commitments would be to build the research platform inside of a company and, generally, outside of his academic context.

The next set of research commitments or funding commitments would be to work on the platform to either develop targets or develop molecules based on the targets.

And there are highly technical, chemical-type criteria that are used to determine how you're moving forward and how things should be funded until you get to a certain point where you're at what has been referred to as a "development candidate" or close to a development candidate. And then it goes more by stages, and when you get to the development candidate, you're really looking at things like, how does this potential drug stack up against other drugs that are in the market or in other pipelines, what's the unmeant medical need, and you bring in all of those translational criteria that Paul Eisenberg started to allude to, because one of our major jobs is to, once we have a preclinical moiety, as Dr. Carson indicated, we have to determine how it will most efficiently be put into the clinic to generate value and that's a big job and it's done in stages. And it's -- there are many, many factors that impinge upon that, which also change, stage by stage.

Q So in going about building the budgets that are at issue today in the funding request, did you have a general approach that you took to generate the amounts that you would be seeking for funding?

A I would say it was a relatively simple approach, because those budgets were already there. Those were the budgets that resulted from our having to, as I've said, as I testified, triage the portfolio down to just the nugget in

each company. And what needed to be done is straightforward in research and development: specific contracts with specific CROs; "specific" is employees doing specific things with specific reagents with specific readouts and specific instrumentation.

That doesn't need to be re-budgeted. It was there. And when it was time to move these companies forward out of a pure, drip-feed, mothballed state, which was the state they were in, we looked at those budgets; we reevaluated them, I and the teams, and there were, I believe, some changes around the edges, but they were largely intact and those are the core of the budgets in the funding motion.

Q You mentioned external R&D. There's been some suggestion that these companies could be kept, somehow, alive and functional without any external R&D spend being made.

Do you have a reaction to that?

A It's impossible.

Q And why do you say that?

A Even well-funded companies with 50 employees and facilities rely on external R&D to advance their programs; otherwise, they would be pharma companies. That's why external R&D exists through contract research organizations of various kinds. Companies that are small companies that are healthy, that are reasonably well-funded, must rely on external R&D in order to move projects forward. And what

they fund internally are programs or elements of technologies that represent their competitive advantage and they outsource other things.

In this case where we've had to do reductions in force and brings things down to just the nubbin, in many cases, giving up labs, it's only through external R&D that any progress can be made.

Q And without going into too much detail, is there a field of contract research organizations, CRO, and what do they do?

A Contract research organizations do anything from early-stage discovery research to late-stage clinical trials and anything in between; all kinds of regulatory activities; various animal studies that are required to move forward into what Paul referred to as "GLP tox" or toxicology. There are CROs, or contract research organizations, in an ecosystem that permeates the biopharmaceutical industry that does, that do many, many things.

Q And are there categories called "CMOs"?

A Yeah, contract manufacturing organizations.

It's expensive to manufacture a biologic and it's expensive to manufacture a chemical, a small molecule at scale, and quite often -- I don't want to say always -- but most often, small companies rely on contract manufacturing organizations to make the drugs that they're going to bring

forward or are bringing forward in clinical trials and also in animal work.

Q So, without putting words in your mouth, are you saying that these companies have to pay someone to make the material that will then be provided to the research organization to carry out their experiments?

A Yes.

Q Okay. Now, right now, we're seeking funding for up to 10 companies. On a going-forward basis, is it your view that each of these companies has to continue to exist with their own balance sheet and their own set of officers and directors, you know, and maintain their current corporate form?

A No.

Q What are the options that you consider when looking at that issue?

A I would say it's a question of critical mass. Does have a company have what it takes to be an independent company or does it have a project that's a valid project that should be integrated into other valid projects to form a company with such critical mass?

In this portfolio, especially given a lack of funding, many companies have become projects, and what we're talking about here is project finance. And when we think about the future, which we hope our plan of reorganization would lead

to, it would be a portfolio that syndicates, as well as attracts corporate partners, and that portfolio that syndicates for each company needs to have that critical mass.

So, in this case, we have identified companies that have valid projects and those projects are funded under the funding proposal, but that we think, assuming that we can emerge with our plan of reorganization, it may be best to consolidate some of them so that there's a critical mass effect.

Q From time to time, have you come up with a conceptual framework that divides those companies up in some form of way; for example, based on area that they might pursue treatment of, for example, an oncology group of companies?

A Yes, we've -- there've been contacts that we've been operating under since the founding of ATP with the Rigmora LPs. And at all times, we looked at the portfolio through various lenses to determine best approaches at any given time. Sometimes, it was thematic. Sometimes, it was looking at it in other ways.

And my approach has always been that way, to look at these assets as a kind of material that we work with to create value. And in the current case, we have, I think, quite a number of valuable assets, some of which exist in corporate forms that, as I said, have a kind of critical mass and others, which, unfortunately, largely, in my opinion, due

to the lack of funding, have dwindled. And those dwindled remaining pieces of fruit are best put together in a single entity.

So, in the case that you referred to of oncology, assuming that -- we're getting ahead of ourselves, perhaps -- but assuming that we're able to emerge, I'm fairly convinced, based upon my business judgment and a lot of experience and working with a team, that there should be a consolidation in oncology at the preclinical level to form a single company.

And we've already had early discussions with potential syndicate leads to verify that and it seems to be something that would be a right approach.

Q So just from a nomenclature point of view, when you talk about syndication, are you talking about any particular type of investment?

A A Series A or Series B investment, depending upon what we did with the given syndicate lead.

Q Equity?

A Oh, equity, yes --

Q Yeah.

A -- as distinct from a corporate transaction.

Q Okay. And when we talk about corporate transactions, or strategic discussions, what -- if they're not equity, what are they?

A The corporate transactions would be of the type of deal

that we've been referring to; for example, with Novo and Deep Apple or Marengo has a deal with Ipsen or various companies, from time to time, form partnerships with larger companies. Aethon has a deal with Revolution Medicines and this creates -- Replicate has a deal with Novo, a South American company --

Q And can you tell the Court, because I just don't know -- you're talking an overview, but, specifically, what are those relationships? How does money flow in those relationships?

A Oh, they tend to be non-equity relations in most cases, which enables these partners to come in without having "know your client"-type issues. And they tend to involve an up-front fee for accessing the technology platform or working on a specific target. In some cases, the corporate partner may provide their own target in order to access the technology platform.

There, then, tends to be research funding for a given number of, we prefer the word, "FTEs" or full-time equivalents, that operate at that, at the company in kind of an enclosed group that works on those projects. And there tend to be milestone payments that come in at different points along the way as progress is made and they can be as early as a development candidate or even earlier and as late as an approval from the FDA after a phase 3 trial or even

later.

And then there's, typically, a royalty and the royalty can be -- is calibrated based upon when you do the deal. If you're doing the deal very early stage, then it's a single-digit royalty. And if you're doing it a deal at a very late stage, it's a high teens or higher royalty.

Q Thank you.

What's your understanding of your duties as a general partner to manage the portfolio in bankruptcy?

A My duties are to preserve the value of the estate; to attempt to maximize the value of the estate; and to obtain, to create a plan of reorganization that I believe will be in the best interests of all the parties to the LPA and all the stakeholders involved in these processes so that the portfolio companies, which some, to create the value of the partnership, can go forward.

MR. BERDON: I'll pass the witness, Your Honor.

THE COURT: Cross?

MR. DUTZ: May I approach?

THE COURT: You may.

(Pause)

THE COURT: I'll make a comment that so far we have two documents in evidence. I -- and that's fine, perfect -- I'm not going to be accepting -- excuse me -- I'm not going to be accepting wholesale, all the exhibits that

have been delivered; you're going to have to tell me what it's relevant to and why I'm looking at it. And if there's -- just because y'all have agreed to it doesn't mean I'm going to take it.

MS. SELDEN: Thank you, Your Honor.

THE COURT: Uh-huh.

MS. SELDEN: Understood.

CROSS-EXAMINATION

BY MS. SELDEN:

Q I think I'm just under the wire to say good morning, Dr. Harrison.

A Good morning.

Q Dr. Harrison, you're aware that the Rigmora LPs made a funding proposal for the debtor portfolio companies last Friday, February 13th, correct?

A The funding portfolio that is called the "Rigmora DIP"?

Q Yes.

A Yes, I'm aware of it.

Q And you've reviewed the Rigmora DIP proposal, correct?

A I have.

MS. SELDEN: Could we put up Rigmora Exhibit 142, the term sheet, and I believe that that is one of the many exhibits in Your Honor's bundles, and one of the few that I will direct Your Honor to. It should be behind Tab 4 with the Rigmora Exhibit Number 142 in the bottom, right-hand

corner.

(Pause)

BY MS. SELDEN:

Q Dr. Harrison, do you recognize Exhibit 142, titled "Apple Tree Life Sciences, Inc. DIP Facility Term Sheet" as the Rigmora funding proposal for the debtor portfolio companies?

A I recognize it as approximately one-third of one page of a multipage term sheet.

Q Dr. Harrison, do you have in front of you a witness binder, as well?

A I do.

Q And could you turn in your witness binder to Tab 5 and take a look at that document.

A I'm there.

Q And Dr. Harrison, behind Tab 5 of your witness binder with the exhibit number in the bottom, right-hand corner, Rigmora Exhibit 142, do you recognize this as the Rigmora DIP term sheet?

A Yes.

Q This is the Rigmora proposal that you reviewed, correct?

A Yes.

MS. SELDEN: Your Honor, this is one of the exhibits that we would like to move into evidence.

THE COURT: Any objections?

MR. BERDON: No objection, Your Honor.

THE COURT: It's admitted.

(Rigmora Exhibit 142 received into evidence)

MS. SELDEN: Thank you, Your Honor.

BY MS. SELDEN:

Q And Dr. Harrison, if you could turn back one tab, behind Tab 6 of your witness binder, do you recognize what's been marked as Rigmora Exhibit 143, as a cover email from Mr. Levinson, on behalf of the Rigmora LPs attaching this term sheet?

A I recognize that's what it is. I'm not on the email, but I read the email.

Q Have you seen this document before?

A Yes, I was shown this email, yes.

Q And you recognize that as the cover email from Mr. Levinson, of my firm, to Quinn Emanuel and others, attaching the Rigmora term sheet, correct?

A I believe that's what it is, yes.

MS. SELDEN: Your Honor, we would like to move Rigmora Exhibit 143 into evidence, as well.

THE COURT: Any objection?

MR. BERDON: Your Honor, the impact on the witness, if he read it, it's fine. But for the truth of the matters asserted --

THE COURT: It's hearsay.

MR. BERDON: Say again.

THE COURT: It's hearsay.

MR. BERDON: Yes, Your Honor.

MS. SELDEN: And I'm not admitting it -- I'm not proposing to admit it for the truth of the matter asserted; I'm proposing that we admit it --

THE COURT: That it transmitted the term sheet.

MS. SELDEN: -- as the conveyance of the term sheet.

THE COURT: Okay. It's admitted for that purpose, but not for the truth.

(Rigmora Exhibit 143 received into evidence)

MS. SELDEN: Thank you, Your Honor.

BY MS. SELDEN:

Q Dr. Harrison, you're familiar with the DIP proposal submitted by the debtors in this case, correct?

A Yes.

Q You didn't review the DIP proposal sent by the Rigmora LPs, filed -- prior to filing the debtors' DIP motion, correct?

A Technically correct. I think it would have been impossible to do so, and my understanding is that Rigmora scare, quotes, DIP proposal was submitted in the middle of the hearing that we last had; at least, that was my

understanding. I only saw it after that. And I believe that we had submitted our DIP proposal prior to my being shown this one.

Q You understood that you had submitted the debtors' DIP proposal before you were shown the Rigmora DIP proposal.

Is that your testimony?

A I more than understand that; yeah, that's what happened.

Q Dr. Harrison, at this point, you've reviewed both, the DIP proposal from Rigmora and the Oaktree DIP proposal, correct?

A Yes, I have.

Q And you understand that the Rigmora DIP proposal has much lower fees than the Oaktree DIP proposal, correct?

A It does.

Q You understand that under the Oaktree DIP proposal, each debtor portfolio company guaranties the loan proceeds that go to all of the other portfolio companies in ATLS, correct?

A I do.

Q You understand that under the Rigmora proposal, none of the debtor portfolio companies guarantee any debt, other than their own, correct?

A I do.

Q Dr. Harrison, you agree with me that if the amounts in

Item 1 of Rigmora's proposal were calculated to cover all of the debtor portfolio company, ATLS, and Chapter 11, professional, and U.S. Trustee expenses shown in the debtors' budget in their second funding motion through June 19th, 2026, less the amounts authorized in the first funding order and the $1.4 million ATBM management fee, those amounts are sufficient to fund the debtor portfolio companies and ATLS for the next 18 weeks, correct?

MR. BERDON: Objection to the form of the question, Your Honor. It's long-winded. It's asking for him to give an opinion.

THE COURT: It's a long one, but if he understands it, I'll permit him to answer it.

THE WITNESS: I believe that the numbers are approximately the same, but as somebody who's done deals for a very long time, I think the mantra is to look at the totality of a deal, always. And when I look at the totality of the two term sheets, they're very different with, I would say, obviously, very different intentions.

I'm happy to comment on that, and I believe it would be necessary, to qualify any yes-no answer that you're seeking by my overall view of the structure of the term sheet, because it's impossible to understand the term sheet without looking at its entirety, which I have.

BY MS. SELDEN:

Q And Dr. Harrison, let me ask you a different question.

Have you reviewed the declaration of Mr. Brandon Aebersold submitted in these cases yesterday?

A Not extensively, no.

Q Were you aware that the Rigmora LPs have offered to extend their DIP proposal to finance for 24 weeks?

A I wasn't aware of the timing, but as I believe I testified to you extensively in our deposition recently, I believe that the Rigmora DIP proposal is legally flawed based upon advice of counsel, because it lends the estate its own money. And most importantly, because I'm not an expert in that, it's obvious that the Rigmora "DIP proposal" stipulates that the companies walk on a death march to their liquidation, which is exactly what Mr. Bogdanoff sought in his May 15th email, which precipitated our filing the Chancery Court suit, which we won, stipulating that these companies were worthy of continuing.

So, I don't see how there's any value to the estate in annihilating the portfolio, which is what this DIP proposal requires; whereas, the Oaktree proposal creates an exit facility into which its DIP will convert, which would enable the portfolio to exit bankruptcy and thrive.

MS. SELDEN: Your Honor, I would move to strike that as nonresponsive.

BY MS. SELDEN:

Q Dr. Harrison --

THE COURT: I'm going to accept it -- overruled.

BY MS. SELDEN:

Q Dr. Harrison, you'd agree with me that if the Oaktree DIP proposal and the Rigmora LP proposal that funding for 24 weeks, that would be the same length of time, right?

A I believe 24 weeks equals 24 weeks.

Q Dr. Harrison, are you aware that there were a number of corporate representative or 30(b)(6) depositions in these cases yesterday?

A Yes.

Q And, Dr. Harrison, you're the chairman of the board of directors of each of the portfolio companies, correct?

A I believe so.

Q Dr. Harrison, are you --

A I'm sorry, I don't think it's a hundred-percent true; for example, Bob Hugin is chairman of Nereid. So, it may not be uniformly true.

Q Dr. Harrison, you're the chairman of the board of Replicate, correct?

A I believe so.

Q Are you aware that Dr. Nathaniel Wang testified as the 30(b)(6) deponent for Replicate yesterday?

A I am.

Q Are you aware that Dr. Wang testified that Replicate

has runway without imminent funding until approximately the end of the year?

A I was not aware of what he testified; I was not at his testimony and nor have I -- nor, has it been put in front of me.

Q Dr. Harrison, you're the chairman of the board of Marlinspike, correct?

A I believe so.

Q Are you aware that Paul DaSilva-Jardine was the 30(b)(6) corporate deponent for Marlinspike yesterday?

A I am.

Q Are you aware that Mr. Jardine stated that Marlinspike has spent not very much of the $699,500 it received, pursuant to the first funding motion?

A I'm not aware of what any 30(b)(6) person testified yesterday because I was not at their depositions and I have not seen the transcript of their testimony.

Q You're not aware that Mr. Jardine testified that the money from the first funding motion was adequate to cover the next three months for Marlinspike?

A I think I already stated that I'm not aware of what any of the deponents said yesterday, because I did not attend their depositions and I have not seen the transcript. If you would provide it to me, then I'd be happy to read it and then I would be aware of what they said and could comment on it.

Q You're not aware that Dr. Jardine testified that Marlinspike was in a complete freeze with no operations between July of 2025 and filing for bankruptcy in December?
A I'm not aware of anything Paul said, because I don't know what he said.
Q Dr. Harrison, you're also the chairman of the board of Aethon, correct?
A I believe so.
Q Are you aware that Mr. Jardine was also the 30(b)(6) deponent for Aethon?
A Yes.
Q Are you aware that Mr. Jardine testified that Aethon has $6 million cash on hand?
A I'm not aware of anything that Paul testified. I didn't -- I'm sorry.
Q Are you aware that Mr. Jardine confirmed that Aethon can operate on the order of months beyond July, assuming it continues receiving from the RevMed partnership?
A I'm not aware of what Paul said.
If you'd like me to comment on what I know about the companies, which may have substantial overlap with many of the things that you're stating, I'm happy to provide my commentary. But I can't comment on what any of the deponents to whom you're referring may have said.
MS. SELDEN: And, Your Honor, I believe we've

designated deposition transcripts from each of the 30(b)(6) witnesses that we took yesterday, following Your Honor's granting of the motion to compel those witnesses. I'm sorry that we were unable to take them in time for them to be reviewed by Dr. Harrison. I will move on, but we will be revisiting those deposition designation transcripts.

MS. GOOD: Your Honor, I would just note that we received those designations this morning and we reserve the right to review and counter-designate.

THE COURT: Okay.

MS. SELDEN: Apologies. We designated them as soon as we could after completing yesterday's depositions. I'm sorry they weren't in time for you to review them or for us to present them to Your Honor earlier. We will discuss with debtors' counsel after the fact and, otherwise, would revisit those in due course.

I have no further questions for you right now, Dr. Harrison.

THE COURT: Any redirect?

MR. BERDON: No, Your Honor; no redirect. Thank you very much.

THE COURT: Thank you for your testimony.

THE WITNESS: Thank you.

Should I take this or leave it?

THE COURT: Please leave it. Thank you.

(Witness excused)

MR. WINSTON: Your Honor, Eric Winston, on behalf of the debtors.

We have one more witness, live. I am looking at the clock. I wasn't sure if you wanted to, like, what your intentions were about proceeding versus lunch versus breaks.

THE COURT: How long do you think the next witness is going to take?

MR. WINSTON: I think my direct is probably under 30 minutes.

THE COURT: Let's do it.

MR. WINSTON: Okay. I'd like to call Perry Mandarino.

THE COURT: Mr. Mandarino?

THE CLERK: Right there.

PERRY MANDARINO, DEBTORS' WITNESS, SWORN

THE WITNESS: I do.

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Perry Mandarino. M-a-n-d-a-r-i-n-o.

THE CLERK: Thank you.

You may be seated.

THE WITNESS: Thank you.

THE COURT: Brandon, you're good?

(No verbal response)

MR. WINSTON: May I proceed, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. WINSTON:

Q Good afternoon, Mr. Mandarino.

How are you today?

A Good afternoon.

Q Mr. Mandarino, you testified last month in support of the debtors' first funding motion, right?

A Correct.

Q And I'm not going to, like I said before, I'm not going to burden the Court with my earlier testimony, but can you just remind the Court what your duties are as a chief restructuring officer for the debtors?

A Sure.

Well, first, it's important to point out I'm not a scientist, so my job is from a restructuring, a financial restructuring perspective to assist the debtors in, you know, assembling the financial information that's required to support its path through bankruptcy; to ensure that it's compliant with all the Bankruptcy Rules in terms of paying its bills and what it needs to do; and to, you know, most importantly, hopefully find a successful path through reorganization.

Q Thank you.

We're here today on, at least for purposes of chief restructuring officer, two motions. One is what we call the "second funding motion" and then the second is the "debtor-in-possession approval motion with Oaktree."

What is your understanding of the relief the debtors are seeking under the second funding motion?

A For it to use the $97 million that was ordered to be paid by the LPs by the Delaware Chancery Court to fund its business.

Q And under the second funding motion, approximately how much of the $97 million would be used?

A Probably, you know, around -- given it has some cash on hand -- I think it's 54 million.

Q All right. And what is your understanding of the relief sought for the debtor-in-possession motion, debtor-in-possession funding motion, DIP motion?

A Sure.

Q If you know what a DIP is, I should just skip ahead.

A Sure.

Yeah, only to the extent that the funding motion is not granted and, again, it's very clear, our preference, our desire is to use the debtors' own cash to fund its operations. But to the extent that that's not possible, we needed a path to have financing for the companies to, you know, do its work and as you've heard other -- as the other

testimony today described. So the Oaktree DIP is what, you know, you can call it a "backup plan" for funding in case we can't use the 97 million.

Q Got it.

And prior to this case, you've been a chief restructuring officer in Chapter 11 cases?

A I have.

Q Approximately how many times?

A I think four or five.

Q Okay. And I'm going to guess you've advised debtors on debtor-in-possession proposals, terms?

A Numerous times.

Q Can you walk us through the process you went through as chief restructuring officer to determine why the debtors believe it is appropriate to spend money on the 10 portfolio companies?

A Sure.

Again, relying on management, on their goals and to contain the mission of the company and to run themselves in the ordinary course of business, we determine, you know, in speaking with the management teams, that they believed it was the appropriate and under the normal course of business to continue with their programs. And then, you know, we helped prepare the budgets to understand what the need would be and then, you know, have the right funding source.

Q Now, I think you've just testified you're not a scientist, right?
A Correct.
Q So you're not offering any sort of opinions on whether the science actually works, correct?
A That's right.
Q Okay. In thinking about whether to fund the portfolio companies, did you consider about the perceived value of those companies sitting here today?
A Well, you know, the companies, there's been a lot of money invested in the companies, you know, before they were forced to -- before they had to shut down. Yeah, there were certainly, there were independent valuations of the company.
So, sure, and that the one thing I did understand was that if they were just to be shut down, the value would, you know, probably diminish if there's forced sales of companies.
Q What is the anticipated time frame of the requested funding to the portfolio companies, whether it be through the second funding motion or the DIP proposal?
A Through July 31st of this year.
Q And why that time frame?
A Well, that's the time that, you know, we determined that -- oh, a couple reasons. The first is the funding, you know, would start to get lower and even though under the funding motion, there, I think the budget says there'd be

about $30 million left even at the end of July. In case it slips a little bit, we could get some time. But that would be enough time to, you know, try to come to, you know, a plan of reorganization and a path in order for the companies to exit bankruptcy so they could continue their mission.

Q So, is it fair to say that the time frame that was selected was at least, in part, on the anticipation of a potential plan of reorganization being confirmed?

A That's correct.

Q Okay. Now, some of the funds being requested are to pay the administrative expenses of these Chapter 11 cases, correct?

A Yes.

Q How did you go about determining those amounts?

A Well, we, you know, discussed with each of the professionals what the costs would be. You know, it's highly unpredictable, just given the nature of all the discovery and litigation. It may be a little bit more expensive than originally budgeted. And to the extent that would continue, then, we could almost guarantee it would be more expensive, but, you know, just what's typical in Chapter 11 cases and what each professional thought the run rate would be.

Q And does the budget also account for other estate professionals, besides the debtors' professionals?

A Yes, the committee, the Official Committee of Unsecured

Creditors; it accounts for U.S. Trustee fees, of course; and the cost of the independent director.

Q What is your understanding of the source of the funds? I know you said $97 million, but what's the source of the funds?

A Sure.

That was the amount that was ordered by the Delaware Chancery Court for the LPs to pay on behalf of, on account of prior capital calls, which was -- which there's an order from that Court and was received by the debtors on December 22nd of 2025.

Q Now, assuming the Court were to grant the second funding motion, does it cost the partnership debtors anything to use that money?

A It does not, which is why it's our preferred path for funding.

Q So why, then, did the debtors also seek DIP financing?

A Again, because the -- we had to have a backup. I thought it was a responsible effort, to the extent to ensure that we are doing what preserves the value and enhances the value of the company and the debtors, to have funding, and would never assume that, you know, given it was so highly contested by Rigmora, even the funding order, right, that, you know, from the Delaware Chancery Court, I should say -- not the funding order -- the judgment order to get the money,

put the money in a segregated account, didn't allow us to use it.

So we had to -- so, we just -- we knew there would be an objection to the use of the funds or assumed it, so we needed to go down a second path to have a second source of alternative funding.

Q Can you walk the Court through the process you undertook for seeking DIP financing?

A Sure.

A fairly typical process. And, you know, as you asked, I've raised, you know, I know hundreds of millions of dollars in DIPs, maybe even more than that, over, you know, many, many years. So, we first started with understanding what the need is, the size of the DIP, and that's the budget.

Q Can you walk the Court through the process you undertook for seeking DIP financing?

A Sure. Fairly typical process. And you know, as you asked, I've raised, you know -- I don't know -- hundreds of millions of dollars of DIPs, maybe even more than that, over, you know, many, many years.

So we first started with understanding what the need is, sizing the DIP, and that's the budget.

And then we prepared, you know, a teaser, and a data room with information for potential lenders to -- to have.

And then, simultaneous with that, we went to -- we

developed a list of potential parties who would be interested in providing a DIP.

Now this is a somewhat atypical DIP because, again, it's not -- it's not a -- the main businesses are not operating businesses with revenue and EBITDA and inventory and receivables. So, you know, wouldn't -- there wouldn't be, you know, the normal, you know, list of 80 people you'd go to.

So we came up with a list of 22 parties of which we went to, of which 11 of those parties signed nondisclosure agreements.

Q Now why was it important to obtain disclosure agreements?

A Well, I mean, it's fair -- it's typical. It happens in every matter I've ever been involved with, but because the debtors, these debtors and others, have confidential, proprietary, nonpublic information that needs to be protected and just can't be shared with -- with -- with the world.

And you know, importantly, in this case, you know, it involves, as you've heard from other testimony, you know, pretty intense scientific research that, you know, could be worth, you know -- you know, a lot of money down the road.

Q Did any of the 11 that signed NDAs submit DIP proposals?

A We received six.

Q And did that include Oaktree?

A It did.
Q And since, I guess, the motion was filed, that's the one that was picked, right?
A Correct.
Q Why did you -- did you recommend to the debtors to proceed with Oaktree?
A Yes. And it was approved by the -- by the -- Dr. Harrison, the independent director. And yes, we -- we -- I -- I had recommended you proceed with Oaktree.
Q Why did you recommend the Oaktree proposal?
A Because of several reasons:

You know, one, it -- it provided the funding we needed.

Number two, you know, while the costs were, you know, expensive, it is -- the interest is being paid in kind, so it's not -- so the $65 million of the DIP is really available to the company, it's not sixty five less the fees, and so on.

And also, there is a path to an exit of the Chapter 11. They -- there is a -- it's not a commitment, for sure. But there's a proposal for a three-hundred-million-dollar exit financing package, as -- you know, as well as a plan termsheet, which, yes, there are a lot of dots and numbers, but there's a plan termsheet to lay out, you know, a path for reorganization.

So we found that to be incredibly interesting and -- and appropriate to recommend to the -- to the board.

Q Before accepting the Oaktree DIP proposal, were there negotiations over the terms?
A Yes, there were.
Q And were there provisions that you found Oaktree conceding on?
A Yes.
Q Okay. So would you call it an "arm's length, third-party negotiation"?
A Yes.
Q Vigorous?
A Vigorous.
Q Got it.

Do you view the Oaktree proposal as superior to the request for the funding in the second funding motion?
A I do not. Again, prefer the funding motion.
Q If the Court were to grant the funding motion and, therefore, the debtors don't proceed on the DIP, do you have an expectation, though, that Oaktree will stick around?
A I -- I -- I mean, I -- I would expect they would. I don't know. I would like them to because they have a -- they've done a lot of diligence. You know, their diligence involved, you know, the portfolio company levels. They've done, you know, their diligence on -- on the GP and were performing diligence on the GP. And they've spent an -- an extraordinary amount of time and -- and seriousness, and I

would hope that would continue.
Q Now we just heard, from the testimony with Dr. Harrison, that Rigmora has made its own DIP proposal, correct?
A Correct.
Q And I think, last week, counsel for Rigmora made representations to this Court that there was a DIP proposal that had just made, correct?
A That's right.
Q Okay. Had you been expecting to receive something from Rigmora that day?
A I had not.
Q Okay. And did you, ultimately, get the DIP proposal in writing?
A I did. It was sometime after the status conference last week at 2:30 started.
Q Had you heard from any representatives from Rigmora prior to the February 13th status conference?
A No.
Q You had not heard from any businessperson prior to that date?
A No. We -- we asked, from very, very early on in this case, we asked Rigmora's counsel for, you know, meetings or access with a Rigmora professional -- a Rigmora principal -- excuse me -- and we never heard back.
Q Have you heard from any other representatives of

Rigmora?

A Before the 13th, only their counsel.

Q Okay. Do you have a view on whether it's common, as a CRO, not to hear from a businessperson of a party that is involved in a Chapter 11 case?

A Well, not only as a CRO, but just as a, you know, professional doing this for a long time. It's, I believe, the only time in my career I have never had a business discussion with a counterparty, with a principal of a counterparty in the case.

Q Okay. After you received the Rigmora proposal, did you reach out to Rigmora?

A I did.

Q And who did you reach out to?

A Sure. So we understood that Rigmora also retained Rothschild & Company. So I sent an email that weekend, either -- I'm not sure if it was the 14th or 15th, I think it was the 14th -- to Yuri Bogdanoff (phonetic), as well as Brandon Aebersold from Rothschild, requesting an either in-person or Zoom meeting for Monday the 16th.

Q So before this hearing.

A Before this hearing, yes.

Q Okay. And you initiated the contact?

A I did.

Q Okay. And was there any response?

A There was.
Q And can you tell us what happened?
A Sure. We -- there was a response from Mr. Bogdanoff that he would be available for a Zoom on Monday, the 16th. And then Mr. Aebersold responded, as well, who asked that the meeting -- that the -- and it was a Zoom call -- that the call be under 408.
Q In other words, a settlement communication?
A A settlement, yes.
Q And that was something Rigmora's representatives requested.
A Correct.
Q Were there any lawyers on the call?
A No.
Q Okay. When you received the written proposal that Rigmora has made, and I think doctor -- was before Dr. Harrison, did you believe Rigmora was making a funding proposal with its own money?
A I thought it was, but it's not.
Q okay. Did you view the written proposal as simply a compromise to settle the objection to the second funding motion?
A No.
Q And I don't want you to tell me what was discussed on the privileged settlement communication. But did anything in

that conversation change your view as to what Rigmora was proposing?

A No.

Q Okay. Have you read the -- did you listen in on the status conference last Friday?

A I did, and I've read the transcript.

MR. WINSTON: Okay. Your Honor, we have a copy of the transcript, which has been marked as Exhibit 108. I'd like to show it to the witness.

THE COURT: You may show it to the witness.

MR. WINSTON: May I approach?

THE COURT: You may.

THE WITNESS: Thank you.

THE COURT: Thank you.

BY MR. WINSTON:

Q Mr. Mandarino, I think you just testified that you listened in on the status conference?

A Correct.

Q And you have subsequently read the transcript?

A Yes.

Q Is this the transcript that you read?

A It looks like it.

Q If you could turn to Page 36, Line 17.

A Okay.

Q Do you see where it says "Mr. Levinson"?

A Yes.
Q Who is Mr. Levinson?
A Mr. Levinson is a partner and, I believe, co-chair of the restructuring department at Debevoise.
Q Rigmora's counsel.
A Yes.
Q Okay. Could you look at Line 23? I'm just going to read that sentence starting with "our clients." I just want to make sure I read it correctly.

"Our clients made the decision to put forward a proposal, which we put forward this afternoon to the debtors, under which the Rigmora entities would consent to funding in a total amount of $31 million over the course of an eighteen-week period that would come to the funds that are currently sitting at the fund-level debtors."

Do you see that?
A I do.
Q And do you recall hearing counsel make that representation?
A I do.
Q When you read that proposal, what do you think Rigmora is proposing? That -- sorry, that statement. What do you think Rigmora is proposing?
A Based on what Mr. Levinson said?
Q Yes.

A That they would let the debtors use their own money.
Q When you read that statement, did you think Rigmora had authorized Mr. Levinson to make that statement?
A I did.
Q Okay. Have you looked at the written proposal that you received? You have, correct?
A I have.
Q Okay. Let's put that in front of you. That was just shown as, I think, exhibit ...
(Participants confer)
Q Yeah, one -- Rigmora 143.
(Participants confer)
Q Do you -- is in front of you a binder that says "Seth Harrison Witness Binder," is that still up there?
A Yes, I -- it's in Tab 6.
Q Tab 6. Okay.
A I'm sorry. Tab -- Tab 5.
Q Tab 5. Okay.
And that's the written proposal you remember seeing?
A Yes.
Q All right. Could you look at the first page of the written proposal, where it says "this non-binding summary of terms"?
A Yes.
Q Do you see, about -- let's see. It's the third line

from the bottom of that paragraph, where it says "the transactions contemplated hereby."

A Yes.

Q It says:

"The transactions contemplated hereby require internal approvals that have not been sought or obtained."

Do you see that?

A I do.

Q Do you typically see that language in a DIP proposal?

A No. What I -- in fact, I -- it's -- it made me think, when I read it, that this was not an authorized proposal. I mean, generally, those proposals will say that it's subject to final approval, which is more -- the more common language, that -- or subject to investment committee approval or -- or subject to final documentation, which is, you know, contained further up in -- in the caveat.

But to say that it has not been sought or obtained, like sought -- so it made me -- it made me confused as to what we were really looking at.

Q Were you --

A So it's hard for me to call this a "DIP termsheet."

Q Okay. And when you think back on what Mr. Levinson said, which I just read to you, did you get the impression Mr. Levinson said he was authorized to make the representation?

A I -- I would -- that would be a normal assumption.
Q But when you read this written proposal from Rigmora, do you think they were authorized to make this proposal?
A I -- not based on this.
Q Okay. Let's go back to that transcript, on Page 37, Line 8. I want to read that first sentence there that goes through Line 12.

"And the way we've structured it, the way would structure our consent, is that it would be a DIP facility from the fund-level entities, provided they would make separate DIPs, essentially, to each of the eight debtors in fixed amounts."

Do you see that?
A Yes.
Q When you read that sentence, what do you think counsel was suggesting?
A You know, saying that the -- that the fund level -- that the -- that the $97 million, which the Delaware Chancery Court ordered, you know, to give to the company would be used to -- that the partnership would use its own money to give to the portfolio companies under a loan agreement.
Q Okay. Similar to what happened in the first funding motion, correct?
A Yes.
Q So would it be fair to characterize the statement to the

Court as really just a debate about how much versus, you know, what the source of the money is.

MR. TAFT: Objection. Leading.

MR. WINSTON: I'll rephrase.

THE COURT: Okay.

BY MR. WINSTON:

Q In your mind, when you read the statement from counsel's representation to the Court, did it remind you of anything that the debtors are trying to do?

A Yes, it was -- it's what we're trying to do. It's what we did in the first funding motion.

Q Okay. Do you think the written proposal that's been presented to the Court, and now admitted, is consistent with counsel's statements to the Court on February 13th?

A I don't.

Q And we went through the lack of authority question.

Is there anything else that causes you to think that?

A Sure. One, there's a bunch of internal inconsistencies in the -- in this document:

Number one, it says that it would provide for funding for all the companies with approved budgets, and then it lists two of the companies that don't have approved budgets, so I don't know if it's real, right? Because Nine Square and Nereid don't have approved budgets. So I -- you know, it's internally inconsistent, number one.

You know, number two, it gives, again, eight separate loans, which, I think, the Rigmora LPs view as favorable.

And the -- you know, sure, there's -- there's -- you know, the interest is low and there's no fees. But it's really they're just paying themselves back, right? Why would there be any fees? But it's okay.

But then, you know, the use of proceeds, you know, are -- are fairly typical, except they don't want to pay the ATM fee, ATVM fee, which is -- you know, that's -- that's not -- that's their issue.

And you know, reporting is fairly common.

You know, some of the budget covenants with -- with the percentage tests are bracketed, but again, fairly typical, but you know, the numbers are -- the -- the tests are too -- I think too tight at ten percent.

But then where it starts to become more problematic is the milestones. And the milestones is, basically, why it's now 18 or 24 weeks now. The milestones are -- really put a -- put a real gun to the portfolio companies' heads because, if -- if, within 6 weeks, the DIPs aren't refinanced -- and I'm on Number 8 on Page 4. If the -- if the DIPs aren't refinanced within 6 weeks, sale processes have to start, right?

You know, the -- so there's a couple of problems with that. And -- but let me go to, first -- and I'll get back to

that, but first go to Number 9 in the negative covenants.

So, while it says you could go out and find a new DIP, it also puts handcuffs on us on what we're allowed to do in finding that new DIP, which is highly extraordinary from -- just highly extraordinary. So, in other words, you can't even go talk to people without the consent of the LPs on finding a DIP.

So, if they had -- if they really did -- if they really wanted -- you know, there's a -- and I don't mean to be -- you know, to be judgmental. But if there's a desire to just sell the companies, they could just say no, you -- to every party you go to, you can't go -- you can't go to that party to try to refinance the DIP, incredibly unusual. I -- I don't know if I've ever seen that before.

And it also says, you know, you can't -- you can't start -- I mean, maybe later on, but you can't start any new -- any new testing, you can't enter into any new contracts. Oh, no, it's right in the second paragraph. You know -- you know, to limit any new employees, external consultants, contractors, other staffing arrangements.

You know, and the last bullet point in Number 9, you know, can't enter -- enter -- enter into any agreement or termsheet or discuss or negotiate the same that would purport to encumber or pledge any assets of the borrower or the fund or provide any guarantee obligation or sell any material

assets of borrower of the fund, right?

So, while they're saying okay, you can take us out and then keep going, they're -- the handcuffs that are on the company are extraordinary.

But now let's go back to even the practicality of refinancing. The -- in -- in companies like this that don't have assets and aren't -- you know, don't have sales and revenue, developmental stage companies, without new equity, it's almost virtually impossible to get a loan for that one entity, right? You know, and maybe, arguably, the clinical stage companies, maybe, but probably not. But without equity, you will never find debt.

This is a milestone, which is -- which is guaranteed to fail, right? And you could never enter into a DIP where you know you're going to fail. I mean, this, you may be in default right away, if you have knowledge -- I don't know -- in the final documents.

Q Let me ask you a couple more precise questions. I know you could probably go quite into more detail about this.

But can you tell the Court who you believe to be the lender under this DIP facility?

A The partnership.

Q Okay. Does it say it anywhere?

A No. In fact, the termsheet doesn't have, usually, in the first line, who the lender is --

Q Okay.
A -- in the first box.
Q And if it's the partnership, you do know that Rigmora is trying to have the Chapter 11 cases of the partnership debtor dismissed.
A I -- I do
Q Okay. How does the DIP handle that possibility?
A Well, it would, you know, continue the funding.

But what the DIP really does is -- is -- I mean, in my interpretation of it from a business perspective, is really put LPs into the shoes of the GP today, right? With all these restrictive covenants, where they're really making the decision, it puts -- it puts the LPs into the GP's shoes, and it's a backdoor way of trying to gain control over the partnership, you know, today.

Q One thing -- I know you started to go here, but I want to make sure we have the Court focus on it. Could you go to Page 2, Section 5, use of proceeds?
A Sure.
Q It says, in (b):

"To provide working capital or for other general corporate purposes of each borrower, to the extent authorized by the Bankruptcy Court, if applicable, subject to the following restrictions."

I know you mentioned the ATVM fee, but I want to ask

you about (c).

Do you see, under (c), that:

"Proceeds cannot be used by any borrower to explore, perform, or in initiate, in any manner, any new research or development activities, to the extent such activities involve (I) external research and development expenditures or (ii) hiring new employees that is not expressly authorized in the approved budget for such borrower."

Do you see that?

A I do.

Q Now you can't put yourself in the minds of the people that drafted this. But when you read "authorized in the approved budget for such borrower," what do you think that's modifying?

A (ii).

Q So if it doesn't violate -- modify (I), what's the impact?

A That they can't -- so, for example, Ms. Karson's testimony today, where, you know, there were 15 employees, there were 4, they haven't signed the contracts to -- to -- you know, to -- to continue their research. We -- the debtor would be -- the debtors would be unable to do that.

Q Okay. Do you believe the Rigmora proposal is, in any way, superior to the Oaktree DIP proposal?

A Again, I -- I don't really view this as a DIP proposal, but -- and I'm sorry.

There's one other point, in terms of the companies it's funding. It doesn't have funding for Aulos or Replicate, which is part of our budget. So it also -- and I just noticed that when I saw the tranches on this page, so I apologize. But it doesn't have funding for Aulos or Replicate, as well, so it's inferior.

MR. WINSTON: Okay. No further questions, Your Honor.

THE COURT: Okay. Cross.

MR. TAFT: Good afternoon, Your Honor. Will Taft, Debevoise & Plimpton.

May I approach with some binders?

THE COURT: Yes, you may. Well, not that many. How many do you really ...

(Laughter)

MR. TAFT: One. One and one.

THE COURT: Okay. Thank you.

THE WITNESS: Thank you, Mr. Taft.

MR. TAFT: You're welcome.

CROSS-EXAMINATION

BY MR. TAFT:

Q Good afternoon, Mr. Mandarino.

A Good afternoon.

Q You are the CRO for all of the debtors in this proceeding, correct?
A Correct.
Q And you are -- but each of these debtors is a separate entity, correct?
A Yes.
Q And so you are also the CRO for the fund as a debtor, correct?
A Yes.
Q Okay. I think you testified this is the fifth or sixth bankruptcy matter in which you have been engaged as a CRO for debtors.
A Yeah.
Q Is that correct?
A Fourth, fifth, sixth, something like that.
Q Okay. So it's not the four hundredth or five hundredth time you've done this as CRO for the debtors?
A No. I've worked on, you know, numerous matters of -- in that -- in that number of cases, probably, over, you know, 35 years.
Q And have you ever served as the CRO for a venture capital fund in a Chapter 11 case?
A No.
Q Okay. In fact, during your deposition yesterday, you couldn't recall any Chapter 11 case in which a venture

capital fund was the debtor, correct?
A Right. It doesn't mean there wasn't one, I just didn't recall.
Q Okay. Your -- you've testified previously that, in your understanding, your duties require to act in the best interests of all of the estates and not just the fund debtor, correct?
A Yes.
Q Okay. And it's your position that the proposed budget underlying the second funding motion seeks to maximize the collective value of all of the bankruptcy estates, correct?
A Yes.
Q But it is not designed to solely maximize the value of the fund, correct?
A I -- I don't know if that's a correct characterization. I mean, if all the estates are -- since the fund owned all the debtors, to the -- the extent that the debtor's are -- value is maximized, then so is the fund.
MR. TAFT: Well, if we could pull up -- Mr. White, I think we might have the wrong cite here.
BY MR. TAFT:
Q But do you recall, at your first deposition, that I asked you:
"So that budget was not designed solely to maximize the value of -- solely to maximize the value of the

partnerships' bankruptcy estate?

A I don't remember that.

Q Okay. The budget that you are proposing today, or the budget underlying the second funding proposal, is based on, effectively, the same budget that we were discussing at the second -- at the second-day hearing, correct?

A There were some changes to it.

Q Those changes include an accommodation for, I think, the creditors' committee, correct?

A Creditors' committee fees, as well as the independent director fees, maybe some timing -- you know, timing differences.

Q With respect to the amounts for portfolio companies, this budget is basically the same, correct?

A It's consistent, yes.

Q Okay. The GP has now appointed an independent director, correct?

A Yes.

Q That independent director did not weigh in on the second funding motion, correct?

A Correct.

Q And you don't know -- I'll move on.

The second funding motion seeks approval to fund ten portfolio companies, and also the management company, correct?

A Yes.
Q And the amounts requested in the second funding motion include amounts that were previously authorized under the first funding order, correct?
A That's right.
Q Okay. Now that first funding order authorized transfers to portfolio companies of approximately $12 million. Is that correct?
A That's right.
Q And it also authorized payments to the management company of -- or the payment of management company expenses in the amount of $6,650,000. Is that consistent with your recollection?
A That sounds about right.
Q Okay. So, in total, the first -- the funding order, which is Docket Entry 206, authorized payments of about $18.5 million, correct?
A That's right.
Q Okay. Has all of that cash been deployed?
A The cash has been deployed to the portfolio companies. The management company has not spent all the money that -- that it's asked for.
Q Has all of the 18.5 million been deployed?
A I -- and I just --
Q Okay.

A -- answered. I don't know. I don't understand the question. I'm sorry.

MR. TAFT: So, if we can pull up Rigmora Exhibit 184.

BY MR. TAFT:

Q This is the declaration in support of the first-day motions. This is your declaration?

A Right.

MR. TAFT: If we could go to Paragraph 14.

THE WITNESS: What number in the binder is it? I'd prefer to read --

MR. TAFT: Oh, I'm --

THE WITNESS: -- in paper.

MR. TAFT: This may not be in your binder. It's -- because it's ...

(Participants confer)

MR. TAFT: Is it Tab 1? Oh, terrific. Thank you.

(Pause in proceedings)

BY MR. TAFT:

Q So, at the time you filed this declaration on December 15th, the debtors only had 17.3 million of cash available for its operations, correct?

A Right.

Q Has all of that cash now been used?

A It has not.

Q Okay. And with respect to the money that went to the management company, approximately how much is still remaining?

A Two point -- almost 2.4 million.

Q Okay. And with respect to the cash that went to the portfolio companies, excluding the nondebtor portfolio companies, approximately how much is remaining?

A You know, roughly 12 or 12.2 million, 12, something like that.

Q Okay. With respect to the second funding motion, you testified earlier that the proposed source of funding is the segregated fund that currently holds approximately $97 million, correct?

A Right. From the Delaware Chancery Court order, yes.

Q And as you said, that those amounts reflected amounts that had been called pursuant to capital calls that were specifically enforced by the Delaware Chancery Court's order, correct?

A Right.

Q Those capital calls were tied to specific portfolio companies and the management company, correct?

A I believe so.

Q Okay. And the analysis by the Delaware Chancery Court was that those capital calls were permitted because they were supported by budgets approved by the Rigmora Limited

Partners, correct?
A Right.
Q In the second funding motion, the debtors are proposing to use a portion of the $97 million for purposes other than for which it was called, correct?
A The debtors are seeking for the use of the -- the funds for the purposes as set forth in the budget, so yes.
Q Okay. About seven and a half million dollars of the funds are proposed to be sent to Replicate, correct?
A I believe that -- like 7.4, something like that, yes.
Q Okay. And no part of the $97 million was paid in response to a capital call for Replicate, correct?
A Well, I don't have the -- the Delaware Chancery Court order or opinion in front of me. If that's what's your representation, I'll believe that's right.
(Participants confer)
Q Could you go to Tab 2 in your binder? And I believe it's at 60 -- that is Exhibit 44, Rigmora Exhibit 44.
(Pause in proceedings)
Q And I think I have it at Page 65. Have you turned ...
MR. TAFT: Mr. White, could you go to Page 65 of this document?
BY MR. TAFT:
Q And you'll see, right above the break, "specific performance." It says:

"-- but there is not royalty financing, so the Replicate budget is not approved and ATP may not enforce capital calls for Replicate."

Does that refresh your recollection that none of the $97 million was in connection with Replicate?

A Yes. And I would have accepted your representations. I'm sure Mr. Berdon would have gotten up to object if that was wrong.

Q Okay. So, again, the debtors are proposing to use funds in a manner -- or to invest in a company that the Delaware Chancery Court, two months ago, held was not entitled to further funding from the LPs, correct?

A The debtors are seeking to use money that -- its money, in accordance with its budget, in accordance with the Bankruptcy Code and the Bankruptcy Rules, and that is what we're seeking to do.

Q Okay. The second funding motion also seeks 2.4 million for Nine Square, correct?

A That's correct

Q And 3.8 million for Nereid?

A I -- that sounds right.

Q And 8.2 million for Aulos, about which four and a half is in addition to the fund -- the first funding order?

A That's correct.

Do you have the funding motion in the binder, so -- I'm

doing it by memory --

Q I can

A -- and I think --

Q -- hand you a --

A -- you're right, but I'd prefer to see it.

Q I can hand you a hard copy. I don't believe it's in the binder.

(Participants confer)

MR. TAFT: May I approach to provide the witness a copy?

THE COURT: You may.

THE WITNESS: Thank you.

MR. TAFT: You're welcome.

(Participants confer)

BY MR. TAFT:

Q So you agree that Nine Square, Nereid, and Aulos have no approved budgets, correct?

A Right.

Q Okay. I'd like to talk briefly about the work that you did to get comfortable with the proposed funding for these portfolio companies.

You agree that the purpose of the fund is to generate a positive return on its investments, correct?

A And the fund -- the fund, the partnership, has, you know, many purposes: To manage the portfolio companies, to -

- to do what it believes is best to, you know, advance the science; that, ultimately, it's to make money. It's, for sure, not a not-for-profit. But I think, you know, saying the purpose of the fund is one sentence is a little reductive. So there -- you know, it's much more than that.

MR. TAFT: Could we pull up, Mr. White, Exhibit 257? Which is the unedited, rough transcript of a deposition taken yesterday of Mr. Mandarino. And I'd like you to pull up Page 204.

THE WITNESS: Is it in my binder?

MR. TAFT: It is, under Tab 10.

THE WITNESS: Okay.

(Pause in proceedings)

BY MR. TAFT:

Q And if you start at the bottom of 203, I asked:

"Do you recall testifying that the purpose of the fund is not to make money?"

You said:

"I don't know if that's what I said."

I said:

"Okay. Do you believe that's true?"

And you said:

"No. I mean, the purpose of the fund is to -- is to make a ton of money, right?"

I said:

"And it does that by achieving a positive return on its investments, correct?"

A Yes.

Q You said:

A That's what --

Q "Right."

A That's what I said yesterday.

Q Yep.

So the fund cannot achieve that purpose merely by disbursing cash to portfolio companies; it needs to also consider whether those disbursements are likely to generate a positive return, correct?

A I'm sorry. Could you please repeat that? I didn't follow.

Q If the fund is to make a profit, to generate a return on its investment, it cannot merely focus on putting cash out into portfolio companies; it also needs to assess whether or not those investments are going to generate a positive return, correct?

A And it can't do that without putting the money out.

Q Okay. So it is your testimony that it should put the money out first, and then figure out whether or not those investments are going to generate a return?

A That's exactly not what I said.

Q Okay. So did you do an economic assessment of the

expected return of any of the amounts covered by the second funding motion?

A Again, I -- as I testified on direct and -- you know, as I testified on direct, I'm not a scientist. I relied on the business judgment of the people who are, who -- as, you know, you've heard some of that testimony today. And their business judgment is that it is worth and it is appropriate to continue the funding based on where each company is at the current level.

And that's how these businesses work, that's how venture funds work. There is never a guarantee -- there is never a guarantee, in any business, it's going to make money. But that's especially how venture funds work, is that they -- they -- they advance the science until they come to a go-to-the-next-step or cut-it-off decision.

Q Did any of the managers of any of the portfolio companies provide you with an analysis of the expected return of investments covered by the second funding motion?

A No.

Q Okay. And you and your colleagues at B. Riley also didn't prepare an analysis of the expected return from any of these investments, correct?

A Correct.

Q Some -- do you -- what is a "value inflection point" for an early-stage company?

A It comes -- it's the point where, you know, we'll value, and you think value can be achieved, do you keep investing.
Q Okay. And have you tried to familiarize yourself with the next value inflection point for the portfolio companies covered by the second funding motion?
A I mean, to the extent that it was covered and -- you know, and there's been a lot of discovery provided and a lot of explanation of what some of those points are, what aren't. Some of them are hard to determine, given the -- has Dr. Harrison testified to, the "mothballing" -- I think was the word he used -- mode. But those points are different among the companies. Some are readily identifiable; some aren't.

But again, I've relied -- as not being a scientist, relied on the business judgment of the -- of the -- of the experts that it was that, as of now, it's worth going, it's worth putting the money into, still.
Q Well, you verified an interrogatory response that asked for the identification of the next value inflection point for each of the portfolio companies, correct?
A Right.
Q So, in connection with verifying that interrogatory response, did you familiarize yourself with what the next value inflection point was?
A To the extent possible and the answers reflect that, so yes.

Q Okay. Some of these value inflection points may not be reached for several years, correct?
A That's absolutely right.
Q Okay. And indeed, there's no certainty that any portfolio company will actually successfully achieve the next value inflection point, correct?
A There's -- well, that's right, as there's -- you know, there's nothing that says it won't, either.
Q Okay. Your -- you have not attempted to assess the probability of any of the portfolio companies actually achieving the next value inflection point, correct?
A I mean, I've relied on the experts.
Q Okay. And did your interrogatory responses address the probability of achieving the next value inflection point?
A No.
Q So there's financial risk associated with this spending.
A There's financial risk in any venture fund associated with dollar one spending, yes.
Q Okay. And to your knowledge, nobody at B. Riley or -- has -- or yourself has assessed the amount of that risk with respect to this funding, correct?
A That's right.
Q Do you know if the independent director has done his own assessment of the potential return associated with this funding?

A I do not.
Q Do you know if the independent director has done his own assessment of the amount of risk that the funds that have been requested would be subject to, if they were spent in the manner proposed by the budget?
A I do not know.
Q Do you know whether the debtors will be calling the independent director to testify at today's hearing?
A I don't see him here, so I don't believe so.
Q Okay. With -- going back to the value inflection points. Did you do an analysis of how much money each portfolio company would require to reach the next value inflection point?
A No. What we -- what we focused on was the next, you know, from now through July, what's needed from now through July to continue the -- the progress and -- that was stalled, back starting last May or June.
Q It's your understanding, though, that, in order for all of the portfolio companies covered by this motion to reach their next value inflection point, would require hundreds of millions of dollars of additional capital, correct?
A Well, yeah, assuming that they keep going, right? To the extent that there's a no-go decision before that, it would take less.
Q So -- but if -- but the goal of this funding, as you

understand it, is to have all of the portfolio companies start down that path towards then next value inflection point, correct?

A That's one goal, yes.

Q Okay. And to achieve that goal would require hundreds of millions of dollars of additional capital, correct?

A Assuming there is a -- assuming that all the decisions are go along the line, sure.

Q Okay. In assessing the funding proposal, did you assume that that hundreds of millions of dollars of additional capital would become available?

A I mean, we -- we assumed that this was a path towards a successful reorganization, where, yes, then there would be -- down the road, there would be funding available to take -- to provide exit -- an exit facility. But it's a -- it's a -- just like a scientific experiment, it's a stage, right? You have to go from one to the other. So this is the first stage. You can't get to the second stage without the first.

Q Okay. The availability of that -- of those hundreds of millions of dollars of additional capital is not a certainty, correct?

A It is not.

Q Okay. So, in essence, you are -- it is an aggressive strategy to spend money that does not take into account the existing capital constraints of this fund, correct?

A No.

MR. WINSTON: Objection to the word "aggressive." Lacks foundation.

MR. TAFT: Okay.

BY MR. TAFT:

Q You understand that, as currently situated, the fund has -- is subject to constraints on its ability to raise capital, correct?

A I'm sorry. I don't understand that.

Q Okay. Do you understand that one of the holdings of the Delaware Chancery Court was that the Rigmora Limited Partners' obligations to contribute capital to the fund was capped at $2.425 billion?

A Yes.

Q And do you understand that one of the contentions that the GP was pursuing in that action was that, actually, there were hundreds of millions of dollars of more commitments that the Rigmora LPs had made?

A Yes.

Q And do you understand that the Delaware Chancery Court rejected that contention?

A I -- I -- I don't know if "reject" is the right word, but if they -- I think there's another 20 or $30 million available, so it's not the hundreds of millions.

Q Okay. And so that -- and you understand that the fund can't raise new equity without the consent of the Rigmora Limited Partners, correct?

A Well --

Q Under the LPA.

A We're in bankruptcy, so, you know, we're moving to a path of reorganization. So it doesn't mean that new money can't be raised, at all, in my view. You know, the APL [sic] is a contract, I guess. I mean, I'm not making a legal conclusion

But you know, the -- you know, there's bankruptcy law that, you know, could -- could make that less relevant, I guess.

So, you know, we are -- again, what we're doing, Mr. Taft, as we've talked about several times, on -- officially and in settlement negotiations, is trying to, you know, maximize the value of the company, maximize the value of all the entities. In our view, this is the path to do that.

Q Okay. The question was -- or my is: Do you have an understanding that, under the existing terms of the LPA, introducing new investors to the fund would require the consent of the Rigmora Limited Partners?

A I believe that's right.

Q Okay. And do you also have the understanding that, for the fund to borrow any money, would also require the consent of the Rigmora Limited Partners under the terms of the LPA?

A Under the terms of the LPA, assuming nothing else matters, yes, that's right.

Q Okay. So, under the terms of the LPA -- which has been, you know, in existence, modified, for, you know, well over a decade -- this is a closed-in venture fund, correct?

A I believe that's an accurate description.

Q Okay. So there is a -- there are limits on its ability to raise capital above what the parties have agreed to at the -- in their agreements. Is that your understanding?

A I mean, I don't want to make a legal conclusion, Mr. Taft, at all. But you know, I guess, if -- given there's, what, 22 amendments to the LPA? There could be Amendment 23, which -- which solves that, so it is -- I would never say "never."

Q You're talking about a hypothetical negotiated, consensual amendment that doesn't exist, that -- but that the parties could walk out the door and seek to negotiate. Is that what you're referring to?

A I'm talking about a path to get -- to get the funding for these companies done, how that happens. And I think may have used the word "miraculous." I don't know. Maybe that's right. But you know, there's a -- we're also in bankruptcy and we have the auspices of the Bankruptcy Code to -- to achieve things, as well, so I don't know if it would take a miracle.

Q Just jumping ahead a little bit, but we're on the -- you know, we're hypothesizing about what could be, theoretically.

If the Oaktree DIP were in effect, would oak -- would the DIP lender have approval rights over any settlement between my client and the debtors?

A They would, under the termsheet now, right.

Q Under the termsheet now? Okay.

So, under the existing LPA, there are capital constraints on the fund ability to -- or there are constraints on the ability of the fund to raise capital, correct?

A Yes.

Q And there is no certainty that additional capital will become available.

A There is no -- there is no certainty.

Q And the GP's position is that, after the contribution of the 97 million, the GP contends that there's about 25 million or so left of capital on the remaining subscription agreements?

A I've -- I don't recall the exact number, but it's -- my recollection, it's like twenty-five or twenty-eight, in that range.

Q Okay. But informing the funding proposal under the second funding motion, you have assumed that significantly more capital is going to be available for these portfolio

companies than is available under the current LPA, correct?
A I'm sorry, Mr. Taft. I -- is that a different -- I'm -- you know, respectfully, is that a different question than the one of a couple of minutes ago how -- when I answered? Because I want to be able to be responsive towards your question.
Q Just trying to sum it up.
You've assumed that hundreds of millions of dollars will be needed in order for the portfolio companies to all reach the next value inflection point?
A I think what I said was that, to the extent, you know, all the companies go and become clinical and commercial companies, that's what it would take. I didn't use "clinical and commercial companies." But what I said, to the extent that there -- the decisions are go, go, go, go, that's correct.
Q Okay. And that is much more money than is available under -- for investment under the existing LPA, correct?
A Right. That money doesn't need to be spent for, you know, several years. It's -- that's over like -- I don't know -- three to five years.
Q Okay. In your role as CRO, do you think it's prudent to pursue a funding program that relies on money that is not available?
MR. WINSTON: Objection. Vague and incomplete;

the question can't be answered.

THE COURT: I'll let you answer it, if you can. Overruled.

THE WITNESS: Well, could you repeat the question, please?

MR. TAFT: Yeah.

BY MR. TAFT:

Q Are you proposing a funding plan that, in order to achieve an economic -- you know, a positive economic return, or to achieve its goal of having these portfolio companies reach their next stage of development will require funds in excess of what is available?

A No.

Q Because you're counting on new funding becoming available through this bankruptcy process. Is that correct?

A This funding plan or the funding motion seeks authority to use the $97 million in order to continue the company's normal course of business using the debtors' business judgment to maximize value and to -- and to have the companies continue their operations.

Q Specifically, you're seeking to maximize the value of each individual portfolio company, correct?

A That's not what I said.

Q I'm -- that's my contention to you, that this funding plan --

A Oh --

Q -- is focused on the value of the portfolio companies and not whether the fund's interest in those portfolios is going to increase more than the amount of money they're asking -- being asked to put in.

MR. WINSTON: Objection. Argumentative. That wasn't even a question.

THE COURT: Yeah, I'm not sure that's a question.

MR. TAFT: Okay.

THE COURT: Sustained.

BY MR. TAFT:

Q With respect to the structure of the proposed funding, some of the money is proposed to go into portfolio companies in the form of loans, correct?

A For the non-budgeted companies, correct.

Q Okay. And then, for the other portfolio companies, where there are existing budgets, you're proposing to invest that money in the form of equity, correct?

A Through the Series A agreements, yes.

Q So there are Series A share purchase agreements between various -- between portfolio companies and the fund, correct?

A Right.

Q Okay. And to the extent those Series A agreements are in place and the full -- the maximum subscription amount has not been reached, you're proposing that the fund purchase

additional shares, equity shares, in those portfolio companies, correct? Sorry.

A That was a long question.

Q Let me take it in pieces.

Those Series A funding agreements state a maximum potential investment in each portfolio company, correct?

A I believe that's right, yes.

Q Okay. And some of these portfolio companies, the fund's investment, to date, is less than the maximum amount set forth in those purchase agreements?

A Right. And we have that detailed in, either the funding motion, or my declaration, that there is room between what was authorized and what we're seeking to fund.

Q Okay. So, to the extent there's room between the maximum amount that the fund could invest and the amount that the fund already has invested, you're proposing to put that money in, in the form of equity, correct?

A Yes.

Q Okay. Now, in your -- focusing on the -- was that decision -- what was the basis for deciding to put that money into companies in the form of equity, as opposed to a securitized loan?

A So the companies that had funded amounts and approved budgets, there is a Series A agreement that it could be done, so that's what should be done.

For the three companies that don't, that are the non-budgeted companies, you know, it was done through a loan and, you know, that will be, I'm sure, detailed very eloquently in the legal arguments after all the witnesses.

Q Okay. With respect to the loan, you would be the -- for the debtor portfolio companies, you would be the CRO for both the debtor and the CRO for the lender in that situation, correct?

A Well, I'm the CRO of the portfolio companies and the fund-level companies, yes.

Q And this would be a loan from the fund to the -- a debtor portfolio company, correct?

A That the loan is the mechanic using to fund it.

Q Okay. So you would be on both sides of that transaction, correct?

A I don't know if that's the way it's characterized, but I'm certainly the CRO of both companies.

Q Okay. Have you consulted with the independent director about the fairness of the terms of these proposed loans?

A I went through the funding motion with the independent director, that was focused mostly on the budget, and I believe he went through the terms of the -- of the funding with counsel.

Q Do you know that for a fact or --

A I --

Q -- that's your --
A I know he discussed the -- the funding agreement with counsel, so I believe that's what happened. But I -- I don't for -- you would have to -- I don't know.
Q Okay. The terms of those loans are exceedingly favorable to the portfolio companies, correct?
A It -- I don't know what you mean by "exceedingly."
MR. TAFT: Could we pull up, I believe it's, Mr. White, Exhibit 5, which is the original fund -- should be the original funding motion. No, I'm sorry.
We can move on.
BY MR. TAFT:
Q Do you believe that these debtor portfolio companies would be able to obtain financing on a standalone basis?
A On a one-by-one basis?
Q Right.
A Not from a third party.
Q So this is -- the proposed loans from the fund to the portfolio companies are not arm's length, don't reflect arm's length terms.
A I don't know if that's right.
Q Well, the portfolio company couldn't get those terms from any third party, right?
A It's a -- it's a mechanic, right? Because they're non -- there's -- they're non-budgeted companies. It's a -- it's

a mechanic, you know, to fund the companies. And I think they're favorable to the fund because the fund gets to achieve value through the continued, you know, progression of the company, especially Aulos, right? Which is a clinical stage company. And you know, you heard some testimony earlier about, you know, Nereid and Nine Square. So it's favorable to both. It's favorable -- I think it's exceedingly favorable to both the fund and the portfolio companies.

Q So the value that might be received by the fund is relevant to assessing the fairness of that transaction?

A Yeah, the -- the continued mission because, I mean, just there's a lot of money that's been invested in the fund that's in the fund, in each of the portfolio companies. And if those companies aren't funded, then presumably they have to get shut down. So then all that -- all that money is lost, right?

Q And just to circle back, you haven't analyzed the value that might be generated by these investment -- these proposed investments, correct?

A I -- I haven't. But I would -- I would say that a shutdown company is worth a lot less than, you know, a company that's continuing what it's supposed to be doing.

Q Is a shutdown company worth less than the amount of money that you're proposing to fund into it through the

second funding motion?
A Don't know.
Q Okay.
A But for Aulos, I would say, for sure, it's -- Aulos is worth more than would be getting put in, you know, given the testimony, at Nereid and Nine Square. I would imagine that it -- again, it's a prudent -- it's a prudent, prudent decision to put the money into those companies based on the experts that run the business. That would increase value to the portfolio companies and to the fund.
Q Okay. Have the Rigmora LPs offered to engage with the debtors about providing funding for Aulos in their Rigmora funding proposal?
A I would take exception to the word "engage." I know they -- I know they, you know, presented the termsheet, you know, sort of at the -- you know, on Friday the 13th. You know, we had a call with Rigmora -- the Rigmora principal and his financial advisor, which I can't get into the details of, obviously. But there's been no -- you know, there's been no engagement, other than the delivery of that termsheet and that one thirty-five-minute call.
You know, there's been, for example, you know, no redline of the funding motion, no -- no proposal for the funding motion, no redline of the Oaktree DIP, no discussions of the Oaktree Dip. It's been, you know, complete silence.

Q I'd like to quickly move through the basis for your recommendation that the fund purchase additional equity in bankrupt companies.

That is based on the existence of these Series A preferred share purchase agreements, correct?

A Right. But not all the companies are bankrupt, right? Aulos is not in bankruptcy, Replicate is not in bankruptcy, Aethon is not in bankruptcy.

Q Those would all -- Replicate and Aulos would be funded through loans, correct?

A That's right.

Q Okay. So, with respect to these share purchase agreements, you've reviewed one of them, correct?

A Yes.

Q You haven't reviewed all of them?

A Not before yesterday.

Q And have you reviewed them between 7 p.m. last night and today?

A I looked at a couple of the other ones this morning.

Q Okay. So you don't know whether there is any present obligation on the fund to purchase additional shares pursuant to those agreements, correct?

A Obligation? I don't know -- I don't want to tread on -- I don't want to make a legal conclusion.

Q Have any of the managers of any of the portfolio

companies told you that the fund is obligated to purchase additional shares in their companies?

A No.

Q Okay. The liabilities under those agreements were listed as contingent and unliquidated, correct?

A Are you referring to the statements and schedules, I believe?

Q Yes.

A I can't -- I don't know -- I -- the -- the statements and schedules listed -- okay. The statements and schedules for the -- for the fund, the partnership, in Schedules E, F listed the obligations remaining under the funding agreements as a contingent and unliquidated liability.

Q Okay. And you don't know whether further obligations under those agreements will ever arise, correct?

A I'm sorry. I don't follow --

Q You don't --

A -- what obligations --

Q You don't know whether, under those agreements, the fund -- the contingencies that would trigger an obligation to purchase shares will ever arise, correct?

A I don't -- I -- I don't -- I don't know what you mean by the word "contingencies." It's a confusing question, and I'm sorry, I can't answer that.

MR. TAFT: Can we turn, Mr. White, to transcript -

- Exhibit 257, Page 116, Row 23?

(Participants confer)

MR. TAFT: It's Page 116 of the transcript, under Tab 10 for those with a book.

BY MR. TAFT:

Q Do you recall that, yesterday, I asked you, starting at Row 23:

"Have you ever, in your role as CRO for the fund, conducted any analysis as to the likelihood of any of these portfolio company contingent claims becoming due."

And you said:

"No, not yet."

Correct?

A Right.

Q Is that accurate, that you do not -- you have not analyzed whether the fund has any present obligation to purchase additional shares under these contracts?

A Again, I'm not opining on obligation; that's a legal concept.

Q Okay. The fund elected not to invoke a contractual right in these funding agreements to terminate its obligation to purchase additional shares in portfolio companies that declared bankruptcy, correct?

A Yeah. That would be inconsistent with, you know, the -- the -- that would be totally inconsistent with the -- with

the business judgment of the -- of the fund and of management, to do the right thing and continuing to fund the portfolio companies.

Q Okay. Very quickly, with respect to the ATVM fee, you're familiar that your fund -- your funding proposal would call for immediate payment to Dr. Harrison's company of $750,000, correct?

A That's right.

Q And that is in connection with an annual management fee that is paid to his company ATVM?

A That's correct.

Q Okay. Dr. Harrison has received, last year, $1.6 million that needs to be offset against that -- his fees under the -- under that management agreement, correct?

A Yeah. And the budget reflects the offset of those fees.

Q The budget proposes that he -- that those amounts be offset at the end of the year, correct?

A His budget -- so his budget -- the budget reflects -- the fee is $3 million per, I think, Amendment 14 of -- I think it's Amendment 14 to the LPA, or maybe it's Amendment 20. I apologize, it's one of the two. And it says that the management fee is $3 million; and, if he receives any dividends or distributions, it's offset. And then, you know, it's paid, you know, the remainder is paid.

So he received about $1.6 million from some stock

options related to an old portfolio company that they sold, and we talked about it last time, that was sold, again, by the buyer, who bought it from ATP for, you know, a lot of money. And -- and so the management fee, rather than being paid -- the 3 million being paid, you know, quarterly, it's being paid, you know, a million four, $750,000 now and $650,000 in April, the first two quarters.

The -- the amendment says that the management fee could get -- you know, should get paid, I think, 25 percent, you know, in 25 percent increments. However, you know, in the past -- in the past several years, I think, since that amendment was made, the management fee had been paid all up front in -- you know, early in the year.

Q So you're --

A So that's --

Q -- not proposing to pay the management fee in accordance with the terms of the management agreement between Dr. Harrison's company and the fund, correct?

MR. WINSTON: Objection. That calls for a legal construction of a contract he did not sign.

MR. TAFT: He was just describing the terms --

THE COURT: He was just --

MR. TAFT: -- of the --

THE COURT: -- describing it.

MR. TAFT: -- contract.

THE COURT: Yeah.

MR. WINSTON: He can read it.

THE COURT: He was talking about.

So you can answer the question. Overruled.

THE WITNESS: I'm sorry. Could you repeat it, please?

BY MR. TAFT:

Q Your funding proposal does not propose paying the management fee in accordance with the terms of the contract between Dr. Harrison's company and the fund, correct?

A It's -- it -- I don't know if that -- no, that's not correct, in my reading of the contract, maybe I'm wrong legally, but in the reading of the contract.

Q Okay. Just the very -- the funding motion lists, next to each portfolio company, valuations as of December 31st, 2024, correct?

A That's right.

Q Those valuations are taken from the year-end financials of the fund, correct?

A They're -- they're taken from the audited financials of the -- at December 31st, 2024, audited by Grant Thornton.

Q Were those valuations prepared by the auditors?

A I believe the valuation -- generally, the way auditors work, they -- they engage, you know, a third-party valuation expert, and then the auditor relies on that expert.

Q Do you believe that the market value of these portfolio companies may be much lower today than reflected in those audited financials, correct?

A You know, it -- I haven't done the full analysis, but generally, yes.

MR. TAFT: Okay. I have no further questions at this time. Thank you.

THE COURT: Redirect?

MR. WINSTON: Very briefly, Your Honor.

THE COURT: Okay.

MR. WINSTON: I have maybe -- I have maybe seven minutes.

REDIRECT EXAMINATION

BY MR. WINSTON:

Q Mr. Mandarino, do you recall, on cross-examination, being presented with the Delaware Chancery Court's opinion?

A I do.

Q Do you have it in front of you? I think it's Tab 2 in your book.

A I will in a second. Yes.

Q And if you could turn to Page 66, that's what counsel took you to.

A 66?

Q Yes.

A Okay.

Q Do you have that in front of you?
A I do.
Q And do you recall the questions that the result or the decision was it has to meet capital calls within approved portfolio company budgets, correct?
A Yes.
Q Other than in this case, Replicate, based upon this opinion, right?
A Yes.
Q Okay. If you could turn to Page 67. If we could look at the first full paragraph. Counsel didn't bring you to this particular paragraph. Could you read it to yourself? And then I have a couple of questions.
A The one that begins with "Rigmora argues"?
Q Yes.
(Pause in proceedings)
A Okay.
Q Is part of the request in the funding motion today to mitigate against the harm to the portfolio companies?
A Yes. And maybe I didn't use those exact words, but it's the sentiment I've tried to convey.
Q Okay. Counsel asked you questions about restrictions under the LPA, correct?
A Yes.
Q And that includes a restriction on borrowing money

without the LP's consent, correct?
A Right.
Q Okay. In your -- you're not a lawyer, right?
A I am not.
Q Okay. But I'm going to guess, as a restructuring officer and financial advisor, you've been involved in DIP proposals.
A Hundreds, probably.
Q And you understand that the Bankruptcy Code requires the Court to approve a DIP proposal?
A Yes.
MR. TAFT: Objection.
THE COURT: What's the objection?
MR. TAFT: Seeks a legal opinion from a lay witness.
THE COURT: That the Code requires me to approve a DIP proposal? We'll take that as a given. Go ahead.
MR. WINSTON: Thank you. I thought the foundation of restructuring and financial advisor would have been enough.
THE COURT: Yeah.
MR. WINSTON: But I guess not.
THE COURT: Well ...
BY MR. WINSTON:
Q In your experience, has there ever been a situation

where a court has authorized a DIP proposal where there was a pre-petition contractual covenant against borrowing money?
A Absolutely.
Q Okay. There was questions about the amount of money to get to the next value inflection point, if it's go/no-go for all of them, could be hundreds of millions of dollars, correct?
A Yes.
Q Do you recall that testimony?
A Yes.
Q The DIP termsheet by Oaktree has a plan termsheet.
A It does.
Q And while it's not binding, does it provide a number?
A It does.
Q What's that number?
A Three hundred million dollars.
Q Does that give you any comfort that, if we can get past today and get to July 31st, there might be some interest in funding the portfolio companies for hundreds of millions of dollars?
A Yes.
Q Listening to the testimony of Ms. Karson about Evercrisp -- do you recall that?
A Yes.
Q Evercrisp is one of the companies that's a debtor.

A Yes.
Q And it's one of the ones that the funding motion seeks to borrow approximately three and a half million dollars. You heard that testimony?
A Yes.
Q Is that significantly less than the budgeted amount?
A Yes, it is.
Q Okay. And when you listened to Ms. Karson's testimony, does that give you more comfort that the proposal to give Evercrisp three and a half million dollars is a smart business decision?
A It does. And it's consistent with what I've heard before.
Q Okay. And then you heard Dr. Harrison's testimony?
A I did.
Q And Dr. Harrison's testimony included testimony about the success of ATP.
A Yes.
Q Does that give you comfort that it's a smart business decision to invest money in these early-stage company?
A A track record is, for sure, a data point and important data point. So, yes, it does.
Q And I now you're not a scientist
A I'm note.
Q And you've not been involved in a -- as a CRO of a

venture fund before, correct?

A Correct.

Q But is it your understanding that, for early-stage life science companies, sometimes it takes a number of years?

A It -- absolutely. And it's happened here. There's been -- it's entirely consistent of any venture fund --

MR. WINSTON: No further questions.

A -- technology --

Q Sorry.

A -- or anything else.

A I'm sorry.

MR. WINSTON: No further questions, Your Honor.

THE COURT: Thank you.

THE WITNESS: Thank you, Your Honor.

THE COURT: You may step down.

(Witness excused)

THE COURT: Okay. We're going to take lunch. And it's clear to me that the parties really haven't talked about whether there could be some consensus around a budget going forward. It's a little surprising. And I wanted Mr. Mandarino off the stand, so that he could speak. And I suggest the businesspeople talk.

We'll come back at 2 and we'll resume. But there has got to be a way, consensually, to get these parties from here to, quite frankly, July. But I don't even know that we

have to get to July. I think everybody realizes that next week is the bigger show. This is almost, in the context of this case, the use of the few million dollars, when 2.4 billion has already been invested, this is sort of an aside. I'm not saying it's unnecessary. It's almost an aside. And it just is surprising that there is no consensus about a budget that management can propose, and that is not -- and that Rigmora can agree to, and that Rigmora's terms are not overly restrictive. So I think the parties should talk.

But we'll be back here at 2. I will let you know that I'm going to check, I believe I have a five o'clock meeting that I have to be on, and I will double-check that, so that is some constraint on my time. So the litigators should get ready for the afternoon and the restructuring people and the businesspeople should talk.

We're in recess until 2.

(Luncheon recess taken at 1:42 p.m.)

(Proceedings commenced at 3:02 p.m.)

THE DEPUTY: Please rise.

THE COURT: Please be seated.

MS. GOOD: Good afternoon, Your Honor. Thank you for the indulgence of a little bit more time. The parties did talk, and I think, possibly, discussions are continuing, but we think it's time for us to move forward with the rest of the hearing.

The Debtors have put forward all of the witnesses that we have today. That doesn't necessarily close our case in chief because we do have to deal with the documents, the evidence, but we heard Your Honor, and we'll continue those discussions with the other side to kind of come up with the list of items that we need to move in and point Your Honor to.

And then we do -- we did designate, items from the Bogdanov deposition transcript, and we received some counter designations this morning. I think we need to review those and confer with the other side. And along with the other designations, I think we can get back to you on that.

THE COURT: Okay.

MS. GOOD: So I think at this point, we would propose to turn it over to the other side on their witnesses. We do have some objections to those, but we can just deal with them one-by-one as they propose them.

THE COURT: Yes, let's deal with them one-by-one.

Ms. Selden?

MS. SELDEN: Thank you, Your Honor. Your Honor, I just wanted to take one moment to confirm what Debtor's counsel said, which is that we've had some conversations during the break. We heard Your Honor loud and clear. Those are continuing. Mr. Aebersold from Rothschild is here, and Mr. Levinson is here. They're out in the hall.

THE COURT: Right.

MS. SELDEN: I want to reiterate: our proposal was, of course, authorized and made in good faith. I'm hopeful they'll keep that up while we continue with witnesses here.

Your Honor will have seen from our briefs that most of our opposition to the funding motion is legal. But we do have some testimony to offer today including through witnesses who are available to speak both on the DIP motion on shortened notice and on the funding motion. And Mr. Saltzman will be calling our first witness.

THE COURT: Thank you.

MR. SALTZMAN: Afternoon, Your Honor. The first witness we'll call is Professor Strabulaev.

MS. GOOD: And Your Honor? Your Honor, we do object to Dr. Strabulaev's testimony. We're happy to walk through that.

THE COURT: Okay.

MS. GOOD: So for Dr. Strebulaev's testimony, first, they're -- you know, and I think it's a preliminary matter that's pretty easy to deal with today. Section 5 of his report goes exclusively to the motion to dismiss. So we don't think that that should be considered today and that can be taken up next week.

With respect to the rest of it, you know, this is

an expert that we were not told about until Tuesday evening. We received his report.

THE COURT: And what is he opining on?

MS. GOOD: So Your Honor, we think that the items he's opining on are largely duplicative of the items that were presented to and decided by the Chancery Court. He testified at the Chancery trial and includes in this report that the basis for Rigmora's decision to cut off funding -- he talks about how it is not due to liquidity crisis brought about by the war in Ukraine. There's a chart in there on that that's virtually identical to one that was used as a demonstrative in the Chancery trial.

He also testified in the Chancery trial that a lack of outside interest in equity investment at the clinical and preclinical stage companies was due to a lack of value and testified about lack of a Russian effect on that interest and investment. And those are items that were considered by the Chancery Court in the opinion.

In the Chancery opinion those items show up at Pages 24 through 26 where -- and apologies; just flipping to those now -- where the Chancery Court determines that -- she addresses all of the points about their shifts.

And further, the items that are in his declaration section -- that was Section 3(a), and then the items that are in his report at Section 3(b), those are addressed in the

Chancery Court opinion at Pages 66 and 67, specifically the Chancery Court determines that ATP has proven by clear and convincing evidence that Rigmora must meet the capital calls within the approved portfolio company budgets.

And then going over, she says, the unbalanced equities favor ATP that Rigmora has funds available to meet the capital calls, that what the portfolio companies are developing are important treatments, and the public interest strongly favors preserving these potentially lifesaving research programs.

THE COURT: So what do you think the effect of those rulings are?

MS. GOOD: We think the effect is that, you know, to put this stuff in is, it -- well, it's preclusive effect. We think, Your Honor -- she's already decided these issues. There's res judicata --

THE COURT: She's decided that the reason that Rigmora cut off funding -- has she decided that?

MS. GOOD: She made specific findings about the cutoff of funding. And as a result of that being litigated in the Chancery Court, we don't need to have that relitigated here before Your Honor.

THE COURT: So what is it, specifically, that Chancellor McCormick found that is an issue preclusion? And what is the -- what's the theory?

MS. GOOD: The theory is that she made very specific findings based on the testimony provided by Mr. Bogdanov about the reasons that the funding was not provided.

THE COURT: Where is that?

MS. GOOD: That starts on Page 25, and that is Section F(1).

MR. SALTZMAN: Sorry, Counselor. Can you say that one more time?

MS. GOOD: Starts on Page 25 in Section F(1).

THE COURT: Okay. So this is where she talks about the change in investment strategy.

MS. GOOD: Yes.

THE COURT: How does that fit in with lack of outside interest, basis, or whatever it is that the doctor's going to testify to?

MS. GOOD: So that goes to Section 3(a) of the doctor's report. That's where, you know, he testifies at the Chancery trial about the reasoning for the cut off of funding, and that's included in this report in a largely duplicative manner.

THE COURT: Okay.

MS. GOOD: The lack of outside interest, that's in the Section 3(b) of his proposed report. And that is what is featured on the -- in the Chancery decision on Paragraph 66 and moving over to 67. Make sure I have that right. Oh, no.

And that's also at -- Your Honor, apologies -- Page 42 where she -- in the middle paragraph where she talks about four companies in clinical trials being promising. They are all in -- they all have generated interest from potential third-party collaborators.

THE COURT: Where she's talking about the clinical stage companies --

MS. GOOD: Yes.

THE COURT: -- right? Does she --

MS. GOOD: Yes.

THE COURT: -- talk about the preclinical stage companies?

MS. GOOD: Let's see. She talks about the preclinical stage companies in the paragraph preceding that. It starts on Paragraph 41. Okay. And that finding is just -- sorry -- just about the clinical.

THE COURT: Okay.

MS. GOOD: Moreover, we believe that the timing of this at this point in the proceeding is prejudicial to bring in a, you know, a new expert this late in the game.

THE COURT: Well, he's not so new, apparently. So --

MR. SALTZMAN: Your Honor, you stole my first point.

THE COURT: Okay. Thank you. Let me hear the

response.

MR. SALTZMAN: Your Honor, we're not seeking to relitigate anything that was decided in the Delaware Chancery Court. The only finding that was against us was the capital calls we paid them. We're not here to litigate whether the capital calls should have been paid, would have been paid, why they weren't paid. None of that is at issue.

Dr. Strebulaev is not going to cover any of that. We're going to focus his testimony largely on the DIP and the conflicts of interest inherent in the current DIP proposal as to the GP and the LP. I don't want to preview his testimony, but I do want to give you a window into what we'll be talking about.

The reason we've brought -- noticed him when we did was because we learned about the DIP proposal on Friday afternoon. We contacted counsel by email, I believe it is on Monday, to let them know that we were planning on calling Dr. Strebulaev. We took something like ten 30(b)(6) depositions yesterday. We took Mr. Mandarino's deposition yesterday. I took a deposition of Mr. Eisenberg (phonetic) on Friday. There was time to take depositions if people wanted to take depositions.

I tried to take Mr. Pole's (phonetic) deposition yesterday, but he did not appear, so I couldn't take his deposition yesterday. If they wanted to depose him, they

could have asked. But he is here, and he's ready to testify. And I think Your Honor will -- might find what he says interesting.

THE COURT: Okay. I'm going to permit -- excuse me -- to permit it. The DIP was filed last Friday, I think. And there is a request for a short notice and an interim hearing, and that's where we are. So I'm going to hear testimony on that timeframe. If there is particular part of the testimony you think is objectionable, I'll hear that as it comes up, but I'm going to hear the witness.

MR. SALTZMAN: Thank you, Your Honor.

THE COURT: Thank you.

THE CLERK: Do you affirm your word that you will tell the truth, the whole truth, and nothing but the truth to the best of your knowledge and ability?

THE WITNESS: I do.

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Ilya Strebulaev, S-T-R-E-B-U-L-A-E-V.

THE CLERK: Thank you. You may be seated.

THE WITNESS: Thank you.

ILYA STREBULAEV

was called as a witness and, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SALTZMAN:

Q Professor Strebulaev, did you prepare a report in this matter?

A I did.

Q And would it be helpful if I handed that report up to you?

A Sure. Thank you.

MR. SALTZMAN: Your Honor, may I approach?

THE COURT: You may.

THE WITNESS: Thank you.

BY MR. SALTZMAN:

Q Professor Strebulaev, did you prepare some slides today to assist in your testimony?

A I did.

Q Okay. Can -- oh, I have the clicker.

MR. SALTZMAN: Yeah, can you just advance to the next slide till I get my clicker?

BY MR. SALTZMAN:

Q You go over first your educational background?

A Of course. I got my BA in economics from Moscow State University, my MA in economics from the New Economic School, and then my MiF and PhD in finance from the London Business School in 2004.

Q And can you briefly describe your professional

experience as it relates to private equity or venture capital, I should say?

A Well, after I got my PhD in 2004, I joined Stanford University at the Graduate School of Business. So I've been there for 22 years. I'm currently the David S. Lobel Professor of Private Equity and Professor of Finance there. And I co-founded and I'm now the faculty director of the Stanford Graduate School of Business Venture Capital Initiative, which is really a research enterprise where my team and I are doing a lot of research work on all aspects of venture capital.

Q And have you conducted any academic research in your career?

A Yes, that's what I do most of my time.

Q And have you authored any papers in venture capitalists that are cited?

A Yes. Most of my work these days is on venture capital, as well as more broadly, private equity. So I've done a lot of work on how venture capitalists make decisions on the valuation of venture capital by companies and so on. And one of my academic papers, for example, where we studied the -- how venture capitalists make decisions is the most cited academic paper in the field of venture capital in recent years.

Q In the context of your experience in venture capital,

have you had a chance to learn about bankruptcy?

A Yes. Because venture capital is very risky industry, most early stage venture capital backed companies fail, shut down, and, of course, many of them file for bankruptcy.

MR. SALTZMAN: Your Honor, we offer Dr. Strebulaev as an expert on venture capital investing.

MR. BERDON: No objection to that.

THE COURT: Then he's so recognized.

BY MR. SALTZMAN:

Q Dr. Strebulaev, let's talk at -- start at a very high level. What is venture capital funding?

A Well, what venture capital funds do is that, effectively, they get commitments from investors. Those investors are called limited partners. So they could be pension funds or university endowments or family offices. And then they use those, that capital, to invest in what they believe promising early stage companies. We call them startups.

And it's very risky, as I mentioned; it's very uncertain. In my research, we find that up to 75 percent of all this early-stage venture-capital-backed companies fail, but -- and when they fail, very often there is really nothing left.

But some of these companies may become very successful. And the idea of the venture capital fund is to create a

portfolio of these companies, knowing that most of these companies may fail, but maybe a couple of companies will become very successful.

And then the purpose, of course, is to make money, to return the -- by investing in innovative companies to return money to limited partners.

Q And what do venture capitalists do?

A Well, venture capitalists, first of all, select portfolio companies to invest in. Then they negotiate investments. And then when they invest, they spend most of their time really managing those portfolio companies. For example, my research shows that active venture capitalists simultaneously sit on between six and ten boards of portfolio companies.

Q And you mentioned that venture capitalists sit on boards. I think we heard testimony this morning that Dr. Harrison didn't attend board meetings at believe -- I believe it was Evercrisp. Did you have a reaction to that?

A I was surprised to hear, if I heard correctly. In my experience -- and I know, of course, many venture capitalists, and I haven't mentioned that I've been teaching a venture capital class at Stanford for many, many years. And more than 500 of my former students became either venture capitalists or founders of venture capital by companies.

And of course, the main thing that venture capitalists

do after they invest is that they work with these portfolio companies trying to make them successful, and attending board meetings is very important.

Q You're aware that Debtors have submitted a proposal for DIP financing in this case, correct?

A That is correct.

Q Have you seen the term sheet the Debtors have proposed for DIP financing from Oaktree?

A I did.

Q Would the fund be a borrower under the proposed Oaktree DIP financing?

A That is correct.

Q In your experience, is it common for venture capital funds to borrow money?

A It is very unusual. Very, very uncommon.

Q And why is that?

A Well, as I mentioned, what venture capital funds do, they already invest in very risky companies. And if they were to borrow any nontrivial amounts of debt, that would make those investments even riskier.

As a result of this, investors/limited partners do not want venture capital funds to borrow, and most of them really never do borrow. And that would really change the economic expectations of limited partners if they were to be allowed to borrow.

Q Are there any structural economic reasons that funds are generally prevented from borrowing in particular as it relates to GP/LP dynamics?

A It is. So -- well, I already mentioned LPs. So LPs are the investors in the fund, and GPs are general partner, those that manage fund on behalf of the LPs. And the compensation of GPs is structured in such a way is that it creates potential for substantial conflicts of interest.

Specifically, the GPs are compensated based on the profit of the venture capital fund, which we call carried interest. And of course, this profit comes only from the successful companies. It does not come from unsuccessful companies.

So if you were to allow these venture capital funds to have a lot of debt, that would increase -- sometimes dramatically increase -- the leverage. And that, of course, is beneficial for the GP because this really increases the possibility of a carry at the expense of returning money to LP.

And so this is really the economics -- the economic reasons why this venture capital funds really don't borrow and, as I understand, really prevented from doing so in their contractual agreements.

Q Now, is proposed Oaktree DIP financing consistent with your research on how venture capital funds operate?

A No.
Q In your declaration, I think you offered an opinion that is a sign of lack of promise that portfolio companies for which Debtors are seeking funding had not, in fact, acquired third-party equity investments. Am I remembering that right?
A That is correct.
Q Is the fact that Oaktree is willing to provide DIP financing a sign that those portfolio companies actually do have promise?
A No, it is not.
Q Did you prepare a slide that helps explain why that's the case?
A I did.
MR. SALTZMAN: Your Honor, can I hand up the demonstratives to Your Honor, if that would be helpful?
THE COURT: Please. Thank you.
THE WITNESS: Thank you.
THE COURT: If you have an extra, can you hand one to my clerk, please?
MR. SALTZMAN: Yes.
THE COURT: Thank you.
BY MR. SALTZMAN:
Q Dr. Strebulaev, can you explain to me what you're trying to illustrate in Scenario 1 at the top of the slide?

A Well, Scenario 1 from the economic point of view is what typically happens in the DIP. So we have the DIP lender who is providing funding to what I would call a single Debtor. And that is because, first of all, single debt, of course, has collateral the DIP lender uses as security. Second is because the DIP lender believe -- has expectations that this single debt has a potential.

And so effective, DIP lender would do it because the amount of money that the DIP lender provides is less than the value of collateral and/or the expected value of the single Debtor. So that is very typical scenario, of course.

Q And is this type of arrangement, is that, in your mind, an efficient allocation of economic resources?

A It is because, if you think about this from the economic point of view, the DIP lender, who is an arm's length party, has to make an economic decision whether it is a good decision or a bad decision financially to extend credit.

And in this case, it is a good decision because if the DIP lender believes that the value of the collateral and the value of the single Debtor in the future is high enough, then the DIP lender is interested in providing this debt. But if the DIP lender believe it is not sufficient, then the DIP lender will efficiently decide not to provide credit.

Q And is this Scenario 1, does this describe your

understanding of the Oaktree DIP financing?

A It does not.

Q Okay. Let's look at Scenario 2. What are you trying to show in Scenario 2?

A I'm trying to show in Scenario 2, very importantly, I believe -- what I see here is really the economics of what's happening in this case. So we have the DIP lender, but now we have many filing portfolio companies. I believe there are ten portfolio companies, and also there is the fund.

Now, what I think is critical to understand from the economic point of view is that the fund here does have interest -- economic interest in this filing portfolio companies. But at the same time, the fund has other interests.

As I understand from counsel -- from your counsel, the fund has $97 million in escrow that could be used as collateral, but also the VC fund has interest in other portfolio companies. So the VC fund had interest in companies that I think were mentioned today like Braeburn (phonetic), for example.

And so from the economic point of view what's happening is that the DIP lender will not provide funding to every single individual portfolio company. The DIP lender will provide funding kind of generically to everybody here, the fund and ten portfolio companies.

And so just consider a scenario where, let's assume that filing portfolio companies here, like these ten companies, have no collateral at all, have no value at all, okay, DIP lender still -- it still may be efficient for the DIP lender -- but not for other people here -- for the DIP lender still might be a good idea to provide credit because, effectively, the DIP lender will use the interests of the fund in this other portfolio companies that are available and, potentially, the interest of the escrow to get this DIP lending back.

So it's -- from the economic point of view, it's a very, very different situation.

Q And is this structure -- it sounds like from what you're saying from this structure is that this may result in the DIP lender providing capital to portfolio companies that have no value. And I understand you're not opining whether they do or they don't. You're just saying, as an economic matter, this structure results in money going to companies that may have no economic value.

A That is correct. And I guess, this is really happening because the VC fund, as I mentioned -- the venture capital fund, generically, and also here, it's really from the economic point of view a different entity from the filing portfolio companies. And I think to see it clearly is important to realize that it has other assets.

So it has an interest in this other portfolio companies. I mentioned two, Galvanize (phonetic) and Braeburn, but actually there are more I think that are not filing portfolio.

Q So if this is not an economically efficient allocation of capital, why would Oaktree do it?

A Oaktree would do it because it's economic -- it's economically efficient for Oaktree because of Oaktree is -- it's providing amount of money at, of course, high-interest rates with a very high fees. But because the Oaktree believes that those interests in other valuable portfolio companies and this $97 million in escrow serves as a very good collateral for this funding.

So from the economic point of view, I think for me, it makes sense why somebody like very sophisticated investors such as Oaktree would propose such a transaction.

Q How about the GP? If it's not economically efficient, why would the general partner agree with structure like this?

A Well, that goes back to what I described as the conflict of interest between the GP and LP. So again, the GP has interest because the compensation of GP is going to depend on the entirety of the fund or he will also have pools -- pools of capital. But the fact that was happening here is that -- think about -- I like to give examples.

Let's consider a lottery ticket. And so think about a

lottery ticket where there's a very small chance that you might get $1,000. But in all the other situations you lose money.

And even though this is a negative proposition, you're going to lose money on average. The GP will do it here because the GP will not be losing the money in the situations where the lottery will not return your jackpot; somebody else will be paying,, and somebody else really will be the interest of LP in everything else.

Like, for example, in other valuable portfolio companies. But if there's a lottery ticket or there's a jackpot, then the GP will be compensated through the profits. So this is a very clear conflict of interest here between the GP and LP. And while it exists generically in the venture capital world, the conflicts of interest, I think, here it's from the economic point of view; it's particularly, I would say, extreme.

Q And given that testimony, I'm curious if you had any reaction to the testimony you heard from Mr. Mandarino that the fund and the portfolio companies can all be thought of as a sort of collapsed hole and that it's profit maximizing for everyone to just distribute from the fund to the portcos?

A Well, from the economic point of view, it doesn't make sense. It just is inconsistent with basic economics because, from the basic economics point of view, these are different

entities, and they're different entities because they have different assets. And so we have five portfolio companies, and you can maximize their value, and the Fund has interest in those portfolio companies. But the Fund has interest in so many other assets.

And what's really, I think, happening here is what economists would call is a transfer from a good asset to a bad asset potentially, which is throwing good money after bad money. And so I think from the economic point of view, you cannot maximize at the same time the value of these portfolio companies and the value of the venture capital fund. Those are just different entities.

Q If the structure became accepted in the marketplace or common in the marketplace, would that have any impact on venture capital investing?

A Well, let me step back by saying I've never seen the structure before. I've been doing this research on the venture capital space for many, many years. I've never seen anything like this. I think this would likely upend the expectations of investors, those limited partners, because again, when they invest in venture capital funds, they know that it's very, very uncertain business. They know that in fact most of the time their money is going to be lost.

But they hope that when the money will not be lost, which is when they hope that actually there are going to be

some successful companies, they will benefit. But this structure kind of affects, from the economic point of view, proposes is transfer from good assets to other assets. But I think this will mean if, let's say, if this were to become common, I think investors will think that the venture capital fund money is going to be more expensive.

So there will be either less likely to invest or maybe demand high premium to invest in those. And I think from the economic point of view in the future, this likely will lead to less investments in innovative companies such as --

Q If I understand you right, what you're saying is because venture capital funds -- because it's so risky in the first place, if when you hit, the money that you hit can then be used to recycle back against your will into risky companies. Then even when you hit, your money is still at risk, and that would discourage investing. Is that -- or not? I might have gotten it wrong.

MR. BERDON: Objection. Leading.

THE COURT: Yeah. Let's -- I'm going to sustain that.

MR. SALTZMAN: I'm sorry, Your Honor.

THE COURT: That's okay.

MR. SALTZMAN: I'll move on.

BY MR. SALTZMAN:

Q Why don't I ask -- can we take the slides down

please? How common is it for venture capitals to go into bankruptcy?

A I'm unaware of well, apart from this case, of course, I'm unaware of venture capital fund ever filing for bankruptcy.

Q And I know you discussed your experience researching and working in venture capital, researching venture capital. How many venture capital funds have you studied?

MR. BERDON: Your Honor. This is one of the topics that goes directly to the question of the motion to dismiss and the decision to file and the decision to fund the portfolio companies, which is the motion that's on today. And we would ask that this testimony be deferred until that hearing or ruled to be irrelevant and, therefore, inadmissible.

THE COURT: Why is it relevant today?

MR. SALTZMAN: I think it's relevant, Your Honor, because the DIP financing has the venture fund in bankruptcy and using its assets to secure loans to the portcos that, you know, there's testimony are not so successful. And the question is how common is this, and does this happen? And that's what we're exploring. But if it's better for Your Honor to do it next week, we'll follow your direction, Your Honor.

THE COURT: I'm going to let you explore this a

little bit. I'm going to overrule it for now.

MR. SALTZMAN: You know what? I'll make this my last question on the topic.

THE WITNESS: Can you repeat the question? I'm sorry, please.

BY MR. SALTZMAN:

Q Sure. You just testified that you're not aware of a venture capital fund filing for bankruptcy. And my question is just how many venture capital funds have you studied?

A Well, I think I've studied every single institutional venture capital fund in the United States that raise money. So it's tens of thousands of venture capital funds in the last 30 years.

MR. SALTZMAN: Your Honor, I'm done.

THE COURT: Okay. Cross.

CROSS EXAMINATION

BY MR. BERDON:

Q Good afternoon, Dr. Strebulaev. How are you today?

A Good afternoon.

Q It's nice to see you again. Dr. Strebulaev, when was the last time you did a search to see if there were any venture funds that had filed for bankruptcy?

A I haven't.

Q I don't have real time, but I think you said tens of thousands of venture funds, you weren't aware of any that had

filed for bankruptcy. Is that right?

A That is fair to say. I'm unaware of any venture funds that filed for bankruptcy.

MR. BERDON: Your Honor, may I approach you?

THE COURT: You may. Thank you.

BY MR. BERDON:

Q Dr. Strebulaev, can you just take a look at page two? I'm sorry, page one. Arabic number one of this filing. Do you recognize this is a original Subchapter V plan reorganization of a company called TSB Ventures LLC?

A I believe so. I've never seen this document before, but I believe so.

Q I understand. It took us about ten minutes to find this. Would you agree with me that under 1.2, Nature of the Debtor's Business, it says, the debtor is a private equity fund that invests in early-to mid-stage companies?

A It just says private equity fund. Correct.

Q Is there a substantial difference between a private equity fund and a venture capital fund in terms of the risk of the investments that they make?

A That depends how they define private equity. But I think typically private equity would invest in companies that are less risky than venture capital funds.

Q Exactly. So venture capital would be even riskier; is that correct?

A Again, that depends how you define private equity, but I think venture capital funds are typically riskier than a typical private equity fund.

Q So Dr. Strebulaev, you don't have a medical degree, do you?

A I don't.

Q You don't have a biomedical engineering degree?

A I don't.

Q You don't have any degrees in the life sciences, correct?

A That is correct.

Q And you haven't taught any courses in venture capital investing that are specific to biopharmaceuticals or life sciences, correct?

A Not specific. Of course, the course that I teach on venture capital at Stanford also covers investing in biotech, life sciences, and more broadly healthcare. And of course, many of my former students became venture capitalists in this sector. But no, we don't cover specifically life sciences.

Q The answer to my question is no.

A Not specifically, no.

Q And biotechnology has never been a specific research area of yours, correct?

A That is correct.

Q And you don't consider yourself to be an expert in

biotechnology investing, correct?

A If it is specifically whether I specifically studied biotechnology investing, the answer is no. Again, I studied venture capital investing, and within venture capital investing, I studied different aspects of different industries. For example, IT versus healthcare, but not specifically biotechnology.

Q And you heard the testimony here today of Dr. Karson, correct?

A Yes, I was here.

Q And there's no factual basis for you to disagree with any of Dr. Karson's testimony here today, correct?

A I don't believe so. That's correct.

Q And you heard Dr. Eisenberg's testimony here today, correct?

A I did.

Q And you have no factual basis to disagree with any of Dr. Eisenberg's testimony here today, correct?

A That is correct.

Q And Dr. Eisenberg has served at Eli Lilly and Amgen and been in a position to either greenlight or kill dozens of products, correct?

A I presume so. I don't really know, but I presume so.

Q You testified a little earlier about an inherent conflict between the GP and the LP essentially because under

your construct, the GP gets more shots on goal, more lottery tickets the more money they invest, correct?

A That is not entirely correct. I think --

Q Can you explain your lottery analogy to me then?

A Of course. The GP makes decision on behalf of the fund, which is effectively on behalf of the LP or LPs. And the effect of the GP does not invest its own money.

So if the fund invests and loses money, then the GP is not going to lose any money. It is the LPs going to lose the money.

But if the fund is going to be successful, which is the lottery jackpot, then the GP will get some part of the profits. And so this creates what we call economic asymmetry, which is you get profits, but you don't incur losses. And this is not my construct, of course; that is the basic construct in economics.

Q It's also basic construct of the venture capital industry, correct?

A Well, that is partially correct, I would say. First is that I think GPs often co-invest together with LPs. Typically they co-invest non-trivial amount of their own money. And second, while it is generically case in the venture capital industry, is that the GPs will benefit from the portfolio companies. Typically what's happening, of course, is that at the time of the first investment in the

portfolio company, the GP believes that every single portfolio company expected to be profitable, even though the GP knows that many of those companies will eventually become unprofitable.

So I think that is a big difference between what's generically happening in the venture capital industry. And I think what might be happening here.

Q Okay. Let's just tell the Judge something that's true. Dr. Harrison has $54-plus million of his own personal wealth invested in the fund, true?

MR. SALTZMAN: Objection. That was a little argumentative. And the witness can hold his own, but it was argumentative.

THE COURT: It was. You can say it more neutrally.

BY MR. BERDON:

Q Dr. Strebulaev, would you agree with me that, during the last case where you testified, you heard testimony that Dr. Harrison has $54 million of his own personal worth invested in the fund as an LP.

A While I believe it is true, what is really important to mention is that the way ATP is structured is that there is no one carry or one profit. It's structured as pools, which I think I mentioned it today. So there's pool V1, V2, V3, pool (inaudible), et cetera. And it's very important from the

economic point of view, which means that the GP here, so Dr. Harrison, and his entities get different shares of profit and contributes different to different pools.

So if I remember correctly, and I think we discussed this at my deposition of my testimony in the Chancery Court, Dr. Harrison has different proportions. And so while he benefits from pools V1, V2, and V3 from the carrier from the profit, I believe that at least in some of those pools he did not contribute.

Q Understood. But he does have a nontrivial amount of money invested in the fund at $54 million, correct?

A I believe that is correct.

Q Okay.

A The entire fund, not the pools, correct.

Q It's also important to note that there is something called a high watermark, right?

A That is correct.

Q Okay. So Dr. Harrison doesn't get any profit unless and until the LPs receive a return of their contributed capital, right?

A While it is correct, this in fact -- thank you for pointing this out counsel, this really increases the conflict of interest. Because what's happening here is that if there's a high watermark, which means -- what high watermark means kind of is the following, is that if I give you 1,000,

I really need to let's say hit 1,200 before I get profits. So this is a high watermark above my investments.

But let's say, I know that all my investments combined are less than 1,200 now, let's say, but I can take money from somewhere else. So because all my investments are below 1,200, I don't get any profit at all.

But if I can take money from somewhere else and invest in these companies that are not performing well, the miracle can happen. I still can get a lottery jackpot. My investments still -- not my investments, sorry, the value of these investments might go above 1,200 and then I will hit the high watermark. So the existence of high watermark only tends to increase the desire of the decisionmaker, in this case the GP, to increase the risk of the portfolio.

Q I think that's an interesting point. One of the things that's different about this fund compared to others is that up until the Chapter 11 case, each and every budget for each and every investment had been personally approved by Dmitry Rybolovlev himself, right?

A I'm not really sure about Mr. Rybolovlev. I believe that as far as I understand, I believe that in this fund, which makes it a bit unusual from the typical venture capital fund, the LP had the right to approve the budgets. I'm not very sure about the individual person.

Q I'm not talking about the LP. The testimony at the

Chancery Court case was that prior to the funding of any company, Dr. Harrison and Dr. Rybolovlev met personally, and only upon Dr. Rybolovlev's personal approval of an investment did it then get papered and a budget approved. Are you aware of that testimony?

A I believe I am. Frankly, I don't remember this, but I believe I am.

Q Now in your declaration that you submitted today, you make some assertions about what we call the Russia factor. And I'd like to talk to you a little bit about that.

MR. SALTZMAN: Your Honor, I think that portion of his testimony was objected to, and I did not approach it or discuss it. So this is well beyond my direct.

THE COURT: I don't remember this part of the testimony.

MR. BERDON: Well, I believe he did talk about the fact that the lack of third-party interest was an in indication of a perceived lack of value of the assets.

THE COURT: Did I hear that in testimony?

MR. SALTZMAN: I believe the testimony I elicited, Your Honor, was whether the presence of the Oaktree DIP financing was a reason to think that there was third-party interest.

THE COURT: Right.

MR. SALTZMAN: And elicited that that was not the

case. I don't believe I got into the Russia effect at all.

MR. BERDON: I'll move on.

THE COURT: Okay.

MR. BERDON: Pass the witness, Your Honor.

THE COURT: Thank you. Redirect?

MR. SALTZMAN: Very brief, Your Honor.

REDIRECT EXAMINATION

BY MR. SALTZMAN:

Q Dr. Strebulaev, understanding that you've never seen the court filing that was handed up to you, can I just ask you to turn to page one of that?

A Page?

Q One.

A Yes.

Q And I would just like to ask you to look at the second paragraph that says this case was commenced under Subchapter five of Chapter 11 of the Bankruptcy Code. Subchapter 5 enables small business debtors to more effectively reorganize in Chapter 11. Do you see that?

A I do.

Q Is the case we're in now, as you understand it, a Subchapter five of Chapter 11 case?

A Well, I'm not a professional lawyer, but as I understand, it isn't.

Q And if you go to the Legal Structure and Ownership

Section, 1.3, what type of entity is the debtor?
A It says it's a Louisiana limited liability company that was organized in 2007.
Q And currently its sole member is a limited liability company as well, correct?
A That is correct.
Q From this, is it possible to tell whether there are limited partners of these companies?
A I don't really no.
Q No further questions.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you.

MS. SELDEN: Your Honor, while they're getting ready for their next witness, you did note, when we broke for lunch, that you might have a stop time. And I did want to just ask about that so we can plan accordingly.

THE COURT: So I have a 5:00. I do have a 5:00 commitment, which I might be able to get out of early, but I at least have to start in it. So I want to see where we are. I want to see what's -- where we are with the evidence and think about where we might be with the argument.

MR. SALTZMAN: Your Honor, the next witness we call is Dr. Illona Rimm.

THE WITNESS: I'm on video. Can you see me?

MR. SALTZMAN: We can. Sorry.

Your Honor, we'd like to call Dr. Rimm as our next witness. Is that acceptable?

THE COURT: Well, I'm not sure I knew we had anybody by Zoom.

MS. SELDEN: Yes, Your Honor, we do object to this witness by Zoom. Your Honor, this again is another witness we found out only recently would be testifying. The report that was submitted is not in support of the debt. It's in support of the second funding motion, which has been on file for now 21 days.

So we find that this late notice is inappropriate. That Rigmora decided to select a new witness at the last minute because they had selected a witness who was conflicted previously. It should not be something that is held to prejudice the debtors. And so we, you know, we object to having this proceed by Zoom without us having the opportunity to cross the witness live in the courtroom.

THE COURT: Thank you.

MR. SALTZMAN: Your Honor, the reason we're calling Dr. Rimm on short notice is we had initially put up Dr. Liu. I think Your Honor has received voluminous papers on that saga. And as we were approaching trial, there was uncertainty as to whether Dr. Liu would be able to testify.

We tried to address the concerns about information sharing between RTW and my client and whether there was some

sort of nefarious plot in the works. We agreed to produce all our documents between us, my client, and RTW. We were unable to get debtors comfortable that Dr. Liu should proceed.

And so, given the time, we pulled him down and we put Dr. Rimm up. Dr. Rimm is appearing on vacation from Belize at the very last minute. In our letter to Your Honor, we did apprise the Court that she would be appearing by Zoom. We apologize for not making a separate formal application because that admittedly would have been better.

But given that Dr. Rimm is here to talk about the topics she was deposed in connection with Chancery litigation, and we think her testimony will be helpful to Your Honor. And again, it's only last minute because our previous expert, who we would have been happy to put up, we agreed to pull down as a courtesy.

THE COURT: You should realize that once -- for example, you said Dr. Liu, and your letter was withdrawn. I didn't read the rest of the letter. Okay? I know it went on for, like, three pages because you felt the need to talk. So I stopped reading.

Okay? There's only so much time. Like, y'all have teams. It's me and my law clerk. Okay? So I stopped reading. So tell me what this testimony is supposed to be about. What's the topic?

MR. SALTZMAN: Sure. Yeah. What we're going to cover is whether -- counsel is right in saying this is going to the funding proposal, and the question that Dr. Rimm will be addressing, if she's permitted to address it, is whether a prudent investor would invest in these companies given their past performance and history.

THE COURT: Okay. The only reason that I'm going to permit this is there was a flare-up with Dr., Mr., whatever, Liu. And I'm only going to permit the Zoom appearance because she was involved in the Chancery Court case, and you've had an opportunity in person to cross-examine her before. I will say that I do not permit remote testimony as a matter of course.

I find it unhelpful. The rhythms are not the same. You all know it is very different when you're in the courtroom, and it's more difficult to assess the witness. So to the extent I have any doubts, it goes against the witness. But you have deposed her presumably before, and she was on the stand in the Chancery court?

MR. SALTZMAN: Yes, Your Honor.

THE COURT: So I'm going to permit it. Otherwise, I would think it would be wholly unfair, and I wouldn't permit it.

MR. SALTZMAN: Thank you, Your Honor. And we do apologize. This is obviously a suboptimal situation.

THE COURT: For the witness too.

MR. SALTZMAN: Yes, Your Honor.

THE COURT: Okay.

DIRECT EXAMINATION

BY MR. SALTZMAN:

Q Dr. Rimm, could you please introduce yourself to the Court?

A Yes. My name is Dr. Ilonna Jane Rimm.

Q And can you please describe your background and qualifications?

A Certainly. I know this information is on a slide. Can you all see the slides?

Q You know, I should have asked you that question. Did you prepare any slides today, Dr. Rimm, in advance of your testimony?

Q Yes.

A Would it be helpful if we put those slides up?

Q Yes, please.

MR. SALTZMAN: May I approach, Your Honor?

THE COURT: You may. Thank you.

BY MR. SALTZMAN:

A If we go to the next slide, it contains my background, which I will describe. I have an MD and a PhD from Harvard University with a PhD in immunology. I also have the Chartered Financial Analyst Designation from 2014.

Q And can you please describe your work experience?

A Yes. I'm going to describe it retro-chronologically. Most recently, I have been working in public equity. Specifically, I worked on the buy side at Trillium Asset Management, where I was the healthcare portfolio manager for a portfolio that contained $250 million of healthcare assets. I also worked on the sell side in public equity.

Prior to that, I worked in venture capital, and prior to that, I worked at Wyatt Pharmaceuticals, running clinical trials and also doing business development deals in genetics.

Prior to my last 25 years associated with biotech investing, I was a physician at the Dana Farber Cancer Institute, where I took care of children and adults on a stem cell transplantation service. I supervised the care of 20 terminally or seriously ill patients and supervised a staff of 50 physicians.

MR. SALTZMAN: Your Honor, we move Dr. Rimm as an expert in biotech investing.

MR. BERDON: I have voir dire on this, Your Honor.

THE COURT: Voir dire.

MR. SALTZMAN: Can we take the slides down, please?

MR. BERDON: Good afternoon, Dr. Rimm. Your Honor, I don't want to stand on ceremony, but could someone swear the witness?

THE COURT: Oh, that would be helpful. Thank you.

THE WITNESS: Thank you.

THE CLERK: Ms. Rim, please raise your right hand. Do you affirm your word that you will tell the truth, the whole truth, and nothing but the truth to the best of your knowledge and ability?

THE WITNESS: Yes.

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Yes. My full name is Ilonna Jane Rimm. My last name is Rimm, which is R-I-M-M.

THE CLERK: Thank you.

ILONNA RIMM

Was called as a witness and, after having been first duly sworn, testified as follows:

VOIR DIRE

BY MR. BERDON:

Q Dr. Rimm, in forming your expert opinions that you're offering today, you never examined how Rigmora actually used budgets or milestones in connection with making its investment decisions, did you?

A Yes, I have a lot of information on that, although that is not the material that I prepared for today. I did learn a lot about that topic for the Chancery Court case, and I opined related to those issues for the Chancery Court case.

Q Do you have Dr. Rimm's deposition transcript? Can you pull that up on Page 48, lines 25 through page 49, line five. Dr. Rimm, do you recall that we met before and you gave a deposition in connection with the Chancery Court case?

A Oh, certainly, Mr. Berdon. I recall that.

Q Do You recall you were in person with me there and you were under oath, right?

A Yes, that is correct, sir.

Q And you did your best to give truthful answers at that time. Am I right?

A Yes, that's correct.

Q Taking a look at the bottom here, my question is did you examine how Rigmora itself used budgets and milestones in connection with making its investment decisions? And the answer you gave was no. Do you recall my asking you that question? You giving me that answer?

A No, frankly, that deposition, I believe, occurred on August 29th, which is some months from now. And I, you know, it was many hours of deposition. So no, I do not recall this particular question.

Q And you didn't familiarize yourself with the budgeting process that Rigmora and ATP used when they were deciding whether to fund a new startup. Isn't that right?

A No, that is not correct. It's difficult for me to know because in order to respond to you, I need to discuss issues

that were discussed in the Chancery Court, which is not the material that I was asked to speak about today.

The issues that you're referring to is that there was an investment memorandum and a process of budgeting that was, as you say, relatively remote from what I was asked to discuss in August and very far remote from the current information. So I'm probably not going to be able to answer your question very well because I was asked to speak on other topics.

Q Well, let me go back to your deposition. Can we get page 54, lines 11 through 21? Starting at Line 11, question. In connection with your rendering of your opinions, did you familiarize yourself with the budgeting process that Rigmora and ATP used when they were deciding whether to fund a new startup? After an objection. Answer: I specifically did not review the details of that process. Again, I worked more from my industry knowledge of how that is managed. Do you recall my asking that question and your giving that answer?

A I wish I could do better. Mr. Berdon, again, this was seven months ago. It is true that I specifically did not review the details of the process at that time, and I recall that's correct. And again, I have really extensive, you know, 25 years of how these things are usually handled.

I have worked in a venture capital firm. So I worked from my basic knowledge of how venture capital firms usually

worked and added on the approximate information again related to more on ATP.

Again, I was not specifically asked to opine on that. So that's probably all the information I can give you about that question.

Q Dr. Rimm, in preparing your opinions that you're going to offer here today, did you do anything to update the information that you had stemming from when you submitted your original report back in August 2025?

A Yes. I did things to update myself as to what had happened in the intervening seven months. Is that what you're asking?

Q Yes. What did you do to update your knowledge of the portfolio companies since offering your last expert reports over the Summer of 2025?

A I reviewed some of the information about portfolio companies that became available between August and January, only a limited amount of that information, but there was information that I could review.

Q Have you reviewed the information about the research plans that are currently in place or proposed to be in place in connection with the company's request for funding that are being made in the motion today?

A Yes, I have reviewed the second funding motion, and I have reviewed the research plans in the second funding motion

in detail.

MR. BERDON: Your Honor, we'll withdraw our objection to Dr. Rimm testifying. Forgive me; wait one second.

BY MR. BERDON:

Q Is it true, Dr. Rimm, that you've never been asked to perform due diligence in connection with venture capital investment in a startup?

A I'm an investor in general. I've done a lot of due diligence in companies. I have not done the job you specifically are describing, which is a venture capital firm investing me, asking me to do due diligence. Now, I did do that work when I was employed by a venture capital firm, which was between the years 2004 and 2006.

Q So that's 20 years ago?

A It's 20 years ago, and I did a limited amount of it then. I haven't done it since then. I do due diligence for my own investments.

Q And is it true, Dr. Rimm, that you focus your analysis mainly on the portfolio companies' use of milestones and adherence to milestones?

MR. SALTZMAN: Your Honor, I was going to say this sounds a little more like a cross voir dire at this point.

THE COURT: Sounds like a cross.

MR. BERDON: Your Honor, I'll rest on my voir

dire.

THE COURT: Okay. I understand the objection to be withdrawn, so let's go forward. Or I guess there's no objection, so let's go forward. And she's so qualified.

DIRECT EXAMINATION

BY MR. SALTZMAN:

Q Thank you, Your Honor. Dr. Rimm, did you perform an evaluation of certain of ATP's portfolio companies in connection with the opinion you're offering in this matter?

A Yes, I did.

Q And can you describe the evaluation that you performed at a high level?

A Yes. I was asked to evaluate the second funding motion and evaluate the research plans of six portfolio companies. I was asked whether a prudent investor would continue to invest in the R&D budget specifically of those six portfolio companies. I reviewed information about the research plan for those six portfolio companies.

Q And did you reach any conclusions, again at a high level, on the basis of that analysis?

A Yes. I reached a very clear conclusion. No prudent investor would ever invest in the R&D budget of these six portfolio companies at this time.

Q I take it that if investments are not made in these R&D budgets, these portfolio companies may lose -- may not be

able to access R&D funding. Is that fair?

A Absolutely. That's likely, and it is certainly fair.

Q Is it common for early-stage biotech companies to lose funding if they fail to progress on their research timelines?

A Yes, it's extremely common. So I would say it's between 50 and 90 percent of early-stage biotechs fail for just that reason.

Q And did you prepare any slides to assist you -- well we have your slides? Let's advance to the next slide. Dr. Rimm, this is the first of six slides that we'll walk through. Can you explain what is the -- there's a sort of teal color that says Aethon.

Q What is Aethon?

A Aethon is a small private company that was founded in 2022 to work on oncology. The oncology programs it works on are listed below. The total investment to date is $21.200 million.

Q And then that was that's the, I guess, left side of the slide. On the right side of the slide, there's blue text that says, delay in achieving next valuation inflection point. Can you explain what the first row in that graphic is showing?

A Yes. So the original expectation, which was defined when the company was set up in 2022, was that the company would have certain conclusions it would reach. It would have

certain milestones it would reach.

So for example, the company was going to have a development candidate nomination, which is DCN, in the third quarter of 2024, at which point $9 million would go into the company. And in the first quarter of 2026, they were going to file an IND, an Investigational New Drug application with the FDA. And the cumulative investment at that point would be $19 million.

Q And just a little bit of industry jargon, can you describe where in the investment timeline a DCN falls?

A Yes. A DCN is in the early stage of preclinical companies. So it is both before the IND, it is before the Phase I trials. It is an early-stage scientific milestone that is described within the company. A particular chemical is chosen as being likely to be able to become a drug. So it's a development candidate, meaning this candidate will be used for development. And they've chosen a particular molecule, and that's the nomination part. So it's development candidate nomination. An early chemical form has been chosen to take forward.

Go ahead, sorry.

Q And then once there's a DCN, what's an IND?

A So an IND is further along the development process. So a DCN undergoes a series of scientific treatments and examinations. If the DCN is potentially clinically valuable,

then a large series of documents is assembled into an investigational new drug application, which is then submitted to the FDA. Excuse me. If the FDA does not respond in 30 days, then the company may start its Phase I trial.

This is a major inflection point valuation for the company if they pass the IND and move into the Phase I trial. So huge amounts of money, time and energy are put into this issue at both the company side and the FDA side.

Q And if a company does not have a DCN, can it file an IND?

A Usually not. I mean, a company would usually only file an IND after they have done a series of preclinical things, including the DCN.

Q Okay. And so what is the red text between the two rows indicate?

A I'd like to talk about that for a minute. As of the current quarter, neither the DCN nor the IND have been completed in Aethon. Now this is impressive and it is a substantial delay. As we can see, the DCN was supposed to be completed in 2024. It is two years later and the DCN is not complete. And since the DCN isn't complete, of course, the IND is not complete.

Q Let's move to the next slide. Sorry, before we move on, so what conclusions, if any, did you draw about whether it would make a prudent investor would contribute more money

to R&D investment as it relates to Aethon?

A I concluded as in the revised expectation, we see that the second funding proposes that this company had more money invested to have a DCN later this year and an IND in 2027 or later.

I can tell you that no prudent investor would put money into this company. So this is a company that used $21.2 million and did not even come up with a DCN, let alone an IND.

So when a company starts, the management can sort of write their job. They can say, we will do this amount of work by this date. This, evidently, this management, and this scientific problem just didn't work because they did not complete their DCN.

So as an investor, if I say, well, this management and/or the scientific problem didn't work, and this team cannot complete what they say they do, then I don't give them any more money. And most prudent investors wouldn't. Because prudent investors are looking for companies that can complete milestones on time and this company cannot.

Q Okay, let's move to the next slide. Dr. Rimm, you see there's a teal line that says Aperture. What is Aperture?

A Aperture, again, is a small private company founded in 2020 that's in the oncology space that works on the two molecules below. The total investment to date has been

$31.200.

Q And shifting over to the right side, what does that first row show?

A The first row shows that this is a company that expected, when they were founded in 2020, that they would file an IND by the second quarter of 2024. There was a budget for $34 million to do this. As of the first quarter of 2026, the IND has not been completed. And that's, again, more than two years, almost two years late, and isn't done.

Q And when does the second funding motion suggest that an IND might be filed?

A So the second funding notion suggests that an IND might be filed in 2027, year-end funding. However, a prudent investor would never provide R&D funding to this company. This company has been active for four years. They have spent $34 million and they have not completed an IND. And a prudent investor would not invest money in them because they are unlikely to generate a return. And an investor is always very aware of whether a company will generate a return.

Clearly, it's difficult for biotech companies to generate returns. There are lots of companies who can't do it. Prudent investors are always looking for companies who can do it. This company has no reason for us to think that this company is capable of delivering anything on time.

Q Let's move to the next slide. This describes

Evercrisp. What is Evercrisp?

A Evercrisp is a small private company founded in 2021 that's focused on genome editing. And the goal of this company was to do genetic editing across various target tissues via a targeting approach. The total investment to date is $28.9 million.

Q And moving over to the right side, can you briefly just describe what the two rows show here?

A Certainly. The original expectation is that the first IND would be completed in the second quarter of 2024, at which point -- and there was an original budget for that of $33.5 million.

We can see that as of the current day, an IND has not been completed. So again, this is another company of the many here that I'm discussing that set goals with the budget. They spent the budget and did not succeed in completing the goals.

Q And does the conclusion you reached as to the first two companies we looked at the same for Evercrisp?

A Yes, it is. A prudent investor would not give this company any more R&D money. And there's no reason for them to be able to complete an IND in the future if they couldn't do it in the past. They had $33.5 million to do it.

Q Okay. Let's look at Initial. Can you describe what the slide shows about Initial?

A Certainly. This is a company founded in 2020, and it's an oncology company, and it's a third different mechanism oncology compared to the previous two companies. Total investment to date has been $55.6 million.

Q What does the right side show?

A The right side shows that the original expectation set in 2020 was that a DCN would be generated. Again, this is an early-stage clinical molecule that's a potential clinical candidate. So its development candidate is nominated at the second quarter of 2024.

And as we see below, as of today, they have not nominated a DCN, and they have not completed this work. The revised expectation refers to the fact that the second funding motion proposes to give them more R&D money so that they theoretically could complete a DCN sometime out in the future.

But I can assure you that no prudent investor would ever do that because we have a company that spent $55.6 million and has been unable to come up with a DCN. So why would anyone give them any more money? I certainly wouldn't, and no prudent investor would.

Q Okay, I think this is the last company we're going to look at. Can you just describe what this shows about Marlin Spike?

A Certainly. Since it's a small private company founded

in 2022 that works on a very esoteric of RNA splicing and C-MYC-driven cancers. The total investment to date is $29 million.

Q And on the right side of the slide, what does it show?

A It shows that the original expectation was that the DCN would be completed in the first quarter of 2025 and an IND would be completed in the third quarter of 2025. As of this date, neither of those has been completed.

So again, we have a company that has had $29 million put in, and they don't even have a DCN. What was proposed in the second funding motion was to give them more R&D money. And maybe someone fantasized that with more R&D money, they can eventually do the DCN and IND.

However, what we have is actual data here is that they had actually received $29 million and did not get to DCN. So I and most prudent investors would say, $29 million and it didn't work; I'm certainly not going to give you more.

Q Can we take down this slide please?

Doctor one last question. If none of these six portfolio companies you evaluated received the funding the debtors are requesting, will that lead to the destruction of substantial scientific, economic and human value?

A It may lead to the destruction of the companies. There are a huge number of companies in this space. There are hundreds of early-stage biotech companies and many large-

stage biotech and pharma companies, and they all work on the same problems.

It is normal for a substantial number of early-stage companies to have their lives end in one way or another and for those assets to be sold to other companies who either develop them or don't. And it's certainly -- the ending of these companies will certainly not decrease the net value of science and clinical medicine.

MR. SALTZMAN: With that, I pass the witness, Your Honor.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. BERDON:

Q Good morning, Dr. Rimm.

A Hello, Mr. Berdon.

Q Have you read the Chancery Court opinion that was written in the Chancery Court case that you last testified in?

A I have read it, but I don't have a detailed knowledge of all of it because my expertise is basically science, medicine, and finance. So I've read it, and it's in English. So I have some understanding of some of it, and I've talked to some people about it. But I would not say that I have a detailed understanding of every word based on my educational and vocational training.

Q Do you recall Chancellor McCormick crediting the testimony of Dr. Mark Robbins where he testified that the preclinical companies at issue here individually and in aggregate indicated significant scientific and clinical potential?

A I certainly recall that testimony.

Q Well, that's not testimony. I'm asking if you recall Chancellor McCormick writing that in her opinion.

A I don't recall her writing in the opinion, but as I say, am not familiar with all of the materials in detail. What I do know is that it's common for people to acknowledge that early-stage companies have potential.

And lots of things have potential. However, investors are interested in return. So return and potential are different. And what I was discussing in my testimony today is likelihoods of return from these particular early-stage companies that have not been able to accomplish milestones and goals in spite of substantial assets.

Q Now, have you ever run drug research and development at a biopharmaceutical company?

A Oh, yes. I worked at Wyeth Pharmaceuticals for four years in oncology.

Q Yes, but you worked in a licensing role at Wyeth, didn't you?

A No. I'm sorry. Perhaps I was not clear enough, and I

would be happy to elaborate at this point. For the first four years at Wyeth, I worked in oncology, running clinical trials.

Q I see.

A I had just come from a role where I was the attending physician in stem cell transplants. And in the first role that I had at Wyeth, I ran sponsored industry trials in the same disease that I had cared for at the academic level as an attending physician. I did academic clinical oncology trials for four years.

Q I see. Well, my question is a little different. Did you ever have responsibility for go/no-go decisions yourself?

A Yes.

Q Yes. Okay.

A I personally did. I had personal responsibility for it.

Q On a clinical basis or business?

A At that point, I had responsibility on a clinical basis because my expertise was clinical. I had that responsibility on a financial basis when I was involved in venture capital, and then I was involved in making the financial decisions.

My major role was to provide the clinical information to people whose exclusive knowledge was financial. And then we would make a decision together about go/no-go decisions in this particular scenario. I have a lot of background on this

topic because it's --

Q If I may.

A Sure. Go ahead. Absolutely, Mr. Berdon, go ahead.

Q Your testimony earlier was that no prudent investor would ever invest. Is Rigmora a prudent investor in your view?

A I think at the moment, it's complicated to respond to that because I just don't understand enough of what the situation is. What I would say is that just when I say no prudent investor will invest, it doesn't necessarily mean that there would be no human that would invest.

Sometimes people will invest because they have extra money and they're not terribly dependent on return. I'm talking about, when I say prudent investor, I'm referring to a investor who's very much interested in return. And I don't know how Rigmora would stand in that. That's a different -- I don't know Rigmora well enough to really be able to respond to that question.

Q Are you aware that --

A I know their investor.

Q Are you aware that Rigmora itself is proposing a Debtor in possession financing proposal in this case?

A You know, I haven't been asked to review that information. I know that I was asked to respond to the material on the second funding motion.

Q Are you aware that Rigmora has been in conversations with a company called RTW about the possibility of doing standalone company development plans for the exact preclinical companies that are under discussion here today.

A So I personally know people at RTW, but I did not -- was not aware there was any conversations with RTW. I think that I should be more specific.

I had said and attempted to say this carefully, but perhaps should say it more carefully, that the current construct of this company with the current management and the current molecules is not a version that is going to be able to generate returns.

It may be that some other construction of these companies, where there's different management and some variation on molecules or some variation of plan, could generate, could have the potential to generate some type of return. That's possible.

I was -- probably stating things maybe too broadly, and perhaps it would be better to have stated them very narrowly. And to say that just this specific configuration of this company is unlikely to generate the next completed milestone.

Q Did you hear the testimony of Meenu Karson, the CEO of Evercrisp, earlier today?

A I heard about half to two-thirds of it.

Q I think it's fair to --

A And I did read her deposition. Oh, sorry. Sorry. I read a deposition also.

Q I think it's fair to say that -- and counsel correct me if I'm wrong -- that Ms. Karson testified that she would use the further investment that is sought here to develop two specific datasets that she knows, based on her discussion with potential partners, are -- would be of active interest to partners in the pharmaceutical industry that could be looked to for future funding. Did you hear that testimony?

A I didn't. But I would like to comment on what you said, which is that -- because I've been in a scenario of hopefulness. Okay? So developing data that might be of interest to partners.

So I can assure you, I've been on the large side of that, the partner, and partners are always asking for more data, and then they ask for more data, and it can be years before they start to talk about term sheets and money.

So I -- the fact that she would say that partners are interested in more data and she would develop data is nice, but doesn't really help the issue of getting to returns or goals that are generated with returns. It's a step, but it's a step that is a very small step.

And the most critical thing is to listen to the hopefulness in the words, that potential. You know, it might happen, but no one ever really talks about the probability,

which is usually lower than one might think.

Q Ms. Karson said that she would use $3,500,000 that she and EverCrisp has requested in connection with this motion to develop an animal data package with respect to many protein binders.

You have no specific knowledge that would contradict Ms. Karson's testimony about the usefulness of developing that dataset for EverCrisp's business. Correct?

A Well, that's complicated. Certainly that if she developed that data set, it -- she would have the data set. That, we know. But whether that data set would ever generate a scenario where a partner invests money is a separate question, and that's my concern.

Q Well, Ms. Karson testified that she would use this money also to determine whether the many proteins that they're developing would have the potential to get specific payload to a specific destination in a mouse model.

Do you have any reason to believe that developing that dataset would not be a good use of assets for an early stage biotechnology company where one of the founders was Jennifer Doudna?

A So I'm very familiar with the pieces of work that you're referring to. If there was infinite money in the world, that would certainly be a reasonable thing to do. It's not that it's unreasonable. It's an issue of generating

return.

MR. BERDON: Your Honor, I'm going to pass the witness at this point.

THE COURT: Any redirect?

MR. SALTZMAN: No, Your Honor.

THE COURT: Thank you for your testimony and for hanging in there on Zoom all day.

THE WITNESS: And thank you very much for allowing me to speak.

THE COURT: Okay.

MS. SELDEN: Thank you very much, Dr. Rimm. I think we can let you off the Zoom, and thank you, Your Honor, for letting us call Dr. Rimm by Zoom. I know that is not preferable for you, for her, for us, or for anybody, and that's why we had not planned to call her this week as she was on vacation far, far out of the country.

I know, Your Honor, that you have 20 minutes before a 5 o'clock meeting. We have two additional witnesses who we had hoped to call today. I'm inclined to proceed straight to Mr. Aebersold of Rothschild so that you can hear a little bit from him about Rigmora's proposal.

We have Mr. Phillips here from London, who will be here next week as well and is being deposed on Sunday, and we weren't sure if he would be here because he had unelective gallbladder surgery in January. So that has been a

challenge.

THE COURT: Okay.

MS. SELDEN: And Your Honor is correct that I'm bringing it up because I am sensitive to the time and your schedule, and I want to do what makes the most sense for the Court.

THE COURT: Okay. Well, we could take him for fifteen minutes, then I can take a break, get on my 5 o'clock, and then let's say we're back here at 5:20. I'll get off that early, and we'll get back here at 5:20.

So if you want to do it that way, we can do it, or we can wait till 5:20. Is there anything else that we could do before then?

MR. WINSTON: Your Honor, if I may.

THE COURT: Yes.

MS. SELDEN: Like, that we could fight about Mr. Phillips.

MR. WINSTON: Well, I was going to suggest -- I have no idea what your anticipation was for this evening. With respect to Mr. Phillips, he presents a unique problem in that he had offered a declaration in support of the motion to dismiss. We were going to depose him, but because of a medical issue, the earliest we could depose him was February 22nd.

We thus did not anticipate at all that he was

going to be available to testify today, even though the opposition to the funding motion raises, in many ways, the same issues in the dismissal motion, and yet there wasn't a declaration in support of that.

With respect to Mr. Phillips, my suggestion would be, you know -- and again, it's obviously dependent upon how late you want to go. He's getting deposed on February 22nd. I haven't had a chance to do it yet. And really what his testimony is about is the big show, as you said, you know, at the last break. And I think you hit the nail on the head.

So my suggestion would be for him, defer it. Let me take the deposition, and then he could testify on the 25th. I don't know what's going to happen today. I just -- like, I'm looking at the clock and, you know, I have no problem with the investment banker testifying. We can probably handle him fairly fast, I would hope.

But beyond that, there's argument that's going to happen on two motions, maybe one, maybe two. It seems quite both unfair to us and just as a practical matter, a weird dynamic to have a fight over a witness, which I thought was unavailable -- literally unavailable. We asked for February 16th. We asked for February 20th. Told not until February 22nd. It is quite bizarre to now hear he's available to testify in court on February 19th in The United States.

THE COURT: Yeah. And that causes a concern even

though I assume, you know, things went better than expected.

MS. SELDEN: Your Honor, that is very much what I would like to bring up. And I bring it up because I understand Debtor's counsel's concern and Your Honor's concern, and I want to be fully frank, which is -- and I'm afraid Mr. Phillips is prepared to testify about his gallbladder surgery, should we want to know about that, which I hope is not the case.

THE COURT: No, we do not.

MS. SELDEN: But he had gallbladder surgery that he did not want to have that was not elective that was in the middle of January that went three or four times as long as it was supposed to and was told by his surgical team that he could not work or testify or travel until he had been cleared.

Poor Mr. Phillips, the first thing he did upon being cleared by his surgical team on Monday morning, the 16th, was let me know that he had been cleared and that he could fly here.

THE COURT: You should've waited a day.

MS. SELDEN: Which he did because we didn't -- we wanted him to be here in person, so we brought him here in person. I am deeply apologetic to all involved, including especially Mr. Phillips. But that is really the story of Mr. Phillips and his gallbladder and the timing of his testimony.

And so he's here. He's available.

He is an expert in Cayman law. Cayman law is also, available to Your Honor through our briefs and through the cases, and through Mr. Justice Assif (phonetic), and we will revisit Cayman law in some detail next week.

So I am open to deferring Mr. Phillips and having him be deposed on the 22nd.

THE COURT: I think we have to. I think we have to in fairness. Debtors haven't deposed him, certainly not for this. I don't know if he was deposed before. But even so, I think it would not be fair.

MS. SELDEN: I understand and appreciate that, Your Honor. And I'm sure you and Debtor's counsel understand that I had to acknowledge that Mr. Phillips is here, having made that effort and is available should anyone want to hear from him, which we will not call him today.

That gives us not very much time for Mr. Aebersold, but I -- it's been a couple hours since we've been on the record. Perhaps now's a good time for a break and we'll come back and put him on.

THE COURT: Yes, we'll take a break, and we'll come back at 5:20.

MS. SELDEN: And, Your Honor, with respect to argument and the other pending motions, I will say this. Look, I have a vested interest, but I do think it might be

helpful to the Court to hear argument on the funding motion and these pending motions.

We, you know, Debtors have their first day hearing and their opportunity to introduce the Court to Debtor's position. We would very much like an opportunity to address the Court on some structural, legal issues and how they play into these very important facts.

From Rigmora's perspective, I think that goes both to kind of the legal conundrum that this case presents and the challenges that the funding motion presents, plus a desire to resolve it in a way that makes sense. And we would appreciate argument, but I'm again sensitive to the time. I'm happy to do that tomorrow. I'm happy to do that late tonight. And I just would ask to put that on the record and let Your Honor consider it or give us such guidance as you'd like.

THE COURT: Okay. Well, let's see how long the next witness goes. And I don't know if people had slotted out tomorrow for this. I would like argument. I have questions. And I have no idea what I did with my calendar, but --

MS. SELDEN: We will be back --

THE COURT: I'd also -- I'd also like to give parties an opportunity to continue their discussions. So, let's get the witnesses in.

MS. SELDEN: And we will be back next week, and there -- that's another opportunity for argument if Your Honor would like to consider that as well. That's on my mind.

THE COURT: I was thinking either tonight or tomorrow because I have motions in front of me, and presumably the funding is necessary. But maybe tomorrow is better if people are available. If not, we can go tonight.

Brandon, you good? Brandon's good. He's the most important person.

MS. SELDEN: All right. Thank you, Your Honor.

THE COURT: Okay. We're in recess.

(Off the record at 4:48 p.m.)

(On the record at 5:25 p.m.)

THE DEPUTY: Please rise.

THE COURT: Please be seated.

MR. LEVINSON: Good afternoon, Your Honor. Your Honor, the Rigmora LPs call Brandon Aebersold.

THE COURT: Mr. Aebersold.

THE CLERK: Raise your right hand. Do you affirm that you will tell the truth, the whole truth, and nothing but the truth to the best of your knowledge and ability?

THE WITNESS: I do.

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Robert Brandon Aebersold. Aebersold is spelled A-E-B-E-R-S-O-L-D.

THE CLERK: Thank you. You may be seated.

THE WITNESS: Thank you.

BRANDON AEBERSOLD

was called as a witness and, after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LEVINSON:

Q Good afternoon, Mr. Aebersold.

A Good afternoon.

Q Where are you employed?

A At Rothschild and Co.

Q And what is Rothschild?

A It is a over 200-year-old global investment bank.

Q And what's your title at Rothschild?

A I'm a managing director and co-head of the North American Restructuring Group.

Q When did you join Rothschild?

A I joined in 2024.

Q Where were you employed before that?

A Lazard.

Q And how long were you employed at Lazard?

A Roughly 18 years.

Q And what was your position at Lazard?

A I was a managing director and head of restructuring and liability management in North America.

Q What's your educational background?

A I have a BA from Furman University, a Juris Doctor from University of Virginia School of Law, and an MBA from the University of Chicago.

Q Can you, generally, describe your experience in the restructuring field?

A Yeah. At a high level, I've represented companies, creditors, government entities, other stakeholders, investors, in all types of situation with some stress or distress. So, advising companies in Chapter 11s, DIP providers, DIP borrowers, out of court exchange offers, it's pretty widespread, but, yeah, mostly company side though.

Q Okay. And it sounds like your experience includes matters involving debtor in possession financing.

A Yeah. Quite a bit.

Q When were you engaged by the Rigmora LPs to represent them in connection with these bankruptcy cases?

A If I'm not mistaken. That letter was signed Thursday, February 12th.

Q So last week?

A Yeah.

Q Now, did you spend any time getting up to speed on this matter before you were engaged?

A Yeah. We had -- we had signed an NDA earlier in the month. I think it was February 3rd. So we had gotten a team up to speed and had, you know, conversations.

Q What was the first thing you did as the LPs' restructuring advisor after you were engaged?

A To me, there seemed to be a need for financing, and I worked with the LPs and their other advisers to come up with a DIP financing proposal, both in terms of trying to reach some settlement, but also to provide financing to Debtors that, depending on the funding motion, may need capital.

Q And such a proposal was, in fact, formulated and prepared?

A Yes, it was.

Q And you were personally involved in formulating and reviewing the proposal?

A Yes, I was.

Q And did you speak to representatives of the LPs prior to the proposal being made?

A Yes, I did.

Q I'm going to show you what has been marked as Exhibit 142, which is already in evidence.

MR. LEVINSON: May I approach, Your Honor?

THE COURT: You may. Thank you.

THE WITNESS: Thank you.

BY MR. LEVINSON:

Q Is Exhibit 42 the proposal that you were referring to that was formulated and prepared?
A Yes, it is.
Q Okay. Was this proposal sent to the Debtor's advisers?
A Yes, it was.
Q Okay. And when was that proposal sent?
A That was midday on Friday the 13th, so last Friday.
Q Okay. And prior to this proposal being sent, did the LPs provide authority for the proposal to be sent?
A Yes.
Q I'm going to show you now -- I'm going to put up on the screen what's been marked as Exhibit 143. This was previously admitted into evidence. This cover email that was sent by myself to counsel to the Debtors at 2:07PM on Friday, February 13th. Do you see that?
A I do.
Q Okay. And you were copied on this email?
A Yes.
Q Okay. So let's -- I want to turn back to Exhibit 142. What is the size of the loan facility that's to be made available under the LP proposal?
A It's $31.7 million.
Q And what's the timing of when those funds would be made available?
A It's 9.1 or just over $9 million available on entry of

the order. And that was an amount according to the budget that we had seen from a prior filing that would last six weeks, and then the balance, which is roughly $22 million, available on week six to carry throughout the term.

Q And generally speaking, how are the proceeds of the loan to be used under the LP proposal?

A To fund the working capital of the eight debtors. It included money for restructuring costs, the Chapter 11 costs.

Q The professional fees.

A Professional fees were included.

Q How were the amounts for each of the eight debtors determined? And when I say eight debtors, this proposal was to provide funding to seven of the seven Debtor portfolio companies plus AppleTree Life Science, the management company?

A Yes.

Q Okay. How are the amounts for each of those eight debtors determined?

A Our team just looked at the budget that was filed in the second funding motion, which is a 26-week weekly budget, and we looked at the funding need of those eight debtors and provided those amounts. So it's in accordance with the budget that was filed by the Debtors.

Q And can you describe the structure of the LP proposal that's reflected in Exhibit 142?

A It's pretty simple. It's eight individual DIPs, a loan to each individual debtor.

Q And is there any cross collateralization or not?

A No. They're all independent DIP facilities with liens on the Debtor entities.

Q Under the original LP proposal, what was the maturity date for each of the Debtor portfolio companies and for AppleTree Life Science?

A Yes. In our original proposal, it was eighteen weeks.

Q Okay. Has that changed?

A Yes. But you have to remember, we put forth this proposal with no discussions and no information. We thought 18 weeks was reasonable. When we saw the DIP motion being filed for 26 weeks, we extended ours to 26 weeks.

Q Okay. And just to be clear, I think we heard some testimony before about 24 weeks. But is 26 weeks the right number for both of those --

A Yes. It's 180 days, which is roughly 26 weeks, give or take a day.

Q And what's the expectation as to what the Debtors are expected to do with the money during this 26-week period?

A Fund the Debtors, but also, if I were advising them, I'd be looking for either takeout DIP financing to replace us, which is cost free, or potentially preparing to sell the entities.

Q What is the -- what's the interest rate that's payable under the LP proposal?
A It's the fed funds rates.
Q And what is that currently, about?
A It's south of 4 percent. I think it's 3.64 percent.
Q Does the LP proposal say anything about the funding of portfolio companies of the fund that are not in bankruptcy?
A Only that we're willing to engage in funding those entities.
Q Okay. But that -- and that's specifically in the -- in the term sheet?
A Yes. Well, we're willing to, yeah, engage on discussions that -- yeah. We are certainly interested in funding entities that are, you know, bankrupt.
Q Mr. Aebersold, are you aware of a motion filed by the Debtors seeking approval of DIP financing from Oaktree Capital Management?
A Yes, I am.
Q And when was that motion filed?
A On Friday, the 13th in the afternoon.
Q Was that before or after the LP proposal was submitted to the Debtors?
A It was after we had sent it.
Q Have you reviewed the DIP motion?
A I have.

Q And have you reviewed the DIP term sheet that was attached to the DIP motion that sets forth the terms of the proposed DIP financing to be provided by Oaktree?

A Yes.

Q Okay. I'm going to show you what has --

MR. LEVINSON: Your Honor, we've marked this as Debtor's Exhibit 83. It was on their trial list, and so we just -- rather than duplicate, we just thought it was easier to use their number. May I approach?

THE COURT: Yes.

BY MR. LEVINSON:

Q Mr. Aebersold, is this the DIP term sheet that you reviewed and referenced?

A Yes.

MR. LEVINSON: Your Honor, I would move Debtor's Exhibit 83 into evidence.

THE COURT: Admitted.

(Debtor's Exhibit 83 entered into evidence.)

MR. LEVINSON: Thank you, Your Honor.

BY MR. LEVINSON:

Q Mr. Aebersold, what's the size of the Oaktree DIP facility?

A It's $65 million.

Q Of that amount, how much will be made available to the Debtors in these bankruptcy cases versus portfolio companies

of the fund that are non-Debtors and not in bankruptcy?
A I'd say it appears that 25 of it is earmarked for Debtors. It's actually complicated because it's a $65 million facility that says up to 40 million can be part of an intercompany loan facility to go to non-Debtors. So in theory, the number to Debtors could be anywhere from 25 to 65.
Q I have some questions regarding the differences between the loans to be provided under the LP proposal versus the loans to be provided under the Oaktree DIP. I think you testified earlier that under the LP proposal, 9.1 million would be made available to the Debtors upon, I guess, with the entry of an order approving it. Is that -- do you recall that?
A Yes. It's 9 and change. I don't have the exact number.
Q Okay. How much money would be available at the inception of the Oaktree DIP?
A $7 million.
Q $7 million. Now do you understand that the Debtors are seeking interim approval today of 17 million in financing under the DIP motion?
A Yes.
Q Why do you say that only 7 million would be available rather than the full 17 million?

A Well, because 7 million is available immediately, but the balance of the 17, which is 10 million, is only available if the Court were to deny the motion next week.

Q The motion to dismiss?

A Yes.

Q The motion to dismiss the fund level Debtors.

A That's correct.

Q And what about the rest of the Oaktree DIP that would be approved on a final basis? Would access to that also require this court to deny the LPs' motion to dismiss?

A Yes. That's correct.

Q Compared to the Oaktree DIP, what effect, if any, would this court's ruling on the LPs motion to dismiss have on the availability of the LP proposal financing?

A No impact.

Q No impact whatsoever. So that money is available either way?

A Yes, it's being provided to the eight debtors.

Q Let's talk a little bit about economic costs. And I'm going to turn your attention to Sections 15 through 18 of the Oaktree DIP just for reference. Under the Oaktree DIP, what interest, fees, and other costs are being charged to the Debtors?

A It's 14 percent PIK interest. There is an upfront fee of 1 percent and undrawn fee of 2 percent, an exit financing

fee of 5 percent and then an exit financing work fee of $1 million.

Q And is there a --

A I'd have to check the document.

Q Is there a MOIC?

A. There is a MOIC as well.

Q What is MOIC?

A MOIC is a multiple on invested capital. And so the MOIC here is saying the return has to be 1.15X. And to simplify it, if you borrowed a thousand dollars, regardless of when you paid it back, if it were one week, ten years, you would at least have to pay back $1,150. And so that's just a term here, so regardless of how quickly it's paid back, you still have to at least hit the MOIC.

Q And does the Oaktree DIP also include legal fees?

A It does.

Q Okay. And that would be for their counsel at the Cleary Gottlieb?

A I assume so. Yes.

Q Is there a collateral agent fee?

A There is.

Q Have you and your team at Rothschild done work to compare the economic cost of the Oaktree DIP versus the LP proposal?

A We did.

MR. LEVINSON: All right. I'm going to have demonstratives, Your Honor, if I may.

THE COURT: You may.

BY MR. LEVINSON:

Q If you could take a look at the first page of the demonstrative that you've been handed. Is this is a chart that you and your team prepared at Rothschild?

A Yes.

Q And this was to -- does this chart compare the cost of the interest, the fees, and the MOIC under the Oaktree DIP versus the LP proposal?

A Yes.

Q What information, did you and your team rely upon in preparing this chart?

A Really just the LP proposal, the Oaktree DIP proposal, and the budget that we had from the prior filing.

Q And how much in loans did you assume as to the amount that was to be funded to the Debtors in these bankruptcy cases? And when I say the Debtors versus the portion that you testified to before that would go to non-Debtors?

A Yeah. I get, just to be on an apples to apples basis, we just assumed because it could be anywhere between 25 and 65 that the proposal and the amount going to the Debtors was equal to our 31.7 million.

Q Okay. And that's what this chart shows. There's a

comparison as if the Debtors were to get the same amount, the 31.7 million.

A That's right.

Q Okay. And what date did you assume for when these -- when these loans would be repaid?

A At the end of the maturity date, which is 26 weeks.

Q The 26 weeks. Okay. How do the two proposals compare cost as measured just in pure dollars? Cost to the Debtors.

A This is -- this is not overly complicated. It's just ours is only the fund the fed funds rate. So it's, you know, roughly 500,000 in fees. And if they were to borrow, you know, 31.7 under the Oaktree DP, the total fees are just under $5 million.

Q And did you, come -- oh, and what actually, just one clarification. The LP proposal, does that provide for any legal fees or collateral agent fee?

A No.

Q Okay. But for purposes of this exercise, did you include any amounts for those fees or no?

A No.

Q What is the internal rate of return to Oaktree of the Oaktree DIP versus the internal rate of return to the fund under the LP proposal?

A Yes. The IRR for the LP proposal's roughly 100 percent, which is close to our interest, and it's over 40

percent for the Oaktree debt.

Q If I could turn you to the second page. There's another chart. And can you describe to me the difference in assumptions between this chart and the first chart that we looked at?

A On the second one we just took, what if the Debtors took the minimal amount of funding under their DIP proposal and said the full 40 went to non-Debtors through intercompany loan facilities and the Debtors just received the 25, see what the fees were under that scenario.

Q Okay. And other than that, were there any changes to the base assumptions that you used?

A No, the same base assumptions.

Q This chart, looking at the, again, the dollars, what's the differential in dollars, the cost between the Oaktree DIP and the LP proposal?

A Yes. So we're still assuming that we fund the 31.7 million, so the same 500,000 for the LP proposal and just over 4 million for the Oaktree DIP proposal, assuming they borrow the 25 to the Debtors.

Q Now, I understand, with these scenarios you ran, as I understand it, you only calculated the fees that are attributable to the amounts that are actually being used by the Debtors, correct?

A That's correct.

Q So you didn't calculate in these the fees that would be -- any fees that would be attributable to amounts advanced to the to any non-Debtors, correct?

A Correct.

Q Would there in fact be any interest, fees, or MOIC charged by Oaktree on those amounts that would be loaned to non-Debtors?

A Of course.

Q And let's assume, I think under your second scenario, assuming $40 million of these funds went to were loaned to the non-Debtors, I assume it's the same -- you're assuming that it would be the same interest, the same cost, the same MOIC would be applied to that?

A Yeah. The MOIC applies.

Q Right. So, so comparing that $40 million to what we looked at in your two scenarios where the Debtors were getting $31.7 million and $25 million, is it fair to assume that for the $40 million that would go to the non-Debtors that the fees and interest in MOIC would be even higher than it would have been under either of those two scenarios?

A I'd say differently, which is just the MOIC's 1.15 percent. It's a $65 million loan, 1.15 or point one five of 65 million is 9.75, so roughly $10 million that's -- it's got to be paid.

Q And what financial impact would payment of the interest

and the fees and the MOIC get maturity have on the fund with respect to these funds that are going to the non-Debtor parties?

A It's a reduction of value. It's money being spent that would otherwise benefit the fund, so --

Q Can you explain why that -- if it's going to the non-Debtors, why would why would that impact the value of the fund?

A Because the non-Debtors are owned by the fund and even if they're paying it, it's a reduction in value. The costs don't disappear if it's coming through a Debtor entity.

Q Now, you testified earlier that under the LP proposal, each of the eight tranches of loans for the eight Debtors were going to be kept separate and that there was going to be no cross collateralization. You recall that?

A. Yes.

Q. How does that compare to the Oaktree DIP?

A Yeah. The Oaktree DIP cross collateralizes everything including basically non-Debtors because it's bringing lien on the fund and all the subsidiaries.

Q In connection with the Oaktree DIP, did you review the various events of default that were provided under the Oaktree term sheet?

A I had read them. Yeah.

Q Yeah. And based on your experience involving, you

know, veteran possession financing, did any of those events of default strike you as unusual?

A Yeah. One stood out. I've never seen it before. It was a prohibition against -- remember correctly -- settlements with any material stakeholder of the Debtor or any of its subsidiaries. And I had never seen that before, and so I had my team do research to try to find it.

We pulled every DIP we could find of the lenders who sent proposals to the company, in the trenches that we saw, every DIP that they'd ever provided including Oaktree, we couldn't find it and AI couldn't find it.

Q In your review of the DIP motion and the Oaktree DIP, did you see any reference to potential exit financing?

A I did. There was a willingness to negotiate exit financing, but there was an expressed disclaimer that there was no commitment to provide exit financing.

Q Were you in the Courtroom this morning when Mr. Mandarino testified?

A I was.

Q Okay. Do you recall Mr. Mandarino referencing the -- or the questions to him referencing the first page of the LP proposal term sheet? It was the language about internal approvals. Do you recall that?

A I do.

Q Okay. If you could turn to the Oaktree term sheet.

And do you see the last sentence at the top in the italics where it says, the proposed DIP facility discussed herein remains subject in all respects to internal approvals of the proposed initial DIP lender and all customary due diligence for facilities of this type. Do you see that?

A I do.

Q Okay. And just to go back to the LP proposal, and again, I just want to emphasize this point. Your understanding is that the Rigmora LPs had authorized this to be sent before it was, in fact, sent to the Debtors. Correct?

A Yes. They had.

Q Okay. Do you recall Mr. Mandarino being asked during his testimony about a provision in the LP agreements regarding LP consent to 363 sales?

A I do.

Q Okay. If you could turn to Page 60 of the Oaktree term sheet. And I'd like to invite your attention to the middle of the page, Section E, Roman numerette II, where it says, sales of assets or equity pursuant to Section 363 of the Bankruptcy Code on terms and conditions satisfactory to the DIP agents and requisite DIP lenders and approved by the Bankruptcy Court pursuant to the applicable provisions of the Bankruptcy Code. Do you see that?

A Yes.

Q Okay. So do you understand this provision to mean that in that in order for any such sale to occur, it has to be on condition satisfactory to the DIP agents and the requisite DIP lenders?

A Yes.

Q Let me ask this. You know, with respect to the provision that Mr. Mandarino testified about the similar provision that was contained in the LP proposal. Is that the sort of provision that you would expect would come up in discussion in connection with negotiations that took place between parties?

A Yeah. Sure.

Q I want to ask you about another provision that Mr. Mandarino was asked about in the LP proposal. Do you recall him testifying with respect to limitations on indebtedness that might require the consent of the LPs, under the LP proposal?

A Yes.

Q I know it's been a long time since this morning.

A Yes, I remember the topic being discussed.

Q If I could turn your attention to page 58 of the Oaktree DIP term sheet, Section A, limitations on indebtedness. Do you understand this provision to impose limits on indebtedness other than subject to certain exceptions below?

A Yeah.

Q Now going back to the LP proposal, there's a reference to -- and why don't we just -- I'm going to pull up the provision just so you have it in front of you. It's in the negative covenants, provision, which is Section 9. It's on page 4, and it provides for, it says no borrower shall enter into any agreement or term sheet or discuss or negotiate the same prior to maturity date.

Again, we have eight separate loans, right, to each of these eight debtors, providing for DIP financing other than in connection with a takeout DIP or with the prior consent to the LPs. Do you see that?

A Yes. I do.

Q Okay. So what is a takeout DIP?

A I think it was a defined term. Yeah. Definition's on the bottom of page 6. It's replacement financing, basically.

Q Okay. This will be replacement financing that would be secured by the assets of that particular Debtor?

A Correct.

Q And so if, you know, to the extent that, a particular Debtor is using the 26-week opportunity to find alternative financing to be able to repay the DIP, they would have the complete ability to do that. Correct?

A Yeah. Under -- yeah. If it's a takeout DIP, yes.

Q Okay. And by the way, just to be clear, if any of

those eight individual Debtors are successful in repaying any amounts that are loaned to them on an interim basis, would those Debtors be required to -- and this is if they're paid during -- let's just say during the first six weeks, would they be required to move forward with a 363 sale process?

A No. No milestones for the first six weeks.

Q So and just going back to page 1 of the LP proposal, you know, the dollar amounts, do you see the dollar amounts that are in brackets for each of the eight different tranches? It carries over to page 2.

A Yes.

Q. And again, these were based on the budgets and what you thought were the need, right?

A That's correct.

Q Yes. And I imagine the expectation is that there would be discussion over those budgets to make sure that each of these entities is getting what they need assuming that the Debtors are willing to provide that information?

A Of course. It's always a discussion.

Q Okay. But is my understanding correct that if those interim amounts were repaid in full by any one of these Debtors, they would not be subject to a requirement to conduct a 363 sale?

A That's correct.

Q And again, this particular provision, is this a kind of

provision that you would expect would be the subject of negotiation between the Debtors and the LPs?

A Which provision?

Q The provision that we were just talking about on the limitations on indebtedness.

A Yeah. Of course. We negotiate everything.

Q At the time that the LP proposal was sent to the Debtors, were the Debtors provided with both a Word version and a PDF version of the LP proposal?

A Yes. I believe so.

Q Have the Debtors provided any markup to the LPs of the LP proposal that was provided last Friday?

A No. Not that I've seen.

Q Now, you were in the Courtroom right before the break when Judge Silverstein encouraged the parties to engage in discussions during the break. Do you recall that?

A I do.

Q Okay. And during the break, did you and the LPs reach out to the client to the LPs to get authority to make a proposal?

A We did.

Q And what -- did you get such authority?

A We did.

Q And what was the terms of the proposal for which you received authority to make?

MR. WINSTON: Objection, hearsay.

MR. LEVINSON: I'm not asking for the truth of the matter asserted. It's just what the terms of that proposal were.

MR. WINSTON: If it's not being offered for the truth, what's the relevance to it?

MR. LEVINSON: That it was made and what the proposal was that they were prepared to make.

MR. WINSTON: Well --

THE COURT: Ask the question again. What's the -- what's the question?

MR. LEVINSON: The question is, what were the terms of the proposal for which he received authority to make?

THE COURT: Why is that objectionable?

MR. WINSTON: So if it's being offered for the truth of the term, that's hearsay. It's coming from his client to him. If it's being offered to say that it was made to us, it's a Rule 408 settlement privilege, which we're going to have a situation of --

THE COURT: That's a different issue. That's a different issue, and I wonder about that.

MR. WINSTON: Yeah. But since I don't know exactly what he was going to say, the fact that he's been authorized to --

THE COURT: Yeah.

MR. LEVINSON: I'll preview what I'm intending to ask, Your Honor, which is that the terms of the proposal for which he, Mr. Aebersold, received authority to make and the fact that it was communicated, and then I'm going to stop there. I'm not going to get into anything with respect to what they said, what their response is.

And this is just an act. I mean, this is testimony about an act of making a proposal. There's no truth of the matter asserted. And with respect to Section 408, I mean, it doesn't apply at all to this situation. Section 408 doesn't shield all settlement communications. It talks about liability, you know, to --

THE COURT: Yes.

MR. LEVINSON: So again --

THE COURT: It's overbroad. But I encourage discussions, and I really think they ought to pretty much stay private while those discussions are going on. I don't -- I want to facilitate discussions, not facilitate more litigation. So, the fact that it that an offer was made, fine. Okay.

MR. LEVINSON: Okay.

THE COURT: That's good.

MR. LEVINSON: One second, Your Honor.

THE COURT: Keep doing it. But --

MR. LEVINSON: That's all I have, Your Honor.

THE COURT: Okay. Cross.

MR. WINSTON: Eric Winston for the Debtors.

CROSS-EXAMINATION

BY MR. WINSTON:

Q Good evening, Mr. Aebersold. Did I pronounce that right?

A Yeah. Long A. Thank you.

Q Okay. Aebersold. I know I've deposed people from your office before, but I don't think I've ever met you before. Nice to meet you in person. I think you testified -- you signed a rate -- an engagement letter on February 12th.

A Yes. I believe so.

Q And who was that engagement letter with?

A It is with Rigmora, both funds.

Q The objecting parties. We call them Rigmora, but they have more formal names. It's with those two?

A Yes.

Q Okay. Is there a compensation provision in there?

A Yes.

Q What is the compensation?

A It's a retainer and a monthly fee.

Q What's the retainer? How much is the retainer?

A We get paid a million dollars upfront and then the monthly fee.

Q And how much is the monthly fee?
A $250,000 a month.
Q Okay. Is there any success fee?
A No.
Q Okay. When does the monthly fee terminate? What's a terminating event?
A They have -- both parties have the right to terminate.
Q Okay. And what's the scope of the engagement?
A It's to provide financial advice.
Q Okay. Any investment banking services?
A Well, providing financial advice is an investment banking service.
Q Let me ask it this way since I know you're very experienced in restructuring. Sometimes Debtors engage both the financial adviser and an investment banker. Are you aware of that?
A Yes.
Q Okay. Are you providing one or both of those kinds of services?
A There's no fine line between the two. I think our -- I don't know if our letter just says investment banking or financial advisory and investment banking. I don't recall.
Q I tend to agree there's a fine line. I always wonder why there needs to be two of them, that's a policy question, I suppose.

I think you also testified you've been -- you signed an NDA on February 3rd, I think I wrote down.

A It was early February, I think it was the 3rd.

Q And who did you sign the NDA with?

A Same parties.

Q Okay. So you've been hanging around the hoop for couple weeks now?

A Hanging around the hoop. Well, having not been engaged, we did background reading, a lot of background reading. But, yeah, starting last week, we were fully engaged.

Q Okay. Between February, early February, and when you were engaged, you, I think you testified, you did some background reading?

A Yes.

Q And that was through the NDA?

A Well, we had an NDA in place. I'm not --

Q. Not a good question.

A There's a lot of public filings that you can spend weekends reading.

Q Fair point. And it wasn't a good question. Was there anything that you received that was confidential because you had signed an NDA?

A I think drafts of a pleading maybe.

Q Anything else?

A Maybe -- maybe a deposition, I don't know if you -- I'm uncertain of what we've been allowed to see with or without the NDA. We played it safe and just had the NDA in place, but most of the documents were public filings and there are obviously, are thousands of pages.

Q Did you read anything from the Delaware Chancery litigation?

A I did.

Q Presumably, you read the actual judgment?

A I read -- yes. I did.

Q Trial transcripts?

A I read both pleadings and the judgment. I don't know if I read the trial transcripts.

Q How about deposition transcripts?

A No, not from that.

Q Okay. How about anything from the Cayman Islands winding up proceeding?

A No. Just as it was it was reflected in the filings in the Chancery Court where there -- and I think that there were certain pleadings that were actually attached as exhibits in a lot of those documents.

Q Sorry for asking questions this way. We didn't get a chance to do a deposition, so I'm sort of doing this on the spot.

A That's fine. I know this is foreign --

Q Yeah. Do you still have that demonstrative in front of you?
A Of the charts?
Q Yeah.
A Yes. I do.
Q And here, if I'm understanding it correctly, it's a comparison of what you call the We proposal. I think you used the word "we" quite a bit and the Oaktree proposal. Correct?
A Yeah. The LP proposal and the Oaktree proposal.
Q Okay. So there's no demonstrative doing a comparison of the LP proposal to the funding motion. Right? A No.
Q Okay. Turn to the last page. This has the disclaimer page. I just want to ask you a couple of questions on this. Fifth from the bottom, there says, a line, nothing contained herein shall be deemed to be a recommendation from Rothschild and Co to any party to enter into any transaction or to take any course of action. Do you see that?
A Yes.
Q Yeah. I'm sure your lawyers wrote this at some point. It's probably boiler plate, but does this mean that you're not actually recommending anything?
A No. I'm just -- I'm asserting which financing is less expensive, and you're right. This is boilerplate language on the disclaimer page.

Q MR. WINSTON: And the next disclaimer says this presentation is not intended to provide a basis for evaluating any transaction or other matter. Right?

A That's what it says.

Q Okay. So if we were to believe the disclaimers, is this telling us that this demonstrative isn't actually informing anyone of anything?

A No. It's just simple math.

Q Okay. Let's talk a little bit about some of the things that you testified. I want to make sure I got some of this right. The LP proposal, who's the lender?

A The lender is the fund.

Q The fund. Okay. Now, if I look at Exhibit 142, it doesn't actually have a provision as identifying who the lender is, does it?

A It does not.

Q And I know you have done lots of DIPs before. I think you said your team pulled out every DIP order you could find. How many of them had not listed the lender?

A None.

Q None of them list the lender?

A No. None did not. You asked a negative.

Q Oh, I did. I'm sorry. Okay. And you were careful to point out that the LP DIP term sheet has language about the transactions contemplated hereby require internal approvals

that have not been sought or obtained, and then there was language that I think you were trying to suggest is similar in the Oaktree language. Right?

A Yes.

Q Okay. Does the Oaktree term sheet have language that says internal approvals have not been sought?

A No.

Q Okay. And unlike this particular term sheet, the Oaktree term sheet is actually before the Court for approval. Correct?

A Repeat the question.

Q Sure. The Oaktree DIP proposal that has that language is nonetheless being asked for approval by this court. Correct?

A Yeah. It's before the Court. Yes.

Q Yeah. So if the Court approves it, does that disclaimer language matter for the Oaktree term sheet?

MR. LEVINSON: Objection, Your Honor. Think he's asking for a legal conclusion.

MR. WINSTON: I'm just pointing out the -- he brought out what he thinks are differences or similarities between the two.

THE COURT: His lawyer actually brought it out, but, yeah, his lawyer asked the question. But yeah. Okay. You can -- you can ask.

BY MR. WINSTON:

Q Okay. And I think you testified you obtained authorization to make the proposal. Correct?

A Yes.

Q Okay. And it actually came from counsel, but you did get authorization to make the proposal. Correct?

A No. I was on the phone with the LPs.

Q All right. I wasn't clear. I'm sorry. Doing this on the fly, but Mr. Levinson actually transmitted the email to our side. Correct?

A Yes.

Q And I know you were copied on that email. Correct?

A Yes.

Q Okay. But before sending that email, you actually received internal approvals from Rigmora. Correct?

A Yes.

Q Who did you speak to?

A To Yuri.

Q I think it's Bogdanov. No. I've never -- I always mess it up. Okay. Well, Yuri, fair point.

A Spelling it --

Q Yuri B. And he authorized you. Correct?

A He authorized us on a group call, and it wasn't just Yuri from the LP, but, yeah, he was the main person speaking.

Q And what he authorized was his written presentation,

correct?

A He -- the written presentation. You mean the written term sheet?

Q Written term sheet. Sorry.

A Yeah. He had that.

Q Okay. And so what he authorized was you to make a written proposal with this term sheet that has language saying, internal approvals have not been signed. Right?

A Let me give you a little background here. So as we talked about, I was engaged --

Q It was kind of a yes or no. So let's start with that.

A I'd like to inform the yes or no, which we got engaged on a Thursday afternoon and cranked out a term sheet to this company. So, yeah, we forgot to remove a couple provisions while I was in draft form, and he had this. And I'll tell you, he may have skipped over what's usually viewed as boiler plate language at the top. I'm sure he was more focused on the economic terms, but, yes, your answer is yes. He authorized us to send this document to the Debtors.

Q So you don't know whether Yuri B has actually obtained or even sought internal approvals at Rigmora, do you?

A No. He has authorization.

Q Okay. How do you know that?

A Because it's been represented to me by counsel, that he did and does.

Q Okay. This term sheet, I think you've testified it's from the fund. Correct?

A That's correct.

Q All right. So it's whose money?

A This is really complicated. It's in a segregated account. Like, our view is that it's held in trust on account of the limited partners because it's an ELP. Nonetheless, it's money that's in a segregated account. And also, the only reason we're talking about DIP financing is in a world where we're in the alternative that the funding motion was denied.

And so if the funding motion were to be denied, we don't want there to be no funding for these entities. We put forth DIP financing because there's been no mention of DIP financing if they were to lose the funding motion. We sent this to protect the Debtors. It's before we saw that they had sought DIP financing, they were asking us for it, and we sent it before we saw their motion.

And so to me, this world of, like, whose money is it, it's only in a world where the funding motion has been declined, and we're coming up with a solution to fund these Debtors.

Q This motion is -- or sorry. This DIP term sheet is subject to Bankruptcy Code Section 364. Right?

MR. LEVINSON: I'm going to have to object, Your

Honor. I think these are asking legal questions.

BY MR. WINSTON:

Q MR. WINSTON: Is it your understanding that this is subject to bankruptcy court approval, this term sheet?

A Well, if you were asking for it to be approved, yes. This is a document that we sent a debtor that was unsolicited. It's unnegotiated, and we've just submitted it as something we're willing to talk about that no one ever sent a markup to, no one ever engaged with us on.

Q So is your testimony then that this is not intended to be actually an offer of consent to using of fund money at the fund Debtor level?

A It is. Yes. I mean, it's a proposal, that no one's responded to.

Q I guess I'm trying to -- I want to make sure I understand this because this is something I'm not sure what to do with it. Maybe you can help me out.

A Okay.

Q It talks about on amount and structure that there will be eight separate DIP orders. Correct?

A Yes.

Q And that's between the fund Debtor as DIP lender and each of the eight borrowers as DIP borrowers. Correct?

A However, we want to characterize funding that's currently in a segregated account where the Debtors aren't

able to use it. To the extent that is viewed as the Debtor's money even though they can't use it and it's held on trust on account for the LPs. Sure. We can characterize as it coming directly from the fund and being loaned to the eight individual Debtors.

The entire thing is so unprecedented that a fund would file for bankruptcy that's a solvent entity and then be trying to consolidate with its portfolio companies, it's never happened. And so these questions are like in this world with unicorns that I'm unfamiliar with, but all we're trying to do is say, oh, if they lose in their funding motion, we're going to be these entities aren't going to have funding, and let's have a mechanism where they can get funding. That's it.

Q Okay. Going back to the comparisons between Oaktree and you call it the LP proposal, the Oaktree DIP term sheet is more economically expensive. I think you've testified to that pretty extensively. Correct?

A Yes.

Q Okay. And that's because is it also true that Oaktree is offering new money? Correct?

A Oaktree is offering new money.

Q Okay. The LP proposal is not new money. It's money that is currently in a segregated account. Right?

A In a world where you've lost the funding motion and you

can't access it so you can't use it, like, this notion of it's like it's our money and you're lending it back to us, what's the purpose of having money that you can't use? We're giving you a way to actually use those funds to support these Debtors on a wildly less expensive path to using it.

Q So who's the we again?

A Sir, I represent the LPs. So the LPs.

Q So the LPs is it is it your contention that the LPs have the authority to dictate the use of the fund's money?

MR. LEVINSON: Objection, Your Honor. I think first off, I think it's beyond the scope and I think secondly, it's, you know, again, asking legal questions.

THE COURT: Yeah. It might be, but it's the proposal as presented. I'll overrule that. You can answer.

THE WITNESS: I have reviewed the LPA. And according to the LPA, you couldn't use those funds.

BY MR. WINSTON:

Q Okay. You've read the Delaware Chancery Court judgment. Right?

A I did.

Q Does the Delaware Chancery Court judgment permit the general partner to use those funds for some purposes?

A Not the full 97, for very limited purposes. Yes.

Q Very limited purposes. Okay. What are those limited purposes?

A For one is if there's an approved budget under the capital call, you could use it for the approved budgets.

Q Okay. And the LPs or Rigmora is objecting to the funding motion to, in part, do exactly that. Right?

A I'm not sure about -- I'm not following that.

Q Okay. The eight, separate DIP fundings, they're the, I think, seven Debtor portcos plus the management company. Am I right about that?

A That's correct.

Q And for each of the seven portcos, the amount being used is based upon the budget that Mr. Mandarino and his team prepared just for not as long. Right?

A No. We took what was filed, I believe, on January 20 with the second funding motion. There was a budget attached to that. We lifted those numbers out because we haven't provided other information to each of those entities and said, in brackets, here's the amount that it looks like you need for those.

Q Okay. But it's based upon the budget that the Debtors filed as part of the second funding motion. Correct? That's the source of how you arrived at your at your numbers. A Yes. Yes. Yes.

Q Okay. Of those seven portcos, four of them are the ones that Dr. Rimm thought no prudent investor would throw any money at today. Right?

A Yeah. Again, which four they are, I don't recall, but I remember some of the testimony. Yes.

Q Okay. You were -- you were listening. I think you were -- I saw you back there. Right? You were here when she testified on Zoom?

A I just said I heard her.

Q Okay. One of them was Aperture. That's tranche number one. Right? You remember her testifying about Aperture?

A I remember her saying the name.

Q Okay. And that was one of the ones that she believed to be not worth any money from a prudent investor. Correct?

A Correct.

Q But this proposal has Rigmora agreeing that the funds can be used for Aperture. Correct?

A Yeah. We're talking about two pretty different things here where I think her statement is in the VC fund world where you're investing capital in a growth company because you care about your rate of return and you're trying to make money, which is what this fund is trying to do, you wouldn't fund that. This is a DIP facility in a Debtor in Chapter 11 that has administrative expenses, and who knows what liability of just not having capital.

It's actually not so prudent to file a company for Chapter 11 when you don't have the capital. We're looking to make sure it has capital to get through a Chapter 11 process.

This is not an independent VC venture funding. Oh, we see massive returns in funding a DIP facility. That's -- those are two totally different investment worlds.

Q So based upon your testimony, did you find Dr. Rimm's analysis remotely helpful to your views of the LP proposal?

A It explained to me why these Debtor subsidiaries have filed for Chapter 11.

Q Anything else?

A I think that's it.

Q And I could walk you through the other ones that are listed here from her analysis, but I'm assuming the test would be exactly the same. Correct?

A It'd be -- it'd be pretty similar.

Q Okay. Let's not waste time on that one. Can you turn to page 2, Section 5 of the LP proposal where it says use of proceeds? This is to dictate how the proceeds are to be used, correct, with some limitations?

A Yes.

Q Okay. And one thing I want to make sure I understand, if you look at Section B and then under that underneath that little c, where it says in no event shall proceeds here under be used --

A Yes.

Q Romanette one says, external research and development expenditures. Do you see that?

A Yes.
Q The approved budgets that form the basis by which the numbers are derived in Section 1 of the LP proposal provides for external research and development. You know that. Right?
A Yeah.
Q Okay. So do you have an understanding whether the LP proposal permits that external R&D to go forward or not?
A I think if it's in the approved budget, yes, it would.
Q Okay. So at least in, as of the time that this was submitted on February 13, and I don't think you've withdrawn it, it is Rigmora's position that spending money on external R&D for those seven companies, if they're in the approved budget, makes sense. Correct?
A Well, this is what I would say. And thanks for drawing -- I hadn't spent too much time on this provision. But, how it typically works with debt financing is someone submits a proposal and someone marks it up and you negotiate terms.

The way that I'm reading it is I think that just getting a markup that added a comma would make your statement correct. And so if I were at all interested in negotiating a DIP proposal, I would have marked it up and added a comma so that the approved budget would apply to both romanette one and romanette two.
Q Okay.

A And then we could have responded, and there would be your answer.

Q Okay. So I think your testimony is notwithstanding how the last antecedent rule might work. It is Rigmora's intention that under this proposal, if there is external R&D expenditures in the approved budgets for those seven, not saying no to that. Right?

A We have to have approved budgets, and if it's in an approved budget, yes.

Q And the approved budget is sourced from the budget that was attached to the funding motion. Correct?

A Yeah. That's from January 20 with no updates. No -- there's been no discussion. So we're working on a document that's four weeks old with no updates. We're open to negotiating that into coming up with an approved budget. And if there is external R&D in a budget we approved, yes, you can spend those dollars.

Q I mean, unfortunately, Yuri B. isn't here today, so we don't have any business person talk. You're brand new to the scene. Dr. Rimm just dumped all over six of these. We're trying to make sure we know that if this proposal were to be considered, it is Rigmora as willingness to fund external R&D. Do you know if that's true or not?

A If it's in an approved budget, the fine term, yes.

Q Okay. Is Rigmora willing to do an approved budget that

includes external R&D for all of the seven companies listed there?

A I don't know. We need to negotiate. We need to see what the amounts are. It's not that the budget that we have has detailed broken out line items and that we know what those are. But, yeah, we're totally willing to engage in that.

Q Okay.

A I know we keep seeing we, the LPs are totally willing, to engage on that basis.

Q Okay. And that is on behalf of the money that is sitting at the fund Debtors account currently. Right?

A Yes. Held on trust for the benefits of the LPs. Yes.

Q Does the segregated account, subject to Bankruptcy Court jurisdiction, say that?

A No. But the LP agreement, I believe it does.

Q Okay. You reviewed that. Right?

A Well, I reviewed that LPA. I got to tell you, it's really hard to put together because there's no conformed copy with 2022 amendments, but I did my best. And I'm sorry, Your Honor. That's why I'm not practicing law anymore.

Q We're on common ground on that one. Okay. Couple more questions, and I'll maybe let you go here. You testified on direct that for the companies that are subject to the funding motion that are not listed in the LP proposal, there's a

willingness to negotiate. Did I hear that right? For funding for those companies?

A Yes.

Q Okay.

A The funding of those entities from our perspective, at least from my perspective, have nothing to do with this bankruptcy. It is so extraordinary. It's unprecedented that we've got a fund filing for bankruptcy with multiple portfolio claiming to be consolidated.

It's in this fact pattern, it's never happened. Only in fact patterns where GPs are trying to shield themselves from liability, it's usually the reverse where I know you're -- it's been before Your Honor, I'm sure, where people have said, oh, this fund is a bad actor. We're going to pierce the corporate veil. It's a reverse merger.

Never has this occurred where someone's saying, oh, we're an enterprise because we have independent corporations and we're we have an LPGP relationship that we're funding seeking to use non-Debtor assets and collateral to pull value out of the Court, out of the Chapter 11 entities, and into bankrupt entities.

So from our perspective, that's totally unrelated. The LPs have interest in funding certain of those companies. We're focused on the eight Chapter 11 entities.

MR. WINSTON: Okay. So I'm going to move to

strike the soapbox speech and I would like to go back to my question that I asked. Is that okay with Your Honor?

MR. LEVINSON: I think it was responsive Your Honor.

THE COURT: It's in.

BY MR. WINSTON:

Q Okay. So for let me just take Alos, for example. That's one of the ones in the funding motion. Right?

A Yes.

Q It is not in the LP proposal. Correct?

A That's correct.

Q But I think I heard you on direct testify that is the -- it would be the intention of the LPs to consider funding Alos. Correct?

A Yes.

Q And would it be from the same source of funds that's sitting at the fund Debtor, or is it totally separate?

A Assume it's at the fund Debtor, but I'm sure that we'd be open to other sources of financing for non-Debtor entities.

Q Okay. Now the Oaktree DIP term sheet attaches a plan term sheet. Right?

A Yeah.

Q And I think you testified on direct, not binding. Correct?

A It's not binding.
Q And it has some, you know, things that are not settled in it. Right?
A These are not settled by the payment to the LPs in a bracketed bullet. Yeah. Yeah.
Q Sure. Okay. And --
A These are unsettled.
Q Yeah. And probably subject to negotiation if we were to proceed on that. Right?
A Subject to negotiation.
Q Similar to subject to negotiation by the LPs on the portcos that not listed in the proposal here, right? Same kind of negotiations?
A No. Not at all.
Q Why not?
A We're talking about providing funding to non-Debtor entities because those are investments that we're the ultimate owner of because we have the LP -- we're 98 percent of the LP interest, and we're saying, let's fund those. It has nothing to do with these Chapter 11s. I don't -- I'm not following your line of connecting them.
Q Okay. So you can't follow the line that just because something is uncertain and not binding doesn't mean parties don't sit down and try to negotiate terms. Do you not follow that?

A Yeah. I'm just -- I'm not the one making a big to do about this is this Oaktree DIP financing is a path for us to exit bankruptcy when there's no financing committed. There's terms such as like the value going to the LP who's 98 percent of the value here with a bracketed bullet in terms of the key term in the entire document. And so I'm not the one making up, like, yes, we're supporting this because it's a way out of Chapter 11. Our DIP actually -- or sorry. The LP DIP actually does end up with the conclusion of these Debtor entities.

It's -- you can find replacement financing, take us out at no cost because there's no prepayment penalties, find new financing, reorganize those entities however you want, or let the market speak. And we've heard all this testimony about tremendous value and what we're going to unlock. Well, sure. Let the market speak. I think our funding, the first one you mentioned is it's $1.7 million. That's what someone would have to come in and pay to buy the asset. And so to me let the market speak, that's actually fair and a path out of bankruptcy.

Q In work that you've done either before or after you signed engagement letter, have you done any valuations for any of the portcos?

A No.

Q Okay. I want to go back just briefly to the notion of

negotiating funding for the portcos that are not listed here. You did testify a little bit ago on cross that you had read the Delaware Chancery Court judgment. Right?

A Yes.

Q And you also read some of the pleadings, I think you said?

A Yes. I'd read the motions there.

Q And you do know that the entire Chancery Court litigation revolved around the failure of Rigmora to honor capital calls. Correct?

A What was the amount of the initial claim in terms of the unfunded capital calls?

Q I'm not going to guess. I don't have it in front of me. Do you -- can you answer my question? Do you do you recall it was about honoring capital calls?

A That was -- that was one of the main arguments.

Q Okay. And the end result was Rigmora actually had to honor capital calls. Correct?

A Yeah. But if I remember correctly, I think the ask was for 400 plus million of capital calls. And she said no. 97 needs to be funded because that amount was double counted somewhere. So, yeah, some amount had to be had to be funded, but it certainly wasn't the full amount in the initial pleading.

Q Okay. So if Rigmora was refusing to honor capital

calls for the ones that it was ordered to pay, does that give you a sense of how Rigmora is going to approach wanting to fund portcos going forward?

MR. LEVINSON: Objection, Your Honor.

MR. WINSTON: To what?

MR. LEVINSON: Objection. It's this is -- they're just calling for speculation.

MR. WINSTON: They've offered him as effectively an expert on this DIP proposal. This DIP proposal is about funding port cuts.

MR. LEVINSON: I mean, I don't I don't recall any testimony during direct also on the subject of the Delaware litigation.

MR. WINSTON: He testified. He read this.

THE COURT: Well, he did.

THE WITNESS: Unfortunately.

MR. LEVINSON: But that wasn't part of the direct.

THE COURT: Give me the question again, if you can.

MR. WINSTON: Let me see if I can ask it, slightly differently.

THE COURT: Okay.

BY MR. WINSTON:

Q One of the reasons why you believe that the LP DIP proposal good is that it contains the notion of negotiating

more funding for portcos that are not listed here. Correct?
A I don't think I said that. I think that our proposal is focused on providing funding to eight Debtor entities. And as we are the ultimate residual claimant of the non -- it's unrelated to this bankruptcy, there's other portfolio companies out there that we want them to succeed, and we are willing to find a way to continue to fund those entities if it makes sense.
Q At what point did Rigmora tell you that it wanted to see these portcos succeed?
A They said the purpose of the fund was to make money. So you can deduce from that that they want these portcos to succeed.
Q And yet in the Delaware Chancery Court, they were not willing to fund the portcos absent litigation. Correct?
A No. That -- now I'm really sorry that I read those pleadings. Actually, I think it turns on the fact that there weren't approved budgets for those entities. And so first their first claim was, no. It's a closed in fund. You've capped it out. The judge said, yeah. We capped it out, but you double counted 97 million, repay that 97 million. And then the argument was, oh, it needs to go to portfolio companies. And if I remember correctly, it was all about there weren't approved budgets.
So even the capital call was made within nine days, by

the way, pretty impressive to come up with $97 million in nine days. That that money is there, but it could no longer be -- it couldn't be used because there was no approved budget to use them.

Q And I think you testified you've not read any of the Cayman Island proceeding materials in and of themselves. Right?

A Not in and of themselves.

Q Unless they were referenced in the Chancery Court?

A Yeah.

Q Have you read any of the pleadings in this case?

A Yes.1

Q Have you read, like, say, the dismissal motion?

A I've read the dismissal motion.

Q Have you read the opposition to the dismissal motion?

A Parts of it.

Q Have you read our reply to the objection to the funding motion?

A I don't think I've read that.

Q Okay. Do you have any reflection --

A Sorry. They're all running together.

Q I get it. Do you have any recollection of Rigmora taking the position that seven of the portcos were hopeless investments?

A I don't remember where it was used. I do actually

remember the phrase hopeless investment.

Q Do you have any knowledge sitting here today whether Rigmora's proposal funds any of those seven hopeless investments.

A Does this LP proposal?

Q Yeah.

A Yeah. It provides them funding in Chapter 11 as DIP financing.

Q Okay. And but you don't know which ones might be hopeless investments based upon what was asserted in the Cayman Islands?

A Based on the testimony we heard before and the fact that we have seven entities in Chapter 11, probably would guess that one of or two of these are hopeless investments.

Q Okay. Do you have any view as to whether if Rigmora had taken a position in the Cayman Islands, these were hopeless investments -- well, strike that. Strike that.

MR. WINSTON: Give me a second. I'm may be done. Just make sure. I'm done. Thank you very much, Your Honor.

THE COURT: Thank you. Redirect?

MR. LEVINSON: Very briefly.

REDIRECT EXAMINATION

BY MR. LEVINSON:

Q Mr. Aebersold, would it be helpful for the LPs and you to -- and particularly the LPs themselves and client

representatives -- to be able to review information concerning these portfolio companies in terms of their analysis and evaluation?

A Which proposal --

Q For the eight Debtor portfolio companies that we're talking about.

A Sure.

Q Yes. I mean, and are you aware of designations that have been put on in this case designating documents as highly confidential?

A Yes.

Q Okay. And would it be -- would you view it as helpful for the clients to be able to review and evaluate these proposals and that information if those designations were to be removed so that they could actually evaluate that information?

A Yes. It's the underlying data for these investments, our client hasn't been able to review because they were sent over the weekend designated highly confidential. We've asked for that to be removed. I don't think that it's been removed yet.

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

THE COURT: Thank you.

THE WITNESS: Thank you.

THE COURT: You may step down.

MS. TOMASCO: Your Honor, I just want to address that last comment. Highly confidential under the existing protective order can be shared with retained professionals for the entity, so there's no reason why they couldn't be shared with Rothschild.

THE COURT: I think they want them shared with the client, so who's making the decisions.

MS. TOMASCO: No. I understand that, but we've asked them for a list of people who that is exactly. That's it. We want to know who that is.

MS. SELDEN: Your Honor, on behalf of the Rigmora LPs, we have provided that list. I'm happy to say it's Mr. McDonough, Patrick Boffinger. We would like -- it would facilitate these discussions for our clients themselves to be able to have access to the information from highly confidential, and we will forward to making progress perhaps in that regard.

THE COURT: Any more evidence? Any more witnesses?

MR. WINSTON: No, Your Honor.

MS. SELDEN: No, Your Honor. We have no more witnesses.

THE COURT: Okay. I do understand there's some deposition designation testimony that y'all need to take a look at and agree to. Anything else?

MS. GOOD: We do have our exhibit list, both the Debtors and Rigmora. We've spent a little bit of time on the breaks, trying to work through and according to Your Honor's directive, cull them down to the most relevant items. But I think we're still working through that, and I think it would be helpful for us to have until later this evening or preferably tomorrow morning to be able to do that.

THE COURT: Okay. Okay. Thank you. We're not going to start argument tonight. So are people available tomorrow?

MS. SELDEN: Yes, Your Honor.

THE COURT: Okay. We'll start argument at 10:00. At 10:00. So I would encourage people to continue talking. Seems like we were negotiating right there on the -- between the podium and the stand. So let's keep that -- let's get some discussions going.

MS. SELDEN: Your Honor, I am going to make one observation just in hopes that it will facilitate those discussions, which is that our client representatives are in Central European time, so they are six hours ahead of us. So just so that you have it in mind, John, there will be, I hope for this, like, too late for me to talk with them much tonight.

THE COURT: So should we start argument later? Okay. Let's do argument at -- let's do argument at 2:00.

MS. SELDEN: Thank you, Your Honor.

THE COURT: Okay. Anything else for tonight?

MS. GOOD: Nothing further for tonight, Your Honor.

MS. SELDEN: Nothing further. I will just reiterate the more information that we can share with our clients tonight or in the morning, the more progress we hope to be able to make. And in the meantime, I think we are making progress on the exhibit list, so that's a start, and we will continue that. Thank you.

THE COURT: Thank you. We're adjourned.

(Proceedings adjourned at 6:39 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

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For Reliable

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/s/ Wendy K. Sawyer February 20, 20265
Wendy K. Sawyer, CDLT
Certified Court Transcriptionist
For Reliable

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	Case No. 25-12177 (LSS)
APPLE TREE LIFE SCIENCES, INC., *et al.*,	.	(Jointly Administered)
	.	
	.	Courtroom No. 2
	.	824 Market Street
Debtors.	.	Wilmington, Delaware 19801
	.	
	.	Friday, February 20, 2026
. . . . .	.	2:04 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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(Proceedings commence at 2:04 p.m.)

(Call to order of the Court)

THE COURT: Please be seated.

Ms. Good.

MS. GOOD: Good afternoon, Your Honor. Thank you for making time for us again today for oral argument.

Before we turn to the argument, we did want to give the Court an update on where we are after your direction yesterday that we continue talking. And so I would turn the podium over to Mr. Winston to provide that update.

THE COURT: Thank you.

MR. WINSTON: Good afternoon, Your Honor. Eric Winston of Quinn Emanuel on behalf of the debtors.

We did want to provide what we believe to be an important update. A few hours ago, we provided a written proposal to Rigmora and to the creditors' committee, to indicate a path forward to a consensual resolution. It was very much intended not to be a Rule 408 settlement proposal because we want to be transparent to the Court and the parties as to what we're thinking. And in reporting this, I'm not intending to be adversarial; I want to be constructive and neutral.

I want to highlight two points from yesterday that got us to what we did, when -- it's a very different proposal than anything that had been done before.

Number one, I think I counted three times Your Honor said talk, and certainly there was a lot of talking yesterday. But what I heard from it was don't just talk about the specific funding motion right now; rather, it was talk more globally. When you said the big show is next week, I heard that and said okay, I could be reading it wrong, but I think the signaling is, if you're going to talk, talk to see if you can get to a much more important restructuring concept. So we had that in our mind.

And then the other thing came out of the examination of Mr. Aebersold, where he said that we hadn't given them a redline to their DIP proposal. And I thought about that last night, we talked about it last night, and I got the point, I got why he said that. And we said to ourselves but they didn't come back to us and redline our plan termsheet. And it taught me that there was a very fundamental mismatch between where they were and what they were expecting and where we were and what we were expecting.

So what we tried to do was come up with a proposal to try to match the expectations, as opposed to continuing on with the mismatching, because, when I look at the number of boxes and people over what I think is a 363(b) motion, over funding where, at least what I heard yesterday, it seemed like everyone was mostly on board with funding at least most of them, I -- we wanted to come up with something, so we did.

And I will tell you why we -- what we did. We did get a response just before Your Honor took the bench. I'm not going to say anything about it; I'll let counsel do that because, again, I want to be neutral and not adversarial. I don't want to mischaracterize anything. But let me just tell you what we've put out there, not to try to like influence today, if we end up arguing, but just to let you know what we are trying to do throughout this case, as part of the big show next week and what happens if we happen to prevail next week.

What we've proposed is that, for the portfolio companies, all the ones that are in our funding motion, they get their funding for the next ten weeks.

To unlock the rest to July 31st, which is what our funding motion proposed, there's a milestone. At ten weeks, we have to deliver a signed restructuring support agreement or plan support agreement or binding plant termsheet that gets us to confirmation by the end of July.

In other words, in order for these PortfolioCos to demonstrate that they should get the rest of the money that they're working on, as you heard Ms. Karson testify and Dr. Eisenberg testify, the work that they're doing to demonstrate that that work is likely to produce value, we have to deliver something that shows somebody else is seeing that value. If we can't, all bets are off.

Importantly, during these -- this period, this first ten weeks -- and if we hit the milestone, the next, to take us to July 31st, we're asking for a standstill, not that they have to withdraw the motion to dismiss, it just gets deferred; not that anyone's rights are forfeited, they're just not the boxes and boxes and boxes of documents that have been produced that you're never actually going to see because no one actually cares. It's just we put a stop to it.

Give us the time to demonstrate what we believe is the right outcome here that will, we believe, generate massive value for Rigmora. And if we're wrong and we cannot deliver it, as I said, their rights have not been forfeited in any way, and they will, undoubtedly, unleash holy war on us if we can't deliver. And so we've asked for that standstill. No more litigation here. You know, obviously, they can object to a plan or anything like that or normal course stuff, but nothing new, nowhere else in the world.

And as a gesture of good faith -- it's in the termsheet we put out there. But as a gesture of good faith on this, whether they accept it or not today, we are comfortable withdrawing our stay enforcement motion because:

One, I want to talk another thing off your agenda that you have to decide.

Two, I think the message has been learned because nothing bad has happened in the last two months.

And three, I'm trying to be constructive. We don't want to like seek to punish anyone anymore.

And so, whether they accept it or not, we're willing to do that as an olive branch, if you will, to say can we kind of put the swords down at least for the next ten weeks, to see whether we can get this done. And that's it, that's it.

And so we ran it by Rigmora, we ran it by the creditors' committee. They can -- everyone can say whatever they want to say about it.

We ran it by Oaktree because that plan termsheet is there. We view them as a partner that has already invested a lot of time and money and, very likely, is the party we would certainly want to see come forward with a restructuring support agreement or plan support agreement. Their counsel is here, they can tell you what they think about it.

But at the end of the day, before Ms. Tomasco gets up to argue and Ms. Good deals with more of the evidentiary issues we haven't sorted out yet, we just wanted you to know we heard what you said to us. We think what you were saying to us was talk to solve the case. We've been trying. And whether it gets solved today doesn't mean we will stop, you know, talking. We're going to continue to talk no matter what. That's all I got to say.

THE COURT: Thank you.

MR. ALBERTO: Your Honor, might I be heard briefly?

THE COURT: Mr. Alberto.

MR. ALBERTO: Thank you, Your Honor. Justin Alberto from Cole Schotz, proposed counsel to the Official Committee of Unsecured Creditors.

You've heard a lot from the debtors and Rigmora, not only over the last 24 hours, but throughout these cases.

Our committee was formed about 25 days ago, approximately; and, since then, we have spent a considerable amount of time delivering a message to both the debtors and to Rigmora, on the other hand, that this is not a two-party dispute.

Our constituency is comprised of vendors who have claims that want to see them paid in full and, maybe even more importantly, developers of certain technology or licensors of certain technology that are really hoping for a go forward business here to conduct business with, and who might actually be able to take that technology, develop it further, and ultimately commercialize it for the greater good.

Some of the testimony we heard yesterday was powerful. But one thing that really stuck out to me was early in the day, when Ms. Karson -- and I'm going to

paraphrase -- said something along the lines of that, due to the lack of funding, potentially life-altering applications are being delayed and the competition is catching up. The committee does not want this fruit to die on the vine. Our vendors won't be paid. And while I'm certainly not an expert, the technology will eventually wither.

This situation cries for a resolution in the committee's eyes. And I commend both parties for at least talking over the last 24 hours. But candidly, Your Honor, we remain far too far apart here.

Scorched earth litigation -- and that's exactly, really, what it is, right now, witnessing as somewhat of an outsider to the fighting that's going on around me -- it's going to crater this case. Maybe that's the objective, but that's not what Chapter 11 is about, in my experience as a bankruptcy lawyer. This is the ultimate tool for hard-fought, yet fairly negotiated negotiation -- or resolutions, excuse me.

The committee would like to see a process that at least attempts to preserve these businesses, gets them out of bankruptcy as quickly as possible. This business will not sit well in a prolonged Chapter 11, I think you heard that yesterday from some of the witnesses. And cooler heads, honestly, must prevail.

We already know the Oaktree termsheet is out

there. Le's pursue that. Let's try to restructure these businesses. Let's put our swords down. And this is the committee imploring both sides here to come together and figure out a way to do this.

And Your Honor, let me be the first to suggest that this situation is perfect for judicial mediation. We can't get anything accomplished outside of this courtroom and even in this courtroom. Let us not kill more trees and come back in front of you seven days from now and fight over dismissal. Let's try to figure it out. Let's use this time productively. It's costing way too much money. These estates will absolutely crater.

You know, that's where the committee is at. I thought it was time for us to be heard. We've remained silent. We would like to see more progress be made. And we're a willing participant in facilitating that.

Thank you, Your Honor, for your time.

THE COURT: Thank you.

MS. LABOVITZ: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. LABOVITZ: I'm going to start by celebrating a point. There is something that Mr. Winston and I agree on. Unfortunately, that thing is that we have a fundamental disconnect, but we're making at least some progress.

Your Honor, let me lead by setting the goalposts

here. We've heard Mr. Winston's summary of their proposal. A couple of other points that I'm trying not to be controversial about, but I think their proposal included a couple of more items that are maybe neutral.

They also required that we withdraw our objections to the Quinn Emmanuel and the B. Riley retentions. We're prepared to argue those today.

In addition, they did propose some resolution to the standstill that we've been at, in terms of information-sharing.

I would characterize it as just the beginnings of a discussion. It's quite vague. But they did put that out there as the beginning of a discussion. And I think that's probably the most constructive part of the proposal because we really need to solve the information-sharing problem.

Leaving that, I think it's probably useful for me to lay out to the Court the counteroffer that we've just made as we walked into the courtroom, and then I'd like to respond a little bit to some of the big picture observations, as well.

As a counteroffer, we have proposed, essentially, to continue the funding -- the relief that's been granted under the funding order that exists, to cover the next four weeks through the week ended March 20th. So, specifically, we'd agree to an additional four weeks of funding for the

portfolio companies that are in Chapter 11 and for the few that have been included in the past funding motions that are not in Chapter 11, but need funding.

Whereas, in the past, we have been asking for information to evaluate that funding and understand what's necessary, in the spirit, similar perhaps, to where they are just cutting through that, we're proposing that, for four weeks, we'll adopt their budget numbers. And you know, so that would be the amount needed to cover budgeted expenses from January 20th through March 20th, less the amounts previously funded by the first funding order.

And the only limitation on that, we're asking that the debtors not pay the contest ATVM fee out of those funds, that the amounts for Nereid and Nine Square be reduced by the amount budgeted for R&D spending, so that's sort of new third-party startup.

And a couple of other points:

Just that the transfers would be pursuant to promissory notes, similar to what's happened before.

And the order would have the same reservations of rights, in terms of allocation, that has -- that we've agreed to before.

So that's the proposal. The goalposts are far apart, but the parties are talking.

Some big picture observations. Your Honor, we

view the jurisdictional matters here as weighty and important. And Ms. Selden is prepared to go into them today. I think Your Honor has read the pleadings and you're well aware of what they are.

We don't view agreeing to funding for 18 weeks, while we go through a plan process in Chapter 11 and leave aside those critical jurisdictional issues that go to whether we should even be having a plan process at all, we don't view that as moving the ball forward. And we don't view it as cutting through unnecessary process or litigation because we'd be having a process and a litigation here that might be entirely unnecessary, if it turns out that we should be proceeding to a winding up in front of Justice Asif, who will decide many of the same issues in probably a more streamlined forum.

A couple of other points:

Mr. Winston, I think, said that the test at ten weeks of whether they can find a plan counterparty would help demonstrate that someone else sees some value in the portfolio companies.

But just to highlight that, and something that I think is really important about the Oaktree plan termsheet is that the value that is included in the Oaktree plan termsheet that would ultimately end up as part of a reorganized debtor, and within Oaktree's ownership and not the LP's ownership,

include portfolio companies that are not in bankruptcy. They include, for example, the Aulos entity that you've heard about before, that everybody agrees should be funded because we think that's, you know, potentially on the verge of seeing some value.

So what they're talking about is not a market test to see whether these particular portfolio companies that are in bankruptcy have some value and should be funded, they're talking about marketing the valuable companies and, you know, offering those up for sale, despite the LP's rights. That's part of what we don't think should happen.

And I don't want to pre-argue the various contested matters, but I'm just trying to help you understand why there is a dispute and sort of what that dispute is getting to and why it is that we view the proposal that was given to us today as something that would be unacceptable.

A couple of other points:

In terms of the creditors' committee -- how to put it? It may be my fault that they haven't spoken to us because I had the audacity to try to go on vacation last week. But I don't think they have meaningfully communicated their position to the Rigmora's LPs, and they haven't heard our position back.

I hope they take away that we have agreed to funding for the portfolio companies throughout this case. We

are -- we have never been saying that legitimate expenses of the portfolio companies should not be paid. We're trying to minimize unnecessary spend going forward. But I don't think that there is a disconnect between the position of the Rigmora LPs and the legitimate unsecured creditors in this case, and I think we should be talking more about that.

Last point. Just to preview because I think Oaktree's counsel is here and about to introduce himself. Your Honor, we heard a lot at the status conference last week about introducing a competitor into the mix. There were a lot of allegations leveled at my clients when they did not do that.

Suffice to say that, despite great respect that I and my firm have for Oaktree, we do view them as having brought a competitor into the mix of this limited partnership that was a two-party contractual arrangement, in which no marketing of the LP's assets should happen without the LP's consent. So I just want to frame that to you and sort of highlight why the issues here are really intractable.

THE COURT: Thank you.

MR. BOTTER: Good afternoon, Your Honor. David Botter, Clearly, Gottlieb, Steen & Hamilton, on behalf of Oaktree. And Your Honor, thank you very much for letting me appear by Zoom, I very much appreciated that.

I guess Rigmora's counsel gave me a good segue

into very brief thoughts that I'd like to present to the Court.

Your Honor, since, effectively, day one of these proceedings, Oaktree has been trying to support the debtors and their mission. Obviously, the debtors are -- were potentially and are potentially without the benefit of funding to go forward in these cases and to move their -- the companies forward and continue their scientific efforts.

Oaktree has stood up for that and has provided a DIP. And despite, the -- you know, sort of the bashing that we took yesterday, it's an economic DIP and it's a proposal that Oaktree is still prepared to honor.

We've heard, obviously, this morning about the proposal that the debtors made to what we feel is preserve the status quo, preserve jobs, preserve the scientific mission of these companies. Oaktree is prepared to go forward in that process, as well. And so we remain supportive of the debtor, supportive of these efforts.

The one thing, you know, that I think is important, and I think is missed, is that, today, these still are debtors-in-possession. The ability for another party, a party-in-interest, to control the cases and control the direction of these cases while the debtors maintain exclusivity is a foreign concept, at least for me, who's been doing this for a few years. I'm sure it's a foreign concept

for a lot of people in this courtroom.

So, Your Honor, with that, again, Oaktree is completely supportive of this process. Time to put arms down and see if we can't be constructive and move these companies forward.

And frankly, I heard, like everyone else in the courtroom, I think yesterday, that the work that these companies are doing is incredibly important. And so I think that we should all be cognizant of that fact and see if we can't do the appropriate thing here and try to move towards reorganization, move towards saving jobs, move towards these companies being permitted to continue to do the good work they're doing.

So, with that, Your Honor, I leave it in your good hands.

THE COURT: Thank you.

Anyone else?

MR. WINSTON: May I have one minute?

THE COURT: Yes.

MR. WINSTON: So, again, one minute. I'm not going to -- I think you're going to have to hear argument today.

I think I heard from Rigmora that they are not saying no to talking, other than their proposal about four weeks is their proposal. And it doesn't -- I don't know what

they do about their DIP proposal because it's longer than four weeks, but I hear that. I think we're just going to have to argue.

Maybe some clarity will come out of today or next week. And then, depending on how it shakes out, I will be an optimist that it will lead to more discussions. I would absolutely love to sit down or have, you know, Mr. Mandarino and miss -- and Dr. Harrison and Mr. Pohl sit down with Rigmora's businesspeople and say you think Aulos is worth X, okay, great, how about the ones that Dr. Rimm really hated, do you put any value on those. Let's figure that out. That would be a wonderfully constructive conversation.

And then how to deliver that value would be even better, but I don't know if we're ever going to get there. Hopefully, we will.

THE COURT: Okay.

MR. WINSTON: Thank you.

THE COURT: Thank you.

(Pause in proceedings)

THE COURT: So let me say I appreciate that there's been an exchange of termsheet, if you will, and that there has been some talking. But I don't hear, at this point, that there is a resolution of today. I'm not even looking forward to next week, but I haven't heard that. I would encourage parties to continue to talk, obviously,

short-term and long-term resolutions. But it sounds like we are -- we're on for today, in terms of argument. I don't think I can send people in the hallway to -- that's not what I'm hearing, so we'll start with argument, or else I would.

MS. TOMASCO: Your Honor, may I approach the bench with record excerpts?

THE COURT: Yes. Thank you.

MS. TOMASCO: Good afternoon, Your Honor. Patty Tomasco on behalf of the debtors, proposed counsel, not ...

I want to start with -- well, where are we today? This is a motion pursuant to 363(b). This is a motion for the debtors to use money that was awarded to them by the Chancery Court, pursuant to specific performance. And under the funding motion, we believe it to be an implementation of what the Chancery Court opinion and the Chancery Court order contemplated.

The debtors propose to spent approximately $39.5 million for 7 debtors and 3 nondebtor portfolio companies. Except for Aulos, Nereid, and Nine Square, the portfolio companies at issue have unfunded, approved budgets that Rigmora previously approved.

Now I know that the Court understands, when Rigmora approved a budget, the debtors turned around and invested in the company pursuant to Series A funding agreements, and that is how those companies got funded and

how they, then -- to speak to Mr. Alberto's point, is how they then entered into contracts with their vendors. So it is a daisy chain of obligations that started with Rigmora approving the budgets.

Now, of course, under the LPA, the management company is not subject to that budget; it just gets reimbursed its expenses. 12.2 million dollars will be paid towards those management company expenses. This is -- consists of:

Payroll, 6.4 million;

1.7 million for external and internal consultants;

2.7 million for overhead;

Management company expenses of two payments, 750,000 and 650,000 which is reduced by the Akero dividend that Dr. Harrison received. Of course, Rigmora doesn't want Dr. Harrison to be paid a dime.

The remaining funds in the management budget, in the general partner's budget, are for the Chapter 11 expenses, including the U.S. Trustee fees and professional fees.

Now I will tell you, as a debtors' lawyer, dyed in the wool, that the professional spend in these cases is quickly consuming any delta that Rigmora might help to achieve by reducing the funding of the portfolio companies.

And I bring that up because, for example, you

heard from the CEO of Evercrisp, she needs $3 million of her approved budget, which is multiples of that, a budget that Rigmora approved. And I ask you: Would you rather do what Rigmora wants, and continue to litigate and continue to spend these attorneys' fees, or would you rather give the $3 million that Rigmora already approved to help her finish her research?

So, to continue, just to look at the exhibits before you, what we've tried to do is to -- instead of referring to these large books of exhibits, we tried to just pull them down into a manageable set to support the argument. If you'll look at Tab 5, it's going to show you kind of my cheat sheet, which is Table 2 from the motion.

I'm not going to go through every portfolio company. We've tried to set this out in charts and exhibits, so that the Court can follow. But in this exhibit, there are three drug candidates that are effective against treatment-resistant viruses, treatments that stimulate the immune system to fight cancer before resistance can occur, the advancement of already nominated drug candidates for the treatment of Parkinson's and other neurodegenerative diseases.

I'm sorry, Your Honor.

So I'd like to focus on just two:

We heard from the first witness, Meenu Karson --

and Karson -- Dr. Karson is the CEO of Evercrisp and is trying to find a way to deliver CRISPR gene editing payloads to specific cells in the body, as the Court heard.

THE COURT: Uh-huh.

MS. TOMASCO: From the chart, you can see that, despite Evercrisp having $49 million left in a funding budget that Rigmora already approved, this funding motion seeks only to use $3.5 million of it. The question is why Rigmora objects to the use of money that it already approved, that the Chancery Court already ordered specific performance.

And the LPA prohibits Rigmora from exercising control of -- this way under Section 2(b) of the LPA. It says that the management of the debtors vests in the general partner, and that is a contractual obligation of Rigmora to let them do that.

Now --

THE COURT: Can you tell me when the budgets were approved versus the missed milestones?

MS. TOMASCO: Well, Your Honor, I -- sitting here right now, I cannot. But I will tell you that the milestones were found by the Chancery Court opinion to not be a condition to funding.

THE COURT: No --

MS. TOMASCO: And --

THE COURT: -- I'm not saying they are. I'm

just -- you know, I heard Dr. Rimm's testimony, and that's a question I have.

I don't think a lot of the facts are going to be in dispute. Okay? But one question I had, as she was testifying, that no prudent investor questioned whether that's the right standard. But no prudent investor would invest in these companies is when did Rigmora make decisions relative to missed milestones.

MS. TOMASCO: Well, in fact, Your Honor, Evercrisp has no missed milestones in its Series A funding agreement.

Second, Dr. Karson testified that the reason why they weren't able to start certain projects was because of the funding freeze caused by Rigmora's breach of the LPA.

THE COURT: Uh-huh.

MS. TOMASCO: And so, for -- with respect to Evercrisp, that's not a great argument. And it's an argument that was made in front of the Chancery Court and found to have been not a condition to Rigmora's funding.

THE COURT: Yes, that is what she found. She -- I don't know that -- she found a whole bunch of other stuff. But she said, notwithstanding, you have to fund.

MS. TOMASCO: Correct.

Now she also found that the budgeting -- the milestone process was not a feature of the budgeting process under the LPA; instead, it was a feature of the Series A

funding agreements to which Rigmora is not a party. And that was entirely between the management of -- the general partner's management of the portfolio, so that it only spent money if the company was progressing towards its milestones; or, if not, that it still felt comfortable investing the money that Rigmora had already pledged. That is the structure.

And that is why, under both the Cayman exempt limited partnership law -- I want to call it an "act," but it's a law -- and the LPA, the management of these portfolio companies is vested solely in the general partner.

THE COURT: It is.

MS. TOMASCO: And so it is in the province of the general partner's management to assess the science.

And now I learned a term in this case, but it's called "drowning puppies." And when a portfolio company is not progressing, this general partner and general partners in this kind of business, they drown the puppies. And there are plenty of drowned puppies in ATP's history.

THE COURT: They should come up with a better --

MS. TOMASCO: I know.

THE COURT: -- term.

MS. TOMASCO: I know, but that's what they call them because it's a -- because it's a sad day when you've invested money in a company and then you have to cut them

off.

But all right, let's talk about the trifecta here:

The exempt limited partnership law vests the management of the portfolio in the general partner.

The limited partnership agreement here vests the management of these portfolio companies in the general partner.

The general partner is a debtor in Chapter 11, which 1107 vests with the power of a trustee to manage these debtors' estates.

And so, if the debtors are exercising their business judgment, why are we here flyspecking every single line item to achieve Rigmora's agenda, which has been to drown every single one of these puppies? And that is their agenda, it's what they've said. They represented to the Cayman Court that these were hopeless investments, puppies to be drowned.

And that is their goal because why? They didn't want to pay 97 million into the general partner, and they want it back now. And so they're pulling out every single trick in the book to get it back because they didn't want to pay it.

THE COURT: So is your argument that this is ordinary course? Because I thought that was your argument, but then I didn't see it when I went back and read the second

funding motion. And I, apparently, was remembering from the first funding motion.

MS. TOMASCO: I believe it -- no. Of course it's ordinary course. And to the extent it's not ordinary course, we can do, under the Bankruptcy Code, whatever a trustee could do because we're imbued with those powers under 1107 of the Bankruptcy Code.

THE COURT: So, if it's ordinary course, do I need to approve or even get into the business judgment of the debtor?

MS. TOMASCO: Only because the Chancery Court order put the funds into the name of the limited partnership, pursuant to Docket Number 79. It is in a segregated account in the name of the limited partnership --

THE COURT: Uh-huh.

MS. TOMASCO: -- which, by the way, Rigmora claims doesn't exist.

So, only because of the Chancery Court qualification that it be subject to his Court's jurisdiction, my argument is it's ordinary course and we don't need the Court's approval, but for that proviso.

THE COURT: Well, the proviso is, okay, not whether it's ordinary course or not, but just whether -- just give me access. I have -- I'm the one who has to say who has access to it.

MS. TOMASCO: Correct. With the expectation that Chancellor McCormick had no problem saying well, you know, this is a State Court judgment that the Bankruptcy Court is going to enforce, whether you call it Rooker-Feldman or something else, it's --

THE COURT: But she didn't say how the money was going to be used. She said bring it in, bring it in, the capital calls are coming in.

MS. TOMASCO: Correct. But she didn't say -- she didn't prohibit its use, either.

THE COURT: No, she didn't prohibit its use. She said it's coming in.

MS. TOMASCO: Correct. And I -- there are parts of the opinion where, in particular, she says I am writing this opinion very quickly --

THE COURT: Uh-huh.

MS. TOMASCO: -- because the portfolio companies are starving, and I am doing this quickly because I don't want them to fail.

Now she didn't say explicitly like and you can use the money for the approved budgets, but certainly, that was a permeating feature of the opinion, that it was about funding the portfolio companies. And I don't know how you square the fact that she, apparently, worked night and day over a weekend to get that judgment entered when she did, with it

just going there and sitting in a segregated account for three months. And that's what's happened.

So, Your Honor, what are we doing here? I believe that the debtor has the right to spend the approved budget amounts as they were budgeted with -- and that is ordinary course. You cannot read anything into Chancellor McCormick's opinion that compels a different result.

And the question is: What does the evidence say before you? You heard from Dr. Karson, you heard from Dr. Eisenberg, you heard from Mr. Mandarino. He wishes he was a doctor, but he's not. And you heard from Dr. Harrison. And they all support the debtors' business judgment to keep these portfolio companies going.

Now you could say well, we want to have a return on our investment. But these are already skinnied-down amounts that are designed to get to the next milestone, to preserve the intellectual property, to encourage investment from the outside world, so that we can get out of this tragic relationship with Rigmora.

THE COURT: Well, assuming that I should be looking at the debtors' business judgment, am I looking -- what's the standard? And am I looking at the short term, the long term; what am I looking at?

MS. TOMASCO: Well, you know, the answer to that is in NLRB v. Bildisco & Bildisco, the Supreme Court case.

And let me find it real quick.

But that is that the goal of Chapter 11 is not liquidation. The goal of Chapter 11, consistent with, you know, Delaware law, every other corporate law out there, is to preserve the debtors' business, its employees, its projects. If it can be, that is the preference of a Chapter 11 case. And what we're fighting, every single time, is Rigmora's desire to liquidate these debtors and to get its $97 million back because it didn't want to pay it in the first place. That's why it fought so hard in the Chancery Court. So it wants liquidation.

But we are a debtor-in-possession. We're going to talk to the committee, we talked to the U.S. Trustee. We have an independent director, we have a chief restructuring officer. We're following all of the rules. And we're doing everything with the consensus of those people.

THE COURT: Okay. We're more than one debtor-in-possession, right? We're eight, ten debtors-in-possession?

MS. TOMASCO: Correct.

THE COURT: Do their interests coincide?

MS. TOMASCO: Their interests do coincide, but I -- in every case, you do have to plan for and make sure that you have the mechanism in place to deal with conflicts. And conflicts of interest and, you know, any kind of conflict that comes up, they coincide because it -- this is not as if

we have -- oh, let's just say we have a management debtor and another debtor that does something completely different, and they are pursuing different goals, and one's value doesn't emanate from the other. That is not this case.

The management -- the ATP III GP, it has a fiduciary duty, not just as a debtor-in-possession, but as a general partner, to manage the assets of the limited partnership in the interests of the limited partnership, and the portfolio companies are that value. In other words, by maximizing the value of the portfolio companies, and you maximize the value of the limited partnership's assets.

Now all we're hearing from Rigmora is they think that it should be done slightly differently, four weeks, ten weeks, these companies, not these companies. It's -- these are disagreements about how to manage it. But as we know, 2(b) of the LPA says they're not allowed to do that. And I forget the section of the ELP Act. It also says they're not allowed to do that. If they do that, they could be liable.

Do they have the right of oversight? Sure, they do. They do. They have the right under the LPA to approve budgets, but they have.

And so what we're sitting here talking about is one -- and forgive the analogy, but I think it's a simpler one. It's as if an equity holder came to you -- and I'm -- I

know this happens a lot in publicly traded companies. You have a -- you know, an equity holder come in and say, you know, I don't agree with what the debtor is doing, appoint an equity committee, they're doing it wrong, I would do it differently. And we all say they have the right, under the Bankruptcy Code, to manage their business consistent with their fiduciary duty.

And we have no problem saying to them sorry, you know, this is not -- you don't get to second-guess the debtor's business judgment. If you have evidence of wrongdoing, you have some other allegation, well, sure, you can seek --

THE COURT: Well --

MS. TOMASCO: -- your remedies.

THE COURT: -- they get an opportunity to challenge the debtors' business judgment.

MS. TOMASCO: Sure.

THE COURT: I'm not a rubber stamp and they're not, either. So there is an ability to challenge.

MS. TOMASCO: Of course. And we've been challenged, we've been challenged. We put on our evidence. We've put on every single shred of, you know, appropriate covenant -- corporate governance that we can reasonably afford, and so we've done that.

And so the question before Your Honor is: Has the

debtor proven its fiduciary duty, its business judgment in wanting to fund these companies on this limited basis and wanting to get to the beginnings of a restructuring, which the Oaktree DIP and the plan termsheet are starting to take form. And we invite Rigmora to tell us what -- how they would like it done differently. But as you can tell, every proposal from them is liquidate now, liquidate tomorrow, liquidate four weeks from now, but liquidate.

I want -- I'm not going to go through, you know, sort of like everything that is in the paper, but I would like to highlight some of the evidence and some of it that I'd like to bring to the Court's attention.

As you know, I want to focus on two companies, and that is Evercrisp and Deep Apple. Deep Apple is not a debtor.

But you will see, in the winding-up petition, that Rigmora has represented to the Cayman Court that these companies, these portfolio companies, Deep Apple, Apertor, Evercrisp, Marlinspike, Red Queen, Aethon, and Initial are all hopeless. And so they did that as recently as November 21 of 2025.

So Deep Apple is not a debtor, and so I want to focus on that.

After the winding-up petition was filed by Rigmora on June 11th of 2025, Deep Apple received a partnership

investment proposal and closed it with Novo Nordisk, which is a major pharmaceutical company, for the amount of $800 million. Did that cause Rigmora to take Deep Apple off the hopeless debtor list? No.

And so I deposed Mr. Bogdanov, and he still considers Evercrisp and Deep Apple to be hopeless investments. They were wrong then and they're wrong now, and they'll be proven wrong again.

Mr. Bogdanov testified that Rigmora has never done a valuation of any of the portfolio companies. They've never had a third party come in and do a valuation of the portfolio debtors. And I will cite you to the deposition excerpts in our book. But it's as if they've made this decision that they're hopeless investments without doing any analysis or getting any third-party opinion to do that.

And the mantra that I heard from Yuri Bogdanov was well, in their present format, in their present ownership structure, they're hopeless investments. And so what he's really telling you, in his deposition, is that he just wants them for himself. And how do we know that?

Well, in June 2025, in between -- of course, we have the instance with Deep Apple, and that ended up being a wrong assessment. But we know that Rigmora reached out to RTW in June of 2025. And despite numerous requests for discovery, Rigmora has refused to produce any internal emails

or even the value -- the desktop valuation that Mr. Bogdanov has referred to as being the only valuation that they've done.

So, if you're telling the Chancery Court that these are all hopeless investments, but you're also talking to a potential investor or partner about reorganizing these portfolio companies, then you're talking out of both sides of your mouth. If you just want them to be terminated and liquidated or do you just want to take them for yourself, that's the question I have. And it's still largely unanswered, but we have some clues.

THE COURT: And what's -- and focus on what that has to do with this motion.

MS. TOMASCO: Well, it calls into question the reason for Rigmora's opposition to this motion, and that is that they want to force a liquidation. They want to liquid -- force a liquidation, so that they can take the -- you know, to take what they want and leave. And they want to leave the debtors and the debtors' creditors and everybody else who's invested in these companies holding the bag.

THE COURT: And again, I guess I'm -- and how does that relate to this motion, in terms of the legal arguments they've made? Their -- how does their intent -- unless, I mean --

MS. TOMASCO: Well, let's just go back to the goal

of Chapter 11, which --

THE COURT: Yeah. But everybody brings their own perspective. Creditors object, shareholders object, they bring their own perspective, they're allowed to do that. So how -- maybe there's another reason that some inconsistencies are important. But they're allowed to object and they're allowed to have their own motive for doing so.

So focus me more on if you oppose their legal arguments. They're allowed to make legal arguments.

MS. TOMASCO: Okay.

THE COURT: Let's --

MS. TOMASCO: All right.

THE COURT: Let's focus on that.

MS. TOMASCO: All right. As I said, ATP has a fiduciary role as a general partner --

THE COURT: Yes.

MS. TOMASCO: -- and as a debtor-in-possession, and that the goal of Chapter 11 is to protect and preserve the estate, including an operating business' going concern value.

So, by focusing all of their efforts and forcing a liquidation, Rigmora is, essentially, telling the debtors that your efforts to restructure this business and to maximize the value of all of the portfolio companies for the benefit of the limited partnership, which is their duty under

both the Bankruptcy Code and as a -- and as a general partner, right?

And we know what the Supreme Court has said: The goal of Chapter 11 is reorganization, not liquidation.

1107 and 1106 imbue the debtor with the role and the duties of a trustee, with a couple of exceptions, such as investigation, which is kind of strange. But what we want to focus on is the fact that we, under 363(b), have the right to use property of the estate to achieve the goals of restructuring, and that's all we're seeking to do here.

THE COURT: Okay. And Rigmora says it's not property of the estate, the funds are not property of the estate. So let's speak to that.

MS. TOMASCO: All right.

(Pause in proceedings)

MS. TOMASCO: It's a doozy.

Section 541(a)(1) says the estate is comprised of all property, interest -- all legal or equity interests of the debtor in property as of the commencement of the case.

We know from Whiting Pools that Section 541(a)(1) speaks in terms of a debtor's interest in property, rather than proper in which the debtor has an interest.

Rigmora misconstrues Section 541 by asserting funds held in trust by the debtors are not property of these estates. Now -- and it kind of depends on the type of trust

relationship that is there, so just bear with me.

Now we've cited in our papers a case out of the Northern District. But there's another one that says that -- which is BDA Design Group v. the Official Creditors' Committee. It's at 2013 WL 12100467. And that Section 541 provides that all property in which the debtor has a legal interest becomes property of the estate.

Now there's a hyper-technical argument that we've made in our reply, and that is that 541(d) says that property that the debtor holds as of the commencement of the case, only legal title and not an equity interest becomes property of the estate under (a)(1)(A)(ii), but only to the extent of the debtor's legal title. And that's what they've focused on.

But under 541(a)(7), which is property acquired after the commencement of the case, any interest in the -- in property that the estate acquires after the commencement of the case, with no distinction between legal or title.

THE COURT: So do you think that just becomes -- because the property comes in after the estate, the debtor could get more title to it than it has.

MS. TOMASCO: It -- well, yes. In this case, it does. It matters because it came in as the result of Chancellor McCormick's order or judgment that happened to come in after the commencement of the case.

THE COURT: Okay.

MS. TOMASCO: And it was specifically that the money that Rigmora was compelled to pay went into the bankruptcy estate of the limited partnership, and that's important.

But let's talk about a more generic issue, and that is: How do we interpret what kind of title a debtor has? And that all emanates, as the Court knows, from the Butner opinion out of the Supreme Court.

The Butner Court cabined its principal that we look to state law or applicable non-bankruptcy law for defining what the nature of a debtor's interest is, either as of the commencement of the case or under 541(a)(7), later, which doesn't distinguish between legal or equitable title, unless some federal interest requires a different result. In other words, idiosyncratic non-bankruptcy laws concerning interest in property will be supplanted by an overriding federal interest.

The case that existed before Butner is In Re Colonial Realty Investments, and it had to do with whether or not a mortgagee had interest in rents, which is really, you know, kind of mundane.

But I wanted to bring your court -- to the Court's attention the Third Circuit case from 1991 which is Nejberger -- -e-j-b-e-r-g-e-r -- which is 934 F.2d 1300,

where it had to do with Pennsylvania's version of its liquor license. And in the Nejberger case, the Third Circuit cites back to Butner and -- for the proposition that idiosyncratic state law is not one of the laws that the Court is required to enforce under Butner.

In other words, if there is an overriding federal interest in defining what is and is not held in trust or what kind of title the debtor has, Butner doesn't dictate exactly how those interests are going to be implemented. Ordinarily, we look to state law or applicable non-bankruptcy law, but it's not a maxim.

So, if you read the cases, Nejberger, In Re the Ground Round, In Re Colonial Realty, and Butner, you come away with the maxim that applicable non-bankruptcy law applies, unless it produces an idiosyncratic result or a result that's inconsistent with an overriding federal interest.

Now, here, the overriding federal interest is, number one, restructuring versus liquidation; and, number two, the ordinary expectations of the parties should not be upset by idiosyncratic, non -- applicable non-bankruptcy law.

THE COURT: What's idiosyncratic?

MS. TOMASCO: I'm going to explain.

Under Cayman law -- and I commend to the Court the Cayman decision of In the Matter of Formation Group (Cayman)

Fund I, LLP [sic], [2022 (1) CILR 594].

The most important thing to know about Cayman law is that -- and I'll just read the quote from that. "The statutory language clearly envisages that" --

They use funny words, it's not my word.

"-- that an exempt limited partnership will have its own assets, debts, and obligations; and that a general partner will be liable in the event that it" -- "the ELP's assets are inadequate. In brief, this implies that an ELP has some degree of legal personality, as one would expect, drawing on the more longstanding traditional partnership contract."

THE COURT: Did you cite that case? Was that cited in the filing?

MS. TOMASCO: It's cited in our response to the motion to dismiss.

THE COURT: Okay. I didn't see it. Okay. So I haven't read that case.

How does that case line up with the -- shoot -- with the Kuwait Ports case?

MS. TOMASCO: So Kuwait Ports was not a restructuring case, right? And this is where I think that the idiosyncrasies are going to come to the fore. And that is that Matter of Formation Group was a winding-up or a restructuring case, in which it was recognized that an ELP

qualifies for restructuring under Cayman law.

That requires that we then look at what happens under the Companies Act for an ELP, and the powers that a liquidator, under the Companies Act, would have those powers.

And so, in the materials book, in Tab 13 -- it's not written as precisely as our Bankruptcy Court. But essentially, under the Companies Act, the restructuring officer would have the power to enter into transactions to spend money, notwithstanding the provisions of an LPA, with court authority. In other words, all of the property of the limited partnership would become property subject to the supervision of the Restructuring Court and Cayman law.

And so, if you think about it, what Rigmora is saying here is that, under Cayman law, all of the property of the limited partnership should not be property of the estate, even though that would be the result under Cayman law, because of the idiosyncratic nature of the ELP Act, compared to all of the other corporate entities under Cayman law, in which this provision doesn't -- 16 of the ELP Act, doesn't appear. And so what happens is that, if this were a restructuring under Cayman law, the restructuring officer would have the ability to use money, spend money, enter into contractors, or whatever powers the Cayman Restructuring Court gave that person, him or her.

But Rigmora is saying that, because of this quirk

of Cayman ELP law, the result would be different in a Chapter 11 filed in the United States by ten companies, only two of which are Cayman companies. We know that, if this were a Chapter 15, the COMI would be in New York, it would be in the U.S. Every single portfolio company is a Delaware corporation. And yet, we're being told that the debtors have fewer rights under Chapter 11 in the United States than they would in a Cayman restructuring. That can't be. It's idiosyncratic.

And Butner doesn't require that you apply those laws slavishly. It requires that you apply them consistent with the reasonable expectations of the parties, with the ultimate goal of restructuring.

The gateway that Rigmora uses is Butner because it says, instead of the system before Butner, where the Bankruptcy Code would say well, in bankruptcy, it needs to be, you know, equitable, legal, it's whatever we think it should be, and it was inconsistent. And Butner said no, first you look to state law, but if it's idiosyncratic and it leads to unfair and unfounded results, then you don't.

And that's exactly what the Third Circuit did when it was analyzing a Pennsylvania liquor license law that said that, notwithstanding the fact that you could transfer a liquor license, that, somehow, in a bankruptcy, it was not to be treated as property of the estate. And so that Third

Circuit opinion is applicable here, and that is that why should we -- why should we have fewer rights in a Chapter 11 for ten debtors, only two of which are organized under Cayman law, than we would under a Cayman restructuring.

And I don't know how we have gone through months and months and months of litigation before the Chancery Court, ended up with an order of specific performance and implementing that order through a couple of things:

If you look at your own order, Your Honor, which is at Tab 14, which is the 97 million resides in a segregated bank account. That segregated bank account, if you look at Paragraph 1 -- and this was settled with Rigmora -- a new segregated bank account for Debtor ATP Life Science Ventures, LP, this supposedly nonexistent entity, which shall be used to hold the 96,960,925 to be paid by Rigmora LPs, in accordance with the partial final judgment and order of the Delaware Court of Chancery, dated December 11th.

And then, if you look at Tab 9, that is an email from Rigmora's counsel, suggesting that the correct proposed form of order implement the Court's post-trial decision includes that exact language.

THE COURT: So you're saying they waived any argument?

MS. TOMASCO: I'm -- as to the -- as to the $96 million in the segregated account, it is payable. And of

course, this is a State Court judgment. It has preclusive effect, and I have more arguments on this point. But it's also Rooker-Feldman. This is what has been done. It has been paid to an entity they now claim no longer exists. And this is the --

THE COURT: Well, I don't know that that's what the ELP statute -- I will confess that I find the statute challenging. And I will say that nobody interpreted the statute in this context for me, so I find it challenging.

But it's not that the entity doesn't exist. It has no legal personality, apparently, for some purposes, when you read the statute. Whether this is one of those purposes, again, nobody really briefed that to me, so I'm struggling.

But we know, at least in the context of derivative actions -- okay? It's been interpreted in that context, trying to give standing -- or giving standing to limited partners to bring causes of action when there's a conflict with a general partner; that's the Kuwait case.

MS. TOMASCO: Correct.

THE COURT: Okay? You're telling me -- and it's a case I -- I'm not prepared to discuss because I haven't read it --

MS. TOMASCO: I apologize.

THE COURT: -- that there's a case in a different context that's going to interpret it there. I'll have to

read that case. But those are questions I have, is what does that mean in this context. And I have lots of thoughts on that. I want to hear the parties' thoughts on that, so that I can come to the right conclusions.

What I hear you saying, I guess, is one because you could do it in a -- because the debtors -- and by that, I assume you really mean the limited partnership and the general partner -- well, maybe just the limited partnership has legal personality for purposes of filing an insolvency proceeding in the Caymans, I should honor that here or treat it the same way. And now I forgot the second argument, but -- or they waived it. And I'm not sure about the estoppel argument. You can make it.

But I think both sides are reading the Chancery Court opinion super broadly. Okay? I think, but for the fact that there was some dispute, her order probably would have said specific performance, pay the capital call. It wouldn't have said the to whom, it wouldn't have said where, it wouldn't have said anything. It just would have ordered specific performance of the capital call, which she clearly did.

MS. TOMASCO: So I've thought of two ways in which you can avoid the, you know, trust/not trust issue that Rigmora has raised before the big show next week. One is this property came in post-petition, it's not subject

to 541(d).

THE COURT: But does that make sense? I mean, I heard the argument. But you know, let's take it out of this context.

MS. TOMASCO: Okay.

THE COURT: I'm the trustee for an estate. Okay? And it happens post-bankruptcy, that that estate gets $300 in it. Okay? Does that mean that $300 is now property of the estate? It can't be. It's in trust for somebody. It just can't be, under 541(a)(7), that that -- that, all of a sudden, I get to bring in an interest I don't have. Now my trust -- my right to disburse those funds might come into this estate, my right to manage those funds might come into this estate. But that $300 couldn't possibly come into the estate if it came -- if it was put into a trust for the benefit of somebody else.

MS. TOMASCO: Right. But we know -- here's the exception, though. The way it came in is very specific. It came in because of the Chancery Court order.

THE COURT: It came to the partnership.

MS. TOMASCO: It --

THE COURT: It came to the partnership because of the order. But does that mean that, however any money comes to the partnership -- like does that mean that the way the money comes to the partnership post-bankruptcy could be

different than money that came pre-bankruptcy? Why?

MS. TOMASCO: But then why is 541(d) written the way it's written.

THE COURT: Oh, I have thoughts on that.

(Laughter)

THE COURT: But you guys probably haven't briefed that, either.

So I don't --

MS. TOMASCO: But --

THE COURT: I suspect 541(a)(7) didn't really think about 541(d) when it was writing that. 541(d) is very specific. 541(a)(7) is just to say okay, if you get money post-bankruptcy or if you get property post-bankruptcy, it comes in. And it's probably written for, quite frankly, an individual debtor. So we can go back and look at that because so many of these are and they make more sense in that context. Okay?

But it can't be that property, which the debtor doesn't own -- let's take a better example, that it comes into its possession. Okay. It has a possessory interest --

MS. TOMASCO: Uh-huh.

THE COURT: -- that comes in post-petition. But now are you saying oh, the whole property comes in, even if it's owned by somebody else, and all they have is a possessory interest because 541(a)(7) doesn't make the

distinction that 541(d) makes? That doesn't make any sense to me.

MS. TOMASCO: Well, Your Honor, there's -- I looked. There's not cases that deal specifically with the language, but the language is there.

THE COURT: Yeah. I find that a hard one.

MS. TOMASCO: And I will say that Rigmora has always treated this property -- that the property held by the general partner as existing, in other words --

THE COURT: The partnership.

MS. TOMASCO: The part --

THE COURT: By the --

MS. TOMASCO: By the --

THE COURT: -- partnership --

MS. TOMASCO: -- partnership --

THE COURT: -- as existing.

MS. TOMASCO: -- as existing.

THE COURT: Well, that's a different argument. That's a different argument.

MS. TOMASCO: They did it in this -- in the very order that we're enforcing here, right? In the very order before the Chancery Court and before the very order that this honor -- that Your Honor entered, establishing the segregated account. They treated it as existing. And that is a -- to me, that is a waiver on top of -- and I'm going to go into

my --

THE COURT: It exists as an asset of which estate?

MS. TOMASCO: Of the limited partnership estate.

THE COURT: Okay. Okay. I've got questions for them, too, don't worry. But I need to understand your position.

MS. TOMASCO: And then I want to -- I want to re-frame the preclusion argument that we're making.

THE COURT: Okay.

MS. TOMASCO: Okay? Now we all know that we don't have collateral estoppel, necessarily, I mean, maybe we do. But on this issue, what I want to focus on is the preclusion for defenses that could have been raised, but were not raised, and the specific language of Restatement of Judgments Section 18-2. And that has two parts:

One is defenses raised -- right? That could have been raised in response to the Chancery Court judgment, including, for example, Chancellor McCormick, we should dismiss this case because, even if you order this relief, ATP LSV doesn't exist, and therefore it would make a round trip. Could have raised that in the way of avoidance under Chancery Court Procedural Rule 8, they were required to raise it as an affirmative defense if this was their argument. They didn't raise it.

Nor has -- have they dealt with the issue of the

second part of U Section 18-2, and that is that a second action cannot stand when the effect is to attack the judgment in the first action, to render it a nullity. And as I stand here today, I want to point out to you that we had the same witnesses, we have the same arguments that were already before the Chancery Court. And the goal of Rigmora here is to render the Chancery Court judgment a nullity. That can't stand.

So I was looking at their slides yesterday. And one of the cases that they cite is In Re Docassist, which is a Middle District of Florida case. I'm doing this from memory, so hopefully I got it right.

THE COURT: That's right.

MS. TOMASCO: A Middle District of Florida case from 2014.

THE COURT: Uh-huh.

MS. TOMASCO: And in that decision, which they say well, you know, it -- basically it's a sound bite from that case. It was a dismissal -- case dismissal for lack of corporate authority to file.

THE COURT: Right.

MS. TOMASCO: And they said well, you can't just come in, you know, and, in addition to filing an unauthorized petition, you can't then seek DIP approval, blah, blah, blah. And in that case, there had been governance litigation before

the State Court before the majority LLC members filed the Chapter 11 petition in violation of that order, right?

And it has a fabulous quote, and that is that:

"Federal Courts are not free to overrule decisions of State Courts under the Rooker-Feldman Doctrine, which applies to cases brought by State Court losers complaining of injuries caused by State Court judgments rendered before the District Court proceedings commenced and inviting District Court review."

And in that case, they said the governance issues that had already been found by a Florida State Court were entitled to preclusive effect on any argument the debtor was making in their Chapter 11 filed in violation of that.

THE COURT: But wasn't the -- and I read that quickly. Wasn't the argument there -- I think it was almost a *non sequitur* -- but that it was an unauthorized filing?

MS. TOMASCO: Yeah.

THE COURT: And if it's not an authorized filing and there was a governance dispute that said here's who's the govern -- here's who can --

MS. TOMASCO: Right.

THE COURT: -- control things, then that clearly is a problem. But I'm not sure this is -- I'll look at it again. I didn't look at this ahead of time, the -- this isn't quite as straight line, in my view, in terms of yeah,

they decided pre-bankruptcy a corporate governance issue, and then a debtor files a petition by someone who's not in the governance, is not management. Well, they can't do that.

MS. TOMASCO: Right. But this is a bankruptcy case that recognizes that, if the Bankruptcy Court were to do something that would effectively nullify the State Court's decision, it can't do it. It's -- the -- one of the --

THE COURT: Did the Court decide what was property of the estate? Because that's what you're asking me to decide. And I don't think she decided that. That issue of what is property of the estate was not in front of Chancellor McCormick.

MS. TOMASCO: Correct. But what was in front of Chancellor McCormick was the idea that who got paid the money and what it was supposed to be used for.

THE COURT: She required a capital call. Capital call comes into the partnership, maybe it always came into the partnership. Who can control it, who can use it, those are different questions. I'll have questions for Rigmora about that. But is it property and of which estate? Does it even need to be property of someone's estate? Lots of questions.

MS. TOMASCO: Your Honor, I want to reemphasize that we have Chancellor McCormick's opinion. We have Chancellor McCormick's judgment that says that it gets paid

to the fund, the partnership. And we have Rigmora's email at Tab 9 -- which is, by the way, Exhibit 167 and 200 on Rigmora's exhibit list -- where they say it gets paid to the limited partnership. And we have that same order being ordered by Chancellor McCormick, at Tab 10, that says it gets paid to the limited partnership.

And I would suggest to you the next place to look are the terms of the LPA itself, and that is the general partner manages the limited partnership. And the general partner, under 2(b) of the LPA, is the one that decides how it's supposed to be used.

THE COURT: Yes. Yes.

MS. TOMASCO: So I believe they've waived this argument by agreeing to those orders and that led to the Chancery Court's judgment, which is entitled to preclusive effect on the terms that I've spelled out, and that the next step is what, then the LPA says that the general partner is the manager of that. 1107 says the debtor-in-possession is the manager of that, and that is the end of the story.

And I ...

UNIDENTIFIED: So are you done otherwise?

MS. TOMASCO: I'm -- yeah, I'm done otherwise.

UNIDENTIFIED: May I have one minute?

(Participants confer)

MS. TOMASCO: Okay. Your Honor, just additional

issues about the record before I cede the podium.

As you know, Dr. Rimm's testimony was about the budgets that were between the general partner and the portfolio company. It was nothing that Rigmora had signed or was necessarily approved. And that's consistent with Chancellor McCormick's opinion. And these milestones were found, for this very reason, by Chancellor McCormick to be a red herring, and the opinion is very clear on this.

And with respect to missed milestones, as you know, the CEO of Evercrisp testified that the reason why they missed that internal between the GP and the PortCo milestone, was because Rigmora breached the LPA and didn't fund and didn't honor a capital call.

And Dr. Harrison testified that, with respect to Braeburn, a very successful portfolio company --

THE COURT: Uh-huh.

MS. TOMASCO: -- still property of this estate -- and I encourage you to look at the plan termsheet -- right? That we've put before the Court, just a sketch, and hopefully something better than something on a napkin. You know, we propose to give that very valuable asset, worth billions of dollars now, to be distributed in some sort of passthrough vehicle to the LPs proportionally.

That very successful company, Dr. Harrison testified, that Braeburn also had milestone misses. They're

kind of to be expected. It's like raising a child. You know? Sometimes, they are -- you know, get their grades that you want them to get, and sometimes it takes them a while for them for them to figure out they need to make good grades, or not jump out the window and climb down a tree, as my son did, but...

But look at Braeburn now. It had missed milestones. This is just part of the process. This is just part of the process of raising the children.

THE COURT: Yeah.

MS. TOMASCO: And --

THE COURT: I'm not really concerned about missed milestones. I asked because I really wanted to know was Rigmora funding through missed milestones.

MS. TOMASCO: Absolutely.

THE COURT: And if they were, then her discussion about they missed milestones is not that impressive, if Rigmora was approving budgets, notwithstanding missed milestones.

MS. TOMASCO: And one of the features of this particular fund is that they've had an enormously successful track of it.

And with that, I will cede the podium.

THE COURT: Thank you.

MS. TOMASCO: Thank you.

MR. ALBERTO: May I, Your Honor?

THE COURT: Yes.

MR. ALBERTO: Thank you, Your Honor. Again, Justin Alberto, proposed counsel for the official committee.

I don't think this will take more than three to four minutes. I also did not expect to walk up here with a computer and the Bankruptcy Code. I'm going to touch on a couple of points because I think we, in front of the bench, Your Honor, do a great job of really mucking up the ether. I think we need to refocus on the statute.

You had a colloquy with Ms. Tomasco earlier about ordinary course/non-ordinary course. If it's non-ordinary -- excuse me. If it's ordinary course, we're in 363, which says they can just do it --

THE COURT: Uh-huh.

MR. ALBERTO: -- without notice in hearing.

If we're not in ordinary course, 363(e)(1) says the trustee or debtor-in-possession, after notice and a hearing -- which we have -- may use, sell, or lease, other than in the ordinary course of business, property of the estate, except, and it goes into an exception that is inapplicable here.

There is nothing in that statute that says the debtors' equity or LP or any party gets to decide how the debtor transacts outside of the ordinary course of business,

except for you, Your Honor. You have to test the debtors' business judgment.

I will tell you that, as a matter of course, whenever we represent committees, we do that, we do exactly that. And I can confirm that the debtors did exact what they were supposed to do here.

We have spent considerable time with the debtors and their advisors, and believe that funding the portfolio companies is, not only a sound exercise of the business judgment of the debtors, but is the right move here. The value of these estates lie within the portfolio companies.

I think that that is the less controversial aspect of today, business judgment, but I did want to highlight it, that the committee agrees with the debtors' business judgment here to do it, to fund the portfolio companies.

So then, in my view, the question is whether this is property of the estate, and I think you just hit on it.

I want to read a quote from Page 67 of Chancellor McCormick's opinion. It's near the bottom, right before Subheading (b). It reads:

"On balance, the equities favor ATP. Rigmora has the funds available to meet the capital calls."

Defined term.

"Moreover, the portfolio companies are developing treatments for serious medical conditions, including

childhood blindness, various cancers, obesity, and neurodegenerative diseases. The public interest strongly favors preserving potentially lifesaving research programs. For these reasons, ATP is entitled to specific performance" --

And it gives the amount.

She's talking about the portfolio companies, those are debtors-in-possession, some.

541 has universally been accepted as to be very broad, as to what is and what is not property of the estate. And in fear of oversimplifying this, to me, when you read that paragraph, it reads directly into 541(a)(1), in my view. This is property of the estate; I don't see how it can't be. Again, I don't want to oversimplify it, but that's where we came out on this.

I'll conclude, Your Honor. I appreciate your time and I recognize that we did not file formal papers. We support the debtors in their efforts today. We think the funding motion should be granted. And we agree with Mr. Harrison, what he said yesterday, that denying this and later denying the Oaktree DIP would, effectively, force the annihilation of the portfolio companies. We don't want to see that. And we would ask Your Honor to approve the funding motion today.

THE COURT: Thank you.

MR. ALBERTO: Thank you.

MS. SELDEN: Your Honor, I suspect that Rigmora's response will take some time, and I was going to suggest perhaps now would be a good time for a five-minute break and --

THE COURT: We can --

MS. SELDEN: -- and I'll come --

THE COURT: -- take a --

MS. SELDEN: -- back and resume.

THE COURT: -- five-minute break. That's fine.

MS. SELDEN: Thank you, Your Honor.

THE COURT: Thank you. We're in recess.

(Recess taken at 3:35 p.m.)

(Proceedings resumed at 3:48 p.m.)

THE CLERK: Please rise.

THE COURT: Please be seated.

Ms. Selden?

MS. SELDEN: Thank you, Your Honor.

And may I please the Court? Shannon Selden of Debevoise & Plimpton for the Rigmora LPs.

Your Honor, we have a lot to cover today. Ms. Tomasco covered a lot. I know Your Honor has a lot of questions.

I think at the outset, I will address a couple of issues that came up with respect to the Chancery Court

opinion, what that means for the capital calls, the budgets, a handful of kind of stray questions about the portfolio company and the implications of that decision. But then, Your Honor, what I would like to do is to kind of get to the heart of the question that is squarely before Your Honor, and only before Your Honor, and not before Chancellor McCormick and not before Justice Asif, and that is the fundamental question of what constitutes property of these debtors' estates, here in these Chapter 11 cases in this Bankruptcy Court.

Before I get to that, though, I was wishing, as I was sitting, listening to Ms. Tomasco, that I had had my closing argument from the Chancery Court case with me, was I think there's some questions that debtors are raising here that we did, in fact, fully litigate there, that Chancellor McCormick did address, and that I don't want to revisit. I don't think Your Honor needs to revisit here. I don't have all those slides and charts with me, but I think I have some answers to some questions that Your Honor had.

First of all, Your Honor will have seen, as Chancellor McCormick noted, that she wrote quickly and decided this case on December 5th, shortly after our closing arguments on November 21st, at the express request of the GP in that case, that the decision be issued before the witness statements be submitted to the Cayman Court on December 8th,

when they were due, and that's Monday, December 8th; the same day that the Rigmora LPs provided what Ms. Tomasco showed you, was a proposed form of order planning to pay the $96 million in capital calls.

So, certainly, the urgency associated with the need for funding these capital calls was one of the issues that we litigated before the Chancery Court. It informed the testimony there. I'm sure it informed Chancellor McCormick's decision there. The timing of that decision was also informed by the pending Cayman trial and the need to submit witness statements, which the GP did on Monday, December 8th, before filing these bankruptcy cases on Tuesday, December 9th. So that was one of the factors in the timing there.

The capital calls that were issued on May 30th of last year were issued seven or eight minutes before the Chancery Court complaint was filed by the GP. So there's no window between the issuing of the May 30th capital calls and the filing of the complaint, during which the Rigmora LPs could have paid them. They were issued and then promptly sued over specific performance. And, of course, as Your Honor knows, the Rigmora LPs objected to that and sought winding-up proceedings in the Cayman Court, which are currently stayed.

As to the sequence of those events, the capital

calls that you've heard about from Ms. Tomasco that we litigated in the Chancery Court were one piece of that litigation, but not the whole piece. I think a fundamental issue in the Chancery Court litigation, which was also resolved by Chancellor McCormick, was the extent of the LPs' contingent subscriptions to the fund; that is, how much capital had they committed? Had they committed the $2.425 billion that they believed they had, pursuant to their contingent subscription agreements, or a much larger number, closer to 2.85 or 2.9 or 3 billion that the GP asserted?

And so that question, how much have we committed, and why is the GP asserting that we've committed hundreds of millions of dollars more, was, again, one of those questions before the Chancery Court and not before Your Honor. We think that's been resolved.

On the capital call question, though -- and I bring up the contingent subscriptions just to be clear. There's been a lot of talk about my client's refusal to fund or objection to the capital calls or what it thinks about funding these portfolio companies, its resistance to doing so. There's some language describing that, that we would vehemently disagree with and I'm not going to repeat, because I don't want to endorse it.

I want to be clear that in the Chancery Court litigation, what was at stake was those hundreds of millions

of dollars of excess, contingent subscriptions and the claim that the Rigmora LPs had defaulted under the LPA, such that the GP could seize 50 percent of their interests in the fund. Those were the claims, when filed in May, and of course we litigated about that. Of course, the Rigmora LPs strongly oppose those claims. We litigated that.

One piece of it was certainly the $96 million in capital calls, but I don't want Your Honor or anyone else to think that all of that litigation was about whether these portfolio companies should be funded. The Rigmora LPs had been funding these portfolio companies since their inception. Ninety-eight percent of the capital that has gone into the ATP fund has come from the Rigmora LPs and I believe a hundred percent of the equity in the debtor portfolio companies before Your Honor has come from the Rigmora LPs because of the pool structure that they sit in and because they sit in pools to which the Rigmora LPs are the only equity contributors.

So, the Rigmora LPs are the sole source of funding and have been the sole source of funding for these portfolio companies. They have been committed to doing that, but they did have questions as they came up against the end of their contingent subscription, whether the GP was appropriately managing the portfolio of investments within the budget, according to milestones, to make good choices about how the

money was being spent, and whether good money was being thrown after bad for companies that were not able to achieve as expected.

And on that point --

THE COURT: Well, that's not a parameter within the document of the protections that limited partners are given, right. Their protections are, our subscription is this amount; this is what we're funding; and here's the termination date, which I understand in the beginning was perpetual and then actually some dates were put in. Those were their protections, not, I want to oversee the GP and make sure his management decisions are correct.

MS. SELDEN: I think Your Honor is right and I would say, again, I am trying not to re-hash issues that we had litigated in Chancery Court, but I will revisit this point, which is that the capital calls and the dispute over these capital calls arose in a context where there was discussion seeking the Rigmora LPs' approval of further budgets and there were disagreements over whether there should be further approvals, whether, in connection with those further approvals, there should be some reallocation of capital, including reallocation of capital among some of these companies that are now before Your Honor.

And so, differences in view about whether to approve the budgets, how to allocate existing capital,

whether there was a way to kind of reframe this portfolio, including in some of the ways that you heard from about in testimony yesterday; that is, could you pull out and combine some of the strategies of different oncology companies? Could you look at some of the neurology companies similarly? Those were discussions that were happening.

But probably not surprisingly to Your Honor at this point, you will see that the parties had different views --

THE COURT: Uh-huh.

MS. SELDEN: -- about how that should go and whether that required a restructuring of the companies. Restructuring of the companies and moving them out of the pools impacts economics, including kind of the carry on returns and the interests of various parties and, look, no deal was reached.

And then on May 30th, the capital was called and the capital was called in amounts that had never been previously called and a suit was filed with no time to pay it. And not only did the Rigmora LPs also, then, file their petitions in the Cayman Islands, but shortly thereafter, got an injunction from Justice Asif, enjoining the GP from using claims of default against them in the way that was proposed in the original Chancery complaint; that is, to take half of the Rigmora's interests in the underlying fund, so...

THE COURT: I do understand that there were other issues that were involved.

MS. SELDEN: Yeah.

THE COURT: I'm just trying to make sure I understand the parameters and we're agreement on parameters of what the LPA provides.

MS. SELDEN: Yes, and I appreciate that, Your Honor, and I think that the LPA is very important here.

And with respect to those capital calls, let me talk a little bit about how the capital calls and Chancellor McCormick's decision granting specific performance of payment of those capital calls, relates to the funding motion before Your Honor, because I think that's the central question for today, which is that funding motion and maybe the consequences that follow from it.

On the capital calls, I want to be clear that you have heard two very different things from debtors. One is that because Chancellor McCormick considered and granted specific performance of the capital calls, that money has come in to them and can be spent as they choose, or consistent with those capital calls, or consistent with Chancellor McCormick's decision; that is, there is a lot of emphasis by the debtors on that decision as providing the basis for their use of the $97 million that my clients funded on December 22nd.

But, the funding motion before Your Honor doesn't spend the money in the way that the capital was called. It doesn't really line up at all. I think something like $40 million is spent, perhaps, consistently with the capital calls and the rest is different. And if you look, and this is a tough comparison to make; I have tried and failed to do it in charts -- but if you look at the capital calls, as compared to the second funding motion, absolutely, the second funding motion adds $22 and a half million in Chapter 11 cases that were not contemplated, of course, in Chancellor McCormick's decision and weren't contemplated by the capital calls back in May. It's added another $1.4 million in management fees that was expressly addressed by Chancellor McCormick's decision, but in the opposite way, which is at page 60 of her decision, Chancellor McCormick recognizes that Dr. Harrison testified that the capital calls were for purposes of funding six months of operations by the portfolio companies and excluded his own management fee from the capital calls so that none of the money would be directed to him. So, she relied on Dr. Harrison's testimony that that management fee would be expressly excluded from the capital calls. It's included in the funding motion; that is one point of distinction.

It's also subtracted $30 million in capital that was called for a company called "Marengo," which is not

before Your Honor and they're not seeking to spend that money for Marengo, I think, because Marengo doesn't need it. Marengo is outside of bankruptcy. We thought the $30 million was excessive at the time it was called and the fact that it is not seeking to be spent on Marengo suggests that that may be right, that that money is being used elsewhere, including, in connection with these fees.

So, it is not accurate to say, because Chancellor McCormick ordered specific performance of the capital calls and the money was paid in for that purpose, all debtors are seeking is to use the money for the purpose for which it was paid. They're not; they're doing something very different --

THE COURT: Uh-huh.

MS. SELDEN: -- from that. And if they wanted to receive the capital for the purpose for which it was called and pay it directly to the portfolio companies, that option was, of course, available to them. And the only thing that got in the way was the filing of the Chapter 11 case.

You saw, Ms. Tomasco showed you that on Monday, December 8th, the day after, the next business day after Chancellor McCormick's decision, Richards Layton emailed Quinn and others with the Rigmora LPs' proposed final order of judgment. And we'll talk about, what it means, that the order of judgment was for payment of $97 million to the fund -- I will get to that when we talk about Cayman law --

but the point is on Monday, the Rigmora LPs reached out and said, Here's a proposed form of order for payment of these capital calls. Here's $96 million and we propose to pay it within 10 days.

We didn't hear back. We followed up on December 9th and the first time that we heard back from the debtors was when they responded saying, You will have seen that we filed for bankruptcy, and they provided no response to the proposed judgment. They didn't ask for that $96 million to be paid more quickly. When I deposed Dr. Harrison earlier this week, he said he'd never seen that order until I showed it to him in his deposition on Tuesday, February 18th.

So, Your Honor, if the debtors had wanted to take the $96 million and pass it through from the fund to portfolio companies who need it, consistent with the capital calls and with Chancellor McCormick's order, they could have done that. We proposed an order doing it. They had her judgment. We've shown Chancellor McCormick, herself, concluded that the Rigmora LPs had the wherewithal to pay and we did it three days before Christmas. That money was available and could have been passed through to the portfolio companies. The only thing that's standing in its way is the Chapter 11 filing that came immediately after Chancellor McCormick's decision on December 9th.

And that Chapter 11 filing has thrown a real

wrench many the works for three different categories of interests, setting aside my clients the LPs. One category is the fund; another is the debtor portfolio companies; and another, and I want Your Honor to be cognizant of them, even though they are not before you, are the portfolio companies that are not debtors, that do have resources, that are real businesses, that are standing up there doing their work, but are being swept in a kind of amorphous way into this bankruptcy by debtors' continuing allegations that all assets of the fund are assets of the estate; again, the core issue for today's argument.

And so, I think that Chapter 11 filing on December 9th not only was inconsistent with Chancellor McCormick's decision, but has obstructed the flow of funds to portfolio companies who said they need it, while interfering with the fund's other investments and its assets and, obviously, and crucially to my clients, and an issue for next week that I will get to then, but preview now, which is there is a real question here for our clients about the continued management of their billions of dollars of investments by a GP who overstated their contingent subscription, their capital commitment, the very foundation of an LPG relationship, by hundreds of millions of dollars, sued them over it, and lost. And it is not surprisingly, and it is not scorched-earth litigation, to say under these circumstances,

we have a winding-up petition and we don't want to be partners anymore. We'd like someone else to ensure that these assets get the attention they need, the resources they need, the management they need, but we would prefer that to be somebody else. And the effect of this Chapter 11, again, is to prevent them from going forward, that question from being heard by Justice Asif, who has exclusive jurisdiction over it.

Before I turn in full to Cayman law and a little bit of the Bankruptcy Code, Your Honor, I want to say one more thing about these portfolio companies and I think it might be helpful if Your Honor still has the chart that Ms. Tomasco presented to you, which is behind Tab 4 in her binder.

(Pause)

THE COURT: Yes.

MS. SELDEN: Thank you, Your Honor.

And if you look at Table 2, it has portfolio companies and identifies the debtors and nondebtors. It has the partnership debtors' total prepetition funding, which, again, Your Honor, these are the amounts -- tens of millions of dollars that my clients have invested in these companies over time. It has unfunded, approved budgets and the funding amount from January 20th to July 31st.

And I want to make a few observations about this

chart. Your Honor asked, when did Rigmora approve budgets, and, again, I will not re-hash the evidence on this or the record from the Chancery opinion, but I can tell you that budgets for these portfolio companies were approved in 2020 and 2021 when the investment proposals were presented to them and said, Look, will you approve a budget of this amount for this company: for Apertor, that's October 2020; for Evercrisp, it's July 2021; for Initial, May 2020; for Marlinspike, December 2021; for Nereid, May 2020; Nine Square, May 2020. These are all kind of COVID-era investments in early-stage biotech. For Red Queen, there's quite a bit approved in September of 2021 and then some additional approved in 2023. So that budget went up. For Aethon, December 2022, and then for Aulos, in October of 2020. So those budgets were approved early and when Dr. Rimm shows you performance over time against milestones, she is referring to, you know, to performance, post the approval of budgets.

For a number of these companies, when Ms. Tomasco says, for example, for Evercrisp or Apertor, there were milestones in their SPAs and that's where you should look. I would encourage Your Honor to look at Exhibit 30, which is the Evercrisp SPA, and you'll see there, that the milestones were to be negotiated and, if reached, there was to be a final amendment entered. And in the absence of agreement or

a final amendment, there's no obligation to further fund Evercrisp. So there's a disconnect here --

THE COURT: So the stock purchase agreement is between the general partner and the portfolio company, right?

MS. SELDEN: No, Your Honor; that's not right either. And if you look at the stock purchase agreement for Evercrisp or Apertor or Initial or any one of these portfolio companies, you will see -- and I want to preview that I will raise the existential question of what it means to be a fund -- but you will see that the purchaser is the fund and the signatory of the stock purchase agreement is the managing doctor of the general partner on behalf of the fund. So the purchaser is the Cayman exempted limited partnership.

THE COURT: I do remember seeing that and thinking there maybe even needed to be another step. There might have been one that was left out. Okay, I'll go back and look at that.

MS. SELDEN: That's right, Your Honor.

But each -- and we will -- I've been promising you for many months, but today's the day -- I've been promising you that we will talk about what it means to be a Cayman ELP. I do want to do that, but the SPAs are consistent with what Cayman ELPs are and can do, which is it's a form of partnership, the GP conducts its business. The fund, itself, doesn't sign in its own name; the GP signs on behalf of the

fund. And what that means, we'll get to, but that is also how the SPAs are structured. I think that's even how the Chapter 11 petition for the fund is signed; it is signed, again, for the fund but by Dr. Harrison, as managing director of the general partner acting for the fund, because it's the GP who is the legally responsible person who takes that act.

THE COURT: Well, there has to be an individual who's, ultimately, the signator, right --

MS. SELDEN: Right.

THE COURT: -- on any entity's signature?

MS. SELDEN: Yes.

THE COURT: And a corporation can't sign: Corporation, right?

MS. SELDEN: Not yet. Not yet.

The robots may be coming --

THE COURT: That's scary.

MS. SELDEN: -- but they're not there yet.

THE COURT: That's scary, yeah. Okay.

MS. SELDEN: So, that is right, Your Honor; there has to be an individual.

And what's interesting about Cayman ELPs is that legally and structurally, that individual is at the GP and not at the fund --

THE COURT: Uh-huh.

MS. SELDEN: -- and I do swear we're going to get

there.

There are a number of these companies that don't have milestones, but I think, to unpack that, Your Honor, there's a lot behind this chart and there's a disconnect here between what the debtors are seeking, with respect to their funding motion, what they got with respect to their capital calls, and how the budgets and milestones are described. But, Your Honor, I think, fundamentally, as you know, the problem with the second funding motion is that the $96 million paid in capital calls, like any other asset of the fund, sits outside of the bankruptcy estate, because it doesn't belong to the fund in the first place and it is held by the GP in trust for the limited partners.

And that, Your Honor, is the thrust of our objection to the second funding motion. Our objection to the second funding motion is not a desire to put an end to promising science. I think that there are ways to fund those companies and we have paid the capital calls; we have made a proposal. The second funding motion should be denied because it asks the Court to order the use of property that's not within the debtors' estates and not within this Court's jurisdiction. And that's the fundamental problem with this motion, just as it's one of the fundamental problems of the fundamental debtors' Chapter 11 cases overall.

Your Honor's heard a lot, and I'm sure didn't need

to hear it because you can see it, about how unprecedented and somewhat unusual these Chapter 11 cases are. I think that that is true, particularly, with respect to the fund, which is a multi-billion-dollar (indiscernible) and has not been filed before. And Your Honor will hear a lot more from me about that next week. But even the most unusual Chapter 11 cases are bound by the rules and the limits on the Court's jurisdiction, the Bankruptcy Code, and the core principle at the very heart of Section 541, that a debtor can't have greater property rights in its Chapter 11 estate than it had prepetition.

By filing Chapter 11, a debtor brings its prepetition property under the protection of this Court and of the Code to enable it to conduct an orderly restructuring. But a debtor cannot bring into this Court what it did not have before, and that, as Your Honor knows, is Section 541 in a nutshell. Section 541(a) provides that the estate includes all legal or equitable interests of the debtor and property as of the commencement of the case, subject to certain exceptions, and the case law, including the Third Circuit and the Supreme Court, are clear that the estate can't possess anything more than the debtor, itself, did outside of the bankruptcy.

Those same limitations are jurisdictional, right; they apply to a Bankruptcy Court's *in rem* jurisdiction over

property. So, under Section 1334(e), the Court's *in rem* jurisdiction extends only the property of the debtor, as of the commencement of the case and the property of the estate. That's the line. I don't think anyone disputes, meaningfully, that that's the line that Section 541(a) draws.

Section 541(d) deals with trusts and it recognizes that the assets of a trust held for a beneficiary do not become assets of the trustee's estate if the trustee files for a Chapter 11.

THE COURT: But the legal interests do.

MS. SELDEN: The legal interests do, but not the property interest. And that's not just the Code, but that's kind of the consistent interpretation of 541(d), by Bankruptcy Courts and the Third Circuit.

THE COURT: Well, what's the legal interests?

MS. SELDEN: What's the legal interests?

I mean, I think the legal interest is, here, that you might hold title, but not have, as a matter of law, the underlying propriety interests, and that is exactly kind of what Cayman law tells you that a GP holds. That is someone has to sign the paper. Someone holds the equity that is held in a name, but if that is a legal interest held by the trustee, the property interests for purposes of the Bankruptcy Code, vest with, as non-bankruptcy law would have it, the person whose property interests that is.

THE COURT: The beneficial title interests, not the legal title interests, and that's what I'm grappling with here, okay. So even the example in 541(d) is an interesting example, right; mortgage-servicing rights. So you have a mortgage servicer who's servicing the legal entity that has the right to foreclose, collect, et cetera; that right comes into the bankruptcy estate.

The mortgage is owned by somebody else who's not even necessarily a debtor. It doesn't have to be a debtor. The ownership interest doesn't come into the estate, but the right to service it, that legal right, the person who can sign and transfer the mortgage and collect on it; that comes into the estate.

So that -- so, how does that apply or not to this?

MS. SELDEN: Your Honor, I think that highlights, for me, one of the challenges that these bankruptcy cases have presented for my clients and the fund and the assets of the fund, which is, I think that you are right in the question that you asked Ms. Tomasco earlier and then what you have said to me and, obviously, read from the LPA and from the ELP, which is that it is the GP, as a matter of Cayman law --

THE COURT: And contract.

MS. SELDEN: -- that's the business of the exempted limited partnership. It's the GP who can sign.

It's the GP who manages. If there's a bank account that needs to be opened to receive a hundred million dollars, the GP --

THE COURT: GP does it.

MS. SELDEN: -- opens it.

THE COURT: And the GP has a fiduciary duty, which the limited partners do not have.

MS. SELDEN: That is exactly right, Your Honor; the GP has a one-way fiduciary duty to the limited partners, directly, to act in their interests and with loyalty.

THE COURT: And not to the partnership, at all, not to the fund?

MS. SELDEN: Not to the fund, not to the partnership; directly to the limited partners. That is a matter of Cayman law, common law, and statute.

THE COURT: Okay.

MS. SELDEN: And so --

THE COURT: But the limited partners, themselves, have no future obligations to the fund or to the general partner, right?

MS. SELDEN: That is correct.

THE COURT: Okay.

MS. SELDEN: And so, when you asked what does the -- what -- how do I think about the legal interests and the propriety or ownership interests of the estate, when the

GP signs the SPA, for example, or to open the bank account, the GP is acting in its capacity as a trustee. It has the legal authority that Cayman law, the LPA, the ELP give it, but that does not make it the owner of the money that sits in the account or the equity.

UNIDENTIFIED SPEAKER: (Inaudible.)

THE COURT: Excuse me -- can we find out who that is -- please mute if you're attending remotely.

I'm sorry.

MS. SELDEN: I think --

THE COURT: But that right, the management right is also part of the partnership interest, the general partnership interest and that management right comes into the estate. It was there beforehand, that was the bargain struck, and it's there now.

Who gets to move the money out of that account? Who gets to make the decisions about where the money goes? That right -- how does that right not come into the estate, the general partner's estate?

The money isn't -- let's say that's right, let's say I assume the money does not come into the general partner's estate and it doesn't come into the partnership estate; it's out there, just like my example of someone who holds a mortgage, not a debtor -- it's out there. Okay.

MS. SELDEN: Your Honor, that is a problem. It is

a real problem to have a general partner who is in bankruptcy, who holds the authority to sign and conduct the business of the fund, but is in bankruptcy while the property sits outside of the estate and Cayman law has an answer for it. And Cayman law's answer for it is that as soon as the GP files its own Chapter 11 case, files for bankruptcy, it loses its ability, except, to dissolve and wind-up the fund. And if it doesn't dissolve and wind-up the fund within 90 days of its own Chapter 11 filing, the Cayman process steps in, that is, a GP --

THE COURT: But the Bankruptcy Code overrides that and there's case law that says those *ipso facto* provisions do not apply.

MS. SELDEN: I'm not sure that the cases that say the *ipso facto* provisions do not apply, apply to a general partners -- the statutory restrictions of Cayman law and the general partners right; although, I do think, Your Honor, we will explore that much further next week when we talk about what it means to wind up and dissolve the fund and whether the consequences of a general partner filing for bankruptcy.

One of those consequences in this consequence where the fund is hung up in its ability to do the things that it needs to do because the --

THE COURT: No. The general partner is going to do that. The general partner, who is the manager, right, and

the management rights come in, is going to manage the funds. The funds is the -- the limited partners may not like it, and they may have remedies, and they may be able to object, and they may be able to do a lot of things but who is a problem for.

Under the bankruptcy code it's not a problem at all. Its contemplated that the legal and equitable rights are separate. And I -- doesn't this partnership agreement itself, as well as the law, contemplate that those rights are separate. So, it's the same before as it is now.

MS. SELDEN: It is not the same as it is now because by operation of Cayman statute, which I do think, Your Honor, falls outside the *ipso facto* rules. But the general partners legal authority changes when the general partner files for bankruptcy. And I believe that there is quite a bit of law recognizing that a limited partnership agreement is a personal services contract.

THE COURT: Different issue that may have other consequences but we're talking today. That may have other consequences, that may give the limited partners rights, maybe it can circuit your end, all kinds of things but in terms of today --

MS. SELDEN: In terms of today I think there's a real problem. And I think it manifests in a couple of ways. One, you know, the general partner believes -- and you may

have questions, Your Honor, about whether the general partner continues to have the authority that it has. Cayman courts would differ. And so that casts a cloud over whatever the general partner might do here.

In terms of today I don't think *ipso facto* rules apply but I also think a couple of things. One is that even if -- and I do not disagree and I bet next week when Mr. Phillips is here to testify, and we explore kind of what the consequences of a bankruptcy filing for a general partner of a Cayman ELP are, he will unpack this better than I can today. I do not think that the general partner retains those rights but --

THE COURT: So, you think upon the -- I'm sorry, I'm going to let you go.

MS. SELDEN: Yes, I do. I think upon the bankruptcy it alters but assuming I'm wrong, and for purposes of today you may want to assume I'm wrong and think, well, what do I do if I believe that it's true that the general partner continues to have some authority to sign an active fund. The money and the assets are not within your jurisdiction. So you can't, Your Honor, issue an order over the property of the estate when it's not before you, I don't think.

THE COURT: I wouldn't be. Well, why not? I can let the service mortgage -- I actually take that back. The

servicing company just does what it does. I don't decide in cases how assets get used necessarily, right? In a retail store I don't tell them sell this blouse, and not that blouse, and in an energy company case I don't say drill the well here, I don't tell them what to do when they're operating their business, okay.

So, if the general partner -- and I realize you disagree but if the general partner can sign the check because they have the legal right to sign the check, transfer the money, I'm old school, okay, and they have the right to manage, and I realize you don't agree with that, but if they have those rights then they just write the check. I am not exerting jurisdiction over the money. The partnership is using and doing what it can do, and there is absolutely no question that the bankruptcy code impacts non-debtors and their rights all the time. And I don't necessarily have jurisdiction over their assets but that doesn't mean if they have a contract with the debtor that I don't impact them. There is a contract here.

MS. SELDEN: Your Honor, I suspect Ms. Labovitz is about to pass me a note but at some risk I will endeavor to give you my initial answer and then she can clean up after me when it comes to the bankruptcy code. I believe that the debtors are here asking you on a funding motion for authority to use property of the estate. And I believe that the

premise of their motion is that what they're trying to use, the $96 million in cash or the assets of the fund posted as collateral for Oak Tree, the premise of those both is that this is property of the estate and they're asking you for an order that allows them to use property of the estate.

The property that they are referring to is not signing authority. Its money or the collateral -- the equity interest that the fund is holding. So, when the debtors come to you and say I would like Your Honor to bless and order the use of the property of the estate, whether you can do so is, I do, believe, jurisdictional and a question of whether that property truly is property of the estate or sits elsewhere outside of the estate in which case you've got a GP in bankruptcy who is, on a non-Cayman theory, but in our hypothetical world, a GP sitting in bankruptcy who is continuing to manage and conduct business on behalf of property that sits outside of the bankruptcy.

I think that is unusual because usually, right, a debtor who files brings with it into its estate the property that it had outside so that its coterminous the estate and the authority but here you have this disconnect. And I do think, Your Honor, and Ms. Labovitz hasn't yet stopped me so I'm going to keep going, when you ask for an order blessing the use of property of the estate the question is, is that property, property of the estate and the answer here is no.

And the answer is no because Cayman law governs. No one is disputing that Cayman law governs.

THE COURT: Whose property is it?

MS. SELDEN: It's the property of the limited partners. And --

THE COURT: No. It's held for the benefit of but whose property is it? Is that --

MS. SELDEN: I think, Your Honor, this is a moment where perhaps I might dig myself into Cayman law.

THE COURT: Yeah. Let's get into Cayman law because the citation that I was given is this case that's talking about derivative standing.

MS. SELDEN: About what?

THE COURT: Derivative standing.

MS. SELDEN: Look, I think that is where it comes up. In that case it came up in derivative standing. That is not the only place where the question of what it means to have (indiscernible) personality and what it means to be an exempted limited partnership comes up.

I might note one thing, Your Honor. If you will bear with me, I do think the central question is, is this property of the estate. I do think there is agreement that Cayman law applies to that question of property interest. And I do think that under Rule 44-1 in interpreting Cayman law you can consider any relevant material, you can consider

any source, you can consider the underlying cases, you can consider the testimony of Mr. Phillips next week when it comes to that. We have submitted his declaration. I understand there is a dispute about whether that will be admitted into evidence. Again, that is the kind of thing that you can consider.

And under Animal Science Products, the Supreme Court case that debtors cite to you, it's also the case that if the relevant state laws establish by a decision of the state's highest court, that decision is binding on the federal courts. I think by analogy that should apply to the highest appellate court of the Cayman Islands, which is His Majesty's Privy Council.

THE COURT: Yes.

MS. SELDEN: I also think -- you heard a little bit about Butner in that federal bankruptcy courts can follow state law but not if it's too weird or idiosyncratic. I think Butner also says you have to follow state law because it avoids the inequity of a giving a party in bankruptcy rights that it wouldn't have under the underlying state law.

And I think that the federal interest there, kind of regulatory interest like liquor licenses and the like that aren't really in play here, and certainly, you know, the interest of the Bankruptcy Code, I think, are not what was intended by Butner or otherwise.

So, that is a lot of buildup for Cayman law but I want to be clear about what the rules are of interpretation because the debtors are asking you to just look at the statute or to look at it as unusual. But there's no question that when you interpret the Cayman ELP Act you should follow the approach the Cayman Court would, which is to consider the text of the statute, the principles of the common law, and the provisions of the LPA, and the binding decisions of the jurisdiction's highest court, the U.K. Privy Council.

The ELP Act is a Cayman statute and it governs, but the Cayman Islands are a common law jurisdiction and they're an overseas territory of the United Kingdom and like our own common law system, the jurisprudence of the Cayman Islands includes all of those things. And I don't think debtors dispute any of that, or that Cayman legislation is based on the equivalent English version, or that Cayman courts look to English courts, together with English text, to guide their statutory interpretation and, Your Honor, that's all set in, In re Padma Fund, which we cite.

And all of which is to say, this is not idiosyncratic. There's a robust and centuries-old body of common law that informs the Cayman version of partnership at issue here, as well as the statute, and a common law system of judicial review, of appeal, and of ultimate interpretation. That's not idiosyncratic. It is foreign,

but it is not idiosyncratic. And to just look at the statute and ignore the Cayman Court's interpretation of the statute or the Privy Council interpretation of the statute would be inconsistent, not only with Cayman law, but with U.S. law, where Rule 44.1 in Animal Science say, look to and follow foreign law.

So, that tells us how to approach Cayman law and that's what I want to do. I said at the first day hearing and in our briefs that Cayman exempted limited partnership are different from ordinary limited liability partnerships under either U.S. or English law, and the hallmark of an exempted limited partnership is that there must be a general partner and at least one limited partner, and that's Section 42 of the ELP Act and the re Formation Group cases we cite.

So, unlike our LLP where they're all limited partners, an ELP has as its hallmark, a general partner, and limited partners, they have different roles to play. The general partner conducts the business on behalf of the ELP and it owes fiduciary duties as agent and as trustee. And the limited partners invest and contribute capital.

And the Cayman Court of appeal in Kuwait Ports Authority explain that that framework is one through which sleeping partners may invest with the protection of limited liability and all of the dealings with the outside world are conducted by the general partner. And those characteristics

of an ELP are what enable its use as an investment vehicle; they're a prominent structure for private investment firms. Trillions of dollars of investment capital run through Cayman ELP structures and, again, rely on the law of the Cayman Islands and its clarity as to what that means, with respect to the general partner's duties and the limited partners' roles and the protections that they have when they make those investments.

So, under Cayman law, the limited partnership, or the fund, or quote, unquote, the name of the fund, is simply a convenient way of referring to the body of partners as a whole. And I am quoting from Certain Limited Partners v Henderson PFI Secondary Fund, which is Exhibit B15 to Mr. Phillips' report and to the Lindley treatise, which is the English treatise on partnerships.

And that, Your Honor, is a kind of simple, textual point, but I think it's very important as a matter of kind of law and translation, which is under Cayman law, as in English law, as you see in Henderson and in Lindley, it's hard to refer to the names of all the limited partners in a fund; that's too wordy, even if it's a two-partner fund or a five-partner fund. And what Cayman law does, as English law before it, is say, we're going to call that collection of partners by a name, the name of the fund, but that's just a convenient way of referring to the body of the partners as a

whole.

They're --

THE COURT: It thought it was sort of -- I thought I read it was an arrangement. It's talking about the arrangement that's reached, or you're just talking about the name. You're just saying the name is the collection of partners?

MS. SELDEN: Yeah.

THE COURT: Okay.

MS. SELDEN: I'm not saying anything too complicated, honestly, Your Honor, but I mean, I'm saying something that is, I think, intuitively a bit challenging for U.S. lawyers. And I say that because I've been saying this a lot over the past eight months and I'm working hard to translate the King's English to American English when it comes to the names of funds. And that's really what I'm doing here, which is to say, under English law, my U.K. colleagues, my U.K. partners, my Cayman colleagues, Mr. Phillips understand that when you refer to Apple Tree Life Sciences Cayman ELP, what you are referring to, legally, tracks through to the body of partners that compose that fund.

THE COURT: Okay.

MS. SELDEN: But there's not an entity that sits differently from its partners, but the name of the fund, the

referent, to make my grammar teacher proud, the referent is the underlying limited partners and not a body corporate, not something that stands between the partners themselves and that name.

So, and there's different -- right, like, we're in Delaware. We think about corporations all the time and think about shareholders existing and having shares in a corporation, but you understand the corporation to have some legal valent, separate and apart from the individuals who own its shares.

For Cayman ELPs, that separation doesn't exist; there isn't that corporate separateness. When you think of an Cayman ELP, you have to think of the collection of partners that compose it. I don't really kind of want to be talking about the name of Cayman funds, because that's what follows through in all these Cayman cases and the English cases, interpreting what it means to be a Cayman ELP and where the (indiscernible). That is, again, in Lynelam Bank's (phonetic), the longstanding English common law with respect to partnerships says in English law, the firm isn't recognized as an entity, distinct from the partners composing it. The thing you refer to when you say the name of the fund is the group of the partners. Cayman Courts view it this way, and so does the Privy Council.

And those are the cases and the principles

discussed in our briefs, and that's Kuwait Ports, which is a 2024 Privy Council affirmation of a 2023 Cayman Court of Appeal decision, recognizing that an ELP has no separated legal personality, and Aquapoint in 2025, recognizing that an ELP does not have separate legal personality, but is a form of partnership. And that's what it means when it says that, as a matter of English law. To say it lacks separate legal personality as the referent of the ELP, it is the underlying limited partners who compose it.

And that's true -- it's not situational, Your Honor. You've asked a couple of times, well, that comes up in a derivative context. A corporation and its shareholders, you know, a corporation doesn't just exist or you think about its existence only in terms of derivative action, but think about kind of, legally, what is that entity as it goes about its business, that is, for all purposes.

And when, in Kuwait Ports and in Aquapoint, the Privy Council is engaged in the act of understanding what it means to be a Cayman ELP, what are we referring to, they are talking about that concept re at large. It arises in that particular case, but as a matter of law, they conclude that ELP doesn't have a separate legal personality, but that's a form of partnership.

And I think, Danny, it might make sense to show Slide 7, because I am referring to this text without showing

it to you. But, again, you can see in Kuwait Ports on the left and in Aquapoint on the right, this description of what it means to be an ELP and how the Privy Council thinks about it as a general matter in these cases.

But I think, Your Honor, we don't need to speculate about what that means for this fund, because we can look at the next slide and at the decision of Justice Asif in the Cayman Islands, where he considers and follows this case law when wrestling with the question of how to think about this particular Cayman exemptive limited partnership and regards whether it can be the respondent in the Cayman petitions. And so Justice Asif concludes here that this fund, Apple Tree, does not have any separate legal personality from the limited partners and the general partner. That's this fund.

THE COURT: For purposes of this attorneys' fees issue, what I found interesting about this case is he starts out by saying that he is giving a judgment on a novel point, okay, and then he's saying -- and it takes him a while to get to the conclusion that he gets to, which you would think he wouldn't have to struggle with so much if, in fact, it was easy to apply this lack of personality to the statute.

In fact, he talks about he doesn't really agree with the statute and how its written in certain ways. He needs to add an S here, and a comma there, and do some other

stuff. And he is trying to reconcile that attribute to a particular statute. So, I found that interesting.

MS. SELDEN: And, Your Honor, I think that that raises two thoughts for me, conceivably three but I will start with two.

One is that Justice Asif is doing the work that Cayman courts do and kind of looking at the statute and looking at Kuwait Ports and Aquapoint and applying them to the ELP that he has in front of him. And even though he thinks the statute is a little bit funky and it takes a little bit of work to read it, he recognizes that at the end of the day that he is bound by the conclusion of Kuwait Ports and Aquapoint.

I would also note, Your Honor, that Justice Asif heard argument in that case on October 31st of 2025 and that Aquapoint was decided on November 27th, 2025. So, at the time that Justice Asif heard the argument it was post Kuwait Ports but pre Aquapoint in the Privy Council. so, I think that he didn't have the benefit when he issued this judgment on November 6th of 2025, of the Privy Council decision in Aquapoint that followed a few weeks later.

So, Justice Asif had Kuwait Ports, which is a 2024 decision and I think clear but new and hadn't been applied -- and certainly -- look, this is -- as Your Honor has seen, you know, this is a very litigated case and the question before

Justice Asif was a complicated question of fees and how to think about the GP/ELP situation in the winding up context but when he had to do that work of interpreting the ELP act at the end of October and beginning of November 2025 he had the Cayman Court of Appeals decision on Kuwait Ports and the Privy Council decision in Kuwait Ports affirming it. But he did not yet have Aquapoint which I think adds meaningfully and is, again, a decision by the highest appellate court of Cayman law interpreting what it means to be an exemptive limited partnership under Cayman law and concludes, as Kuwait Ports did, that it doesn't have separate legal authority.

THE COURT: And I've got the Privy Court decision in Kuwait and I've been looking at it. And I, unfortunately, didn't pull the Aquapoint. I agree, its exactly what it says and ELP has no separate legal personality. Maybe Aquapoint gives another sentence that helps us with that, right.

I guess, again, in the winding up procedures or in Cayman, Justice Asif is still trying to figure out how to apply it. That is why I ask how do I apply it. How do I apply this, whatever the lack of legal personality is. I am getting it but how do I apply it to this situation where I've got a general partner who has the right, under contract, with the limited partners to be able to manage and use the money.

MS. SELDEN: Two things, Your Honor. On that

question that is always the case in an ELP. That is the very nature of an ELP. In every ELP in Aquapoint, in Kuwait Ports, it's always the case that there will be a GP who conducts the business of the fund and that GP has the authority to do those things.

THE COURT: Yes.

MS. SELDEN: So, these courts are interpreting that statute in a circumstance fundamentally different from your circumstance where I have a GP who has this authority but what does it mean to be an ELP. I think that is always the nature of the beast and the question that it raises.

THE COURT: So, pre-bankruptcy with the no separate legal personality, the managing partner was able to take all those steps. That was his contractual right as well as statutory right.

MS. SELDEN: Is the trustee and fiduciary acting on behalf of the limited partners. Let me say two things about the question of this particular ELP and then let's look at 16-1.

Your Honor, I think it's also, well, Justice Asif spells out in some detail his thinking about the statute and his analysis in those proceedings in the Cayman Islands. The GP's counsel didn't contest this point. That is, the GP's counsel agreed.

THE COURT: Separate personality point.

MS. SELDEN: Yeah, exactly.

THE COURT: Right.

MS. SELDEN: And then, again --

THE COURT: I will say this, and if the debtors have a response they can, I don't see why I wouldn't follow what the Privy Council says the law is. The question is -- how do I apply it is the question. I mean, clearly, the statements are there, you know. How do I apply it in this circumstance because what the Privy Council is looking at is not these circumstances.

MS. SELDEN: Right. So, what the Privy Council then is looking at in different circumstances, I think, helps us help you understand how to deal with it here. I appreciate that Your Honor recognizes this is uncontested, you should do as Justice Asif does and follow the Privy Council.

I think the next step in this analysis, right, where you say the ELP doesn't have legal personality, and when we refer to the fund we're referring to the limited partners, what does that mean when we look at Section 16-1 which says that the rights are property of the ELP are held in trust by the GP in accordance with the terms of the LPA as an asset of the exemptive limited partnership.

This, Your Honor, is the text that you looked at, at the first day hearing and I said, no, don't just look at

the text, there's a whole body of Cayman law and there is, indeed, a body of Cayman law. If you are looking, as I believe you are, at Section 16-1 of the ELP Act it says, you know, any rights or property of every description of the exemptive limited partnership, including all choses and action, and any right to make capital calls and receive the proceeds thereof, shall be held or deemed held by the general partner on trust as an asset of the exemptive limited partnership in accordance with the terms of the partnership agreement.

And so, Cayman courts, including the UK Privy Council, interpret Section 16-1 to find that the assets of the ELP are held in trust by the GP for the benefit of the limited partners; that is that it's the assets of the limited partners. Under Cayman law, Your Honor, that answer is straightforward and I think that is the answer that Cayman law compels Your Honor to reach here as well, that these assets of the ELP held on trust by the GP are held on trust for whom for the benefit of the limited partners.

THE COURT: Okay.

MS. SELDEN: That is the answer that Cayman law compels. That is Kuwait Ports, again, decided in 2023 by the Court of Appeals and affirmed by the Privy Council. The Cayman Court of Appeals looked at exactly the same text in 16-1 and held that the only sensible construction of the

words in the ELP A-16-1 is that the general partner of an ELP holds its assets on trust for all the limited partners.

And in reaching that conclusion, Kuwait Ports is building on this ancient notion that the ELP has no legal personality separate and apart from the partners that compose the partnership, it's not an entity that can hold property or BOD duties. So, a statutory trust, as described in Section 16-1 of the ELP Act, only makes sense if the general partner as the trustee is holding those assets for the benefit of the limited partners, that is that follows from these principles of Cayman ELP law that we have been talking about.

THE COURT: We just insert the words "collections of limited partners for the limited partnership."

MS. SELDEN: Yeah, we substituted in. It would be wordier but it would get us to reveal the legal meaning, right. That is exactly right.

I think in Aquapoint the same thing that is Aquapoint, again, just in November concluded that the property and rights of an ELP are held on trust as an asset of the exemptive limited partnership in accordance with the terms of the partnership agreement such that limited partners have a proprietary interest in the partnership assets.

That is Cayman law and who owns the assets of the fund, when the fund purchases equity, when the fund receives cash, when the fund opens up bank accounts, when the fund has

$96 million or $10 million assets of the exemptive limited partnership are held on trust by the GP for the benefit of the limited partners. That is a lot to say every time you need to refer to an asset of the fund. So, in shorthand we may say the fund assets but Cayman law is referring to that concept.

What that means for Your Honor is that property of the exemptive limited partnership held by the GP on trust is held on trust for the limited partners. It does not belong to the fund, it can't under Cayman law. It doesn't belong to the GP. It is the trustee. It is owned by the limited partners and, therefore, outside of the estate. And you cannot order its use as property of the estate because it wasn't owned by any debtor prepetition and it can't be owned by any debtor post-petition.

THE COURT: What about the contractual rights, how does that fit into the analysis.

MS. SELDEN: The contractual rights to manage the money and sign the contract to buy and sell things don't create a proprietary interest or ownership interest in the underlying estate. So, I --

THE COURT: How are you using the word "estate" there? The bankruptcy estate?

MS. SELDEN: Mistakenly.

THE COURT: I'm asking --

MS. SELDEN: I don't think I meant to say "estate," Your Honor. I will have a sip of water and try again.

THE COURT: Okay. I will let you.

MS. SELDEN: You asked me a question. Let me try to answer it again. What does that mean for the contractual rights. Look, the contract, the LPA is, again, a create of Cayman law, subject to Cayman law, subject to the ELP. You can't have an ownership interest in bankruptcy and in the debtors estate that these debtors didn't have outside of it but you've got a GP in bankruptcy who was supposed to conduct the business of the fund on behalf of the limited partners and is, frankly, precluded from doing so or meaningfully unable to do so by virtue of its bankruptcy filing.

THE COURT: How is that? How is it meaningfully unable to do so? It can still do exactly what it could do pre-bankruptcy.

MS. SELDEN: I am a hundred percent sure that if -- well, maybe not a hundred percent sure. I suspect, Your Honor, I would be surprised to think that it would be okay or a good result for a GP sitting in bankruptcy to maintain a legal right to sign away money or sell assets where those assets sit outside the estate and are not subject to Your Honor's jurisdiction and are not subject to the automatic stay where the GP is getting all the benefits of bankruptcy

but able to dissipate assets outside of the Court without oversight. That doesn't seem right to me.

THE COURT: I think there are just impacts on non-debtors all the time. If the debtor has a lease in the mall down the street, has a contract, it doesn't own the real estate, it doesn't -- but it has a contract, it can assume the contact, reject the contract, it can perform the contract and that has an impact on the landlord. Maybe it puts somebody in there who the landlord doesn't want but I can do that. I don't have any jurisdiction over that mall or that real estate but actions the debtor have, can do, and can take impacts on other people's property.

MS. SELDEN: That is true, Your Honor. I think that that is not quite the right analogy --

THE COURT: Okay.

MS. SELDEN: -- for what is happening here in two ways. One, to conclude that because the GP had, under Cayman law, an authority to conduct the business of the ELP, that it maintains that authority and can do what it wants with property and assets that are outside of the estate while in the bankruptcy is a real conversion of the trust in which the GP holds the assets for the benefit of the LP's. That is the GP, if you think that he continues to do whatever he wants with the property in the bankruptcy court --

THE COURT: It's not whatever he wants. He's got

a fiduciary duty. He's got a fiduciary duty now, even a greater one maybe because now he's got a fiduciary duty of the estate and he still has his fiduciary duties. If he does something wrong maybe there is a breach of fiduciary duty lawsuit. I don't know but he still has his -- the contract is the contract and the statute is the statute.

MS. SELDEN: Your Honor, I think that that presumes an ability to act with respect to assets held on trust that does not exist either under the ELP Act or under the statute. The GP and the funding motion, even if you were to give the GP in US Bankruptcy Court greater rights then a Cayman law would, setting that to the side, the GP isn't seeking to enforce the LPA or follow its terms or do what it says, its seeking to do something very different and that is what we're talking --

THE COURT: I don't know if it can or it can't. I don't know if it can take funds that were budgeted, and approved, and subject to a capital call and use them elsewhere. Maybe it can, maybe it can't, I don't know. If it can then it can.

MS. SELDEN: It can't, Your Honor.

THE COURT: Well, I will say Chancellor McCormick didn't seem overly swayed by that even though I don't think she ruled on it. She didn't seem overly swayed that something got diverted to another portfolio company. It

didn't bother her that much.

MS. SELDEN: I don't know that that is correct, Your Honor, but nor do I think that it was before her in an illegally dispositive way.

THE COURT: I don't think she ruled on it, no.

MS. SELDEN: I don't think she ruled on it.

THE COURT: No, I agree. I don't think she ruled on it but she still said notwithstanding that she was going to enforce the capital call.

MS. SELDEN: So, Your Honor, I think she was not called upon to interpret the question directly and didn't reach a final decision on it. And I think if Your Honor were considering it, and I really don't think that Your Honor can get there because I do not think that you have authority or jurisdiction over property that is not in the estate and this is a runaround to get there. To say that the --

THE COURT: Let's say I just have a simple trust, okay, I've got a person who is the trustee of a trust for their nephew and that person, that trustee files a bankruptcy case, do you think that the trustee is no longer the trustee of the trust for the nephew? The trust doesn't come into the estate. That property in the trust is $100,000 in a trust, a house, whatever. That property does not become property of the estate but maybe he gets a fee, maybe he's supposed to administer the estate, get a fee for it, that right comes

into the estate and he gets to continue to do that.

Now maybe the beneficiary can come in and make some arguments and move to dismiss and move to do a whole bunch of stuff and has rights but that -- I know it's a lot simpler and it's not -- you know, he's got a fiduciary duty, there is a beneficiary, the assets of the trust are not property of the estate, clearly, but if he impacts them because he distributes them then he does. That is very simplified but I am trying to simplify it, I am trying to understand what it is that can happen and not happen. The code versus perhaps Cayman law, the code doesn't say those rights cease, not at least upon the filing of the case.

MS. SELDEN: Cayman law treats it differently, Your Honor, and Cayman law says if I'm putting my trust in someone and they are the trustee of my assets, where I'm trusting them as a fiduciary to manage my assets, if my trustee files for bankruptcy I am entitled to a new trustee.

The answer in Cayman law is not I have a bankrupt trustee who gets to sign for my assets while tied up in Chapter 11, my assets sit outside. The answer under Cayman law is I get a new trustee. I am entitled to a person of my choosing to manage my valuable assets and my trust to act as my fiduciary, and as a function of statute and of Cayman law, and under the LPA, we win the GP files, he no longer gets to be the trustee.

I think that that is not -- you know, again, not to preview next week's coming attractions --

THE COURT: Well, maybe its next week. I mean maybe it's a next week argument, maybe it's a some other motion argument, but I'm looking at today and with the funding and I am trying to figure out how to put it together for this.

MS. SELDEN: Your Honor, I think -- well, I think we will be talking about this again next week but I do think that when there is a limited partnership agreement that recognizes both as a function of that agreement and under Cayman law that the general partner plays this very important role as a fiduciary and a trustee that that is a personal services contract. It is not subject to *ipso facto* rules. I do get a chance to replace my trustee if that trustee files for bankruptcy. That is absolutely what Cayman law would permit.

So, the kind of alternate universe that we're contemplating today is eons beyond what the Cayman law regime is set up for. The Cayman law regime says, look, GP's are trustees, they're fiduciaries, they have duties, if they file for bankruptcy a partnership gets dissolved and run down which means not a liquidation, not a fire sale, it means somebody else can come in and serve as the trustee of the assets of the fund. That is a sensible approach.

I don't think, Your Honor, for today's purposes is sufficient to rely on the notion that the GP has under the LPA some contractual authority to conduct or manage the business of the fund because the GP is not seeking to do what the LPA permits. I think that is true in two critical respects.

One is Section 5(a)(2)(e) of the LPA where the GP can call capital to invest in projects approved by the LP's in accordance with the budget that they have approved. So, you can call capital in accordance with approved budget and think it follows from that that the GP is intended as a matter of contract to not just call the capital in accordance with the budget but then also invest it in accordance with that budget. That would be a non-sensical contractual provision to say you can call capital in accordance with a budget for a particular company, for a particular purpose that the LP's have endorsed but when you receive it you can do whatever you want with it.

THE COURT: I would agree it seems nonsensical but am I supposed to imply the terms that aren't there in a very sophisticated contract. Am I supposed to do that? I had to write on that a couple of years ago under Delaware law and I said if there is no gap then I don't do that. Cayman law seemed, at least from what I read here, pretty similar.

MS. SELDEN: Your Honor, I don't think that there

is really a meaningful gap to fill. I think there are kind of three answers to that question.

One is there is not a meaningful gap to fill. It makes no sense as a question of contract interpretation to say the LP's have rights to approve the budget. That is what company is going to get how much money. Then the GP can only call capital for that approved budget. It cannot ask for capital otherwise. Then calls the capital, receives the capital, and does whatever it wants with it irregardless of the budget for which it called that capital in. I do not think there is any coherent reading of the contract that would permit that.

Your Honor doesn't have to answer that question. When Chancellor McCormick entered her decision, she ordered specific performance of these particular capital calls and said they were intended for these companies. In fact, relied on the exclusion of things like Dr. Harrison's management fee and saying, okay, I understand that is out, you are asking for money for these companies.

And, Your Honor, the GP made presentations to Chancellor McCormick as they have to you here saying this company needs this money for this reason, this company needs this money for this reason, and the capital calls were ordered to be specifically performed in reliance on those representations, and testimony, and the trial record, and

that is the basis for the decision to disregard not just the terms of the contract that give the LP's authority to approve the budget prior to the capital calls and then to go to Court and say, Your Honor, I've made capital calls in accordance with budgets, you should force the LP's to approve them so there are kind of two layers of tying capital calls to budgets.

And then to come to Your Honor for a third bite at the apple and say but, no, in bankruptcy court you should enforce McCormick's opinion, Chancellor McCormick's opinion, and let us use the money as she ordered except we're not using it as she ordered, we're doing all kinds of different things for which the capital wasn't called and that she didn't contemplate and had no reason to contemplate because we told her we were going to the Cayman Court, that, Your Honor, is so far from what the LPA contemplates, of what these parties agreed, when our clients invested billions of dollars with this GP as to be wholly untenable. That is not a way to resolve this.

To the extent that there are questions about Cayman law and what the LPA means and how to think about the duties of a GP in this situation, Justice Asif is standing ready, willing, and able to resolve this question as well. So, that, of course, is another place in which most of this dispute honestly, as much as love being here, Your Honor,

really belongs.

So, I think that there is a real flaw that just permeates every aspect of the fund and the GP's Chapter 11 cases. And that is what is making this intractable and difficult. And what is making it intractable and difficult is that the fund and the GP really shouldn't be in bankruptcy court at all for reasons we will address next week. If they are here, the funds' assets didn't come with them. So, it's a fund with no assets, a debtor with no estate, and the same is true for the GP.

THE COURT: Let me ask this question, pre-bankruptcy $10 million comes into the fund, it's on trust for the benefit of the limited partners --

MS. SELDEN: Yes.

THE COURT: -- who has legal title to the funds? Not beneficial title. Who has legal title to the funds?

MS. SELDEN: I expect that the funds sit in a bank account opened in the name of the fund acting by the GP. And I don't know, although it's an interesting existential question, I guess, as to whether the cash that sits in the fund that the GP opened for the benefit of the fund, I think that the legal title and the proprietary title all goes to the LP's. I think that is what Cayman law would recognize.

I think, Your Honor, when you say, well, look, if the GP is here and the property is not here but the contract

rights are here, and the legal rights are here, and I say that is not true as a matter of Cayman law. I am entitled to a new trustee. And I think Cayman law would see it differently.

I believe also, honestly, that to use $22 million that was called for portfolio companies to pay Chapter 11 fees instead of sending it to the portfolio companies --

THE COURT: Yeah, that may be a problem.

MS. SELDEN: -- is right up against, if not over a breach of fiduciary duty. That money was called and paid for portfolio companies. We were ready to send it. We offered to send it. We did send it. It should have gone to the portfolio companies and instead it's going to Quinn Emanuel and other advisors.

I have -- and my clients have no recourse against the GP in the court that governs his fiduciary duties and their relationship with him that prevents me from resolving these issues. That is a real hangup. That is an intractable problem. And there is a solution for it, again, for next week but it is causing problems with the funding motions to.

So, if this were about getting the capital consistent with the budgets, consistent with the LPA, consistent with the presentations that the GP made when it sought approval for that investment and then called the capital inconsistent with what it said to the Chancery Court,

there would be no need for Chapter 11. They got the decision from Chancellor McCormick. They could have just taken the capital calls. They could have asked us to pay them sooner. We did pay them in less than 10 days but never responded. They could have taken that money and just passed it through to the portfolio companies who had asked to receive it.

So, I think when everyone stands here and says that it is the Rigmora LP's who are trying to deprive these portfolio companies of further funding, Your Honor, that is not the case. The funding that they have received to date has come from our clients. We have paid the capital costs. It is sitting there. The reason it is not getting distributed to them is because it is Chapter 11. Your Honor doesn't have authority, jurisdiction to order the use of that property because it is not property of the estate and I think it would be a real distortion or disregard of Cayman law to allow the GP to rely on ministerial authority under the LPA while sitting in bankruptcy and protected by it to do with that money things that he could not and should not do otherwise.

THE COURT: I understand that point and maybe that is how this comes out but I don't think its ministerial. I don't think the general partners duties, and obligations, and rights are ministerial under either the act or the LPA because he's the one with the fiduciary duty and he is the one who is liable if the partnership -- that is interesting.

If the partnership, as a collection of limited partners, doesn't pay the partnership's obligations, the general partner is on the hook. That is kind of interesting, right. So, how -- so, I don't think its ministerial.

MS. SELDEN: Maybe "ministerial" is not the right word, Your Honor, but I don't think that there is a substantive right in the property of the fund or my clients that the GP has. And I also think, Your Honor, that at the second day hearing Mr. Berdon has conceded that the LPA doesn't give the general partner discretion to spend the money outside of the capital costs and that is on page 148 of the transcript.

I think, Your Honor, there is a way out of this for you, if not for me, and so I will offer that to you in connection with this funding motion. As to the Section 363 issue and whether it would be an appropriate exercise of business judgment to use this money in this way, you have heard from Dr. Rimm, you've heard testimony yesterday, but I would call Your Honor's attention to the portfolio company representatives who were not here to testify but whose deposition designations we offered and who stated in various ways that they are not in urgent need of funding and wouldn't face irreparable or imminent harm if the funding motion isn't granted there or okay for some time.

I think, Mr. White, maybe we have Slide 18. And

we can pass this dec around or probably Sebastian did it for me. I got mired in Cayman law.

Your Honor, I think this is really striking and important. You have heard an awful lot in very negative terms about debtor portfolio companies that are being deprived of funding. And you have heard those accusations leveled at LP's who have satisfied their contingent subscriptions and to the extent that there is a disconnect between the amount that the portfolio companies have received or have in their budgets and the amount coming into the fund in terms of committed capital that is because the general partner overcommitted to the portfolio companies that the totals of the budgets are in excess of the capital commitments and that the money wasn't managed to its total commitment. And the portfolio companies weren't managed to use the money that they had. And you saw some of that for Dr. Rimm.

So, there is a problem there which is maybe the general partner overcommitted when it made these promises to these portfolio companies that they would have the full amount of these budgets but the budgets were also tied to performance. They were in tranches. And if you look at the SPA, like money is to be released upon performance, but for purposes of today's motion, and this case, and the issue before Your Honor, which is, is there an imminent and urgent

need for funding such that you should do radical things to the LPA, or Cayman law, or go down kind of untrod paths in that regard the answer is, no.

You can see that from Mr. Mandarino's testimony, and Dr. Wang's testimony, and Mr. Jardine's testimony. ATLS has $12.2 million in cash on hand. Replicate has runway without any funding until the end of the year. (Indiscernible) has $6 million in cash on hand. Marlinspike hasn't spent much of the money that it received in the first funding motion. They are not sure whether its left the account yet. It had been in a complete freeze between July 2025 and its bankruptcy filing.

Red Queen, Nereid, Nine Square are the same. Their representatives weren't able to give a firm number as to how much of the January funding had been spent but they estimated it would cover research for three months. It's been dormant since last summer. Nereid has $850,000 cash on hand which could last eight months if it maintained its current expenses. Nine Square is still thinking about how to put its money to deployment. Evercrisp has $1.4 million of cash on hand as of this Monday. Apertor received around $950,000 which could last over a year. And Initial has had $845,000 in cash since January 30th which, again, would last over a year.

Danny, you can take that down.

So, we're here on a funding motion that seeks to use property that is outside the jurisdiction of the Court that is held on trust for limited partners that would require extraordinary contortions to authorize the use of and is not needed by the companies that are seeking it and is being asked to be used in manners inconsistent with the budgets, the LPA, and Chancellor McCormick's decision, and the representations that the JP made to Chancellor McCormick in order to get specific performance entered.

Your Honor doesn't need to enter the funding motion because the companies don't urgently need the money that you seek. You have some time, at least time, to get through next week. And here, more Cayman law but really on fundamental issues about whether this is a fund GP set of Chapter 11 cases and seven portfolio companies and a management company or whether this is and should be a Chapter 11 set of cases for seven portfolio companies who share a common investor, and have some overlapping boards, and some other areas in which they have similarities and have been invested in similar and thought of as a portfolio but each of which is pursuing something and wants to reorganize and restructure.

I think that there is a path forward for them to do that without the fund and the GP and the overhand of these questions in the way. I think it's also clear, and

Mr. Aebersold was particularly clear yesterday that the calculous changes when a portfolio company files for Chapter 11 and even though it wouldn't make sense for an investor to put more equity into companies kind of outside the chapter and with the infirmities, there is a reason to fund them through Chapter 11 to have this be an orderly process, to have each company be able to do a market test, and to proceed from there.

This can be and should be, in our view, a regular set of Chapter 11 cases but for the portfolio company debtors who need it and want to restructure and have that Chapter 11 need, and not for the fund level fund and GP debtors who don't.

So, I know Cayman law and its intersection with the bankruptcy code create a bit of a bind but I think that bind was created when the fund and the GP were filed. I think for today the question is just what does that mean for the second funding motion, and the DIP, and the funding proposal. I do not think, as Your Honor knows, that you can order entry of the second funding motion or the DIP for the same reason because it pledges the collateral of the fund, which it cannot do, both as a matter of Cayman law and because its prohibited by the LPA which says that the GP, even if he continues to have the authority under the LPA to act, that authority does not extend to taking on debt at the fund

level, at the partnership level, without the consent of the LP's who do not consent because the only reason for Oak Tree to come in and lend against the fund, rather than the portfolio companies, is because that loan at the fund level is secured by my clients assets that are valuable, that sit outside the estate, that include Braeburn and these other companies that have real value created by our clients equity into those companies.

A DIP loan seems like at the fund level is not a way to directly get cheap money to the portfolio companies but it is a way to try to get priority over the equity holders of assets that sit outside the estate on the cheap. And I think, Your Honor, there are real problems with that conceptually and as a matter of Cayman law and under the LPA. I do not think that you can grant that order.

So, like any other trust beneficiary or third-party holding assets outside of the bankruptcy but with an interest in the outcome, the Rigmora LP's have an interest in the outcome and a successful outcome for the portfolio company debtors. They are the equity. They are the fulcrum security. There are some creditors, and I'm glad the UCC is here and I hope that they will talk to us, at the portfolio company level but our clients have an interest in those companies. They are here and have made an offer to fund them through these Chapter 11 cases.

I think that, Your Honor, is a way to move this forward without tripping up all the very complicated legal issues and other structural issues that I have raised.

THE COURT: Thank you.

MS. SELDEN: Thank you, Your Honor.

MS. TOMASCO: Your Honor, because you asked for it, I have a copy of Formation Group. If I can hand it up -- I don't need it for this argument or -- okay, I will skip over it. Formation Group was a limited -- was a case involving a limited partner filing for winding up without naming the general partner as the respondent of whatever the term is that they used in Cayman. I just start this argument with the reminder of what we stated in our reply and that is that the interpretation of foreign law is a legal one and not a factual one. So, the Court is -- can make your own determination of how that foreign law, especially on the concept of how it fits into 541 should be applied.

THE COURT: Right, but why would I ignore and can I ignore the decision of the Privy Council.

MS. TOMASCO: No. You can't ignore it but I think you have to put in context, right. So --

THE COURT: If the highest court of a state had ruled on an issue, would I just ignore it? I don't think I could but --

MS. TOMASCO: No. I'm not saying that you ignore

it but you have to then decide how does that inform your decision under 541(d).

THE COURT: I agree, I have to apply it somehow but the decision they have made on legal points is the decision -- that is the law.

MS. TOMASCO: What does Kuwait Ports actually say? It says that it's no different -- and maybe it's the words that they use but it's not different then what we would apply in our US C Corp. and that is that the board of directors of a C Corporation operate with a fiduciary duty towards the corporation of which the shareholders are the beneficial owners. It's not that remarkable.

In fact, if you look at what Aquapoint says, on their Slide 9, it's no different than that. And, yet, we are being told that it means that specifically it means the same thing as a trust relationship -- you know, any kind of trust relationship that we would consider to be worthy of 541(d) treatment, they're saying it's the same thing. And I am saying you have to look at the totality of Cayman law here and not just this snippet from one case.

Remember, its context. Aquapoint says, on Slide 9, that it's not unlike a limited partnership's interest has a good deal in common with that of a shareholder in a company, right, but nonetheless ELP is not a separate legal person. So, it's not that different then what we

consider to be a beneficial interest of a limited partner under a US limited partnership. It's not that different then derivative standing by a shareholder who if the board, here the GP, engages in misconduct and is not likely to sue on behalf of the corporation then a limited partner, under Cayman law, can sue because it's the beneficial owner.

It's the same concept and their cases point that out. The question is what does that mean for purposes of is -- what kind of title does -- do these debtors have for purposes of 541 and then, you know, 363(b), etc. And so in that respect I commend you to look at what would happen if an ELP filed for bankruptcy and that question is answered by the Formation Group decision and that is that if an ELP files for restructuring in Cayman law, Formation Group says quite clearly that all of the property is then entrusted to, whatever they call them, I think they call them restructuring officers, almost like a Cayman restructuring officer, we're going to call them CRO's, and they would have the right then to apply to the court to make decisions on behalf of the corporation, right.

So, that seems very harmonious with our concepts. So, taking the soundbite from Kuwait Ports seems to me to be, you know, too cute by half. It's not looking at the entire context and even the cases they cite, and this not my argument, it was going to be Eric's argument, Mr. Winston's

argument next week, but I look at this and I'm like where is the beef. Where do we get from these cases to saying that the -- what the GP holds, legal title on behalf of another debtor the limited partnership. That is the trust relationship of which the limited partners are beneficial owners.

What Aquapoint says is it's not unlike a shareholder derivative kind of situation. The residual owners are the limited partnerships. They're treated like equity in a US bankruptcy. That is all it says. If you read them all together that is all it says. And then, you know, I go back to the statute, right, and I agree with Your Honor, the GP has management rights, not unlike at all, not unlike at all, you know, a mortgage servicer which American Home Mortgage was.

Guess what, they had restrictions on what they could do as a bare legal title holder. Could they sell their servicing rights, right. And this was in the middle in 2007, 2008 mortgage crisis and we were all, you know, looking at that opinion and going, wow, this is -- what is going to happen to these mortgage servicers. And it was a watershed case. But what they said was, you know, these mortgage servicing rights and you have bare legal title but its property of the estate.

And then I am going to take you back to Cayman

law, let's read what does 16(a) of the ELP law say. It says the general partner -- the assets of the partnership are held by the general partner upon trust as an asset of the exempted limited partnership, and then it continues, in accordance with the partnership agreement. That is what we're saying here, right, it's not just that its upon trust. It says it's on trust of the exempted limited partnership, that is a debtor, and in accordance with the partnership agreement, which is the EPA we have here.

So, where I'm missing the necessary link, the missing link here is how does any of this Cayman law translate into a trust relationship that 541(d) would exclude from property of the estate. And then on top of that we have all the stuff that happened in the Chancery Court, right, that it was an award to the limited partnership. It was not -- they didn't go to Chancellor McCormick and say, oh, change X, Chancellor McCormick, you shouldn't send that to the limited partnership, you should send it directly to Rigmora or distribute it to the limited partners because they are the residual owners. That is not what happened. It's not different, right.

Even when you have a shareholder derivative suit the proceeds of it go to the corporation, right. That is what happened here. You sue for a shareholder's derivative suit the proceeds of it, even though you have standing and

you the residual owner, it gets distributed to the corporation to be used to remedy the wrong, right.

THE COURT: Okay. If it's to be used to remedy the wrong then why should the general partner be able to do anything with the funds that is not a direct budget approval, capital call award.

MS. TOMASCO: Well, we discussed that in our papers at some length. I mean, it's going to bring me back to American Home Mortgage and American Home Mortgage said notwithstanding the terms of your servicing contact with, you know, the RMBS securitization, notwithstanding the fact that, you know, you are not allowed to transfer these rights without our consent, and you're not allowed to do these things, the court had no problem saying, you know, under the bankruptcy code if I have something that can be sold or reorganized or managed, those corporate restrictions should not apply.

We cite some other cases, Federated Department Stores out of Ohio, and other places where these rights are because there is bankruptcy court approval, there is a bankruptcy statute, and, goodness, what do we get to do under a plan. We get to do all those things, right. So, because we're on this continuum of places where we're going to do what is best for the bankruptcy estate, notwithstanding any restriction in the limited partnership agreement, as long as

it's in the best interest of the estate and the court approves it that is what the bankruptcy code says.

You know, that is the cherry on top of the original argument and that is that these are assets of the estate. The GP has the management rights, those are assets of its estate which I am going to argue they are interfering with. The limited partnership has the GP holds the assets, has title and then the trust relationship is between the GP and the LP, subject to the GP's management rights, that is the correct construct here.

There is nothing that they have cited in any of these Cayman cases that says that's wrong. Of course, the limited partners are the residual owners. They are also the fulcrum security but that doesn't mean that the debtors don't own the property. These are concepts that we deal with every day in bankruptcy court.

THE COURT: Does an exempted limited partnership own property?

MS. TOMASCO: The exempted limited partnership owns the property under 16(a) of the Exempted Limited Partnership Act. Its owned by the partnership, not the partners.

THE COURT: Is there a case in Cayman law that deals with, maybe there is, exactly that kind of issue, who owns this piece of real estate?

MS. TOMASCO: I mean, we -- the Formation Group says exactly that. It says its owned by the limited partnership and it has -- and for purposes of a restructuring it is definitely owned by the limited partnership but only the general partner can answer to a winding up petition, which they know, because they have done one.

So, I -- where I'm missing the connecting link because, you know, transitive theory A equals B equals C, I'm missing that part where they're saying A equals C but they're missing B. B is how do you interpret 541(d) in light of this mismatch between what 541(d) is trying to solve for and what Cayman law provides and they don't get there, right.

I don't see anything that says that the general partner doesn't have title. The general partner has the right to manage. It holds it on trust for the limited partnership of which the limited partners are the residual owners. That is it and there is nothing in there that says that it's not property of the estate.

It would be property of the estate in the Cayman Islands. We know that. And so, if it's not property -- if its property of the estate there, its property of the estate here. There is no reason to have a different result when all of the assets, the people, the science, the scientists are here in the United States.

THE COURT: And that is Formation Group?

MS. TOMASCO: Correct.

I don't think we need to discuss the *ipso facto* clause issue. I mean, the statute says what it says. It says applicable non-bankruptcy law which specifically includes, and we cite cases in there, foreign law. So, the *ipso facto* provisions of Cayman law are not going to prevent property from becoming property of the estate and it's not going to strip the general partner of its management rights.

THE COURT: Are those two different things?

MS. TOMASCO: Well, if the general partners management rights are an executory contract, then it comes in under 365, and to the extent it pertains to property, its 541(c). So, that is the -- you know, either way, *ipso facto* clauses are invalidated in Chapter 11. For obvious reasons we don't want the result to be that you can't seek relief because of these provisions in the contract or in the law.

Your Honor, with respect to the need, the funding need, they have taken snippets from depositions and before you take their soundbites you have to remember we had live testimony and you only have soundbites. We have not had a chance -- we just got this just now, this slide. But there is an acute funding need.

It's interesting because they were asking questions about how little money do you need, you know, to

not run out of money, right. That is a different question then the exercise of the debtors business judgment to advance these projects and not put them in an anticompetitive environment where they're not keeping up with the rest of the world that is moving forward because that is going to put the -- that is going to diminish the value of the debtors estates by not keeping up.

So, you know, we will send you counter designations. You're welcome to look at them but listen to Mr. Mandarino, and listen to Dr. Harrison, and listen to the witnesses. The witnesses could not have been more clear and that is that they have been mothballed during this funding crisis. I feel like I'm talking about the federal government, but I don't mean that funding crisis. I mean the moratorium on getting money from Rigmora. They have already been in a mothball situation. We want to de-mothball them so that they can be competitive and we can get the most money into the estates and increase the value. That is the point.

They're trying to -- they're conflating an urgent need like you would do with an interim order but this is not an interim order, this is a 363(b) ordinary course of business order, not an interim order for which we need abject need. So, I would say right there that those soundbites were inapposite.

Your Honor, I have a goal of trying to get out of

here to catch a plane because I have my grandkids birthday party tomorrow. So, if the Court doesn't have any more questions, I am going to sign off.

THE COURT: Okay.

MS. LABORITZ: Your Honor, if I may say two things just in response to that. I too will try to be very brief because in addition to Ms. Tomasco's important commitment, its Ms. Selden's birthday, and it's a big birthday, and she is trying to get home for dinner with her daughter.

THE COURT: Congratulations.

MS. LABORITZ: So, we're going to try to be very quick but there are a couple of things that I just would like to say that have come to me as I listen to this fascinating argument. This is not the typical bankruptcy court argument and it is interesting.

Quick points in response to Ms. Tomasco but I think this goes to some of the fundamental questions that we're going to deal with not just for the funding motion but as we look ahead. And I just want to frame it all for us. Ms. Tomasco previewed where they're going with this. She is saying, the GP can do anything it wants with these assets whether or not they are property of the estate and so, therefore, under Section 1129 we're going to be able to confirm a plan that removes the LP's. That is consistent with what she said on the first day of the case.

A lot has changed. They were arguing that 541(c) meant that they could ignore the language of the contract. They're not doing that today. They were arguing that the Russian Effect prohibited them from getting no investment. We're not hearing that anymore. But the thing that they have been consistent about, from day one, is that they're going to try to use Chapter 11 to remove the LP's from the position they have where they have contractual rights over this race that has some -- I mean, the trust assets there will be argument about what they are but the key point is that the purpose of these Chapter 11 cases is to separate the LP's from the rights that they have under the LPA over the trust assets.

I want to just bring us back to that because I think that is going to be important for some of the issues that Your Honor is thinking about when you asked Ms. Selden what may not be as relevant for the funding motion itself, you said can't the GP exercise rights by signing documents using the rates that it has as the GP under the LPA and am I really authorizing use of assets. Am I, right, using the assets. I think that is the question you are asking.

So, I want to take that to the next step and frame it for us as we think about it. Ms. Selden answered correctly that what the funding motion asks is to use assets in violation of the LPA. And she correctly said also that

when you look ahead to a DIP then what you're doing is pledging assets of the estate and that, I think, is where the rubber meets the road in terms of the questions the Court is wrestling with because we all know that a DIP order that is something that carries the weight of the bankruptcy court, you, Your Honor, are granting a security interest in assets and that is a grant by the Court, not by the GP. That would be an action over assets that we do not believe are within the Court's jurisdiction.

We don't believe the funding motion is appropriate either but I am just trying to answer the question you're asking. And, likewise, when you get to a confirmation order, the confirmation order takes possession of the assets and it says who has rights in them. These would be assets that we do not believe the Court can enter an order related to. It's not just saying the GP has a right to enter into a plan and a plan is a contract. A confirmation order purports to actually determine the property rights in assets that are the assets of the estate. We don't think you can do that.

I also would just take issue with Ms. Tomasco's point that they, anyway, could do that under Section 1129. Among other things, Section 1129 requires that a plan be proposed in accordance with applicable law. We think the applicable law is Cayman law. There are a lot of points we would raise, right, in the context of confirmation but I just

wanted to answer that question that I think the Court is thinking about.

THE COURT: Thank you.

MR. WINSTON: Your Honor, Eric Winston.

Usually, the movants get the last word so I want to make sure that is accurate. What I think we just heard was an argument against confirmation premised on the idea that the cases should be dismissed. I think that is what that speech was about. That is going to be heard next week.

A lot of the arguments for next week have been fronted here. I think you are going to hear even more detailed analysis of Cayman Island law, how it interacts with Section 541. We will have the benefit of deposing Mr. Phillips. Presumably they will put him on afterwards and then I'll have a cross-examination of him and we will find out whether you find his testimony credible or not.

We heard, for the first time, that they made this is a personal services contract. We will hear, under Cayman Island law, this is not a personal services contract even though it's an executory contract. If they decide to raise that argument, they hadn't raised it before. So, we don't have a West Electronics catapult problem here.

Those are all for the future assuming we're in Chapter 11. If they're right, you will never reach those issues but I don't know why we're even talking about them

unless it's to say deny the DIP motion because it's too expensive and it pledges assets it shouldn't. Well, we've told you why we did it and it is definitely not our preferred path but one of the benefits of it was to attach a plan term sheet where you just heard me say at the start, and backed up by the committee, and backed up by Oak Tree, that that plan term sheet is a way we want to proceed.

If you actually have a chance to read it, and if Rigmora's counsel and businesspeople read it, it actually gives them the assets that they have long cared about direct ownership of and not through the limited partnership. Rather, all that is going to be really thought about are the ones that they have not liked. The ones that they have tried to kill. The ones that they are not wanting to fund today.

So, that issue is not for today. It is not something Your Honor has to decide and I wouldn't even be -- I would be packing up too. I am missing lots of stuff myself and I'm trying to catch my flight. But because I heard that, we want to be a hundred percent clear, they have made their stand, this case should be dismissed.

If they win it, none of these issues will ever matter and we will find out whether Evercrisp will die, and Marengo dies, and Marlinspike does; we will find that out. But if the case is not dismissed, they have every right in the world to argue that we're not paying them enough for the

things they just told Your Honor are worthless. And we will find that out if you allow us to get there.

All we are asking for today is the right to fund to get to that point. Your Honor, they raised it, is going to have to wrestle with the question whether there is even an argument of a property interest that allows Your Honor to grant the motion. If the answer is yes, we would urge you to grant it based upon our business judgment. If the answer is no, well, then the case is probably going to get dismissed because there is no property interest.

We would submit we have already demonstrated that Your Honor is already there, has the judicial hook, the jurisdictional hook to grant the relief that is requested, and if we need to revisit it next week in the big show we will. We are -- we want to be very, very clear at the end of the day they will never be deprived, if we get through this Chapter 11, of their rights to argue what they are entitled to, what the bankruptcy code gives them, and it's going to give them a lot if they let us get there.

Thank you.

THE COURT: Thank you.

Okay. Well, I'm not ruling tonight. So, we're adjourned. Everyone go catch your flights, planes.

What do I need, Ms. Good? What am I forgetting?

MS. GOOD: Sorry. I just wanted to just briefly

touch on the evidentiary issues. We heard Your Honor loud and clear yesterday about skinning down our exhibit lists. We have worked together and I think we have an agreed upon list except for one item. I think you heard Ms. Selden mention that in her argument. That is the declaration of Mr. Phillips that appears at 126.

I am just going to grab my bankruptcy code book. The issue with that -- and she cited to Rule 44.1 which does say that the Court may consider any relevant material or source including testimony whether or not submitted by a party or admissible under the federal rules of evidence.

So, we're not disputing that the Court may consider it but we don't believe it should come in as evidence because it is hearsay and the Court did not except that testimony yesterday.

THE COURT: Okay. I will think about that objection as I review the other exhibits apparently that are on the list.

MS. GOOD: And we will -- what we will do is we will file that joint list with the notation that that is an open issue.

THE COURT: Yes.

MS. GOOD: We do have agreed deposition designations for the 30(b)(6) depositions, the one we took of Rigmora's witness and the three that they took of our PortCo.

witnesses. The only deposition designation that we, I think, still need to clean up is one from Mr. Ehlers from the Chancery Court proceeding. I am confident that we can -- they have designated. We need to counter designate and I'm confident we can reach agreement there and get those submitted to Your Honor's Chambers.

THE COURT: Thank you.

Anything else?

(No verbal response)

THE COURT: Goodnight. We're adjourned.

(Proceedings concluded at 5:53 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling February 21, 2026

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable

/s/ Mary Zajaczkowski February 21, 2026

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/s/ Coleen Rand February 21, 2026

Coleen Rand, CET-341

Certified Court Transcriptionist

For Reliable

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
	Case No. 25-12177 (LSS)
APPLE TREE LIFE SCIENCES, INC., *et al.*,	(Jointly Administered)
	Courtroom No. 2
	824 North Market Street
Debtors.	Wilmington, Delaware 19801
	Wednesday, February 25, 2026
	10:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

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(Proceedings commence at 10:08 a.m.)

(Call to order of the Court)

THE COURT: Please be seated.

(Participants confer)

MS. GOOD: Good morning, Your Honor. Katie Good of Potter, Anderson & Corroon on behalf of the debtors.

We're here today for hearings on the motion to dismiss and the motion for relief from stay.

But before we get to those two main events, there were Items 1 and 2 on the agenda, which were the committee retention applications. I believe the committee filed a certificate of no objection or certification of counsel, and committee counsel is here if the Court had any questions it wanted addressed.

THE COURT: I will confess to having not reviewed them. So, I will do it and I will let you know if I have any questions or not.

MS. GOOD: All right. And then we will -- I'll turn the podium over to counsel for Rigmora to kick things off on the motion to dismiss and motion for relief from stay.

THE COURT: Yes. Thank you.

Ms. Labovitz.

MS. LABOVITZ: Your Honor, Ms. Selden is going to do the honors for most of today, but I thought I might rise to give a brief update on funding discussions, which did

progress over the weekend to a degree. So -- and I hope they'll progress further this morning.

At this point, I -- the bid and the ask, I won't try to characterize. The debtors' proposal the last week, when I updated you, we had some -- we had agreed to provide funding on the same terms, essentially, as the prior funding motion --

THE COURT: Uh-huh.

MS. LABOVITZ: There was some question, apparently, whether that agreement was conditioned on Your Honor granting the motion to dismiss. We've clarified that it was not. And over the weekend, we've sort of sharpened our pencils on that, and we've put forward a proposal to give eight weeks of funding not conditioned on any outcome of the motions that are before the Court today, on essentially the same terms as the prior funding orders, including the same reservations of rights.

For two of the debtors, Nereid and Nine Square, we don't consent to funding external R&D; the idea being we wouldn't like to start up new long-term commitments there. And we do not consent to funding that contested management fee.

But we do consent to just under $18 million, as we calculate it, of funding that would carry those debtors through April 17th.

I think, if the other side came back to us and said April 17th is the wrong date, you know, it needs to be a few more weeks, that's a discussion we could have. That's not a discussion that's occurring.

But they did come to us last night and said they didn't understand how we were calculating that number just under the $18 million. I believe Rothschild has gotten them or is getting them the breakdown of our calculation this morning, and I'm hopeful that discussions on that can occur through the morning.

THE COURT: Thank you.

MS. LABOVITZ: Thanks, Your Honor.

THE COURT: Ms. Selden.

MS. SELDEN: Good morning, Your Honor. Shannon Selden of Debevoise & Plimpton for the Rigmora LPs.

Your Honor, I'll address a couple more housekeeping items with respect to the two motions before Your Honor, and then we'll call our first witness.

On the two housekeeping items, I did want to update the Court that we heard Your Honor on the unsealing of the filings of these motions and any motions before the Court, that we have been in communication with debtors' counsel, we agree with Your Honor, everything should be public and unsealed.

We understand that there are some concerns from

debtors' counsel with respect to certain information for the portfolio companies that they need to review. Those discussions are ongoing. We're making some headway. We're not there yet. But I do hope to get to a point where everything will be unsealed.

We have also agreed on a joint exhibit list and the Court has copies of those exhibits. There are some objections from both sides; we'll address those as they come up.

The procedural order provides that all joint exhibits not subject to objection will be pre-admitted, we had that agreement with debtors' counsel last night. And I understand from Your Honor, as we are going through witnesses today, if we want to admit exhibits in, we will flag them for Your Honor and request that they be admitted.

THE COURT: Yes. I really don't want a document dump. I find it's unhelpful. I guess I'm expected to read all those documents in whatever context or no context. And so, we're going to take the exhibits that need to be admitted for purposes of this hearing.

MS. SELDEN: Thank you, Your Honor. We appreciate that.

I think the joint exhibit list is a helpful way to facilitate the lack of objections, so we can streamline these proceedings. But we will address the exhibits one by one, as

they come in throughout the day.

THE COURT: Do I have that? Can I have a copy of the joint exhibit list?

MS. GOOD: May I approach?

THE COURT: You may. Thank you. Uh-huh. Okay.

MS. SELDEN: Thank you, Your Honor. It is long, and we do not expect Your Honor to read all those exhibits, but it does at least reflect a long list of things that we have agreed upon, that these are exhibits to which there are no objections.

MS. SELDEN: And then --

THE COURT: I guess --

MS. SELDEN: -- there are --

THE COURT: -- that's something --

MS. SELDEN: -- a handful --

THE COURT: -- huh?

MS. SELDEN: -- that will come up.

THE COURT: Okay.

MS. SELDEN: Your Honor, for the two motions before the Court today, we have the motion to dismiss the Chapter 11 cases of the fund and its general partner and for relief from the automatic stay, again, as to the general partner and the fund, to allow the Cayman trial to proceed. The relief sought is as to the fund-level debtors, the Cayman ELP and its general partner, and not as to the portfolio

company debtors. That will be the focus of the testimony that you will hear today.

We appreciate that Your Honor has cleared Thursday for us, from 10 to 3:30. We do have what looks like a very full schedule of witnesses, but I'm hopeful that the witnesses can be heard today and tomorrow by 3:30.

And we have conferred with debtors' counsel about timing of closing argument, if Your Honor would like to, and we hope that you will want to hear argument on these motions. Both parties are available the morning of Thursday, March 5th, if that works for Your Honor; otherwise, we will continue to consult and consult with your clerk as to scheduling. I did just want to flag that that was another point of agreement that we had been able to reach and another moment where we might hope to be back before Your Honor to address the argument on these motions, where we're focused on witnesses today and tomorrow.

THE COURT: Okay. We'll take a look at that at some point today and let you know.

MS. SELDEN: Thank you, Your Honor.

As for today, let me just say a moment about the witnesses, and then we'll just start calling them. My partner Ms. Natascha Born will be directing Rigmora's CEO, Yuri Bogdanov;

And then calling counsel from the Cayman Island

Mr. Liam Faulkner, who is a partner at Campbells, and will give brief testimony on the time line of the Cayman proceedings.

Then we'll call our Cayman expert, Mr. Mark Phillips, who, as you know, arrived last week and has been enjoying the blizzard here in Wilmington and will be here to testify today.

Then Mr. Saltzman will call Brandon Aebersold again from Rothschild. We expect that to be fairly short testimony.

I think that will take us most of the day until late in the afternoon.

We do have two adverse witnesses on the Rigmora LPs' witness list Dr. Harrison and Mr. Mandarino. We expect to call them in our case. We assume that debtors' counsel will want to direct them before our cross, and we're fine with that approach. So we expect, either late today, or for the balance of tomorrow, to be hearing from debtors' witnesses.

And that, Your Honor, I think ends the preliminaries for me. And my partner Ms. Born will call Mr. Bogdanov.

THE COURT: Thank you. I appreciate the script.

MS. BORN: Good morning, Your Honor. And may it please the Court, I would like to call Mr. Yuri Bogdanov.

THE COURT: Mister --

MS. BORN: And while he makes his way up here, Yuri's English -- Mr. Bogdanov's English is excellent, but it is not his native language, so we do have a translator here. And we did discuss this with counsel for the debtors, who asked that he be sworn. So, if it's all right with you, could we have him, just in case there's a question as to a specific term?

THE COURT: If the parties have agreed to it, that's fine.

UNIDENTIFIED: No objection.

THE COURT: And both will be sworn.

MS. BORN: And then can have Mr. Victor Potapov?

THE COURT: Thank you. I guess --

MS. BORN: Would that be a good spot for him?

THE COURT: Yes.

MS. BORN: Okay.

(Court and court personnel confer)

MS. BORN: May we approach with some binders for the witness and yourself and opposing counsel?

THE COURT: Yeah. Give us a second.

(Pause in proceedings)

THE ECRO: Will the interpreter please raise your right hand?

(Interpreter sworn)

THE ECRO: Please state your full name your full name and spell your last name for the record.

THE INTERPRETER: My full name is Victor Potavov and the spelling of the last name is P-o-t-a-v-o-v.

THE ECRO: Thank you.

And sir, please raise your right hand.

YURI BOGDANOV, WITNESS FOR THE MOVANTS, AFFIRMED

THE ECRO: Please state your full name and spell your last name for the record.

THE WITNESS: Yuri Bogdanov, the last name B-o-g-d-a-n-o-v.

THE ECRO: Thank you. You may be seated.

THE COURT: Yes. Thank you.

(Participants confer)

THE COURT: Do you have an extra binder for my clerk?

MS. BORN: Yes.

THE COURT: Thank you.

And does the interpreter need one?

(Pause in proceedings)

DIRECT EXAMINATION

BY MS. BORN:

Q Mr. Bogdanov, do you hold any professional degrees?

A Yes, I do.

Q Could you tell me about that degree?

A Yeah. I graduated from the Finance University of Russia more than 20 years ago.
Q And what kind of a degree did you receive?
A The business and real estate valuation.
Q Are you currently employed?
A Yes, I'm employed by Rigmora Holdings Limited.
Q And if I just refer to that as "Rigmora," you'll know what I mean?
A Yes.
Q What is Rigmora?
A Well, Rigmora is the advisory body that advises the trustees of the family trust on numerous matters, and also it's an investment vehicle that holds number of the important trust assets.
Q And when you say "trust," what do you mean by that?
A It's -- it's a separate discretionary trust established for the benefit for the three generations of the Rybolovlev Family.
Q Does Rigmora invest in the biotech industry?
A Yes, it does.
Q Can you explain that investment to me?
A Rigmora, through the -- through the special purpose vehicles, holds the limited partner stakes in the ATP Fund.
Q And when you say "special purpose vehicles," do you mean the two LPs who filed a motion to dismiss in this case?

A That's correct.
Q Do you know where the capital that the Rigmora LPs invest in the fund comes from?
A Yes. It comes from the trust assets.
Q And did the Rybolovlev Family Trust have any investments, other than this indirect investment in the fund through the LPs?
A Yes. So the trust has numerous investments in other businesses, in the cash funds, private equity funds, marketable securities, real estate, soccer club.
Q What is your current position at Rigmora?
A I am co-COO and CIO, Chief Investment Officer.
Q How long have you held those positions?
A Since October 2024.
Q And did you have a role at Rigmora before you became the co-COO and CIO?
A Yes. I held numerous executive positions before. But the last three or four years before I was elevated to the COO role, I worked as a special advisor to the trustees and to the family.
Q As CEO and CIO of Rigmora, do you have any responsibilities with respect to the LPs' investment in the fund?
A Yes. I oversee the -- the investments in ATP.
Q And do you know when the LPs first began investing in

the fund?
A More than ten years ago. I think that 2012, I think, was the first year when we started investment.
Q And do you know how much the LPs have invested in the fund since then?
A I think, just in cash, it's more than 2.4 billion. And there is also a piece of the deemed contributions of roughly 400 million, which -- which is now on appeal.
Q Do you know how much the LPs have invested in the fund since February 2022, when Russia invaded Ukraine?
A Yes, more than 800 million.
Q Do you know whether there's anyone else that has contributed any capital to this fund?
A Yes. Dr. Harrison contributed to the small share somewhere in -- like in between one to two percent of the entire capital, which was funded through the interest-free and ordinary course loans, also provided by the limited partners.
Q Has anyone else contributed capital to the fund?
A No.
Q And earlier, you mentioned the Rybolovlev Family. Do you know Dr. Rybolovlev personally?
A Yes, I know him for more than 20 years.
Q And what impressions, if any, have you formed about how Dr. Rybolovlev viewed the LPs' investment in the fund?

MR. BERDON: Objection. Calls for hearsay.

MS. BORN: They've put at issue his motivations and actions, and I think his understanding of how Dr. Rybolovlev viewed the investment is important to that.

MR. BERDON: Your Honor, we certainly did not object to his testifying as to any instructions he has received from Dr. Rybolovlev. But his trying to describe Dr. Rybolovlev's purposes or intentions seems to be pure hearsay.

THE COURT: Sustained.

Mr. Bogdanov, can you pull the microphone a little closer to you?

THE WITNESS: I can move closer to it.

THE COURT: Or either way.

THE WITNESS: Uh-huh.

THE COURT: Yeah. Thank you. Whatever is more comfortable.

THE WITNESS: Yeah.

BY MS. BORN:

Q I'd like to spend just a little time to the Cayman winding-up petition.

When you took over as CEO of Rigmora in October 2024, was there any pending litigation?

A Yes, there was a litigation in the Grand Court of the Cayman Islands with regards to the distribution of Braeburn.

Q And who were the parties to that litigation?

A Limited partners on one side and the general partner on the other side.

Q Do you recall a little bit more about what that litigation was about?

A Yes. The -- under the LPA, limited partners had the right to call distribution of the Braeburn assets, assets held in the pool Braeburn. And the limited partners called the distribution, and the general partner refused the distribution; and, after the second refusal, the limited partners filed the complaint.

Q Do you recall how that litigation resolved?

A The parties agreed to settle.

Q When was that?

A December 2024.

Q And do you recall the terms of the settlement, in broad strokes?

A Yes. The parties agreed to distribute the SPV, which held the royalty purchase agreement, yeah, in kind, the parties agreed to set certain rules and mechanisms for the future distribution of the Braeburn in kind, and the parties agreed to discuss certain budgets for certain portfolio companies.

Q Do you recall whether the settlement addressed attorneys' fees?

A Yes, the settlement provided that the parties would bear

their legal costs on their own.

Q Did you have any concerns, after the settlement agreement was signed, that the GP was, nonetheless, charging its legal costs to the fund?

A Yes, I did.

Q How come?

A I think, shortly after the settlement was signed, probably in parallel, we received the partnership expenses capital calls, and that call included the legal fees. And the level of the legal fees was very unusual, I think it was almost four times higher than the normal level of the legal expenses.

Q And did you take any action in response to receiving that capital call?

A Yes. Obviously, it was first raised by my general counsel, who requested the supporting information and breakdown of these legal expenses and narratives. And when he received no response, I followed up and sent a follow up letter to Dr. Harrison.

Q Did Dr. Harrison ever get back to you with that information?

A Never.

Q Did this issue ever get resolved?

A We paid 50 percent of the call, with a reservation. And Dr. Harrison asked to give him a little bit more time to have

a closer look at the legal expenses, and I think it took three or four weeks. And he reviewed the call and issued the new capital call, eliminating probably somewhere in between two hundred and $300,000 of the legal expenses out of almost 2 million charged to the -- to the fund.

Q And what was your reaction when you saw that the GP only reduced the costs by two or 300,000 and did not give you the information you had asked for?

A I was angry. It's we have just settled the case. We agreed, in very clear terms, that the parties should use their own money to fund the legal expenses, and the general partners tried to charge us and withhold the information, so it was like a major red flag.

Q Did that impact your trust in Dr. Harrison?

A Of course.

Q Did the LPs pay any capital calls in the first half of 2025, despite all of this?

A Yes.

Q Do you recall, roughly, how many dollars worth of capital calls you paid?

A More than 40 million, like forty-two or 43 million of U.S. Dollars.

Q And from 2012 through May 30th, 2025, was there ever a capital call for one of the fund's portfolio companies that the LPs did not pay?

A We never missed a single PortCo call.
Q Mr. Bogdanov, do you recall whether the GP issued capital calls on May 30th, 2025?
A Yes, I do.
Q Were you surprised by those capital calls?
A Well, it's an understatement. I was shocked.
Q How come?
A No single forecast, no single plan provided for such an amount to be called in a one night. So general partner never called such a capital in one day before.
Q And when you say that "amount," do you remember what the amount was?
A More than 100 million, probably more than 110 million. I think one call was subsequently adjusted, but it was definitely more than 100 million.
Q When did you find out about the capital calls?
A Early in the morning. I refer to the Central European time. Early in the morning on Saturday.
Q And do you recall whether there was any other news from the general partner that weekend?
A Yes, it was pretty eventful weekend. We learned that the general partner filed a complaint in the Chancery Court of Delaware.
Q And did you learn when that complaint had been filed?
A Probably minutes after the capital calls were issued,

like eight minutes, ten minutes, I don't remember.

Q So did you have time to react to the capital calls before got the complaint?

A Obviously not.

Q Do you recall what the complaint requested?

A Many things. So like it was very wild relief that the general partner was seeking at the moment.

MR. BERDON: Your Honor, we would suggest that the complaint itself is the best evidence of what we asked for.

MS. BORN: We're about to turn to the complaint.

THE COURT: Well, it is, but I'm going to overrule that, to the extent it's an objection.

BY MS. BORN:

Q Well, why don't we turn to Tab 2 of the binder?

Is this the complaint that you were just referring to?

A Yes.

Q Do you recall what the complaint requested?

A Could you please, again?

Q Do you recall what the complaint requested?

A As I said like -- many things. But like one of the most appalling was their request to confiscate the 50 percent of the LP interest in the fund.

Q Let's take a look at Paragraph 189, which is on Page 82.

A Could you please say again the paragraph number?

Q 189.

A Uh-huh.

(Pause in proceedings)

A Yes, I'm on it.

Q And is this what you were referring to when you said that the GP was asking for an order permitting it to seize up to half of the LPs' interest in the fund?

A That's correct.

Q Did you have any understanding of what would happen to the LPs' interest in the fund if the GP seized them?

A Yes, I do. Under the LPA, those interests would be relegated to Dr. Harrison and his family trust.

Q Did the complaint also seek any payment of funds from the LPs to the GP?

A That's correct. The complaint requested specific performance of more than 500 million of U.S. Dollars.

Q And the GP had only actually called capital for $100 million, though?

A That's correct.

Q Did the complaint refer to those capital calls?

A No.

Q And did the complaint ask for anything else, insofar as you can remember?

A Yes. So it also asked to waive the LP budget approval rights and voting rights and declare LPs defaulting partners, as defaulting partners.

Q And if we can just flip to the next page, Paragraph 191, the first sentence there.
A Yes, I'm on it.
Q Is that what you're referring to, when you say that -- is that what you were just referring to?
A That's correct.
Q Did you have any other reactions to the complaint that we haven't covered yet?
A Again, we were shocked and astonished and surprised to see that. But we were also appalled by the language, very offensive language of the complaint, that you probably should not expect to hear from your fiduciary.
Q Why don't we take a quick look at just the very first sentence of the complaint, in Paragraph 1? And you see here there's a reference to:

"Premeditated financial destruction of more than a dozen Delaware portfolio companies that would otherwise be actively engaged in productive, cutting-edge research."

Do you see that?
A Yes, I do.
Q In your view, were the LPs trying to destroy the fund's portfolio?
A No, it's absurd.
Q Why is it --
A It's our --

Q -- absurd?
A It's -- it's -- it's our assets, it's our capital, it's our investment.
We do want to maximize the return on our investments.
Q And in the next sentence here, you see a reference to an attack being carried out by the LPs and a reference to Dr. Rybolovlev being born in Russia. Do you see that?
A Yes, I do.
Q I would like to turn to Page 8, which -- and Paragraph 12 on that page.
A Can you please say again the page number?
Q 8.
A Uh-huh.
Q At the very bottom there.
A Yes.
Q So this refers to:
"-- the family office LP hiding its predatory intentions by feigning a willingness to meet capital calls."
Do you see that?
A Yes, I see.
Q What was your reaction to that?
A The same, like it was very upsetting and, obviously, it was not true.
Q And the last paragraph I'd like to take a look at is on Page 40, Paragraph 78.

(Pause in proceedings)

Q And I'm just looking at the very first sentence here. What was your reaction to the GP invoking Russia's invasion of Ukraine?

A The same. I -- we were upset and appalled.

Q Just taking a step back here, can you describe what June and July of 2025 were like for you?

A It's not -- it's not a memory I would like to keep. It's not the memory I would like to keep. It's very stressful. Like I think I slept an average two to three hours a day.

Q Did the GP's filing of this complaint have any impact on the LPs' ability to consult with the GP about the GP's management of the fund and the fund's portfolio?

A It -- it made it impossible.

Q Did the LPs pay the May 30 capital calls before the Chancery Court issued its decision in that case?

A No, we didn't.

Q And is the reason that the LPs did not pay the capital calls that the LPs could not afford to do so?

A Of course not.

Q So you could have paid the capital calls?

A Yes. Financially, yes.

Q When you say "financially, yes," what do you have in mind?

A Just have in mind that we had sufficient funds to pay whatever hundred ten, 111 million called in late May.

Q And does Rigmora's CFO occasionally put together a snapshot of the trust's cash and marketable securities?

A Yes. Alexei -- this is the name of the CFO. Alexei preparing -- is preparing the snapshots for our banking partners. And the most recent, at the time of the May capital calls, was the year end of 2024, and the trust has almost 400 million in cash and marketable securities.

Q Do you know at which financial institutions the trust holds its cash and marketable securities?

A There are many, but I think the most important Julius Baer -- it's a Swiss private bank -- Goldman Sachs, JPMorgan, and I recently added Barclays.

Q Did you have any trouble finding a U.S. bank willing to work with you after February 2022?

A No.

Q Was there any other interruption to the LPs' relationships with banks after February 2022?

A Yes. Two Swiss banks, shortly after the invasion started, closed the relations with all the -- what they called "Russian clients," the clients which had some Russian nexus or some historical ties with Russia and, obviously, we were one of those clients. So it was UBS and Credit Suisse who discontinued their like Russian client relations.

Q Were there other Swiss banks that didn't discontinue the relations?

A No. Julius Baer had no problems, Pictet stayed with us. And we even added couple of more big Swiss private banks during like the last two or three years.

Q Going back to the May 30 capital calls, why didn't the LPs pay those before the Chancery Court decision?

A Because we -- we had major disagreement on the amount of the contingent subscription. First, we believed those calls were called not in accordance with the LPA terms.

Q Did you take any action with respect to the May 30 capital calls?

A Yes. We requested an injunction relief from the Cayman Judge, preventing the general partner from declaring us as the defaulting partners while we were litigating this matter.

Q And did the Cayman Court grant that injunction?

A That's correct. It granted such an injunction.

Q Did you file anything else in the Cayman Court?

A Yes. We filed a petition, a petition to wind up the partnership.

Q And why did you file that petition?

A Well, because we completely lost the trust and confidence in this manager.

Q Did you think there was any way for the LPs to continue with the GP as their partner?

A No. The relationship -- the relationship for -- was broken. There was no way to repair or to fix it.

Q Can you tell me some of the reasons why you got to that conclusion?

A There are many reasons. And obviously, it started probably a couple of years ago with the Braeburn story, and then it continued.

And we had the story with the legal costs improperly charged to the partnership.

We -- we believed that the part -- the general partner charged his personal expenses to the fund.

We finally received this outrageous complaint from the fiduciary, which seeked [sic] all these reliefs we have just discussed.

There were some other things; for example, we didn't receive any information on the breach of LP, despite of our numerous requests.

Q And from your business perspective, what were you asking the Court in the Cayman Islands to do?

A To appoint the independent fiduciary, who would run the -- the independent assessment of the affairs of the partnership, and who will finally wind up the partnership, pay all the creditors, and distribute the assets to all limited partners in accordance with the LPA terms.

Q And why did you want the assets of the partnership to be

distributed to all the limited partners?

A Sure, because we want to continue, we want to continue investing in those businesses. We want to continue developing the good companies.

We do want to look at the companies which didn't perform well, which are struggling now, to reach their like goals and targets and, with the help of the new fiduciary and the new manager, who we can trust, see whether we can salvage value from those companies and whether we can do anything to boost the performance of those companies and businesses.

Q And what do you mean when you say salvaging value from the less promising companies?

A Well, there's no closed list, but there are like some ways to - to improve their performance, either through the third-party partnerships, to let the companies work on the Big Pharma projects and develop their products and their programs. There could be some consolidation there, so it's -- there could be some modification of the existing programs; or like, if there's no sensible way to -- to reach the goal, we can consider like the closing down of the program.

Q Switching gears a little bit.

Did there come a time when the LPs sought to audit the fund's records?

A Yes.

Q Could you tell me about that?

A We -- we requested an audit last year, in June, I think in early June. And I contacted the Kroll -- Kroll, right? Kroll accounting firm headquartered in New York, and tried to perform an audit with their help.

Q And why did you think that the LPs could go and audit the fund?

A It's our contractual right.

Q Let's take a quick look at Tab 1 in the binder.

Is this the limited partnership agreement between the LPs and the GP?

A Yes, it is.

Q I'd like to take a look at Provision 16(c), which is on Page 60.

A Six zero, right?

Q Yes.

And I'm just looking at the beginning of the first sentence here. Could you maybe just lead that out loud through "bank balances"?

A Yes.

"At any time while the partnership continues and until its affairs have been wound up, but only during reasonable business hours, each partner may fully examine and audit the partnership books, records, accounts, and assets, including bank balances; may make copies of such books and records" --

Q I think that's plenty, but thanks.
A Sorry.
Q All good.
So is this what you were referring to when you said you understood that the LPs could go and audit the fund?
A That's correct.
Q When did the audit happen?
A It never happened.
Q Why not?
A Well, we spent probably a week or so trying to schedule a date, and the general partner tried to delay it. But finally, when we signed the confidentiality agreement with the auditor, he agreed and scheduled, I think that -- the first visit on Monday. I don't remember the exact date, but it was scheduled on Monday. And on Sunday evening, we received a message, I think from the GP counsel, informing us that they will not let them in.
Q Have you been able to get the information you were hoping to examine in any other way since then?
A No. No, we, I think, never received a single response to our requests, starting from the probably mid-May. We -- I know that there was some information produced in discovery. But for instance, even in this process, many of the important pieces related to the companies' development were produced under the highly confidential title, so I had no chance to

review them.
Q Did there come a time, while the chancery court proceeding was pending when the LP's offered to provide capital to the fund?
A Yes. We made a few attempts to offer the interim funding.
Q Do you recall how much funding you offered to provide?
A I think the first time I made this offer we offered $15 million, 1-5, and we indicated in our willingness to consider even greater funding if it's not sufficient.
Q Let's take a quick look at Tab 3 in your binder. And you see at the bottom of the first page there is an email from you to Dr. Harrison copying others dated June 4th, 2025.
A Yes, I see it.
MS. BORN: I'd like to move this into evidence.
THE COURT: Any objections?
MR. BERDON: No objection.
THE COURT: Its admitted.
(Tab 3, received into evidence)
BY MS. BORN:
Q And is this the email that you were referring to when you said that you made an offer of $15 million?
A That is correct. Let me look at the second page.
(Pause)
A Yes, it is.

Q And if we just look at the big block paragraph on the screen there is a reference in the middle there to "Presently, we have allocated $15 million for this purpose."

Is that what you were referring to?

A That is correct.

Q Did Dr. Harrison accept this offer of interim funding?

A No.

Q Did he come back to you and ask for a different number?

A I think there was an exchange in June and finally he came back to us seeking the $42, $43 million of the interim funding.

Q And did the LP's provide that funding?

A No.

Q How come?

A We requested the information on how those funds would be spent and he didn't provide us any information and stopped the negotiations.

Q Did that mean that the portfolio companies did not get any funding at all between May 30th and December 9th?

A No. They received funding, I think, in August or September. We learned from our Cayman counsel that the general partner received the distributions and withheld those distributions and spent them on the portfolio companies to fund expenses.

Q And let's take a quick look at Tab 4 in your binder.

This is a letter from Walkers to Campbells. Do you know who Walkers is?

A Yes. Walkers is the Cayman counsel of the general partner.

Q And who is Campbells?

A Its limited partners counsel in the Cayman Islands.

Q And so you see this letter is dated September 8th, 2025.

A That's correct. I see it.

Q And if we turn to the third page, Paragraph 11 --

MR. BERDON: Your Honor, I don't know if counsel intends to move to admit this as an exhibit but she seems to be walking down that path and we object in terms of hearsay.

MS. BORN: So, this is a letter from the general partners Cayman counsel, but I actually wasn't going to admit it into evidence.

MR. BERDON: Your Honor, I withdraw the objection.

BY MS. BORN:

Q So, taking a look at Paragraph 11, the last sentence there, the GP's Cayman counsel said, "As of August 1st, 2025 the partnership, therefore, held funds of $61 million from these two sources combined."

Do you see that?

A Yes, I see it.

Q Is that the communication from the GP that you are

referring to?

A From GP's counsel, yes.

Q If you think back to the fall of 2025, do you recall when you expected a decision from the Cayman Court on your petition to wind up the fund?

A Yes. We learned from the Judge -- well, the hearing was scheduled on the week of January the 12th and the Judge informed the parties that he allocated the following week to write the judgment and deliver it. So, therefore, we expected to have the final judgment by the end of January the latest.

Q And you mentioned earlier that you thought that that winding up decision might result in a distribution in kind of the funds interest in the portfolio companies to the limited partners. Is that right?

A That is correct.

Q Did you take any steps to prepare for that possible outcome?

A Yes, I did. I contacted a few high-profile biotech venture firms to discuss with them how we can manage this portfolio should the Court decide to distribute the assets with their help.

Q Were you planning on liquidating the portfolio with their help?

A No. We wanted to continue. There were a number of

very good promising clinical stage companies who want to develop. There are some early-stage companies which require certain attention and would like to consider the project which could help us to salvage some value with the help, again, of the new investment manager, new investment advisor.

Q I think you mentioned contacting a few biotech firms to discuss all of this. Do you remember when that was?

A Yes. I contacted a few firms but I think that we reached the most advanced stage of the discussions with KKR, it's a biotech branch, and with RTW.

Q Let's talk about RTW a bit. Did RTW perform any analysis for you?

A Yes. So, they looked at the list of the investments and using publicly available information, came with what they called very high level, very preliminary analysis of how the portfolio could be developed. Obviously, with all these reservations that it will require like regular diligence and more detailed studies.

Q Did you consider partnering with RTW after the Cayman Court issued a winding up order?

A Yes, we did.

Q Did RTW prepare any written work product for you?

A Yes. So, they made two presentations. One in November with very high-level views on the portfolio and one in December.

Q And did you discuss those presentations with RTW?
A Yes. I met with them in November in person and discussed the first presentation. The second presentation was prepared, I think, I don't remember the date but probably in the first half of December. Then we learned about the Chapter 11 filings and we never discussed the second presentation with them.
Q Did there come a time when the chancery court issued a post-trial decision in the GP's case against the LP's?
A Yes.
Q Do you recall when?
A It was late night Friday, December the 5th. I refer to the central European time. So, that is the time when I learned about the decision.
Q Do you recall whether the chancery court made any ruling as to the amount of the limited partners contingent subscription to the fund?
A Yes, I did. So, if confirmed what the limited partners told the general partner for, I think more then two years, that our commitment is kept at $2.425 billion US dollars.
Q And what had the general partner been saying that the contingent subscription was?
A There was like an evolving theory. He came with different numbers but all these numbers provided that the commitment of limited partners is, at least, I think $400

million greater then the real number. Is that the biggest number he gave was $3.3 billion.

Q Do you recall whether the chancery court made any decisions about certain of the May 30th capital calls?

A Yes. The Court ordered the specific performance of some of the capital calls.

Q Do you remember the dollar amount that those capital calls added up to?

A I'm just rounding up, its $97 million.

Q And did you take any action after the chancery court's decision on Friday night?

A Yes. While it was too late for Friday but I called my CFO on Saturday morning and instructed him to start the preparation and talk to the banks. It was December, the festive season was coming and banks in Monaco work in a slightly different mode during the Christmas time. So, I instructed him to talk to discuss the technicalities, to work with the compliance team of the bank because $100 million is a big payment..

Q Did the LP's reach out to the GP at all concerning the decision?

A Yes. I discussed it with my counsel and I know that my counsel reached out to the general partner counsel on Monday morning proposing the way we would pay.

Q Let's take a loo at Tab 5 in your binder. Do you

recognize this email?
A Yes.
Q And you see its dated December 8th, although that's the European way of organizing the month and the day. And its from a lawyer at RLF to Quinn Emanuel?
A Yes.
Q Let's turn to the attachment that is referred to in the email. And you see this is a proposed partial final judgment and order?
A I see it on my screen. Is it in my binder?
Q Yes. Sorry, its Tab 5. We keep flipping.
A Yeah, I see it.
Q And if we flip to Paragraph 4, is this what you were referring to when you said that the LP's offered to pay within 10 days?
A That is correct.
Q Did you approve your counsel sending this email?
A Yes. We discussed and I approved it.
Q Do you have any idea whether the GP ever responded to this email before the Chapter 11 petitions for the GP and the fund were filed?
A I don't think so. I think that we sent the fullow up reminder to this email and only then we learned that general partner filed for Chapter 11 protection.
MS. BORN: And this document is JX-87 and I'd like

to move it in.

THE COURT: Any objection?

MR. BERDON: No objection.

THE COURT: Its admitted.

(JX-87 received into evidence)

BY MS. BORN:

Q Do you know whether the GP ever sought to confirm with the LP's either directly or via counsel whether the LP's, in fact, intended to pay the $97 million?

A No.

Q Did the LP's, in fact, pay the $97 million?

A Yes, we did. I think we did it like a few days before the deadline.

Q Mr. Bogdanov, I think you said that you were aware that the GP filed the Chapter 11 petition for the fund on December 9th, right?

A I think I learned that on the next day, yeah.

Q And I think you said earlier today that the LP's have provided 98 percent of the capital to the fund.

A That is correct.

Q Did the LP's ever get any head's up that the GP was going to file a Chapter 11 petition for that fund?

A No. It came kind of like out of the blue.

Q do you have any understanding as to what the GP is seeking to do with the LP's interest in the fund in these

Chapter 11 proceedings?

A I think they said it, like very openly, that they're still trying to remove the LP's.

Q And what was your reaction to learning that?

A Again, it's the second time. So, they tried it in the chancery court, they tried to confiscate the 50 percent share, they didn't get any success, and they're trying again using a different platform. So, very upsetting.

Q What impact, if any, has the Chapter 11 petition had on the LP's ability to confer with the GP concerning the management of the fund and the fund's portfolio?

A Again its impossible. Just practically impossible.

Q And you referred earlier to the Cayman Islands winding up petition. Do you understand that that proceeding is currently on hold?

A Yes. That is my understanding.

Q What is the hardship to the LP's of having the Cayman Island's winding up proceeding be on hold?

A There are many things. And the most obvious thing is that we are stuck with a manager whom we don't trust. Who lost the trust and confidence, who doesn't act in the best interest of the limited partners. That is kind of like one of the most important things here.

Second, we cannot do all of the portfolio. Its kind of like in limbo if I use the right word. We do want to

continue. We do want to develop the good companies who want to salvage the data from the companies which are struggling with the help of the new manager whom we can trust. Obviously, we cannot do that.

Then it's an expensive process. I learned that it will already cost $20 million just in the bankruptcy process. And this cost is borne by limited partners. So, we continue to pay on both sides. And our capital is used to fight with us.

What else, again, we spent quite some time preparing for the Cayman proceedings and we were stopped probably two, three weeks before the final hearing. Its another example of the hardship we are facing.

MS. BORN: I pass the witness.

THE COURT: Thank you.

Cross.

MR. BERDON: Good morning, Your Honor. Andrew Berdon of Quinn Emanuel for the debtors.

CROSS-EXAMINATION

BY MR. BERDON:

Q Good morning, Mr. Bogdanov. Nice to see you again.

A Good morning.

Q Mr. Bogdanov, speaking of the document that you testified about, which is the email regarding the potential payment that is JX-87, you authorized your counsel to pay this, correct?

A What document are you referring to?
Q I'm sorry. I'm talking about JX-87. Its Tab 5 in the binder you are using.
A Yes. That is correct.
Q Okay. And you would agree that in Paragraph 4 you authorized your counsel to offer to pay that sum directly to ATP Life Science Ventures, L.P. ("The Fund"), correct?
A That is what the document says, right.
Q So, you were going to make this payment directly to the partnership, right?
A To the fund.
Q To the fund, which is the partnership debtor in this case, correct?
A I think its like general partner who is receiving the funds, right.
Q Mr. Bogdanov, I'd like you to answer my question. The authorization was to pay it to ATP Life Science Ventures, L.P. ("The Fund"). Is that right?
A To the fund.
Q And the fund is the partnership debtor in this case, correct?
A The partnership -- the limited partnership, right.
Q Mr. Bogdanov, you testified on direct that the complaint sought to confiscate 50 percent of the partnership interest of the limited partner. Do you recall that?

A Yes. It requested to order a specific performance and confiscate up to 50 percent of the LP's interest.

Q You see, you just used the words "up to 50 percent" but in your direct testimony you testified that they sought to confiscate 50 percent, did you not?

A Maybe. I don't remember but most likely what you are saying.

MR. BERDON: Can we pull up JX-0, please.

BY MR. BERDON:

Q Mr. Bogdanov, I understand that you are familiar with the provisions of the limited partnership agreement, correct?

A Well, yes, I know the provisions. I can hardly comment as the lawyer, but, yes, I know the LPA.

Q And you testified about some of the rights and obligations of the GP on your direct, right?

A That is correct.

Q And you talked about audit rights, correct?

A That is correct.

Q Isn't it true that during discovery in the chancery court case you had, and your lawyers, access to the general ledger of ATP as a result of discovery in that case.

A Its true that my lawyers had access to the discovery with certain limitations to some of the documents of the partnership. That is true.

Q Are you aware of the partner -- of the general partner

withholding from discovery any of the non-privileged information that was sought in connection with the Crowe audit?

A I cannot comment on the way the discovery was conducted. I don't know.

Q Well, you testified on direct that you never got access to the information that was requested in connection with the Crowe audit. So, you don't know one way or another whether, in fact, that is true, do you?

A The Crowe audit reviewed all the books and records of the partnership, and discovery had its own limited scope.

Q Are you aware of any non-privileged information with respect to the finances of ATP that was withheld in discovery. Yes or no?

A Sitting here I don't remember but I recall that we discussed many important pieces were missing, among those we requested.

Q You don't have any specific recollection of even a single piece of information sitting here today, do you?

A No. Sitting here today I don't recall particular pieces.

Q Turing back to the limited partnership agreement, can we go to page 11 in JX-0, please.

A You said 1, right?

Q Yeah, Tab 1. And it has the Bates number ending at 259

and it's the next two pages later.

Titled "Removal of General Partner." Mr. Bogdanov, has Rigmora invoked the provisions of Section 4 of the limited partnership agreement and tried to remove Dr. Harrison pursuant to this provision?

A To the best of my knowledge, no.

Q Okay. You talked about your outrage at learning that the GP sought to impose a default charge against the Rigmora LP's, correct?

A Can I ask the translator's help just to translate a single word?

THE INTEPRRETER: Can you repeat the phrase, please.

BY MR. BERDON:

Q You testified earlier about the limited partners outrage.

A Yeah, that's correct.

Q Can we please go to page 21 of JX-0, please, Sub (c) defaults on contributions.

You are familiar with these provisions on defaults on contributions, correct?

A What is the page number?

Q Its -- I'm sorry, its on Tab 1 in front of you, page 21. And it is Section 5(c).

Would you agree with me that Section 5(c) enumerates

the rights and obligations of the GP upon a failure by the LP's to respond to a capital call?

A Let me read it again.

(Pause)

A Yes. IT lists certain rights and obligations with regards to the default.

Q And once a limited partner is declared to be a defaulting partner, the general partner may, in its sole discretion, pursue one or more of the alternatives that are enumerated at the (i) through (iv). Do you understand that?

MS. BORN: Objection. I think we're getting into a pretty specific legal conclusion and terminology here.

THE COURT: He can ask him his understanding but, yes, I think -- as you said before, the document says what it says.

BY MR. BERDON:

Q Sitting here today, you have an understanding that if the limited partners are declared as defaulting partners, the general partner has the right to impose a default charge, right?

A Yes. My understanding sitting here that the general partner, following certain procedure and certain periods which are given to the limited partners to cure the default, may use discretion. Again, remember that the general partners owes fiduciary duties to the limited partners

including the duty of loyalty and the duty of care, yes. My answer is yes.

Q I am going to ask you this question, Mr. Bogdanov, are you aware of any provisions in the limited partnership agreement that actually allow the general partner to enforce the capital contribution requirements against the LP's without it being deemed a breach of fiduciary duty?

A I don't understand the question.

MS. BORN: Objection. We're really getting into more legal conclusions.

THE COURT: I think that is a legal conclusion. Sustained.

BY MR. BERDON:

Q So, Mr. Bogdanov, you currently serve as the chief investment officer and co-CEO of Rigmora Biotech Investors I, L.P. and Rigmor Biotech Investor II, L.P., is that right?

A No. That is not correct. I serve as the COO and CEO of Rigmora Holdings Ltd.

Q And that is --

A That is the shareholder, right.

Q That sits above the two limited partners.

A That is correct.

Q So, in that role you are the most senior person overseeing Rigmora's investments into ATP, is that right?

A Yes. In Rigmora Holdings Ltd., yes.

Q And you have held your current role with the Rigmora LP's since October of 2024?
A That is correct.
Q And prior to October 2024, you had no involvement with the ATP portfolio company budgeting, correct?
A I had very limited involvement, right.
Q And your understanding is that a woman named Anna Kolonchina was in charge of that process prior to October 2024, right?
A That is correct. It was my predecessor.
Q And your degree is in business valuation, right?
A That is correct.
Q Your degree -- withdrawn.

You do not have an MD, correct?
A No, I don't.
Q And you do not have an academic degree in any bioscience, correct?
A No, I don't.
Q And you have never taken any courses in hard science, have you?
A No.
Q And you have never taken any courses in medicinal chemistry, have you?
A No.
Q And you have never taken any courses that are relevant

to the treatment of any disease, right?

A No.

Q And Rigmora doesn't have any employees on the payroll with a scientific background in biotech research or development, correct?

A No, we don't.

Q Mr. Bogdanov, in 2022 Rigmora was facing a liquidity crisis, wasn't it?

A In 2022, right, I made a memo saying that I see that what Rigmora faced was kind of a liquidity crisis, right. That is correct. That was my impression.

Q You used the word, yourself, "liquidity crisis," right?

A Yes. That is correct.

Q And, in fact, you wrote a memo discussing how you would suggest addressing that liquidity crisis, right?

MS. BORN: Objection. I think what was happening in 2022 is far beyond the scope of anything I talked about on direct.

THE COURT: Overruled.

BY MR. BERDON:

Q You wrote a memo in November of 2022 discussing how you would seek to address that liquidity crisis, right?

A That is correct.

MR. BERDON: Your Honor, may I approach?

THE COURT: You may.

MR. BERDON: I'd like to publish to the Court and the witness JX-199.

BY MR. BERDON:

Q My first question to you, Mr. Bogdanov, is do you recognize what has been marked as JX-199 in this case?

A Yes. It's a section of my memo which I drafted in Russian.

Q And you have seen this English translation before, correct?

A Yes. We discussed it.

Q And you testified about it in the chancery court, right?

A That is correct.

Q So, taking a look at the section of the memo --

MR. BERDON: -- well, actually, first, Your Honor, I would move this Exhibit JX-199 into evidence.

THE COURT: Any objection?

MS. BORN: No objection except relevancy.

THE COURT: Its admitted.

(JX-199 received into evidence)

BY MR. BERDON:

Q Under the heading "What we have now" you state:

"We are in a liquidity crisis. The primary task, obviously, is to provide for funding needs for the next two to three years."

Do you see that?

A Yes.

Q And it says:

"Previous crisis with similar characteristics occurred two to three years ago and was resolved by liquidating the private equity portfolio."

A Yes, I see it.

Q And it says:

"The current cash gap can be closed by drastic reduction in a venture investment (and particularly biotech and divestiture)."

Correct?

A That is what memo says.

Q And it says, number 4:

"The structure of our assets with predominance of venture projects, (biotech, gaming), carries same risks that have led to the current crisis, poorly predictable money inflows, divestments, and massive outflows, capital calls."

That is one of the things that you observed about the nature of the Rigmora portfolio, right?

A Yes, in 2022.

Q And you say:

"So, we remain within the same logic of shifting money from less risky (private equity funds, real estate, boat) to more risky assets with fire extinguishing from time to time."

A That is correct.
Q "How do we go about creating the cash buffer section down below?"
A Yes.
Q "The only way in this situation to start moving towards the cash buffer is to drastically reduce ATP payments."
Did I read that correctly?
A Yes. And, obviously, the memo explains what it means if we continue reading.
Q And number 11 above, you said that priority number one is to create the cash buffer, all free money should go there, then work on creating a cash cow, correct?
A Yes.
Q And this drastic reduction in spending on ATP would be accomplished by "putting a plug on expenses," right?
A Can you please refer to the paragraph.
Q Let's take a look at the summary, please, on page 3. Taking a look at number 4 --
A Yes.
Q -- the first priority in this case is to put a "plug" on expenses. No new projects, reducing investment expenses, the tasks of creating a cash buffer and finding new business can be solved in parallel, right?
A Yes.
Q Mr. Bogdanov, you wrote an email to ATP on May 15th,

2025, correct?

A That is correct.

MR. BERDON: Your Honor, may I approach?

THE COURT: You may.

BY MR. BERDON:

Q And it is addressed from you to Seth Harrison dated May 15th, 2025, correct?

A That is correct.

MR. BERDON: Your Honor, I move JX-1318 into evidence, please.

MS. BORN: No objection.

THE COURT: Its admitted.

(JX-1318 received into evidence)

BY MR. BERDON:

Q And taking a look at the second sentence at the top you say:

"This email puts you on notice" - and then underlined and in bold - "the SLP are of the strong opinion that it is in the best interest of ATP Fund not to allocate any further funding for the following portfolio companies of the ATP Fund."

You then define then as the early stage companies. Do you see that?

A Yes, I see it.

Q And would you understand what I meant if I called these

preclinical companies?

A Preclinical or early stage, right.

Q And Deep Apple Therapeutics, Red Queen Therapeutics, Athon Therapeutics, Apertor Pharmaceuticals, Evercrisp Biosciences, Marlinspike Therapeutics and Initial Therapeutics were the companies that you told the GP that the limited partners believed should not receive any further funding, right?

A That is what the email says, right.

Q And down below you say in your email the SLP, and by SLP that means Rigmora, right?

A SLP stands for the subject limited partners, it's two limited partners.

Q Right. And you took the position -- on the sixth line down it says, quote, "The SLP's position" --

MR. BERDON: -- can you highlight that, please, Mr. Scott?

BY MR. BERDON:

Q "The SLP's position is therefore that further funding of those early stage companies will waste the ATP fund's assets."

Do you recall writing that?

A Yes, I do.

Q And do you recall that at this time the GP had requested funding and new budget approvals for four clinical

stage companies?

A I recall we were in discussions and we requested certain information on those budgets, right.

Q And you recall that for at least Aulos, Marengo, and Ascidian, there was no new budget allocation that had been made beyond the existing commitments, correct?

A Could you please rephrase? I'm not sure I'm following.

Q Well, for example, you were told that Aulos would run out of cash in late June or early July of 2025, and that Aulos needed a new budget approval, right?

A That was what we were told by the general partner and that's why we requested immediately the information on the Aulos budget request.

Q And you understood that Marengo would run out of cash for its clinical trial program unless it was modified by the end of 2025, correct?

A I don't remember all these dates, but again, if you're saying, most likely that was presented to us.

Q Well, let's go down to the last paragraph where you say, quote, "The SLP are available to initiate these discussions."

By these discussions, you're talking about discussions about new budgets for the clinical stage companies there, right?

A That's correct. And I think that later the same month

we in spite of the statement offered to start the discussions immediately without waiting for the outcome of this early stage company's discussions.

Q But here on May 15th, which is two weeks before the complaint was filed, you said that the SLPs are available to initiate these discussions immediately upon your agreement to wind down or liquidate the preclinical companies, right?

A That's correct, and our position was subsequently modified before the general partner filed its May complaint and we offered to start the budget discussions. And we sent as the least of the information we needed to assess the budget requests and we never get any response.

Q So it's your testimony under oath here today that you wrote to the general partner between May 15th and May 30th agreeing to contribute more capital for the preclinical companies without condition?

A No, it's not the question we discussed. I just -- I was saying that we started the discussions on the new budgets for the clinical stage companies after the May 15 email, but before the general partner filed its complaint, that's what I was saying.

Q But you gave no indication between May 15th and May 30th that you would be willing to respond to capital calls to fund the preclinical companies, correct?

A Sitting here, I don't remember the full content of our

exchanges. If you can just show the email exchange, that will help to refresh my memory, I would probably be -- be in a position to respond.

Q Now, one of the reasons that you gave for refusing or recommending -- withdrawn.

One of the reasons you gave for the LP's position that it would be a waste of partnership assets to invest in the preclinical companies was that they had failed to meet internal research milestones, correct?

A Inter alia because, yes, they have failed to meet the milestones set out in the investment memorandum, right.

Q And that question was addressed by the Chancery Court in its December 5th opinion, right?

A That's my understanding, and it's on appeal now.

Q And you would agree with me that the Chancery Court at page 9 of its opinion held, quote, "No evidence suggests that anyone intended the performance milestones identified in the investment memoranda to serve as conditions to Rigmora's obligation to fund budgets that it approved --

A That was --

Q -- do you agree with me?

A -- that's what the judgment says in front of me. By the way, I don't have the paper copy of that.

Q And it says down at the bottom of that paragraph, "The fact that certain of the Rigmora-approved budgets contained

express milestones suggests that the parties did not intend to condition the other budgets on milestones contained in the investment memorandum," correct?

A That's what the judgment says.

Q One of the other reasons that you said the clinical stage -- preclinical companies didn't deserve further investment is because, quote, "there was no third party interest to invest in these early stage companies." Do you recall that?

A Yes, we referred to the third party equity investors, right.

Q But you had not evaluated any of the early stage companies' ability to establish non-equity funding through business development deals, had you?

A We invited the general partner in this email to come with proposals to salvage value and, as I said, the third party non-equity partnerships can be one of the examples of these proposals to salvage value, and we never heard back.

MR. BERDON: Let's take a look at the August 8th deposition transcript, please, at page 261, line 21, through 262, line 3.

BY MR. BERDON:

Q That's 261, 21. Question, "Did you conduct any independent assessment of any of the companies' ability to raise outside funding from non-equity sources?"

And the answer at the top of page 262, "No, I didn't conduct the assessment of whether those companies are able to raise non-equity funding."

A That's correct.

Q Do you recall giving a deposition in London on April the 8th?

A Yes, I remember.

Q And --

A We spent 14 hours together.

Q And do you recall my asking you this question and you giving me this answer?

A Yes.

Q Did Deep Apple end up finalizing a business development deal with Novo Nordisk shortly after you wrote your May 15th letter -- email?

A That's correct. I recall the discussions with some partnership employees that Deep Apple in case they finalized their partnership -- I don't remember whether the Novo Nordisk name was disclosed to us -- would not require any funding from limited partners, and I think April forecast of the general partner provided that no new money would be required from the limited partner for Deep Apple after we paid the six million call in April, that's correct.

Q Is it your contention that the general partner kept the Deep Apple transaction a secret from you?

A No, he mentioned that the partnership transaction is on the way and the partnership transaction would bring sufficient funds to the company, that's why no capital was required from the limited partners.

MR. BERDON: Your Honor, may I approach?

THE COURT: You may.

BY MR. BERDON:

Q Taking a look at what's been marked as JX-201, have you ever seen it before?

A I think, yes.

Q And it's a press release -- withdrawn.

It's a publication dated June 11th, 2025, correct?

A Yes.

Q And that's just under 30 days after the May 15th email, right?

A That is correct.

MR. BERDON: Okay, Your Honor, I move the admission of JX-201 not for the truth of what's stated in there, but simply for the fact that it announces, publicly announces and discusses the deal.

THE COURT: Any objection?

MS. BORN: No objection to that limited purpose.

THE COURT: It's admitted for that purpose.

(Exhibit JX-201 received in evidence)

MR. BERDON: Thank you, Your Honor.

BY MR. BERDON:

Q And you would agree with me that subject to a number of milestones that deal could be worth upwards of $800 million in funding?

MS. BORN: Objection, foundation.

THE COURT: You can ask -- set a foundation, please.

BY MR. BERDON:

Q Mr. Bogdanov --

A Yes, again, so that I can just read what it stated here that Novo has agreed to pay 800 million, including that front payment, research costs, and milestone, right.

Q Now, despite the deal with Deep Apple in 2025, your November filings in the Cayman Islands still maintained that Deep Apple was a, quote, "hopeless investment," isn't that correct?

A Yes, the program we agreed to fund in Deep Apple was apparently not that promising. The limited partners funded 40-plus million and the call was made for another nine million to reach 50 million to get to IND products and it was not delivered. The Novo Nordisk program is definitely a new project which has nothing to do with our original program and our original project.

Q So your position is that Deep Apple as it sits in the partnership today is a, quote, "hopeless investment"?

A The new project is, like as I said, a good example of what proposals we were seeking which could salvage the value.
Q And you have continued to take the position that investing in Deep Apple is a, quote, "hopeless investment" as recently as the amended winding-up petition that Rigmora filed in Cayman, didn't you?
A Again, the Novo Nordisk deal provided sufficient funding for the Novo Nordisk project, but we believed that the current projects as of the May 15th were not viable.
Q And you continue your belief that the preclinical companies listed in your May 15th email are not viable investments, correct?
A In their current form, yes, but probably with the help of the new investment manager we would be able to salvage the value.
Q And so you today consider the companies listed in your May 15th email to be hopeless investments, correct?
A In their current form, yes. Again, there will be some work required to salvage the value and to improve the performance of those companies.
Q But before -- and since reaching that conclusion Rigmora has not conducted any valuations of these preclinical companies themselves, right?
A That's correct. We didn't have any information and the general partner refused to provide us any information, we

were unable to conduct any valuation.

Q Did you ever send a valuation company to the GP for the purpose of conducting your own independent valuations?

A We requested certain information we plan to use. No, because like the general partner refused to provide any information, we didn't specifically send or engage the valuation firm. But I just like want to remind that, I think as early in January 2025, I requested specifically the valuation reports for some of the portfolio companies and I never received a response.

Q Do you recall giving your deposition in this case on February 15th?

A Say again, please?

Q Do you recall giving a deposition in this case on February 15th?

A That's correct, I do recall.

MR. BERDON: Can we pull up page 66 at line 7 of Mr. Bogdanov's February 15th?

BY MR. BERDON:

Q Question, "Now, we have established that at no time did Rigmora itself or through any third party perform any valuations of any of the portfolio companies, is that correct?"

Answer, "That's correct, apart from the, as we said, Braeburn termination case."

Question, "Other than Braeburn?

"And, again, it was not a valuation, yes."

MS. BORN: Objection, this is not impeachment. It wasn't impeachment last time --

THE COURT: Sustained.

MS. BORN: -- I let it go, but --

THE COURT: Sustained. This is not impeachment.

MR. BERDON: Withdraw the question, Your Honor.

BY MR. BERDON:

Q And before sending the May 15th email you didn't perform or have any third party perform any valuation of the preclinical companies, did you?

A No.

Q You mentioned RTW Investments in your direct. Did Rigmora reach out to RTW or did RTW reach out to Rigmora?

A I reached out to RTW.

Q Now, you took the position on your direct that RTW's analysis was limited to public information, do you recall that?

A That was my understanding.

Q And how did you get that understanding?

A They told me that, and I know what I shared with them.

Q Taking a look at the page -- well, let's take a look at JX-202, do you recognize it?

A I think it's the first presentation they prepared when

we met in person.

(Pause)

BY MR. BERDON:

Q Did you take any steps, Mr. Bogdanov, to ensure that nothing in JX-202 was confidential and proprietary information to any of the portfolio companies?

MS. BORN: Objection, this is an RTW dec, not a Rigmora dec.

THE COURT: Yeah, I'm not sure I understand the question in the context.

MR. BERDON: I'll lay a little more of a foundation.

BY MR. BERDON:

Q Did you ask RTW to perform an analysis or provide a presentation regarding its potential plans to take over management of the portfolio?

A Again, I shared with them the list of the portfolio companies, probably the years of incorporation and the investment made from inception to date. And, again, I told them before we met and before they prepared that presentation that I'm willing to discuss how they can help us to manage the portfolio in a case that the winding-up petition is granted and we will get a distribution of assets. And like I didn't give them any detailed instructions or kind of like the words, their initiative to draft that overview of the

portfolio companies' assets, and that's it.

Q Did you give them asset access to any of the GP's quarterly updates that you had received?

A I don't think so.

Q Did you give RTW access to any of the opinions of Dr. Rimm from the Chancery Court litigation?

MS. BORN: Objection. I think we pulled back Dr. Liu, which we didn't think that we needed to do or should do, we did it not to cause a distraction, but I have no idea what these are conceivably relevant to.

THE COURT: Where are you going with this?

MR. BERDON: Can we flip back to Tab 1 from the Rigmora binder which contains the LPA?

BY MR. BERDON:

Q And let's go to Section 15, indemnification -- I'm sorry, Section 16, fiscal year records and reports, confidentiality and organizational expenses, Mr. Bogdanov, and that starts on page 59.

A It's internal numbering, 59 --

Q No, I'm actually looking at -- yes, internal numbering, the document itself. And let's take a look at where we go to page 60 -- let's go to page 62, please, and D, confidentiality, and then we're at (iv).

Did you have an understanding, Mr. Bogdanov, that the LPs were under an obligation to seek permission and consent

of the general partner before disclosing any confidential information to any other person?

MS. BORN: Objection. So, this Rigmora -- I mean this RTW dec is dated November 20th, it's after the trial in the Chancery Court where a bunch of stuff was made public, we're still doing the same line of questioning about what may or may not have been disclosed to RTW when we've already pulled Dr. Liu down. There's no conceivable relevance between this and our motions to dismiss the petitions as filed in bad faith and to lift the automatic stay.

THE COURT: What's the relevance?

MR. BERDON: Your Honor, if there's been a breach of confidentiality in connection with discussions with third parties about potentially taking over as GP of the fund, we think that that would be relevant to at least the witness' and Rigmora's credibility in asserting that our bankruptcy filing was in bad faith.

THE COURT: I think that's a stretch, but if you want to explore it a little, you can.

MR. BERDON: No, Your Honor, I'm done on that subject.

BY MR. BERDON:

Q Mr. Bogdanov, you expressed a great deal of surprise that you had not received a heads-up from the general partner before it sent over capital calls and filed the Chancery

Court complaint, do you recall that?

A Yes, I do.

Q Did you give the general partner a heads-up that you'd be filing the winding-up petition, yes or no?

A He received a notice, right? He was notified, duly notified.

Q He was notified upon it being filed, but before filing did you give the general partner any notice of your intention to file a winding-up petition in Cayman?

A No, we didn't. The May complaint changed a lot.

Q I'm sorry, I couldn't hear that.

A The Delaware May complaint changed a lot, it was kind of the last drop.

Q Oh, so it changed a lot?

A Yes, it did.

Q I see. Are you aware that Rigmora's lawyers informed the debtors' counsel that it required at least until Tuesday, June 10th to prepare their opposition to the general partner's motion to expedite the Delaware case?

A Could you please say again? I don't understand the question.

Q Are you aware that Rigmora's lawyers asked the debtors' lawyers for the courtesy of a ten-day period between the filing of its motion to expedite the Delaware case and Rigmora's obligation to put in an opposition to its motion to

expedite?
A You're talking about what case, this case?
Q You're aware that on May 30th in the Chancery Court there was a complaint filed with a motion to expedite, right?
A In June last year?
Q Yes.
A I don't remember all these details.
Q But you testified about your emotional reaction, how it was seared into your memory in June and July of last year, and you testified about your specific reaction to the filing of the complaint and the service of the capital calls, do you recall giving that direct testimony?
A Yes, I do recall.
Q Okay. So my question to you, sir, is do you know whether there was a motion to expedite that accompanied the filing of the complaint, yes or no?
MS. BORN: Objection again. I mean, first of all, we're getting quite argumentative here, but -- I mean, the witness can fend for himself, but just in terms of the tone, and I don't see how the motion to expedite is relevant at this point in time.
THE COURT: I'm not sure either, but I think he said -- he's already testified he doesn't remember.
BY MR. BERDON:
Q While that motion to expedite was being briefed,

Rigmora filed the winding-up petition without notice to the GP, right?

A We filed the petition and we duly informed the general partner.

Q Now, you recall that Rigmora's counsel filed a motion seeking to continue the September trial of the Chancery Court action based on an alleged prejudice that it had suffered as a result of the late production of documents?

A That's referred to the question of the documents which were like wrongfully alleged as privileged, right?

Q Yes.

A Okay. So when we had like a production of 70,000 documents, right? I'm just trying to refresh my memory. It was a long process.

Q If -- I don't have a distinct recollection of the volume of documents, but I think we can agree that there was a substantial document production that was made, yes.

A Yes.

Q And, as a result of that, the Rigmora entities asked for an adjournment of the trial date, right?

A To the best of my recollection, yes.

Q And immediately after that motion was granted Rigmora filed an application in the Cayman Islands for the appointment of provisional liquidators, right?

A To the best of my recollection, yes.

Q And you recall that the Court had a very strong reaction to that, right?

MS. BORN: Objection. Again, we're -- first of all, this is way beyond the scope of any of my direct, but also we're delving into procedural rulings by the Chancery court with respect to our client's efforts to progress Cayman winding-up petition in the Cayman Islands.

THE COURT: Okay, I'm going to sustain the objection. The Court had a reaction, he can't testify to the Court's reaction.

MR. BERDON: He may have actually been on that conference call with --

THE COURT: It doesn't matter. The Court had whatever reaction the Court had, I wouldn't presume to think that I could gauge what the Court's reaction to something was.

MR. BERDON: I have the transcript, Your Honor.

THE COURT: That may be argument, but what does this witness know about the Court's decision to say something?

MR. BERDON: Your Honor, I have the Court's statement on the record at a status conference on September 19th.

THE COURT: Okay.

BY MR. BERDON:

Q Were you -- did you dial in by Zoom?

A No.

MR. BERDON: Okay. I'll move on, Your Honor. Your Honor, the relevance here, just so you don't think I'm pursuing a fantasy, is the debtors' good faith belief that Rigmora would not make good on whatever offer to pay it made on June 8th -- withdrawn -- on December 8th, based on a pattern of conduct is the reason why this is relevant because we are being accused of having filed these cases despite --

THE COURT: Preemptively, that's what I'm hearing --

MR. BERDON: -- despite knowledge --

THE COURT: -- you filed them preemptively without waiting for the ten days to go by, but okay.

MR. BERDON: Because we had a good faith belief --

THE COURT: But that's your belief, that's the debtors' belief, that's not his belief --

MR. BERDON: Okay.

THE COURT: -- or the Court's belief, presumably, it's the debtors' belief. I assume I'll get testimony on that.

MR. BERDON: Thank you, Your Honor.

BY MR. BERDON:

Q Mr. Bogdanov, you testified a little earlier that you and Mr. Yakovlev on the Saturday following the issuance of

the court's opinion immediately started discussing payment, correct?

A That's correct.

Q Okay. You also testified that you don't actually control the Rigmora LP's assets, isn't that true?

A I'm not sure I would like frame it --

Q Well, isn't it true --

A -- in this fashion.

Q -- isn't it true that the assets of the Rigmora LPs and Rigmora are controlled by a trustee?

A The assets of Rigmora are controlled by the Rigmora management and Rigmora board, but when the assets are not sufficient, yes, the trustee would have to allocate the capital to Rigmora.

Q So, is it your testimony that there was already $100 million sitting with the Rigmora LPs on December the 6th?

A I don't think so. I think that was close to that, but we moved the funds from the other trust companies.

Q Did you receive permission from the trustee before doing so?

A That's correct.

Q I'm sorry, did you receive permission from the trustee before doing so?

A The trustees are the exclusive signatories on their accounts, so therefore you cannot move the funds to Rigmora

from the trustees' accounts without their explicit order. I don't have a signatory right on the trustee's accounts.

Q Are you aware that in connection with this motion the debtors requested copies of all correspondence between Rigmora and any third party about the payment of the funds, are you aware of that?

MS. BORN: Objection. I don't know that getting in the discovery disputes make sense, and I'll just note that the cutoff day for discovery was December 9th.

THE COURT: He can ask the question. Overruled.

BY MR. BERDON:

Q Are you aware that the debtors requested, but did not receive, copies of any correspondence between Rigmora and any third party about the payment of the judgment amount between December 6th and December 9th?

A I don't know the details on the -- on discovery, I don't know, it's in the hands of my counsel.

Q Did you have written communications with the trustees between December 6th and December 9th?

A I don't recall that. I recall I called Elias Neocleous who is one of our trustees, but I don’t remember whether I sent any email to him or to the other trustees.

Q You did not testify at your deposition about having conversations with anyone on December 6th other than Mr. Yakovlev, correct?

A Yes, I testified that I called Mr. Yakovlev first thing on Saturday morning, that's correct.

Q You did not testify about any conversations with the trustees at your deposition, though, did you?

A I don't think so.

Q Did you discuss -- withdrawn.

You didn't talk at your deposition about any consent that you might have received from Dmitry Rybolovlev for paying the judgment, did you?

A No, I didn't discuss his consent.

Q And did you exchange any written back and forth with Dr. Rybolovlev before the June 8th correspondence from Rigmora's counsel to the debtors' counsel?

A Say again, June?

Q You know, I am having a hard time with dates. December, between December 6th and December 8th, did you have any written communications with Dr. Rybolovlev with regard to payment of the judgment amount?

A No, Dr. Rybolovlev doesn't use emails. So I just called him, probably later the same day, and informed him about the decision of the Delaware court.

Q Did Dr. Rybolovlev give you any instructions on what to do?

A No, he doesn't have any powers to instruct me on this payment.

Q Did Dr. Rybolovlev give you his view on whether the judgment should be paid at that time?
A No, I informed him that I discussed that matter with the counsel and we expect that the court order most likely would provide for the ten business days for the payment. I don't recall whether I shared my concern that it would fall on the Christmas week, but yeah, that's it.
Q You understand that the debtor portfolio companies have -- or had employees, correct?
A Could you please specify what debtors do we have in mind?
Q Well, for example, Evercrisp, you understood that on May 15th Evercrisp had a number of employees, correct?
A When it comes to the portfolio company debtors, yes, they have some in place.
Q And you're aware that since May 15th there have been reductions in force imposed on the debtor portfolio companies, correct?
A I think, yes, we learned from the public media statements of the general partner.
Q And you understood that the debtor portfolio companies had contracts with vendors and other ongoing expenses, correct?
A We can assume that, right.
Q And for those without third party research partnerships

you're aware that the partnership, the fund is their sole source of funding for their operations, correct?

A If we exclude the -- all the other sources, yes, we remained the only source -- I mean the LPs and the fund.

Q Now, there's recently been a funding proposal that has been offered by the Rigmora LPs, correct?

A There were a few --

MS. BORN: Objection. I think this is outside the scope of -- I mean, the funding post Chapter 11 petitions.

THE COURT: How is this within the scope of the direct?

MR. BERDON: Your Honor, this is relevant to arguments that are being made to you about the property of the debtors and whether the property of the debtors is subject to the jurisdiction of this Court.

THE COURT: How is the funding proposal relevant to that?

MR. BERDON: It is relevant, Your Honor, because the fund, the partnership fund level debtor is listed as a lender to the portfolio companies under this proposal.

THE COURT: Okay. And how is, still, that within the scope of the direct of this witness?

MR. BERDON: Your Honor, it's relevant to the motion. I understand your point on scope of the direct. I'll withdraw the question.

THE COURT: Okay.

MR. BERDON: Pass the witness, Your Honor.

THE COURT: Any redirect?

MS. BORN: Just a couple questions.

THE COURT: Okay.

MS. BORN: We can wait until after the lunch break if you'd like?

THE COURT: No, I don't want to do that. I'll give you five minutes if you'd like a break. Why don't we take five minutes' recess.

Please do not discuss your testimony with anyone.

THE WITNESS: I can stay here?

THE COURT: You can stay right there if you want, yes. Five minutes.

(Recess taken at 12:06 p.m.)

(Proceedings resumed at 12:15 p.m.)

THE CLERK: Please rise.

THE COURT: Please be seated.

Counsel, proceed.

MS. BORN: Thank you, Your Honor.

I don't have any further with -- questions for the witness, except that I realized we both referred to the LPA several times. I would like to move into evidence the LPA and the amendments, thereto.

MR. BERDON: No objection.

THE COURT: It's admitted.

(Rigmora Exhibit received into evidence)

MS. BORN: And Mr. Bogdanov has taken time out from a family vacation to be with us here today. Could he be released to go to the airport?

THE COURT: Certainly.

Is that a problem?

MR. BERDON: No objection.

THE COURT: Certainly.

You may step down and you're free to go.

THE WITNESS: I will do that after the lunch break, thank you. Should I leave the binders here?

THE COURT: Please.

(Witness excused)

MS. BORN: We have one more short witness that I think we can squeeze in before lunch, but I'm in your hands, obviously.

THE COURT: Okay. Let's do it.

MS. BORN: We would like to call Mr. Liam Faulkner to the stand.

THE CLERK: Sir, please raise your right hand.

LIAM FAULKNER, RIGMORA'S WITNESS, SWORN

THE WITNESS: I do.

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: It's Liam Faulkner, F-a-u-l-k-n-e-r.
THE CLERK: Thank you.
You may be seated.
MS. BORN: May my assistant approach?
THE COURT: Yes.
MS. BORN: Thanks.
THE COURT: Thank you.
(Pause)

DIRECT EXAMINATION

BY MS. BORN:

Q Mr. Faulkner, could you describe your professional background at a high level for me?

A Certainly. I was admitted as a solicitor of England and Wales in 2009. I've been admitted as a Cayman Islands attorney since 2015 and I am a resident in Cayman. I'm a partner of Campbells, LLP and I specialize in insolvency, restructuring, and litigation.

Q And are you familiar with the LPs that filed the motion to dismiss in this case, Rigmora Biotech Investor One LP and Two LP?

A I am. Campbells is Cayman Islands counsel for those entities.

Q And Mr. Faulkner, you're here as a fact witness, right?

A Correct.

Q So you've traveled from the Cayman Islands to be with

us today solely to testify to the sequence of events in the winding-up petition; is that right?

A Correct.

Q You're not here as an expert on Cayman law?

A No.

Q And you're not here today as an advocate on behalf of the LPs?

A Correct.

Q And you understand that I'm not seeking your legal analysis or views and you will stop me if I ask a question that strays beyond strictly factual matters?

A I understand that.

Q Did you submit a declaration in connection with the motion to dismiss and for relief from the automatic stay in this case?

A I did.

Q And is that what we have at Tab 1 of your binder?

A It is.

Q Have you had a chance to review this in the past few days?

A I have.

Q Do you have any edits or corrections?

A No, none.

Q You mentioned today that you present -- represent the LPs in proceedings in the Cayman Islands.

Is one of those proceedings based on the petition filed by the LPs to wind up the fund?

A It is.

Q Let's turn to Tab 2 in your binder.

Is this the winding-up petition that you were referring to?

A It is.

Q What's the date of this petition?

A It's filed on the 6th of June 2025.

Q And if we take a look at page 28, is this the prayer for relief?

A It is.

Q In the first paragraph here, the prayer for relief asks that the partnership be wound up; is that right?

A Correct.

Q I'm looking at the second paragraph. The prayer asks for two individuals of Alvarez & Marsal to be appointed as joint official liquidators; is that right?

A Yes.

MS. BORN: We can put this away.

BY MS. BORN:

Q Which court is the proceeding pending before?

A It is pending before the Honorable Justice Asif KC of the Grand Court of the Cayman Islands, Financial Services Division.

Q At a high level, could you outline for me what happened after the LPs filed their petition to wind up the fund?

A Yes, high level, there's four phases of the winding-up proceedings. You have the pleading stage, where each party sets out its pleaded position. You then have the discovery phase, followed by a witness statement and evidence, being the evidence of witnesses of fact, which each party intends to allow in at trial to assist the Court to determine any undisputed issues of fact, and then you have the trial itself.

So, in the present case, the petition was filed on the 6th of June. In response to that, the position of the general partner initially was to file a stay application, which it did on the 26th of June. That application, which is the equivalent of a motion, sought a stay of the Cayman winding-up petitions, pending the final determination of the Delaware Chancery proceedings. That stay application was listed for a full day of legal argument on the 1st of August before Justice Asif.

In a similar way to U.S. motions, it was fully briefed in the sense that the parties filed evidence and detailed written legal arguments in advance of the 1st of August hearing. At the 1st of August hearing, the general partner withdrew its stay application at the lunch break and, instead, agreed directions to trial of the petition so that

the petition would be determined on its merits at a trial in January 2026.

Those directions were recorded in a consent order, so a directions order made by Justice Asif, with extent to the parties, and it provided for the various steps to the conclusion of that trial. So it provided for pleadings. It provided for the GP to file its defense by the 20th of June, which it did for the Rigmora LPs, as petitioners, to file what's called a reply to this defense, which they did on the 3rd of September.

It then provided for the parties to give discovery, so the parties made substantial steps in relation to their discovery obligations during the course of September and then agreed for that deadline to be extended into the end of October. So the parties took those steps and there was a further status conference, what we would call case management conference, on the 31st of October before Justice Asif, at which further directions were agreed for the remaining issues, again, by consent. So that provided for any witness statements, which either party wished to allow to be filed by the 5th of December. It also, then, provided for what we would call procedural issues, so a pretrial review, which would be the final case status conference prior to the trial commencing. That was listed for the 17th of December. And then procedural issues, such as trial bundles, which were to

be filed on the 18th of December in advance of this substantive five-day trial commencing on the 12th of January.

Q Did the parties to the Cayman winding-up proceeding ever amend their proceedings?

A Yes, so following discovery, both parties filed amended petition and an amended defense during the course of November.

Q And Mr. Faulkner, I believe you're aware that the GP filed Chapter 11 petitions for both, the GP and the fund on December 9th; is that right?

A Correct.

Q Could you outline for me what was happening in the winding-up proceeding in the Cayman Islands around the time the GP filed those petitions here?

A Yes, so with the trial listed to commence on the 12th of January, we were roughly one month, four weeks away from the commencement of trial. In the week or so prior to that filing, there were a couple of substantial, significant steps that were taken in the Cayman proceedings. The first was in relation to an application, which we'd refer to as the privilege application.

So, on the 2nd of October, the general partner filed an application in the petition proceedings seeking declarations from the Cayman Court that certain documents, which had been produced on discovery in the Chancery proceedings were, in

fact, privileged as a matter of Cayman Islands law, and they should be deemed to be inadmissible in the petition proceedings, such that neither party could rely on the same at trial.

MR. RALSTON: Your Honor, I would object to this line of questioning. He testified -- he's been offered as a fact witness. He's now characterizing his legal analysis as to what is in the pleadings. That goes beyond just being a fact witness, as to what was actually filed, and just going through the procedural steps.

MS. BORN: And we're just doing a very high level here of if there was this privilege application that was denied and this was, I think, the week before the Chapter 11 petition, but, like, I don't have any follow-up question about that.

THE COURT: Okay. Let's move on, then, to the next topic.

BY MS. BORN:

Q Was there a deadline for the -- I think you mentioned that there was a December 5th deadline for the parties to submit witness statements?

A Correct.

Q Did the LPs file any witness statements on December 5th?

A Yes, the deadline for filing witness statements

was 4:00 p.m. on the 5th of December. The Rigmora LPs complied with that obligation and filed three witness statements. One witness statement from Mr. Bogdanov, being the co-CEO and chief investment officer of Rigmora Holdings. There was a witness statement filed on behalf of the chief financial officer and also a witness statement filed on behalf of Mr. Rybolovlev.

Q Did the GP file its witness statements on December 5th?

A No, they did not.

The GP missed the deadline with no substantial reason. We did receive, by email, at around 9:45 p.m. on the 8th of December, the witness statements of Dr. Harrison and one other witness statement; obviously, that was on the evening before the Chapter 11 filing.

Q How close were you to trial on the winding-up petition in the Cayman court when the GP filed the Chapter 11 petitions for the fund and the GP on December 9th?

A Very close.

If we look at the four phases of the Cayman winding-up proceedings, all that was substantially left was the trial itself. So, as that's the Chapter 11 filing deadline, the only steps that remained, remaining was that the parties had a right, but not an obligation, to file reply witness statements by mid-December. We then had the pretrial review you listed for the 17th of December, which would typically

only deal with logistical issues related to the trial. The trial bundles would usually be filed on the 18th of December, and the parties were required to file their written legal arguments in advance of the trial commencing on the 5th of January.

MS. BORN: No further questions.

Pass the witness.

THE COURT: Mr. Ralston?

MR. RALSTON: Your Honor, Brian Ralston, on behalf of the debtors.

May I proceed?

THE COURT: You may.

MR. RALSTON: Can we hand out witness binders, with Your Honor's permission?

THE COURT: Yes, you may.

Thank you.

(Pause)

MR. RALSTON: May I proceed?

THE COURT: You may.

CROSS-EXAMINATION

BY MR. RALSTON:

Q Good afternoon -- we're in afternoon now -- good afternoon, Mr. Faulkner --

A Good afternoon.

Q -- very nice to meet you.

Your firm, Campbells LP -- LLP is counsel of record on behalf of Rigmora in the Cayman proceedings, correct?

A Correct.

Q Rigmora is your client?

A Correct.

Q And if the Cayman proceedings continue, you and your firm will continue to lead the litigation on behalf of Rigmora in the Caymans, correct?

A Correct.

Q How much has Rigmora been paid -- excuse me -- how much has Rigmora paid your firm in connection with the Cayman proceedings?

A I don't have base for this --

MS. BORN: Objection. I think this is beyond the scope and, like, he's here as a fact witness. He was giving the broad strokes of the dates on which things were filed. I don't see how this warrants examination of how much has been paid.

THE COURT: How is it relevant?

MR. RALSTON: Well, one, it goes to bias. He -- also, it's in his declaration, which he was asked about. If we want to look at his declaration, we could do that, but they put that at issue.

THE COURT: You can ask him. It's in the declaration.

BY MR. RALSTON:

Q We could look at your declaration if you'd like?

A Please do, yes.

Q Okay.

MR. RALSTON: Could we pull up JX-98?

BY MR. RALSTON:

Q And it's in your binder, as well, if you want to look at it.

A Which JX number, sorry?

Q JX-19 [sic] -- I'm sorry, 98. Right there.

And this is the declaration that you signed on December 12th; is that correct?

A Correct.

Q Okay. And if you'd turn to paragraph 87.3 at page 35, the Rigmora LPs have engaged extensively in the Cayman proceedings for six months, to date, during which it has incurred millions of dollars in legal fees.

A Correct.

Q Okay. And those fees are paid to your firm?

A To our firm and to King's Counsel.

Q Does Campbells have any incentive compensation structure for lawyers who bring in cases?

A No.

Q Are you being paid to testify today?

A No.

Q Okay. Now, in your declaration, you state that Walkers is one of the most expensive firms in the Caymans, with partners charging more than 2,000 per hour.

What's the basis for making that statement in your declaration?

MS. BORN: And objection. We didn't move the declaration into evidence because we just wanted Mr. Faulkner to provide the basic outline, so this is beyond the scope of my direct.

THE COURT: How is this within the scope of the direct?

MR. RALSTON: Again, this goes to his bias. He's testifying he's counsel to the party and I think I'm allowed to impeach his credibility.

MS. BORN: He's being asked about compensation for opposing counsel.

MR. RALSTON: Well, we want an understanding of how he got that information and where he got it from.

THE WITNESS: I can answer that question.

THE COURT: No, I'm going to sustain the objection.

BY MR. RALSTON:

Q Now, just to be clear, I think it's clear you are not testifying as an expert?

A Correct.

Q And the Court should not consider anything in your declaration, other than the procedural steps in terms of the filings of the Cayman pleadings; is that right?

A I think that's a procedural question, Counsel.

Q You're not familiar with the United States bankruptcy law; is that right?

A Correct.

Q Now, in the Cayman proceedings, you have told ATP that the Court of Chancery's post-trial ruling and judgment is not entitled to recognition by the Cayman Islands Court, correct?

A I think we're getting into --

MS. BORN: Objection, again, to the scope of the direct.

MR. RALSTON: Again, Counsel took him through pleadings that were filed, when they were filed. I want to ask him about some of those pleadings.

MS. BORN: I believe that you objected to anything that I asked that was beyond just what was filed when.

MR. RALSTON: No, I objected to him providing his legal analysis.

THE COURT: Yeah, I'll overrule it.

You can ask, as a factual basis, what was asserted in a filing. So, can you repeat the question for the witness?

MR. RALSTON: Yes.

BY MR. RALSTON:

Q Well, let me ask it this way. Your firm provided a set of draft pleadings for both, the writ proceedings and petition proceedings, isn't that right, do you recall that?

A Sorry. My firm provided draft pleadings on what dates and to whom?

MR. RALSTON: Let's take a look at JX-63. It might be easier with a document.

BY MR. RALSTON:

Q Am I correct that this is a draft, amended winding-up petition?

A No, that's incorrect.

You'll see from the top of the page that it's got a court filing on it, so that's the filed, amended winding-up petition, which was filed on the 21st of November.

Q Thank you for correcting me.

So this was actually filed with the Court?

A Correct.

Q Okay. And if you go to -- I just want to take a look at one of the allegations in here at paragraph 43(e), am I correct that, on behalf of Rigmora, you alleged further:

"In seeking the amended relief in the Delaware proceedings, the GP has acted in breach of the terms of an injunction issued by the Grand Court on 20 June '25 and continued at a return date hearing on 1 August 2025."

Then you go on:

"In those circumstances, any judgment obtained in favor of the GP in a Delaware proceedings is not entitled to recognition in the Cayman Islands, as being contrary to public policy."

Correct?

A Your question was, I allege?

Q On behalf of Rigmora.

A This is to -- I don't allege on behalf of Rigmora. This is Rigmora LPs' pleaded case.

Q So Rigmora made this allegation?

A That is Rigmora LPs' pleaded case to be determined at trial.

Q Okay. In fact, Rigmora never had any intention of honoring the Court of Chancery's ruling; isn't that right?

MS. BORN: Objection.

THE COURT: Sustained.

MS. BORN: Thanks.

BY MR. RALSTON:

Q Now, in the winding-up petition that I believe you talked about on direct, Rigmora asserts that the catalyst for loss of trust and confidence is the general partner's desire to continue investing in seven early-stage companies labeled as "hopeless investments"; is that right?

A You'll have to refer me to the pleaded case.

Q Fair enough.

MR. RALSTON: Let's take a look at JX-62.

BY MR. RALSTON:

Q And, am I correct, this is the June 6, 2025 winding-up petition of Rigmora?

A Prior to the date of its amendment, correct.

Q I'm sorry, I couldn't hear you.

A Prior to the date of its amendment. So the amended petition would supersede the unamended petition.

Q Right. And we'll get to that in a minute, but this was the original winding-up petition filed by Rigmora?

A Correct.

Q Okay. And let's take a quick look at paragraph 35 and 36 on page 12, and the assertion is made here that the loss of trust and confidence were the GP's behavior in regards to seven early-stage portfolio companies.

Do you see that in paragraph 35?

A Yes.

Q Okay. And in paragraph 36, it goes on, the second sentence:

"The GP has insisted on continuing to invest the partnership's capital into the early-stage companies, even though the petitioners consider them to be hopeless investments."

Correct?

A Yes, correct.
Q And then you mentioned that this winding-up petition was amended and that was in November of 2024; is that right?
A '25.
Q Okay, '25. I'm sorry, I read the wrong year in my outline. Thank you for correcting me.
MR. RALSTON: So let's take a look at that; it's JX-63.
BY MR. RALSTON:
Q So, then, in November of 2025 -- this was filed on November 21, 2025; is that correct --
A Correct.
Q -- the amended winding-up petition?
And if you take a look at the same paragraphs, 35 and 36, the allegations about the seven early-stage portfolio companies being a hopeless investment remains, correct?
A Correct.
Q And one of the companies listed there is Deep Apple, correct?
A Correct.
Q Now, am I correct that there's no submission filed with the Cayman Islands Court that Rigmora had been in discussions with third parties to continue to invest in portfolio companies if, after winding up and appointment of joint liquidators, ownership stakes in such companies were

distributed in kind.

Is that in any pleadings in the Caymans?

MS. BORN: Objection. I think asking him for sort of, like, a specific characterization when there's thousands of pages of pleadings and witness statements doesn't make a whole lot of sense.

THE COURT: You can answer if you know if that was pled anywhere.

THE WITNESS: As far as I'm aware, it's not part of the pleadings or where, as I said, but for the Chapter 11 and in the statutory moratorium, there would have been reply witness statement filed in mid-December which could, at least in theory, have addressed those issues or any updates since the last witness statements had been filed.

BY MR. RALSTON:

Q But sitting here today, you can't point to anything specific?

A No, correct.

MR. RALSTON: Can I have one second, Your Honor?

THE COURT: Yes.

(Pause)

MR. RALSTON: Your Honor, nothing further.

THE COURT: Thank you.

Any redirect?

MS. BORN: No, Your Honor.

THE COURT: Thank you, Mr. Faulkner. You may step down.

(Witness excused)

THE COURT: Okay. So this seems like a good time for a break?

MS. BORN: Thank you, Your Honor.

I think that's right. Our next witness may be a little bit longer.

THE COURT: Mr. Phillips is next?

MS. BORN: That's correct, Your Honor.

So maybe a break for lunch before we delve into Cayman law.

THE COURT: Okay. Is an hour enough for everyone to get back to offices and back here?

(No verbal response)

THE COURT: I'm not hearing no.

Okay. So 1:45. This time I will get the time right. 1:45.

We're in recess.

MS. BORN: Thank you.

(Recess taken at 12:41 p.m.)

(Proceedings resumed at 1:48 p.m.)

THE COURTROOM DEPUTY: Please rise.

THE COURT: Please be seated.

Ms. Selden.

MS. SELDEN: Good afternoon, Your Honor. Shannon Selden of Debevoise again for the Rigmora LP's.

Your Honor, before we call our next witness, I just wanted to check whether Your Honor has any time constraints at the end of the day that we should be aware of. Not for this witness but for the ones who follow him.

THE COURT: Today my only constraint is Brandon's constraints. As I said, he's the most important person in the room. We're good? Okay, we're good.

MS. SELDEN: All right. Fantastic. Thank you, Your Honor.

The Rigmora LP's call Mr. Mark Phillips KC to the stand.

THE COURT: Mr. Phillips.

MARK PHILLIPS KC, RIGMORA WITNESS, SWORN

THE COURTROOM DEPUTY: Please state your full name and spell your last name for the record.

THE WITNESS: My name is Mark Phillips KC, and Phillips is spelled P-H-I-L-L-I-P-S.

THE COURTROOM DEPUTY: Thank you. You may be seated.

THE WITNESS: Thank you very much.

DIRECT EXAMINATION

BY MS. SELDEN:

Q Good afternoon, Mr. Phillips.

A Good afternoon.
Q Thank you so much for being here today.
Mr. Phillips, what is your profession?
A I'm a barrister.
Q How long have you been a barrister?
A I've been a barrister since 1984.
Q Are you a King's Counsel?
A I am.
Q What does it mean to be a King's Counsel?
A A King's Counsel, the patent, which is signed in my case by Queen Elizabeth, says that I'm one of her Majesty's counsel learned in the law.
Q When did you become a King's Counsel or Queen's Counsel?
A 1999.
Q Do you have any experience in insolvency and restructuring law?
A I do. It is what I have been doing my entire professional career.
Q Could you please describe that experience for the Court?
A Certainly. Over my career I have dealt with almost every major restructuring insolvency case. When I started I did all the administrations for the first period and then I was counsel at Maxwell, Olympia & York. I restructured in

London, Lloyd's of London market. I was counsel for the Bank of England on the BCCI matter, which went for many years and, of course, resulted in a two year trial. And I have also done cases in other jurisdictions including Cayman Islands, the BVI, Hong Kong.

Q Mr. Phillips, do you have experience in Cayman law?

A Yes, I do.

Q Could you describe that experience for the Court?

A Yes. I was first instructed on an ad hoc basis in 1999. In the Cayman Islands, leading counsel are often instructed in more difficult cases and was admitted on an ad hoc basis. So, I was first admitted to argue the TransWorld case, which was a case involving a Brazilian bank with Cayman Islands aspects to it. I dealt with the SPhinX companies which was the liquidation of a segregated portfolio company which involved both Cayman Islands and proceedings in the United States. It was dealt with by Judge Drain in the Southern District of New York. And I was counsel in the longest trial that there's ever been in Cayman which was the Saad trial. It arose out of the liquidation of the Saad case and my clients were the liquidators who were from Grant Thornton.

Q How long was that trial, Mr. Phillips?

A The trial was for 12 months in court.

Q That is a record I am not aspiring to break.

Mr. Phillips, are you a member of any insolvency or restructuring associations?

A Yes, I am. I am a member and former president of the Insolvency Lawyers Association, which is the English based lawyers association. I am a Fellow of R3, which is the Association of Business Recovery Professionals. I was a council member of R3 for a few years. I am a member of INSOL. I am a member of the International Insolvency Institute, which is an invitation, if I can put it that way, institute of the leading practitioners in the world. And, of course, through the International Insolvency Institute I found myself in the privileged position of being involved in meetings, for example in court-to-court communications discussions and we contribute to Group V of the UNCITRAL, which means that we sort of have input into the UNCITRAL Model law.

So, forgive me if I forget some of them.

I am also a member of RISA, which is the Insolvency Association of Cayman Islands. I have spoken at their conferences and of the BVI. And I am a member of the Hong Kong Bar Association.

Q Thank you, Mr. Phillips.

MS. SELDEN: Your Honor, we tender Mark Phillips KC as an expert in Cayman and English law including in insolvency and restructuring matters.

MR. WINSTON: No objection as to those two matters.

THE COURT: He's admitted as to such.

BY MS. SELDEN:

Q Mr. Phillips, for what purpose were you engaged in this matter?

A I was asked some questions of Cayman law, 10 questions, and I was asked to give my opinion on those questions in order to assist the Court.

Q Did you submit any expert declarations in this matter?

A Yes, I did.

MS. SELDEN: Your Honor, may we approach? I believe we have a binder for the witness, and for the Court, and for others.

THE COURT: You may.

BY MS. SELDEN:

Q Mr. Phillips, now that you have your binder in front of you, could you please turn to Tab 1 which should be a document marked JX-97.

A Yes. Thank you very much.

Q Do you recognize that as a copy of your declaration in this case?

A Yes, I do.

Q Do you have anything you would like to change in your declaration?

A No. Thank you very much.
Q Do you stand by the opinions stated in your declaration?
A I do.
MS. SELDEN: Your Honor, we would like to move Mr. Phillips declaration into evidence.
MR. WINSTON: Objection, Your Honor. He's testifying as expert. Expert declarations and expert reports are not admissible.
THE COURT: They're hearsay. So, sustained.
MS. SELDEN: Thank you, Your Honor.
BY MS. SELDEN:
Q Mr. Phillips, let's then testify directly about the opinions in your declaration.
A Yes, of course.
Q Could you turn to Paragraph 24 of your declaration which lists 10 key principles under Cayman law?
A Yes. Thank you.
Q Did you put together some slides to accompany your testimony today?
A Yes, I did. I saw -- Your Honor, I saw the other day that the witnesses were producing slides and I thought that looked extremely helpful. So, I have done the same.
Q Not to be left out.
Mr. Phillips, you are familiar with Cayman ELP's,

correct?

A I am.

Q ELP's refers to Cayman Islands exempted limited partnerships?

A Yes.

Q Did you view -- do you have a view as to whether Cayman ELP's are similar to other partnerships?

A No. A Cayman ELP is unique. I wonder if we could go to the first slide, which is -- that is actually taken from my declaration but most of the rest of these slides are just quotes from cases or authorities.

So, as I point out here it's a special form of partnership. The partnership, as we know, is a relationship between partners carrying on business with a view to profit. It's a relationship that arises out of the agreement, the partnership agreement.

Pursuit to the terms of an ELP agreement and governed principally by the ELP Act in which -- and this is very important. We will, obviously, analyze this, in which the general partner manages the business and holds the ELP's assets on trust for the limited partners who generally act as investors with limited liability.

So, that idea was an overall framework and I wonder, do tell me if I shouldn't -- can we go to the next slide, please. The next slide, you will see, this is Section 4(2)

of the Exempted Limited Partnership Act. I should have said, Your Honor, it's a statutory construct. This is a statutory construct. Its very unusual.

But Section 4(2) explains that the exempted limited partnership shall consist of one of more persons called general partners who shall, in the event of the assets of the ELP being inadequate, be liable for all debts and obligations of the ELP. And one or more persons, called limited partners, who are not liable and so on. But that is an important starting point because there has to be at least one general partner and, of course, there has to be at least one limited partner. So, that is the starting point which is 4(2).

Q Mr. Phillips, you're referring to the Exempted Limited Partnership Act of the Cayman Islands. Is a Cayman ELP unique to the Cayman Islands?

A I believe so.

Q And the ELP Act that you are referring to was restated in 2025, is that right?

A Yes, it was.

Q And I described last week statutory interpretation in the Cayman Islands. Do you have an overview of how statutory interpretation works under Cayman law?

A Well, it's a common law jurisdiction and we interpret statutes in the Cayman Islands in exactly the same way as we

do in other commonwealth jurisdictions, in particular in England.

Q How is that?

A Well, we look at the words used. We look at whatever provision in the context of the entire statute so that we can understand what it is that the relevant legislator has provided.

Q And do you look to decisional case law at all?

A Yes, of course, because what you find is, of course, that the various statutory provisions will have been considered by various authorities.

And Your Honor will appreciate the seniority of the various different courts. In the context of the Cayman Islands the most senior court is the Privy Council. That is the most senior court of appeal.

The Justices in the Privy Council are our Supreme Court Justices and some very senior commonwealth Justices as well. And we will see that when we look at the cases. I will point out who has been making the decisions.

Q And when you say "Supreme Court," Mr. Phillips, are you referring to the Supreme Court of the United Kingdom?

A I'm referring to the Supreme Court of the United Kingdom. I am, of course, aware that the Supreme Court in the United States is the most senior federal Supreme Court but that is certainly outside my experience.

Q And it's the UK Privy Council that is the ultimate court of appeals for the Cayman Islands?

A Yes, it is.

Q Mr. Phillips, you state in your declaration that Cayman ELP's do not have separate legal personality. Do you recall that?

A Yes, I do. And it is the fundamental -- it is the fundamental principle of ELP's because everything about ELP's flows from that and we will see how that works but that is fundamental.

Could I go to the next slide and could I perhaps take the Court to the Aquapoint decision. I promised that I would explain who the Judges are. So, this is a decision of the Privy Council. Its from the Court of Appeals of the Cayman Islands. And you can see the Judges referred to, Lords Sales, Leggatt, Burrows, and Richards are Supreme Court Justices. And Dame Janice Pereira was a very eminent commonwealth Justice. So, that was the Court.

The most significant Judge in this particular case is Lord Richards. That is Lord David Richards. And I say that because he wrote the decision in this case. Also, Lord David Richards is the most experienced senior company and insolvency judge in the United Kingdom. There is no doubt about that. Along the way, he was the English Judge in the Lehman cases back at first instance and he has decided many,

many leading company law cases. So, he wrote this.

Q Mr. Phillips, before we delve into Lord Richards opinion in Aquapoint, could I ask you when you said in your declaration that Cayman ELP's don't have separate legal personality, could you just elaborate on what you mean by that for a moment?

A Certainly. Your Honor, as you know, there are various different entities and they have legal -- they will have legal personality or they do not.

I will take the easiest one, a corporation. A corporation is established, as Your Honor knows. It has separate legal personality which means it is that entity that does things. As a consequence of that it is also certainly in the English and Cayman environment, it is that entity that is then made the subject matter of a winding up petition, for example, or restructuring proceedings because it attaches to the entity and also certainly in jurisdictions you can -- there are provisions about winding up foreign companies. And that is express.

Now, a partnership is a relationship between the partners that arises out of the agreement that they have made and that there is no separate legal personality. It is a relationship between the partners based on that agreement. In an ordinary partnership -- so what you get in an ordinary partnership is that all of the partners can enter into

obligations and liabilities on behalf of the partnership, which means all of the individual partners. And they are liable for those obligations. That is an ordinary partnership.

Partnership itself, when you refer to the name, so it trades under a name, that is a shorthand way of referencing all of the individual partners. So, you then ask, well, how do -- can you wind it up, for example, and the answer is yes because there is a statute that says you can wind up a partnership.

When you come to an ELP, an ELP has no separate legal personality but the ordinary rules of a partnership are amended so that you have two types of partner involved in the business and in the management, if you like. The first is the general partner. You have to have, as your Honor, you saw from 4(2), you have to have, a general partner and the reason for that is that the general partner -- I will show you this, the general partner is responsible for managing the business. And you will have seen that if there is a deficiency then the general partner is liable.

Limited partners, on whose behalf he enters into all of those particular -- whatever the agreements are. The limited partners are just so, they cannot take part in the management. They are just investors. So, there is no separate legal personality and the ELP has specific

provisions for how you manage the business and how, in particular, you dissolve it which we'll come on to in due course.

Let me ask you another question, Mr. Phillips, which I think you were pointing us to Aquapoint and Lord Richard's decision. Was that one of the Cayman Court's decisions that informed your analysis about Cayman ELP?

A Absolutely.

Q How so?

A If you look at Aquapoint, so we start with Paragraph 2, which was the general description. So, Lord Richards says Aquapoint is an exempted limited partner formed in the Cayman Islands under the ELP Act. The ELP Act requires the ELP to consist of one or more general partners and one or more limited partners. The general partner has full responsibility, I will come back to that, of the management and conduct of the ELP's business and is liable for the debts in the event of a shortfall of assets. Limited partners do not take part in the management of the ELP and is not liable for its debts and obligations except as maybe provided by the partnership agreement.

Then if we could go forward to Paragraph 33. And I cannot emphasize too much the significance, and we get this in two Privy Council decisions, Paragraph 33 on the next slide, an ELP does not have separate legal personality but is

a form of partnership. To constitute an ELP it must be registered with the registrar, and then it goes back to Paragraph 2 and points out that an ELP must include at least one general partner and one limited partner. A general partner is liable for all of the debts and liabilities of an ELP to the extent of any deficit of assets. And, again, is responsible for the conduct and management of the business while the limited partner is liable only to the extent provided in the partnership agreement.

And the last sentence, Your Honor, that refers to Section 20. Section 20 -- what Section 20 provides is that as long as the limited partners do not go outside doing what is in Section 20 they are not personally liable. So, that was Aquapoint.

There is another Privy Council decision in Kuwait Ports, if we could turn to the next slide, please. So this is a judgment which is written -- again, it's the Privy Council and the judgement was written by Lord Hamblen. And in Paragraph 35 he says this:

"There are, however, a number of important distinctions between ELP's and companies which mean that little assistance can be derived from such case law."

And I would just pause there, Your Honor, just so that you appreciate why they were referring to Foss v. Harbottle, that was because it was about derivative actions. So, the

Court was considering whether the case law in relation to companies on derivative actions was going to help them in relation to the specific provision in ELP's.

Then they set this out. Number one, an ELP has no separate legal personality. Number two, you then get the reference to the company's articles of association but then the last sentence, the rights and obligations of the partners in an ELP are governed by contract between the partners and a statutory trust. Very significant, Your Honor, to have that in mind. Number three, the directors of the company have fiduciary duties. Picking it up, the general partner of an ELP has fiduciaries to all the ELP's limited partners. I will comment on the duties shortly. Number four, picking up the last sentence, the general partner of an ELP holds the ELP's assets on trust for all the limited partners.

Your Honor, I'm going to come back to it later but the general partner is an agent on behalf of the limited partners, is a fiduciary on behalf of the limited partners and holds all the assets in a trust. I will come back to the significance of that, if I may, a little bit later.

Q Mr. Phillips, you had mentioned that Kuwait Ports makes a reference here to Foss v. Harbottle and then conducts the analysis that you pointed out. Are these conclusions of the Privy Council in Kuwait Ports limited in your view to the circumstances in which they arose here?

A No, not at all. Your Honor, this --

Q Why is that?

A I'm sorry. It's very important because the fact that an ELP has no separate legal personality is fundamental and applies in whatever context you consider it. What we see in the cases is that the fact that there's no legal personality is then applied in the various different contexts but it's not the contexts that drive the conclusion that there's no legal personality. That is a fundamental fact, if I can put it that way.

Q Mr. Phillips, are you aware of the Grand Court's decision in Re Formation Group?

A Yes, I am. It was put to me in my deposition. I, therefore, have given it a great deal of thought.

Q What particular issue, if you recall, was Justice Kawaley addressing in Re Formation Group?

A Yes. Well, the question in that case was could a winding up petition be issued against the ELP. So, in other words, could you petition against the ELP as if it was a company.

Q Sorry, Mr. Phillips, I will interject a question once in a while.

Have you considered whether that decision affects your conclusion that ELP's don't have separate legal personality?

A Not at all. Can I explain why?

Q Yes.
A So, if we look at the next slide, there are two paragraphs in Mr. Justice Kawaley's decision. And, Your Honor, I think you're familiar with the fact that, of course, these are first instance decisions and the rest of it.
Q Mr. Phillips, what do you mean by first instance decisions?
A Oh, I'm so sorry. First instance is what we refer to where it's a single judge sitting. We call it at first instance. One then goes to the Court of Appeal, one then goes to the Privy Council --
Q It's a trial court level judge, is that right?
A Thank you.
Q I will have to translate English into English from time to time.
A We do have that, I'm sorry.
But if I could start with Mr. Justice Kawaley's decision, I think its helpful to start with Paragraph 16. So, in Paragraph 16 he picks up and it's the bit I have highlighted. Section 4(2) is only explicitly defining two central characteristics. It says as a general rule, limited partners have no liability in respect to the ELP debts. And as a general rule, general partners shall, in the event that the assets of the exemptive limited partnership are inadequate, be liable for all debts and obligations of the

ELP. So, that was 16.

I look at that because that precedes 17. And 17 has within it the dictum, and I will explain what that is in a minute, has the dictum that has been reflected. So, what Justice Kawaley says in 17 is the statutory language clearly envisages that an ELP will have its own assets, debts and obligations, and that a general partner will only be liable in the event the ELP's assets are inadequate to meet its liabilities. He then says in brief, this implies that an ELP has some degree of legal personality as one would expect drawing upon the more long-standing traditional partnership construct. So, that is where that comes from.

If I can turn to the next slide, the first point that I think is very, very important is in Paragraph 37 Mr. Justice Kawaley says the fact that an ELP generally has no separate legal personality is entirely beside the point.

Sorry, Your Honor, am I going to --

THE COURT: No. I remember that language. I'm looking for it in my copy.

THE WITNESS: Exactly. And on the point about that, Your Honor, is what Mr. Justice Kawaley makes crystal clear is that that point, what he has said about legal personality, is not what we call it the ratio, but it’s not the reasons for the decision. So, it's a comment which we would describe as an *obiter*, it's a comment that falls

outside the reasons for the decision. So, that is an important starting point.

BY MS. SELDEN:

Q Mr. Phillips, what is the distinction that you're drawing between the reasoning for a decision and then *obiter* or an *obiter dictum*?

A Oh, of course. The reasons for the decision would be that part of a judgment that is then binding. If one was to turn this up, assuming that one hadn't had decisions of the Privy Council, but if one was to turn this up the first question you would ask is what is the binding reason for the decision because that is then a decision on that point which is binding. And *obiter dictum* is other statements that a judge may make in giving their reasons. And we call that *obiter dictum*.

Q Mr. Phillips, Justice Kawaley wasn't the only judge at the time looking at this issue, is that correct?

A That is correct. And, Your Honor, what we can see from, what I would call, the first instance decision because there were two first instance decisions, there was Mr. Justice Kawaley in Re Formation and then there was Mr. Justice Parker in Padma.

What happened was that Mr. Justice Parker had decided you could not present a winding up petition in the name of the ELP. Mr. Justice Kawaley disagreed and said you can

present a winding up petition in the name of the ELP.

So, if we could look at the next slide we can see where Mr. Justice Kawaley disagreed with Mr. Justice Parker and he says:

"I'm bound to find that with the greatest respect to Justice Parker, in Padma, was wrong in finding that 33(1), as read with 36(3), does not permit the presentation of a winding up petition against an ELP alone because only the general partner may be sued. "

So, that was the disagreement and if one looks -- if we can go onto the next slide, because I've gone straight to 45, but the reasoning -- the beginning of why he disagreed comes out in 31 and its really 31(a) where Mr. Justice Kawaley says a hypothesis set out in Padma, ibid at Paragraph 35, that there was no provision within the ELP Act or the Partnership Act which provides that legal proceedings may be instituted against an exempted limited partnership in the name of the partnership.

So, what he says is -- he said his preliminary view was I thought Mr. Justice Parker was right. That was his preliminary view and he said it entailed accepting, and then he goes on then to say in 45 that he disagreed. So, if we can just look at Paragraph 35 of Mr. Justice Parker.

Q Mr. Phillips, is this Mr. Parker's opinion in the Padma Fund case?

A Yes, it is. And we can see this was in Padma Fund which was in 2021. This is Mr. Justice Parker and it's the paragraph that's picked up then by Mr. Justice Kawaley where he says there is, however, no provision within the ELP Act or the Partnership Act which provides that legal proceedings may be instituted against an ELP in the name of the partnership. Then the reference to it being the general partner. At this point was picked up by the Privy Council in Aquapoint.

Q Before you go there, Mr. Phillips, was Mr. Justice Parker also a judge in a court of the first instance?

A Yes. They sit in the same court. It's the business and financial court of the Grand Court of the Cayman Islands. So, those are what I have described as first instance.

Q Mr. Phillips, what is the status of this debate between Mr. Parker -- Mr. Justice Parker and Justice Kawaley.

A Well, the status of the debate is that you've got two decisions that disagreed but the current status is that its really been determined by Aquapoint and the Privy Council.

Q And how has it been addressed by the Privy Council in Aquapoint?

A Well, you see, the point -- the point in the Privy Council was whether or not you could wind up an ELP, and of course there wasn't -- they hadn't tried to do it in the name of the partnership in that case, but what's important is what Lord Richards says. So, in terms of where we're going to end

up is what's the standing, this -- I would defy anyone to take a first instance decision with which another first instance decision agrees, but which is then dealt with by the Privy Council and say you can wind up. And I'll come to a first instance decision in a moment -- sorry.

Q Finish your answer, Mr. Phillips.

A I defy anyone to argue that you could wind up in the name of an ELP after this, but can I just show 45 and 46?

Q Yeah, I was going to say, could you point us to the language you're referring to in Aquapoint?

A Yes, of course. So, if we go back to Aquapoint -- can I have the next slide, please? So, of course this is Lord Richards, and what he says in 45 is he says, "While it is not in doubt that the court has jurisdiction to wind up an ELP on the ground that it is just and equitable to do so, there appears to have been some uncertainty as to the statutory provision under which this power arises."

And he then goes on to refer to section 92 of the Companies Act.

And perhaps I should just mention that part of Mr. Justice Kawaley's reasoning was, well, if you look at section 92 as amended by the ELP Act, the definition of company becomes exempted limited partnership, exempted limited partnership, and therefore when one is winding up a company, it becomes winding up an exempt limited partnership, and so

he thought that that gave the power to do that.

But then if we go over to 46 of the judgment and what Lord Richards says is that the Board has received no submissions on the point, "which is of no significance to the parties given their common position that the court has power to wind up an ELP on the grounds it is just and equitable to do so," a point that we'll see the jurisdiction shortly. "It is perhaps less than satisfactory that a court should make orders while being uncertain of the source of its power to do so, while acknowledging that it has received no submissions on the point, the Board's present view is that the power arises simply under section 36(3)(g) of the ELP."

And just pausing there, that was Mr. Justice Parker's reasoning.

"An ELP is a special form of partnership created by the ELP Act. The primary source of legal provision for the nature and attributes of an ELP, and the court's jurisdiction in relation to an ELP, is the ELP Act. Section 36(3)(g) provides in terms 'on an application by a partner... the court may make orders... for the winding up and dissolution of an exempted limited partnership as may be just and equitable.' There would not seem to be any need to look further for the court's jurisdiction to wind up an ELP on the just and equitable ground."

So that was the Privy Council and --

Q Are there any other recent authorities relevant to this question, Mr. Phillips?

A Yes, there is, Your Honor, because this very point arose in the ATP case. And so this was considered by Mr. Justice Asif is that there was an argument that I believe was brought -- yes, it was -- an argument raised by the general partner in this case that the respondents to the petition should be the partnership as a whole, and that was rejected by Mr. Justice Asif for exactly the same reasons as it had been rejected by Mr. Justice Parker and we've seen Aquapoint.

But can I just show you the reasoning in this case? Can we have next slide, please? Yes.

And it's really important, I would respectfully say, really important that one starts with paragraph -- sees in paragraph 32 because what he says is that it's because an exempted limited partner does not have any separate legal personality from the limited partners and the general partner. So he then explains that by referring to the exempted limited partnership throughout as being the appropriate respondent to the petition in the absence of separate legal personality, the effect of the general partner's position is that the petitioners, who were limited partners, should both pursue the petition and at the same time be respondents to the petition because, as Your Honor knows, the reference to the exempted limited partnership is

just a reference to all the partners, so at the same time be respondents.

That is neither legally nor procedurally possible. It would necessarily involve obvious and irreconcilable conflicts of interest for the petitioners because they would be on both sides, but then this: it also flies in the face of Section 33(1) of the ELP Act, which provides that -- and this is -- again, it was relied on by Justice Parker -- subject to subsection 3, "legal proceedings by or against an ELP may be instituted by or against any one or more of the general partners only," and that's important, "and a limited partner shall not be a party or named in the proceedings."

I'm just picking up -- sorry, I had to go into the next slide -- paragraph 34 where he says, "If as I consider must be correct, the exempted limited partnership cannot itself be a respondent to a just and equitable petition brought by a limited partner, and that only a general partner and any intermeddling limited partners can be the respondent."

He then says it follows that some cost provisions couldn't be applicable, but he says this is because the exempted limited partnership does not have separate legal personality, and the petitioning limited partner cannot also be a respondent. And, thus, the respondents to a just and equitable petition can only be the general partner and any limited partners who intermeddle.

So, Your Honor, when I said at the start that the absence of separate legal personality then informs everything else about an ELP, that is an absolutely classic example of that. And it won't be lost on the Court that that is a decision between these parties in this case and in the Cayman Island that is binding, that is binding as between these partners -- parties, partners, in this case.

Q Mr. Phillips, the cases that you've pointed us to on this question of the status of the ELP and its lack of legal personality are all relatively recent --

A Yes.

Q -- does that mean that this is new or unsettled law?

A It's neither new nor unsettled, but the point is that where the correct analysis -- the correct analysis just wasn't recognized early on. If one looks at earlier cases, the issue didn't arise -- one saw in Aquapoint, for example, everyone agreed that you can wind up on a just and equitable basis. So, the argument hadn't been fully developed, if I can put it that way, the argument hadn't been fully taken, but it's always been there and it's really crystalized in the last two -- was it four years -- in the last four years. It's one of those points that was there and needed to be properly brought out.

Q Mr. Phillips, I'd like to switch gears and talk a little bit about the relationship between the GP and the LPs.

A Yes.

Q You mentioned that an exempted limited partnership has a GP and limited partners, right?

A That is correct and -- I'm sorry?

Q And could you just tell me if you have a view what are the key features of the relationship between the general partner and the limited partners in a Cayman exempted limited partnership?

A Yes, absolutely. And, Your Honor, you'll appreciate that this flows from the fact that there is no separate legal personality. So, one then has got a general partner with certain responsibilities, which I'll come on to, and one has got the limited partners, who are investors who don't get involved in the management.

So, if I can -- there are three aspects to it and I'll just -- if I can just put this out from the start. The general partner is responsible for managing; when the general partner manages, there are three aspects. Number one, he is an agent to and on behalf of the limited partners; number two, he is a trustee on behalf -- a trustee for the limited partners; and, number three, he is a fiduciary.

So, if I can just explain those three points. If I could ask you to go to section 14(2) of the -- this is the ELP Act.

(Pause)

A So, Your Honor, if one looks at 14(2), and I put it on a slide, all letters, contracts, deeds, instruments, or documents whatsoever shall be entered into by or on behalf of the general partner on behalf of the ELP.

So, this is the agency provision and it's everything. So, everything that needs to be signed, whether it's a letter, contract, deed, instrument, document, whatever it is, those are entered -- those are signed or entered into by the general partner on behalf of the ELP, and by the ELP we mean all of the limited partners, it's all of the partners.

So that's the agency --

Q So, Mr. Phillips, when a contract refers to the exempted limited partnership by name, under Cayman law, to whom is it referring?

A It's referring to all of the partners, all of the limited partners. It's a shorthand, it's a shorthand.

Q And, Mr. Phillips, I think you said that when the GP is an agent he has a responsibility to manage the affairs of the ELP, is that right?

A Yes, that's right, and --

Q And what does that mean?

A A responsibility means that he is under obligations arising out of his agency, the trust, and his fiduciary duties. He is responsible to the limited partners to manage the estate, and it's important to understand that those are

responsibilities, not rights. He doesn't have any personal right; he has responsibilities to manage a partnership.

I mean, if I could just turn up Lord Richards in Aquapoint, which is on the next slide, there are two paragraphs where -- and I tell you, Lord Richards in the Privy Council chooses his language very carefully. So, he says here, "The partner has full responsibility for the management and conduct of the business, and is liable for the debts in the event of a shortfall."

And then, in 33, he says it a second time. "A general partner is liable for all the debts and liabilities of an ELP to the extent of any deficit of assets and is responsible for the conduct and management of the business of the ELP."

So that's your starting point, which is the responsibility. And I've shown -- Your Honor, I've shown you the agency, the next step, if we can turn to 16, is to understand the trust.

Q And when you say 16, Mr. Phillips, you're referring back to the ELP Act?

A I'm sorry, Exempted Limited Partnership Act, Section 16(1).

And if one looks at 16(1), one sees that "Any rights or property of every description of the exempted limited partnership, including all choses in action," which I will come back to, "any right to make capital calls and receive

the proceeds," and so on and so forth, "shall be held or deemed to be held by the general partner," or if more than one general partner by them jointly, upon trust as an asset of the ELP in accordance with the terms of the agreement.

Now, the terms of the agreement are the terms of the trust.

Q And, Mr. Phillips, when you say the agreement there, that is a reference to the limited --

A Partnership agreement --

Q -- partnership agreement?

A -- yes, apologies.

Q And, Mr. Phillips, when you -- could you describe what the scope of the assets is that the GP holds on trust?

A Yeah, it is absolutely everything, it's property of every description. And, Your Honor, you'll see the reference to choses in action, as a matter of Cayman law and English law, chose in action is a right which one would enforce by an action. And so if I --

Q Can you give us an example, Mr. Phillips --

A Sorry.

Q -- of a chose in action because --

A I know, it's a common language problem --

Q -- I think that would be helpful.

A -- I apologize. But an example of chose in action would be a right on a bank account. So, we've already seen

how a bank account would be opened. So, the bank account would be signed by the general partner in the name of the partners acting under 14 as an agent, and that would give rise to a debt due from the bank. Okay? And that chose in action, that right which it could be sued upon, is held on trust for the partnership.

Q And what --

A Sorry.

Q -- what, Mr. Phillips, is the GP's role with respect to assets held on trust?

A Well, the GP's role is literally just as a trustee, and when I get -- I've got one more aspect to him, but the GP has no personal -- has no personal rights unless he's entitled to remuneration, which he may or may not be under this agreement, but that's not necessarily for me to comment -- he has no personal rights. And it's one of the reasons why what one sees in a number of the cases and in fact one saw it in Mr. Justice's -- one of Mr. Justice Asif's judgments is, when the relationship falls apart, then the proper thing for the GP to do is actually to stand aside. It's because none of this is personal to him, this is all -- everything is held on trust for the limited partners.

And I wonder if could I possibly just deal with the last of the three aspects, which is 19(1), or should I not yet?

Q Yes, you may.

A Thank you.

Q And was that -- am I right in remembering that the third aspect was as a fiduciary, is that --

A Yes, that's right.

Q Could you describe what you mean by that?

A Yes, what I mean by that -- so we've seen that he holds all the assets in trust, we've seen that he acts as an agent, the third is that he must act as a fiduciary, and what that means is that every step he takes must be taken in the interests of the exempted limited partnership. Okay? So that is -- and he must act in good faith.

So, if one looks at 19(1), "A general partner shall act at all times in good faith and, subject to any express provisions of the partnership agreement to the contrary, in the interests of the ELP."

So, I mean, I know that in this case we've got some bank accounts and I know that in this case there are shares in the underlying portfolio companies. Those shares, those bank accounts are held on trust for the ELP, which is the limited partners, and the general partner can only deal with them *qua* fiduciary in the interests of the -- in the interests of the exempted limited partnership, and that's all he can do. Those are his duties.

Q When you say -- looking here at section 19(1) of the

ELP Act that the GP owes duties to act in the interests of the exempted limited partnership, how does Cayman law look at that in light of the concept you described earlier about lack of legal personality of the ELP?

A Well, it's all a consequence of the lack of legal personality because, once you have an entity which is a number of partners and you've got no legal personality, you have to have someone who is managing it, and what the Cayman ELP Act has done is it's identified that the person who manages it manages it on behalf of all of the partners because there is no separate legal entity, and he manages it on behalf of all of the partners, as I've said, as an agent, as a trustee, and as a fiduciary. And that's how it fits together because it's not as though you've got an entity with say directors who have their duties to the entity, and that's the structure that has been put in, which is why, Your Honor, I describe this as a particular statutory structure that they have put in place in the Cayman Islands.

Q To whom, Mr. Phillips, does the GP owe fiduciary duties, if anyone?

A It's to the limited partners.

Q Do the limited partners owe any fiduciary duties to the GP?

A No, they don't, and one sees that from section 19(2).

Q And are there any authorities or cases relevant to the

principles you've just described?

A Yes, sorry. It's interesting because Kuwait Ports in the Court of Appeal actually touches on this quite clearly; it's a Court of Appeal decision.

So, if we could turn to the next slide, which is paragraph 25 of Kuwait Ports in the Court of Appeal. Yes. So, in paragraph 25 -- and this was I think Justice of Appeal Field who sits in -- so it's the second level of Cayman courts -- the Judge stated that the fundamental legal distinction is that an ELP has no separate legal personality and exists only as its constituent partners and cannot own property in its own right. He stated that the consequence of the ELP not having a separate legal personality is that its general partner holds its rights and property, including choses in action, on trust for each of the partners. And he then says, because a legal partnership has no legal personality, the partnership as a whole is not able to enforce the general partner's obligations as trustee.

So that is -- I would respectfully suggest that is a very helpful encapsulation of all of the concepts we have been looking at and the Court of Appeal, Justice of Appeal Field said in terms that it was the consequence of the ELP not having separate legal personality that then the general partner holds everything in trust for each of the partners.

Q Thank you, Mr. Phillips.

We talked a lot about how ELPs are set up and how they are structured and work, I want to switch gears and talk now about the winding up of Cayman ELPs. And I know we'll talk about that in some detail, but before we do could you just describe in a sentence or two what it means to wind up a Cayman exempted limited partnership?

A Yes. A winding up, there are two forms of winding up that one can have. One can have what's called a voluntary winding up, which is a winding up that happens when certain events that are agreed take place, or in fact in the case of an ELP also happens automatically under statute in particular circumstances, or one can have a compulsory winding up, which is where the court orders that the partnership be wound up.

When one is talking about winding up in the context of a partnership, one is talking about dissolution, and what is meant by that is that the partnership agreement is dissolved, and the dissolution in the context of a partnership. So, when it talks about -- we'll see dissolution and winding up, in the context of a partnership that is different from, for example, in a corporate context one has winding up, which is the process, and at the end of the process then the corporate entity is dissolved, which means the entity ceases to exist. It's obviously very different when one is dealing with partners and those partners have an agreement, a partnership agreement between them, and the process of dissolution and

winding up is the process of bringing that agreement to an end.

And although it's described as dissolution, which often in insolvency terms we always think of the thing that happens at the very end because we're most used to seeing a company winding up and then dissolution, it's actually the process, the whole of the process.

I'm sorry.

Q And, Mr. Phillips, under Cayman law, where might a Cayman ELP be wound up, if anywhere?

A I see. Under Cayman law, what one has to appreciate is you've got two things in play: Number one is one is dissolving the partnership agreement, which of course in this particular case, in this case is governed by Cayman law, and then one has got statutory provisions that one finds in the ELP Act and one only finds in the ELP Act. So, it is provided that you can wind up a Cayman exempted limited partnership, and we'll look at the provision, in the Cayman Islands.

Q Mr. Phillips, is insolvency a prerequisite for winding up an ELP under Cayman law?

A No, it isn't.

Q Is financial distress a prerequisite for winding up under Cayman law?

A No, it isn't.

Q Mr. Phillips, you referred to voluntary winding up and dissolution, and I think you had flagged some language for that in your declaration, is this is what you were referring to just now when you --

A Yes --

Q -- described dissolution?

A -- it was and I'm sorry that I didn't turn up the slide first. One sees -- and this is Lindley and Banks on Partnership, which is --

Q What is Lindley and Banks?

A It's the leading textbook dealing with partnership, and the question that they're dealing with is what's meant by the dissolution of a partnership. It's often misunderstood not only because the word is used in two distinct senses, which I've tried to explain, but also because it has a very different meaning when applied to a company or a limited liability partnership. In the case of a partnership, it invariably refers to the moment of time when the ongoing nature of the partnership relation terminates even though the partners may continue to be associated together in a new partnership or merely for the purposes of winding up the old firm's affairs. And it then makes the point that following dissolution often the partnership's appearance will appear unchanged, but for a company or an LLP, on the other hand, dissolution marks not the commencement of the winding up, but

its conclusion, i.e. the moment of extinction, which was the point I was trying to explain earlier.

Q Mr. Phillips, are there provisions in the ELP Act that apply to the voluntary winding up of a partnership?

A Yes, there are. So, what we need to look at, Your Honor, is we need to look at voluntary winding up and then we need to look at compulsory winding up, if we may, but looking at voluntary. Can we go on to the next slide?

And it's notable that the heading is "Dissolution," one should note --

Q Why is that notable?

A Well, it's notable because what the act is describing is dissolution and if one looks at 36(1), an exempted limited partnership shall be voluntarily wound up, that's winding up and dissolution are being used because they are as the same concept.

And the important point for this part of the analysis is that it provides "shall be voluntarily wound up," so it's mandatory, "in accordance with the provisions of the partnership agreement," and then it says this, "at the time or upon the occurrence of any event specified in the partnership agreement."

So, this is looking at where the partners have agreed when a dissolution should take place, and that is what section 36(1) deals with. And then I've picked up clause

10(b) of the limited partnership agreement in this case because 10(b) provides -- so this is the event specified in the partnership agreement -- 10(b) provides, "The partnership shall be wound up and dissolved," and one can see that the language in the agreement mirrors the legal concepts.

Q And, Mr. Phillips, I see in 10(b) of the limited partnership agreement for Apple Tree Partners there's a reference to winding up and dissolving upon events specified in section 15(5) of the ELP law --

A Yes, I was --

Q -- do you see that?

A -- yes, exactly. I was just going to come on to that, I was just waiting for Your Honor to actually have turned up your copy. Forgive me, because I can see better than you can.

Q That's right, I'm too short to see over. And you were looking --

A But yes, so it identifies it shall be wound up and dissolved upon any event specified in respect to the general partner specified in 15(5) of the ELP law.

And if we then go over to 15(5), which is the next slide, what we can see is that the events identified in 15(5) are the commencement of liquidation or bankruptcy proceedings in relation to the sole or last remaining general partner.

And can I just highlight, what it's saying there, if

the last general partner commences liquidation or bankruptcy, then you don't have a general partner anymore. That critical animal that we saw from section 4(2) and we've seen what the obligations -- what the responsibilities, is a much better word, of the general partner are, once the general partner goes into liquidation or bankruptcy proceedings, if it's the last remaining general partner, because of that then one sees what's in the partnership agreement, but one also sees what 36(1) is saying.

And just to complete this, can I just show you 36(7) of -- because this is the 2000 -- that was the 2012 revision, which is at the time of the agreement, and --

Q And just, Mr. Phillips, before you move on to 36(7), when you were looking at section 15(5) of the ELP Act, what year of the ELP Act were you looking at?

A That was 2012, Your Honor. That was the 2012 revision. And that's why I just wanted to go forward to the -- so if we can go forward on the slide, 36(7) of the 2025 revision, you can see that that, again, we'll come into the effect of the notice in a minute, but there's a notice in the 2012, but also, there's -- but the events, the events that are identified, the commencement of liquidation, bankruptcy, as before or dissolution proceedings, which has been added and, again, in relation to the sole or last remaining, qualifying general partner. And that's described as an event of

withdrawal.

And if we look at the next subsection 9 of Section 36, and, again, this is of 2025, now, this is a statutory provision. And what it says is, unless the partnership agreement provides otherwise, if a new general partner is not elected within 90 days after service of a notice of an event to withdraw, and we've seen the entry into bankruptcy is one of those events so, that's referred to as the automatic wind-up date and we've seen what that is earlier in subsection 7. The ELP shall be wound up, in accordance with the partnership agreement or the orders or directions the Court may make or give in accordance with 3 -- subsection 3(g).

And, Your Honor, the significance of this is that the Act provides that if the general partner files for bankruptcy, then if the general partner isn't replaced within 90 days, if a new qualifying general partner isn't elected within 90 days, then, as a matter of statute, the partnership is dissolved and wound up, and that's the statute. That's why it's described as the automatic wind-up date.

And of course it does say that the partnership agreement could provide otherwise. I'll leave it to others to identify whether it does. My understanding is that it does not.

Q And Mr. Phillips, as a matter of Cayman law, would this

be regarded as an *ipso facto* provision --

A No.

Q -- of the ELP Act?

A No, as a matter of Cayman law, it would not, because this is not an agreement that results in something happening to the assets of any of the estates. So, just for the sake of debate, just assume that the general partner has got assets, just for the sake of the debate. I do understand *ipso facto* provisions and, obviously, as a matter of English and Cayman law, but, actually, I understand them a little bit, I hope, as a matter of U.S. law, because I argued the Pan Ocean case and I took the English Court through a whole series of U.S. *ipso facto* clause cases and also Canadian, for what it's worth. But anyway, so it's an agreement, but would remove assets on the event of a bankruptcy, putting it simplistically.

The reason why this wouldn't is, this is not to do with the agreement; this is the statute. This is a statute that has that effect, so it's not an *ipso facto* clause in an agreement. It's the consequence of the statutory provisions that apply to ELPs.

Q And Mr. Phillips, turning to the statute, what happens in a voluntary winding-up, pursuant to Cayman statute?

A Yes, well, the first thing that I should point out is that the -- what -- sorry, forgive me.

As a matter of process, what happens is that whoever is managing the larger winding-up has an obligation to maximize the value of the assets that they have in the estate for the benefit of those who are stakeholders in the estate. So, in the case of the ELP, what we've got, as I understand it, is we've got shares in portfolio companies, as I understand it, I think eight or so of those are also in Chapter 11, and others that are not, and some cash. And the obligation of the person winding up or dissolving that relationship, which is what happens, is to maximize the value of those assets.

How they would do that is, obviously, complicated and we might come back into how that would work in practice. But can I go to the next slide, because I'll show you what the general provisions in the agreement is following termination, pursuant to 10(b), the partnership shall be wound up in an orderly manner. The general partner shall carry out the winding up of the affairs of the partnership. And one also sees, if one goes over to the statute --

Q And Mr. Phillips --

A Oh, sorry.

Q -- before you turn over --

A Yes, I'm sorry.

Q -- to the statute, when you are looking at paragraph 11(a), you're looking at paragraph 11(a) of the limited partnership agreement for Apple Tree?

A Yes, I am.

Q And do you have an understanding of how that provision, for winding up in the LPA, relates to the Cayman ELP Act?

A Yes, it --

Q And could you describe that for us?

A It mirrors it, because -- we'll look at it in a moment -- but what the ELP provides is that the winding up will be conducted by the general partner or another person if the Cayman Court takes the view that it orders somebody else to conduct it. But they're doing the same job.

Q And what's the relevant provision of the ELP Act?

A Could we go to the next slide?

Can I just show Your Honor, this is Section 36 of the ELP Act and Section 36, subsection 13 deals with the management. See, it's very much about who is managing the partnership at this particular point. And in 13, following the commencement of the winding up of an ELP, its affairs shall be wound up by the general partner -- that's the starting point and that mirrors 11 that we looked at -- or other person appointed, pursuant to the partnership agreement, unless the Court otherwise orders on the application of any partner, creditor or a liquidator of the ELP, pursuant to 3(g). And 3(g), which is the provision that also gives rise to the jurisdiction to wind up, which we saw in the earlier cases, 3(g) is, on the application by a

partner, creditor, or liquidator, the Court may make orders and give directions for the winding up and dissolution of an exempted limited partnership as may be just and equitable.

So, the trigger for changing the general partner is the just and equitable jurisdiction, but it can -- obviously, it can be done. And as I said, this is all about management. This is about governance, if you like, of who actually runs the process. But the process is clear, both under the agreement, because one sees you have to dissolve this, but also under the Act, you wind up and dissolve it.

Q And Mr. Phillips, what happens to the assets of the ELP when there's a voluntary winding-up, did you look at that question?

A Yes, I did.

And perhaps, we could go to Section 140. With this, it will be very familiar to Your Honor. It's the *pari passu* principle. So it provides the property of the company shall be applied in satisfaction of its liabilities *pari passu* and subject thereto. So the first bite goes to the creditors in the way that all insolvency practitioners would immediately recognize, subject thereto distributed amongst the members, according to their rights and interests in the company.

So, what one has got, one starts off with dealing with the creditors and they get paid and that's it. And then one deals with the assets, which are going to be, in this case,

it's going to be the shares, once one can deal with the money that one's got, obviously. Primarily, one's looking at the shares. Those are, then, distributed to the members, according to their rights and interests in the company.

Now, I'm not talking about the facts, but I'd just give you my general understanding from what I've heard in court is that we've got limited partners who have contributed around 98 percent and we've got other limited partners who've contributed, say, 2 percent. And so what we would try to do is you would try to come up with a solution that reflected those rights in the ELP assets.

Q And Mr. Phillips, does distribution of property under the provisions you've been discussing necessarily require a sale of the assets of the trust held for the limited partners?

A No, absolutely not, and it's very important that one understands that the objective, and although we use the word "liquidation" -- actually, liquidation means to maximize the value, because it comes from *liquidare*, which is where that came from, believe it or not, in the 16th Century -- no, you don't have to sell the assets.

And the duty of the general partner now, the duty of any liquidator that's appointed is to maximize the value of the assets in the interests of the stakeholders in those assets. If one got to a sale, one can see that the sale has

to be for the best price reasonably obtained, if that's what one is going to do.

But you don't have to have a sale. So take, for example, the experience that I had -- I know it's not an ELP, but it's a liquidation context -- in the Sphinx matter, I think it was six or seven years of managing segregated portfolio assets, which included shares. They were managed and one worked through it and ended up with a scheme of arrangement in the Cayman Islands dealing with that.

There are many, many ways of dealing with assets in a liquidation and that's something that, as I've indicated in my statement and, I've obviously explained to Your Honor, it will be complicated. It's going to involve a lot of working through by all of the parties interested. And I know we'll come to talk about coordination and how that works in reality and cross-border insolvencies today.

But, yes -- no, the answer to your question is no. Sorry, that was a really long-winded answer. I'm so sorry.

Q Let me just -- I hesitate to say this, Mr. Phillips, but let me ask you two brief follow-up questions on that.

A Yes.

Q In the Sphinx matter that you described, were there quite a number of creditors in those estates?

A Yeah, I actually acted for the Creditors Committee in that case. And there was a complication, as well, because

there had been misapplication of funds; obviously, there was that complication.

Q And, Mr. Phillips --

A Yes?

Q -- how does winding up work if there are no creditors of the exempted limited partnership?

A If there are no creditors, then one's already seen from Section 140, once you get to no creditors, then the stakeholders are the members, in accordance with their rights and interests. So, for example, in relation to this partnership that owns shares, as I understand it, in portfolio companies -- excuse me -- it would be a question of how best to take the management, and if necessary, distribution or refinancing of those shares forward. That's what one would do.

What one wouldn't do, if I'm, you know, to answer this question directly, one wouldn't -- the general partner or liquidator won't go in and then dump all of these shares on the market, because that would be the opposite of what their duties are, which is to maximize the value.

Q Mr. Phillips, switching gears, you've talked a little bit about voluntary winding-ups.

What does it mean for a winding-up to be compulsory?

A Yes, compulsory means by an order of the Court. And, Your Honor, will have seen the reference to 36(3)(g) to just

and equitable. And there are two relevant bases for a just and equitable winding up, certainly for present purposes. Those are loss of substratum and irretrievable breakdown. And can I just turn up two authorities on that?

The first is Belmont Asset Based Lending. Is that in the next slide? Thank you very much. And this is loss of substratum. And this case, it was Justice Jones sitting as a First Instance judge in the Cayman Islands, and what he explains, first of all, is the loss of substratum or failure of substratum are derived from English case law going right the way back and he explains that. But then he does this, which is very helpful, to translate these statements into a modern context, it can be said that it's just and equitable to make a winding-up order, in respect to the open-ended corporate mutual fund if the circumstances are such, that it has become impractical, if not actually impossible, to carry on its investment business, in accordance with the reasonable expectations of its participating shareholders.

So that's the loss of substratum; in other words, the Court is going to look and it's going to say, has the -- have the reasonable expectations of the participating partners, that's the general partner and the limited partners in this particular case on the facts, have those expectations become impractical, if not, practically impossible? And so that's loss of substratum.

Q And was there another potential ground for a compulsory winding-up?

A Yeah, the other one, and this is the other just and equitable basis, if we can go over the page, it's an irretrievable breakdown in trust and confidence. And this comes from Harrison v Tennant, which I know is 1856, but it's still good law, and it talks about altered circumstances have, combined with the conduct of the parties themselves, produced a mistrust, which the Court cannot say is unreasonable.

So the Court is looking to say, is there a mistrust? Is that mistrust unreasonable?

If I can't say it's unreasonable, then there's a mistrust. Taking all these things together, it is impossible that the partnership can be conducted upon the footing on which it was originally contemplated. So that's what the Court is going to look at on the just and equitable ground of the liquidation.

Q And Mr. Phillips, are these questions of fact that a Cayman Court of the First Instance would have to determine before entering a compulsory winding-up order?

A Yes, they are. Those are the questions of fact that a Cayman judge will ask when it considers this petition.

Q And, Mr. Phillips, I'm afraid you've scared me and perhaps others with the length of trials in the Cayman

Islands.

Does the Cayman Court have the equivalent of summary judgment?

A Not in this context, but --

Q Are these issues that would necessitate a lengthy trial in every case?

A No, it wouldn't necessitate the trial in every case.

And if I may respectfully suggest, one can see that Justice Asif has already taken the view that it shouldn't take more than two days for him to determine these issues. I can't say more than that. It's not for me to make that determination, but one can see what he has said about it.

Q And if the Cayman Court granted a compulsory winding-up order and entered that order, would it have any consequences on actions of the partnership taken while that petition was pending?

A Yes, it would.

Can we go over to Section 99 and I'll just explain how this works. So, Your Honor, Section 99 is the avoidance of property distributions and as it says, when a winding-up order has been made, any disposition of the company's property, any transfer of shares, alteration in the status of the company's members made after the commencement of the winding-up is, unless the Court otherwise orders, void.

So the first question is, what is the commencement of

the winding-up? The commencement of the winding-up is the presentation of the winding-up petition, which as I understand it, occurred, if I was listening earlier, occurred in June of 2025. If a winding-up order is then made, what happens is, it's a concept that we call relation back. So the estate relates back to the commencement of the winding-up. So any alterations, any dispositions of property, those are void unless the Court otherwise orders.

And there are two ways in which -- we call them validation orders -- two ways and circumstances in which you make validation orders. The first is prospectively and this is something that's extremely common. And I can say to Your Honor that when one is a brand new, baby insolvency barrister, it's something you do week in, week out, when a winding-up petition is presented, you run to court and you say, I would like Section 99 relief -- in England, it's Section 127 relief; it's identical -- I would like prospective relief in order to pay obligations and the obligors of business so, for example, the rent or wages, those sorts of things. And the Court will regularly grant prospective relief in that situation.

But the other circumstance in which the Court may grant relief is after the event. So one can go along and one can say, well, this, that, and the other hand, I'd like you, Court, to validate what has been done in relation to the

property of the company.

Q Thank you, Mr. Phillips.

In presenting those validation orders, the judge in the Cayman proceeding would want to hear some facts about what it was that he was being asked to validate; is that correct?

A Yes, absolutely.

Q I want to switch gears. I know I've had you up there for an hour and a half --

A Oh, I'm so sorry. That's my fault.

Q -- and I am conscious -- and I won't go back into it, but I am conscious that you are recently recovering from surgery, so I am sensitive to the time -- but I do have a few more questions for you --

A Yes, of course.

Q -- which is, you've talked a little bit about liquidators or joint official liquidators and I would like to spend a moment unpacking what that is and how it works.

A Certainly.

Q Mr. Phillips, as part of a winding-up of an exempted limited partnership in the Cayman courts, could joint official liquidators be appointed?

A Yes.

Q And is that possible in both, the voluntary and a compulsory winding-up?

A Well, in a voluntary winding-up, it would be under the

provisions that we looked at a little earlier, where they would replace the general partner.

Q And, Mr. Phillips, what are joint official liquidators, could you explain that?

A Joint official liquidators, they are officers of the court and they are appointed in order to manage the estate in the interests of, and as I've said, to maximize value in the interests of the stakeholders. They're also, as officers of the court, subject to directions from the Court, which they will obtain; for example, if they enter into a major transaction, they will ask for directions from the Court. So they don't just operate on their own.

And I should have said that as officers of the court, the description of their obligation is to act more honestly than other men. I know I go into history a little bit, but can I just --

Q Very briefly.

A Oh, I'm sorry.

But it started because a winding-up by the Court was a winding-up by the judge. And what the judges started to do in the 19th Century was appoint these officers to actually do the job for them so the judge wouldn't need to do it. That's where it comes from and that's why they're subject to the control of the Court and they have to act more honestly than other men.

Q And, Mr. Phillips, liquidation sounds sometimes like a sale or like a fire sale; is that what joint official liquidators do?

A No, absolutely not.

Q What is their mandate?

A Their mandate is to, best at extract and preserve value. You know, perhaps, if we could look at One Thousand & One Voices at paragraph 32, because, this is -- again, it's Justice Kawaley, but it's helpful, because what he says in paragraph 32 is the appointment of independent liquidators did not mean that Mr. Jordan -- and he was the general partner -- continuing in involvement in the liquidation process would be brought to a complete end.

And then -- so, it's standard operating practice for professional liquidators to assess how best to extract and/or preserve value from a liquidation process. And, again, engagement with former management frequently occurs. That is absolutely normal. I cannot -- you know, I've been involved in so many and the liquidators will, they'll talk to management, they'll want to understand what's been going on. They will gather information.

And then, of course, if management is reticent, there are powers in order to -- where the judge can compel them to provide materials, documents, and so on. So, yeah.

Q Mr. Phillips, in your opinion, could a Cayman winding-

up proceeding for the fund proceed in the Cayman court while Chapter 11 cases for portfolio companies proceed in a U.S. court?

MR. WINSTON: Objection; outside the scope of the opinions.

THE COURT: Is it? I haven't read the opinions, so I don't know if it is or it isn't.

MR. WINSTON: I mean, talking about what would happen in a Chapter 11 with portfolio companies, did I hear that correct? Was that the question?

MS. SELDEN: No, the question is could a Cayman proceeding proceed in the Cayman courts whilst other litigation proceeds in the U.S. courts, but I can ask a different question.

BY MS. SELDEN:

Q Mr. Phillips, in your experience as an insolvency practitioner, have you seen -- and I will preview, I know that your experience in this is vast, so I don't -- you don't need to tell us all of your experience in this regard --

A Fine.

Q -- but have you seen examples of U.S. and foreign courts coordinating where a restructuring situation spans multiple jurisdictions?

A I have. The first case that I was involved in was Maxwell and in Maxwell, it was Justice Hoffmann and Judge

Tina Brozman from the Southern District of New York, they liaised with each other. That, then, led on to the Court-to-Court communication.

But it's not just about communication, because in a modern environment, in the modern world, in my experience, the courts will not just -- the judges may just talk to each other, but they will hear what each other are doing in order to reach maximum-value solutions. So, just to be clear, the winding up of this ELP will be the winding up of an entity which owns shares in the portfolio companies. It is a shareholder in the portfolio companies. It can't take over any further than that. It is, as I said, it's a shareholder and so one would expect there to be coordination.

Of course, I have no idea what sorts of solutions might be found in order to maximize the value of the shares, of the businesses. That's not for me and, of course, I'm not commenting at all on what you can and cannot do in Chapter 11. I'm not here as a Chapter 11 expert and it would be foolish of me to say anything at all with Your Ladyship sitting there.

Q Mr. Phillips, are there some guidelines that inform --

A Yeah.

Q -- communication in cross-border matters?

A Yeah, if we can just turn it up, just so that you're aware, the Grand Court practice direction has adopted the JIN

Guidelines, which are the Court-to-Court communication guidelines. And it is quite clear from those that -- and from my experience, for example, in dealing with Sphinx, we didn't carry on in the Cayman Islands and ignore everything that Judge Drain was dealing with in America. So those guidelines have been adopted and, yes, the answer to your question is, yes, it can be done and it can be coordinated and we can work together. And when I say, "we," I'm --

Q And Mr. Phillips, could a Cayman exempted limited partnership be wound up under the ELP Act, here in the U.S.?

A Not under the ELP Act, no; that is a statutory provision that will only apply in the Cayman Islands.

Q And do Cayman courts have exclusive jurisdiction for winding up under the ELP Act, to your knowledge?

A Well, the Cayman courts is the only court with jurisdiction under the ELP Act.

MS. SELDEN: Just one moment.

(Pause)

MS. SELDEN: I'm happy to pass the witness.

THE COURT: Thank you.

THE WITNESS: I'm so sorry.

MR. WINSTON: Good afternoon, Your Honor. Eric Winston of Quinn Emanuel, on behalf of the debtors.

We went, I think, an hour and a half or so, or close to it. I don't know if either you or the witness could

use a break.

THE COURT: I'll ask the witness: Would you like a break?

THE WITNESS: I would actually appreciate a little break --

THE COURT: Okay. Let's take --

THE WITNESS: -- because I'm not firing on all cylinders yet.

THE COURT: Let's take 10 minutes.

We're in recess.

(Recess taken at 3:23 p.m.)

(Proceedings resume at 3:38 p.m.)

COURT OFFICER: Please rise

THE COURT: Please be seated.

MR. WINSTON: Good afternoon, Your Honor. Eric Winston, Quinn Emanuel. For today's examination of Mr. Phillips, I have a couple tabs to hand up to him. May I approach?

THE COURT: You may.

MR. WINSTON: Thank you.

THE COURT: Thank you.

THE WITNESS: Thank you very much.

CROSS EXAMINATION

BY MR. WINSTON:

Q And Mr. Phillips, the good thing is actually what I

just handed to you is largely duplicative of what's in your notebook that was handed to you on direct.

A Yeah.

Q So I'm actually going to use the one on direct, the nicer version, unless for some reason I point you otherwise. Is that okay?

A That's absolutely fine. Thank you very much.

Q Yep. Absolutely. Okay. Thank you for making the time today. I appreciate it. I'm glad you're on your mend. Yes?

A Thank you very much, Mr. Berdon (sic).

Q And I'm glad to see you and I both dressed up as opposed to the Zoom on Sunday morning for our -- for your deposition. So that's good. If you could turn to tab one, in your book.

A Is this mine?

Q Yeah. Yeah. Yeah. Yeah. That should be your declaration.

A Yeah. Sorry. Yes, sir.

Q And I think you confirmed on direct that this is the declaration you prepared?

A It is. Yes. Thank you.

Q And other than two specific matters that came up last week, every opinion you anticipated testifying about today was set forth in your declaration. Correct?

A I think so.

Q And the two points from last week were you thought you might need to provide some testimony about the Formation Group case? Yes?

A Yes. I saw that Formation Group come up. So yes.

Q And the second was whether the general partner of an exempted limited partnership has personal rights. Correct?

A I think that was in there anyway, but, yes, I was dealing with his responsibilities.

Q Very good. And I think you testified on direct. You didn't see any need to change your declaration.

A No. I didn't.

Q Okay. And you're not giving any opinions on US law. Right?

A Absolutely not.

Q And you have no view as to what would be the center of main interests of the partnership debtor. Right?

A I don't. It's a fact question.

Q Very good. It is your opinion that a Cayman Island -- I'll call it an ELP just to make it easier -- has no separate legal personality. Correct?

A Correct.

Q And an exempted limited partnership, an ELP, is just a body of its partners. Yes?

A Correct.

Q And you cite the Privy Council's decision in Kuwait

Ports to support the proposition that under Cayman Island law, an ELP does not have separate, legal personality. Correct?

A That's one of the cases I cite. Yes.

Q And the Privy Council in Kuwait Ports affirmed the Cayman Islands Court of Appeals. Correct?

A We can check, but, I think so. Yes.

Q Okay. In fact, you cite at Footnote 40 of your declaration the Cayman Islands Court of Appeals' decision for this proposition that a Cayman Islands ELP has no separate legal personality. Correct?

A I'm just turning it up, sir. Lindley & Banks, Kuwait Ports and, of course, Formation, which we looked at the other day.

Q Yeah. So the -- I didn't hear you. Did you say yes?

A Yes.

Q I'm sorry. Okay. And you, in fact, cite the Cayman Islands Kuwait Ports decision elsewhere in your declaration. I'm sorry.

A No. I'm sure I do.

Q Okay. So fair to say you think the Cayman Islands Court of Appeals' decision was correctly decided?

A Well, I cite it for what I cite it. But as a matter of precedence, it's important that we all understand that when something has gone to the Privy Council, you look at the

Privy Council decision for obvious reasons.

Q Of course. And if the Privy Council is affirming the Court of Appeals from the Cayman Islands and isn't criticizing the Cayman Islands decision, the Cayman Islands decision is a pronouncement of Cayman Islands law. Correct?

A No. Not really. You're jumping through to saying if a decision is not overturned, then everything said in the decision is correct. The ratio, in other words, the reasons for the decisions that one sees in the Privy Council are the reasons for the decisions.

Q Okay. Also in Footnote 40, I think you've commented that you cited Formation Group. Correct?

A Yes. I did.

Q And you cited Formation Group for the proposition that an ELP has no separate legal personality. Right?

A Yes. I did.

Q Okay. And it's your opinion that ELPs operate through their general partner? Yes?

A Well, yeah. We've seen the agency and the trust relationships. So yes. Yes. And we've seen that the limited partners do not.

Q And it's your opinion that the general partner holds the assets on trust for the ELP. Yes?

A Yes.

Q And you believe that an ELP is just shorthand for the

limited partners themselves. Right?
A It is.
Q Now, there's nothing in the, ELP act that defines an ELP to mean just the limited partners. Right?
A That's basic partnership law.
Q Okay. Could you turn to Tab 2 of your book?
A Yep.
Q This is the exhibit -- hopefully, you have it in front of you, the Exempted Limited Partnership Act.
A Yes. I do.
Q And if you could turn to Article 2.
A The definitions.
Q It says interpretation, but those are the defined terms. Right? Okay.
A Interpretation. Yes. Yes.
Q And if you turn to the second page of the definitions, you'll see a definition of exempted limited partnership. Yes?
A Yes.
Q And Part A says an ELP means a partnership formed and registered under Section 9-1. Correct?
A Yes.
Q Now there's another version in B which deals with what I would call grandfathered ELPs. Do you see that?
A Yes. I do.

Q MR. WINSTON: But we're going to focus on A because I think that's what is relevant here. Yes.
A Yeah.
Q Okay. So if an ELP is a partnership -- sorry. An ELP is a partnership if it satisfies Section 9-1. Right?
A Well, yes. I don't know where quite where you're going, but yes.
Q Okay. If you turn to page 10.
A It describes -- it doesn't necessarily -- okay. We'll look at it. This is the registration process.
Q So if an ELP satisfies the limbs of 9(1), it's a partnership that's an ELP, isn't it?
A No. That's over simplistic. It has to satisfy the provisions in particular of Section 4, which identify consistent with one or more general partners, one or more limited partner. So it's not just the registration process that determines the substance.
Q Okay. Let's turn to Section 4. If you could turn to page 8. And you see Section 4.2.
A Absolutely.
Q And it tells us an ELP shall consist of one or more persons called general partners who shall, in the event that the assets of the ELP are inadequate, be liable for all of the debts and obligations of the ELP --
A Yes.

Q And one or more persons called limited partners who shall not be liable for the debts or obligations of the ELP, and then there's some savings clause. Do you see that?

A Yes.

Q Okay. So as long as there's at least one general partner and at least one limited partner, and otherwise satisfying Section 9, you have an ELP. Right?

A Well, yes.

Q And an ELP is a partnership. It's just a form of partnership.

Q Okay.

A It's a partnership, which is something that arises out of the agreement with a view to profit, hence the definition that we're finding.

Q And Section 4(2) refers to the assets of an ELP. Correct?

A Yes.

Q And if the assets of the ELP are insufficient to cover the debts and obligations of the ELP, the general partner's liable. Correct?

A That's true.

Q Okay. If you could turn to Section 16-1. It's on page 14. I think you went through this on direct.

A I did.

Q I think it was in the slides you prepared.

A Yes.
Q Okay. And Section 16(1) also refers to the rights or property of every description of the ELP. Correct?
A Yes. It's actually important to read both of the first two lines. But any rights or property of every description of the ELP, including all choses in action, rights to make capital calls and so on. And I explained what choses in action are because that's important in the present context. So what you get from this is the assets of the partnership are the trust assets.
Q And the rights or property, whatever they are, they're held by the general partner. Correct?
A On trust.
Q On trust. But they're held -- we start with they're held by the general partner on trust for the ELP.
A Well, I don't know what you mean by you start with, but they are held by the general partner on trust.
Q If you look at 16-3, do you see a reference to the assets of an ELP or any class of assets may be subject to a floating charge?
A Yes.
Q A floating charge is the English way of saying secured -- a lien on secure -- a lien to secure property. Right?
A Sort of. A floating charge, I mean, I don't know how much you want to know, but there's a difference between fixed

security and floating security. Floating security is the movable security over assets. So if you've taken out a loan from a bank, the bank might take a floating charge. But yeah.

Q And the floating charge as referred to in 16-3 is on the assets of the ELP. Correct?

A Yeah. What would happen if you look where it says may be the subject of the floating charge, so it's talking about the assets or any class of assets. So what would happen is if, for example, an asset was acquired with a loan from the bank, the bank might take a floating charge security over it. The asset itself will still be held on trust.

It's just that this is permissive. It allows you to grant security --

Q Very good.

A -- to the bank.

Q If you could turn to Section 20(1) -- 20 and then

A Subsection one.

Q Subsection one. Thank you.

A Yeah.

Q This Section indicates a limited partner can be liable for the debts and obligations of an exempted limited -- cannot be liable for the exempted for the debts and obligations of an ELP. Right?

A That's as long as it carries out the -- it doesn't go

beyond what's listed there.

Q Correct. So as long as a limited partner doesn't undertake the conduct listed here, it's not liable, correct?

A What it is, is it's conduct which would -- is outward facing conduct. So if a limited partner does something that's outward facing, then they can become liable for the debts that result from the outward facing conduct. That's a simple way of understanding it. I hope not too simplistic.

Q And the statute Section 20 treats a limited partner and the ELP as distinct. Correct?

A I don't know what you're trying -- a limited partner takes part in the conduct. Well, it's -- you've got the business of the exempt limited partnership. Okay? And the question is if a limited partner conducts themselves in a way that goes outside what is permitted, what is internal, then that limited partner can become personally liable.

Q Just to go back to my question, this Section, it treats a limited partner and a limited -- and ELP as distinct. Right?

A No. I think you're overreading. You're putting weight on the language that isn't there. This does not mean that the exempt limited partnership in any way has any form of corporate personality.

What it's doing is it's saying that if the limited partner conducts themselves in a particular way, that limited

partner will not -- will lose its limited liability in relation to what it's done. It doesn't go further than that.

Q And even though an ELP, in your opinion, doesn't have separate legal personality, it does have assets. Correct?

A It's got the assets that are held on trust for the ELP, which is the limited partners.

Q Let's turn to Formation Group. I think it's in Tab 5 of your book.

A Yeah. Thank you very much.

Q Now we talked about it earlier. You cited it in your report at Footnote 40.

A Yeah.

Q And if we could turn to paragraph 17.

A Yes.

Q Which is on just to, Your Honor, to bring you the right page on --

A It's on Page 603, bottom right hand corner.

Q Thank you so much. And you pointed in your direct to the first two sentences. Correct?

A Yes. Because the second sentence is the sentence that you referred me to in deposition.

Q And just to read the second sentence, it says, in brief, this, implies that an ELP has some degree of legal personality as one would expect drawing upon the more long standing traditional partnership construct. Do you see that?

A Yes. I do.
Q And you, I think, testified this is dicta. Correct?
A It is dicta.
Q Okay. So it's dicta, even though if you look at paragraph 16 above, the learned judge says this does provide some potential support for the proposition that a general partner is, as Section 33-1 arguably implies, the only proper party to sue in respect to the partnership debts. However, carefully read, it does not meaningfully advance the thesis at all. Rather Section 4.2 from subsection 2 is the only explicitly defining two central characteristics of an ELP. Do you see that?
A Yes. I do. And I referred you to paragraph 37.
Q I'll come to 37 in a second. I just want to make a --
A If you're asking me, is it dicta, it is definitely dicta.
Q And you believe that this dicta contradicts with Padma? Yes?
A That was the debate between Mr. Justice Kawaley and Mr. Justice Parker.
Q And AquaPoint, the Privy Council decision, resolves the debate. Correct?
A Yes, insofar as it deals with, is there a separate legal personality and can we wind up? And, of course, we have as of -- so yeah.

Q Okay. So in going back to paragraph 17, the middle part of 17 says, Section 4.2 is ultimately neutral in terms of shedding light on how Section 33(1) should be construed, but provides some general support for the proposition that as far as a winding up is concerned, an ELP does have its own pot of assets and liabilities, which are capable of being wound up separate and apart from the general partners. Do you see that?

A I see that. And what point are you trying to get to?

Q Is it your testimony that when an ELP is wound up, it doesn't have its own pot of assets?

A Of course, it has its own pot of assets. The assets are held in trust.

Q If you could turn to paragraph 37, I think that's the one you just referred to.

A Yeah.

Q Paragraph 37 says accordingly and ultimately, very simply, Section 36-3 expressly provides that a winding up petition may be presented against an ELP in the same manner as in relation to a company and this special provision overrides the general terms of Section 33-1. Correct?

A Yes.

Q And then the judge continues, the fact that an ELP generally has no separate legal personality is entirely beside the point when parliament has expressly extended the

company winding up regime to such entities. Do you see that?
A Yes.
Q And you have no disagreement with that statement?
A Well, I don't know what you're trying to get from it. The -- yeah. And when he's talking about this overrides 33-1, I do disagree, in that he has been found to be incorrect on. Because 33-1 is the provision that provides that you can only sue the general partner. Okay?
And in 36-3, which is the winding up provision, which says you can wind up if it's just and equitable, where he's -- so where he says that that overrides 33-1, he's wrong. That's exactly what Mr. Justice Parker said was the opposite. It's what Mr. Justice Asif says is the opposite, and we know it's the -- that is wrong.
Q Okay. Just to make sure, the problem of Formation Group, in your opinion, is in Padma, it relied upon Section 33-1, which you believe AquaPoint accepted, not what the learned judge here wrote.
A You're missing the point. With respect, what you need to look at, is you need to look at the company provisions. So just to boil it down, what Mr. Justice Kawaley said and what he got wrong is he said, look. Because under the Companies Act, you can wind up a company, and under Companies Act and because of the ELP, you substitute ELP for company, therefore, when it says in 36-3 that you can wind up the ELP

on the grounds of it's just and equitable, you can wind up just the ELP because that's substituted in Section 92 of the Companies Act. And you can ignore 33-1. He was wrong about that, and that we know.

Q And Formation Group was a winding up against the ELP. Correct?

A Um-hum. Yes, I apologize.

Q And Padma was a winding up against the ELP. Correct?

A Yeah. Yeah. Well, yes. But it was against -- the general partner was the named party.

Q General partner was the named party.

A Yeah.

Q And in AquaPoint, the named party was the ELP. Correct?

A In AquaPoint, I don't think that is correct.

Q Okay. We'll have to look at AquaPoint. I'll come back to that.

Let me ask you just in one other paragraph about 30 -- about Formation Group Section -- or paragraph 39, where the judge says it is true that a general partner is ultimately responsible for an ELP's debts, but the responsibility is only triggered when the ELP's assets are insufficient to meet those debts.

The need to call upon a general partner may not be apparent until the winding up of an ELP which is cash flow

insolvent is incomplete. When an ELP is being wound up on just and equitable grounds and is solvent, the rationale for naming the general partner as respondent to the petition is indecipherable altogether.

The idea of an ELP being wound up is consistent with the statutory scheme because Section 4.2 makes it clear that such legal entities have their own assets and liabilities distinct from the general partners who manage them and the limited partners who invest in them. Do you see that?

A Yes.

Q I didn't see anything in your declaration disagreeing with that sentence.

A Well, I don't know how long you wanted the declaration to be, but the simple proposition, which one gets from all the cases is that, an Exempt limited partnership has no separate legal personality.

And in Formation Group, Mr. Justice Kawaley, came up with a number of reasons why he thought that you could sue the ELP, and we know, in fact, from -- more important from, I think, I think Asif in this case, you can't do that. Section 33-1 is express. The only party who you can join is the general partner.

Q So I want to focus still on the cases I have before you, Formation Group. You did not criticize Formation Group on this point in your declaration. Correct?

A Correct.
Q And you didn't feel the need, after you signed the declaration and you were deposed to correct any aspect of your declaration.
Right?
A I didn't need to.
Q Okay. And you cited Formation Group in Footnote 40 for support for the proposition that there is no separate legal personality. Correct?
A Oh, that's correct.
Q But at least in Formation Group is one example of a court saying that doesn't matter in a winding up. Right? Yes or no, sir. I'm sorry. You can -- your counsel will be able to --
A Yes. But it still said there was no separate legal personality, which is what I cited it for. It's the point you're putting to me. And what he said is, well, that's beside the point.
Q All right. One more question about Formation Group, and then I want to ask you a few things about AquaPoint and Padma. Can you turn to paragraph 45?
A Yes.
Q Despite Mr. Khanbhai's -- I hope I'm pronouncing that right -- able arguments to the contrary, I am bound to find that with the greatest of respect to Justice Parker in re

Padma was wrong in finding that Section 33-1, as read with Section 36-3 of the ELP Act does not permit the presentation of a winding up petition against an ELP alone because only the general partner may be sued. Do you see that?

A Yes.

Q So when you talked about Padma and 36-1, did you mean 33-1?

A Oh, I did. I'm so sorry. I do apologize. Yeah. I misspoke.

Q That's okay. It happens. So Padma says you have to proceed under 33-1 to wind up an ELP. Correct?

A No. It's under 36-3, under 36-3(g). But you have to read 36-3(g) with 33-1, which is the provision that makes it clear that you can only sue the general partner. And that's really the ratio of all of the cases.

Q I know you were going through the -- some of the backgrounds of the various judges in this. Justice Kawaley, he's the former Chief Justice of Bermuda. Right?

A He is. And he is presently a member of my chambers.

Q So you have, presumably, great respect for him?

A No comment.

Q Okay. Let's talk about Padma for a second. Can we turn to, I think, Tab 6 of your book?

A Yes, of course.

Q If you could turn to Page 563, paragraph 47. Here, the

judge cites the Section 36-3 of the ELP Act. Correct?

A Yes.

Q And then in paragraph 48, the judge says, it seems to me that this provision does not give a freestanding right for a creditor to present a winding up petition against an ELP. Correct?

A Yes.

Q And then the next paragraph says, I also find there is no jurisdiction for the court to make a winding up order against an ELP on a creditor's winding up petition. I have reached this conclusion for the following reasons. And it goes to the reasons. Correct?

A Yeah.

Q But Section 36(g) of the ELP Act does give standing to a creditor to bring a just and equitable winding up petition. Right?

A Yes. But he's talking about a creditor's winding up petition. A creditor's winding up petition is where the creditors are owed an unpaid debt.

Q So in 36-3(g), it does refer to a creditor seeking a winding up petition.

A Yeah. But these are all on just and equitable grounds.

Q Okay. So if this case involved nonpayment of a debt, it's not on just and equitable grounds. Is that right?

A Ordinarily, what happens if you've got an unpaid debt

is you petition on the debt, and that's what we describe as a creditor's petition. Now, I haven't considered whether Justice Parker was considering that particular point in detail, but, that appears to be what he's saying.

Q Okay. Turn to paragraph 61. Do you see in paragraph 61, the judge says -- I think it's supposed to say it seems to me, maybe a typo there. It's -- I mean, I think it's it seems to me that from a proper analysis of the above statutory provisions that the Court's jurisdiction to wind up an ELP on the application of a partner on the grounds that it's just and equitable to do so arises by virtue of Section 3 of the ELP Act and Section 35(e) of the Partnership Act only. Correct?

A Yeah.

Q Do you believe that's consistent with AquaPoint?

A No. Because the answer from Lord Richards is quite clear. It's 36-3(g), and he says there's no need to go any further.

And what you're helpfully pointing out is why Lord Richards said in AquaPoint, there seems to be some confusion about what the jurisdictional basis is. And that's what he said, and that's what one would expect from the Privy Council.

Q Let's turn to AquaPoint if we can. Let's see. I think it's at Tab 3 in your book? Yes.

A Yes. It is. Thank you.
Q If you could turn to paragraph 46. This is, I think, where you is consistent with the testimony you just gave that Lord Brown said that the source of jurisdiction to do a --
A Richards.
Q I'm sorry?
A Lord Richards.
Q Lord Richards. I'm so sorry. I apologize. Lord Richards said that the jurisdiction to proceed with the winding up petition is 36-3(g). Correct?
A Yes. You can -- you can say there he says "The primary source".
Q Okay. And Formation Group, its flaw, I believe, in your opinion, was even though it invoked 36-3(g), it also said you had to look at the Companies Act. Correct?
A Well, it also led to the conclusion that you could ignore 33-1, and you could petition in the name of the partnership.
Q And nothing in AquaPoint says you're supposed to look at 33-1. Right?
A No. That's the point. That's the -- if you like, the other point. Yeah.
Q Okay. Can you turn to paragraph 36 of AquaPoint?
A Yeah.
Q 36 has the paragraph that reads -- Section 36 makes

provision for the winding up of an ELP to which the provisions in the Companies Act and the Companies winding up rules apply with modifications necessary for the different status of an ELP and subject to any special rules that may be made by any insolvency rules committee. Do you see that?

A Yes. I do.

Q Does this sentence tell you that Lord Richard is recognizing 36 has reference to the Companies Act with respect to a winding up petition?

A Yes. It does.

Q And does AquaPoint say anywhere in it that as part of the analysis of 30 -- of jurisdiction under 36, you shouldn't consider the Companies act?

A No. It doesn't. With respect, you're missing the point. That was one of the reasons that Justice Kawaley said that you could ignore 33-1. But the key point is 33-1.

Q Okay. Let's talk about that Kuwait Ports case from 2023. I believe it's Tab 8 of your book.

A Oh, thank you.

Q You didn't cover this one on direct, so I'm going to have to spend a little time on this one.

A This is the court of appeal decision. I did refer to it.

Q Correct.

A Albeit briefly.

Q Fair point. I don't know if you were shown it. We covered before, though. Your declaration did comment on it with favor. Correct?

A In the points that I referred to, absolutely.

Q Okay. And if you could turn to paragraph 144. So you'll see that, the Court in 144 -- and you can go a little bit above it -- is engaging with the legal principles as applied to the facts. Do you see that?

A Yeah. Let me just -- so did you want me to read 143 and 144? Or --

Q I would like for you to read 144 because then we're going to turn the page in a second. But read -- let me know when you're done. And here the --

A Sorry, I haven't finished reading yet. I was just agreeing where it was explaining is simply a convenient way of referring to the body of partners as a whole. I'm sorry.

Q Sure.

A Yeah. Yeah.

Q Okay. So here, the Court is commenting on the Henderson decision. Right?

A Yes. In the context of --

Q And we turn to the next page, paragraph 145. The Court says we are not to be taken as agreeing that this is correct. Right?

A Yes.

Q So the Court is disagreeing with Henderson. Yes?
A No. There's a difference between saying we're not being taken as agreeing with something and saying I disagree with something.
Q Okay. It says in the next sentence, as already stated in Section 16(1) of the act, provides that the general partner will hold the assets of the ELP upon trust. That's consistent with your testimony. Yes?
A Yes.
Q In the case of a trust, whilst a beneficiary undoubtedly has a direct claim against the trustee for breach of trust, the appropriate remedy as discussed above by reference to Target versus Redferns, paragraph 38, is for an order that the trustee restore the trust fund to which it would have been had the breach not been committed.

And the Court continues, such a claim may be brought by one or more beneficiaries, but a successor trustee will often bring such claim against a former trustee for breach of trust on behalf of the trust as a whole and will hold any sums recovered from the former trustee upon the terms of the trust.

Thus, even though like an ELP, a trust is not a separate legal entity, it can properly be said that the trust as well as a beneficiary has a claim against a trustee for breach of trust and that such a claim can be considered as an

asset of the trust. It seems to us strongly arguable that the position is the same in relation to an ELP, particularly given the general partner is also a trustee. You see that?

A Yes.

Q So even though the beneficiary of a trust can have a claim, so can the trust itself.

A No. When the beneficiary makes a claim for breach of trust, what happens is that the trust is made good. In other words, it could be a personal claim, but it could be a claim on behalf of the ELP, the trust. And what he's explaining is that, he says, even though, like an ELP, a trust is not a separate legal entity, it can be said that the trust as well as a beneficiary has a claim.

It doesn't mean the trust or the ELP sues. It means that the claim makes good the loss to the trust as a whole or to the trust as an ELP as a whole.

So, one mustn't confuse who might be the claimant, who is the legal personality, who is the legal entity. And, you know, that's crystal clear from what he says. Like an ELP, a trust is not a separate legal entity. So you can't jump from the fact that there might be a claim that restores assets into a trust or into an ELP and say, ergo, they have -- they become a legal entity. You can't do that.

Q Let me be a little bit more precise because I'm not sure you and I are on the same page about this. Whether or

not it's a separate legal entity --
A Yes.
Q -- an ELP has assets. Correct? You've answered that already. Yes?
A Well, the assets are held on trust, which means for all the partners.
Q And the trust in this case, in this example, also has an asset, a claim. Right?
A That there is a claim which can be brought for breach of trust, which results in the trust being made good. But the way you're describing it -- sorry. I don't want to be too argumentative. But what you can't do is you can't jump from that saying, ergo, the trust, or the ELP is a legal entity. It simply doesn't follow.
Q Let's go back to the ELP Act if you have it in front of you.
A Yes. Thank you very much.
Q Tab 2. Go to Section 36.
A Yes. Thank you.
Q 36-3 says, except to the extent that the provisions are not consistent with this act, in the event of any inconsistencies, this act shall prevail, and subject to any expressed provisions of this act to the contrary, the provisions of Part 5 of the Companies Act 2025 revision and the Companies winding up rules 2023 consolidation shall apply

to the winding up of an exempted limited partnership.

And for this purpose, company in Part 5 is the same thing as an ELP. Limited partners are treated as if they were shareholders. Correct? And there's a number of other provisions?

A Yeah.

Q Okay. You do know that in the Companies Act, there is now a provision for the restructuring of company. Right?

A Yes. I do.

Q Okay. And you didn't consider that as part of your testimony either in your declaration or for today. Correct?

A That's correct. Can I explain why?

Q No. You can on a redirect. And you've never considered whether an ELP can be restructured under Chapter 11. Right?

A That's not for me.

Q Okay. Let's turn to tab -- I'm going to find the Companies Act. I think I saw it in your book. Tab 11.

A Is that -- yes, thank you.

Q Okay. Now if you could turn to Section 91A.

A Yes.

Q Now, even though you didn't consider it for your opinion, you are familiar with this provision. Right?

A I'm familiar with it in the sense that I have seen it. I have not had occasion to use it.

Q You've never been actually involved?
A No.
Q Okay. But you're familiar enough. You're an expert on Cayman Island law. I'm sure this --
A I'm familiar enough with restructuring and some of the provisions, yes.
Q Okay. So if you look at 91A, it says for purposes of Sections 91B through J, which I'll represent you, I think is the entirety of the statute, company means any company liable to be wound up under Section 91. See that?
A Yeah.
Q And Section 91 tells us, you know, what types of companies can be wound up. Correct?
A Yes.
Q And there's nothing inconsistent in Section 91, as compared to the ELP Act. Right?
A If you're asking, can you use it? Yes. You can use it.
Q Okay. So --
A We're going to get onto 91B(1)(a)? No, sir. Sorry.
Q There's no dispute in your mind that an ELP under Cayman Island law can access the company restructuring provisions of the Companies Act. Correct?
A If it is insolvent.
Q If it's insolvent. True. But otherwise, it can.

Correct?

A Yeah.

Q All right. And if you look at 91B(4), it contemplates the appointment of a restructuring officer.

Right?

A Yes.

Q And the restructuring officer, if the Court so orders, has the power to act on behalf of the ELP. Right?

A Yes.

Q And 91B(1)tells us to access the company restructuring, the company must present the petition to the Court for the appointment of a restructuring officer. Right?

A On the grounds that the company --

Q One -- there's two grounds. One is that it's insolvent. And here, that's defined as is or likely to become unable to pay its debts within the meaning of Section 93. Correct?

A Yes. And (b) is intends to present a compromise or arrangement to its creditors (or classes).

Q Okay.

A So what it's concerned with is insolvency and dealing with creditors. That's what it's -- what it's about.

Q And we know that it'll include an ELP. Right?

A With creditors. Yes.

Q And I think you testified -- well, I don't know if you

testified, so I'm going to ask the question.

Your declaration makes no mention of whether any ELPs under Cayman Island law have previously been the subject of US bankruptcies. Right?

A I believe the answer to that is none.

Q None have.

A Sorry. Did you say US bankruptcy?

Q Yes.

A Or did you say this -- oh, apologies. No. I say nothing about US bankruptcy. I misheard you. I thought you asked me if there are any ELPs that have been subject to the company restructuring. I do apologize.

Q And you do know that at least as of your deposition, you knew that there have been Cayman Island ELPs that have filed for Chapter 11 besides this one.

A Yes, I saw it in your briefs.

Q Okay. And have you had occasion to look at any of those?

A No, I have not read them.

Q Okay. And one of the points of the restructuring provisions in the Companies Act is to attempt to attempt to restructure the business. Correct?

A It's -- sorry. What do you mean by that? Attempt to restructure the business. You're talking about the Companies Act now or Chapter 11?

Q Yeah. Companies Act. I apologize.
A Okay. So, if you look at how the company restructuring goes, what the restructuring officer is looking at. And I think it's one of the reasons why we haven't had the ELPs going into this. It's restructuring creditors or classes of creditors.
Q And if an ELP can access the restructuring provisions of the Cayman Island law ELP Act by virtue of the Companies Act, would you agree with me that it is to try to restructure the ELP itself?
A No. It's to try to restructure the ELP's creditors. That's what it says.
Q So when it says, in 91B(1)(b)that part of the petition has to present a compromise or arrangement to its creditors either pursuant to this act, the law of a foreign country, or by way of consensual restructuring, well, I understand creditors have to certainly be part of it. Are you saying it's not about a restructuring of the ELP itself?
A No. It isn't. Can I explain? Because I've done an awful lot of compromise or arrangements.
So the language of compromise or arrangement comes from what -- and I'm going to talk in English terms. Section 425 as well. It's now Section 901 of the Companies Act in England. And there are two types of compromise or arrangements.

There's a compromise or arrangement by way of a scheme of arrangement, and the way that works is you divide the creditors into different classes, and you have to have 75 percent of each of the classes approve it. That's a scheme of arrangement.

There's a new form of arrangement, which is under 901(a), and that's a restructuring plan, it's called. And the restructuring plan, again, you divide the creditors into their different classes. But for the very first time, what we have introduced is a cram down provision so that you don't just go with the 75 percent.

But if a particular class is not approved, then it is possible to cram down that class if they are no worse off than they would be in what's called the relevant alternative. And it is considered fair that they should take what they take.

Anyway, it's all quite technical, but it is not to do with anything other than creditors. When you're looking at an ELP, and, you know, an ELP, as we know, in this case, we are concerned with investors in shares. It's not to do with creditors. You wouldn't have classes in it. It wouldn't fit into classes. So I don't think this really helps you.

Q Can an ELP, whether in a winding up or a reorganization provision, invoke Chapter 15 in The US? Do you know?

A I would anticipate so.

Q You testified on direct about the paragraph 10(b) of the LPA. Recall that?
A. Yes. I did.
Q. That's an ipso facto clause. Right?
MS. SELDEN: Object, to the extent it's calling for a US legal conclusion. You can --
A I mean, exactly, I'm not going to comment on that as a matter of United -- even though I have got experience. I'm not going to comment on that. I think I explained to Her Honor that there are two relevant voluntary liquidation triggers here.
One is the agreement, which was 10(b), and the other one was the mandatory provision of 36-7, off the top of my head.
Q And it's your opinion that, putting aside US law, the provisions of paragraph 10(b) are implicated, notwithstanding the fact that the general partner has commenced an insolvency proceeding. Correct?
A Sorry. This is a common language problem. What do you mean by implicated? Forgive me.
Q Okay. The fact that the general partner has filed for Chapter 11 bankruptcy in The United States, in your opinion, under paragraph 10(b) of the LPA is a basis to terminate the partnership. Correct?
A It is one of the events that is identified, both in the

agreement and in the statute, and that then results in dissolution and winding up. I note that you said terminate, but the correct language is dissolution and winding up.

Q Okay. And you would acknowledge that if there's consideration afforded to the general partner under a limited partnership agreement, that's a personal property right of the general partner. Correct?

A Yeah. That would be a personal one. Is he would be --

Q No. I'm sorry.

A I was just going to say, he would be a creditor for those, for that interest.

Q Is the right to manage the limited partnership agreement itself a property right of the general partner under Cayman Island law?

A No.

Q Why not?

A Because it's not a right. It's a responsibility that arises. He has -- as Lord Richards said, he has a responsibility to manage the partnership. And when he does so, as I've indicated, he does so as agent, he does so as trustee, and he does so as fiduciary. None of that is personal. He doesn't have a personal right to manage.

Q Okay. Let's turn to Tab 10, which is the LPA for this ELP.

A Yeah.

Q This agreement is a contract between what I'll call the Rigmora Limited Partners and the general partner. Right?
A It's the partnership agreement.
Q Okay. Now, in forming your opinions, you did not review any commentaries regarding contract law principles. Right?
A No.
Q Okay. Now, you did review the LPA in preparing your declaration?
A I reviewed the provisions that were relevant for this purpose, which are quite limited.
Q And you didn't review any other contracts to which the limited partner may -- limited partnership may be a party. Right?
A I didn't.
Q Okay. Now, if you could turn to Page 9 of this document.
A Yes.
Q There's a section, actually starts on Page 8 -- sorry. Page 9. Titled limited partners Section 3.
A Yes. Thank you.
Q And if you go to Section 3(b) on the next page, it's titled limited liability.
A Yes. Thank you.
Q And it says, no limited partner in its capacity as such

shall be liable for the debts or obligations of the partnership. Right?

A Yes.

Q That's consistent with the ELP Act. Right?

A Absolutely.

Q Okay. And you previously stated that the partnership is just shorthand for the limited partners themselves. Right?

A It is.

Q So if your interpretation that the term ELP means limited partners, is this clause saying there's -- that no limited partner would be liable for the debts of any other limited partner?

A No. It's saying that it's -- that no limited partner in its capacity as a limited partner shall be liable for debts and obligations of the partnership, which is the ELP.

Q Okay. If you could turn to Page 5. This is the start of the standard of care language. You see that?

A So you're looking at three?

Q Yes. I'm sorry. If you look at the second sentence saying to the fullest extent permitted by law, you don't have an opinion whether this sentence -- you don't have an opinion as to why this sentence refers to liability of the partnership and any other partner as separate things, do you?

MS. SELDEN: Objection, mischaracterizes the

document. I think that's an "or", not an "and".

MR. WINSTON: Sorry. An "or". I apologize.

A Well, I think it it's clear what it says. But anyway --

Q Okay. So the answer is you don't have an opinion?

A I don't know what you want me to have an opinion about.

Q You have no opinion why the document refers to partnership and limited partners as separate, enumerated things. Right?

A I see. Yes. Well, it is an error -- it is an error to think that any descriptions or definitions can change the legal entities involved. But anyway --

Q Okay? If we could turn to Page 74.

A Sorry, one moment.

Q No problem.

A Yes.

Q Page 74, if you look at (j) as contract construction

A Yes.

Q You'll see that there's a defined term person.

A Yes.

Q And it lists a number of entities under the definition of person. Right?

A Yes. It includes all of those.

Q And it actually it has a expressly included in the definition of person exempted limited partnership. Right?

A Yes. And what's important is the fact that you're defining ELP as a person doesn't make it a person with separate legal personality.

Q Okay. Let me -- I only have a couple more questions, and I appreciate your time.

A Oh, thank you.

Q I know it's been already a long day.

A Don't worry.

Q You spoke earlier about why fiduciary duties constrain every action of the general partner. Right? Do you recall that?

A Yes. I explained that there are three aspects to the general partners' responsibilities.

Q Could you turn to page 72 and look at Section, 18(g)? It's actually on 73, 18(g)(4).

A. Yes, thank you.

Q Isn't it true that the LPA in this case permits the general partner to take action against the limited partner in connection with such limited partner's breach of the Limited Partnership Act?

A Well, there are two points I'd make about that. The first is that's a chose in action. So it is held in trust for by the general partner for that limited partnership. So if one -- if one limited partner has done something they shouldn't have done, then that right is held by the general

partner on trust for the limited partners. So it's, if you like, for the others. And also, it is a fiduciary obligation.

Q So if you could look -- I'm sorry. Were you finished? Okay. If you look halfway through the paragraph, it says, "To the fullest extent permitted by law, each limited partner hereby specifically agrees that in the event such limited partner violates the terms of this agreement, such limited partner shall not be able to claim that the partnership or any of the other partners are precluded on the basis of any fiduciary or any duty arising in respect of such limited partner status as such from seeking any remedies -- any of the remedies permitted under this agreement or applicable law."

A Yeah.

Q You see that? So if --

A And it doesn't stop the general partner from enforcing the rights. The rights are still held on trust for the limited partnership, and *qua* fiduciary, which means that those must be exercised in the interests of the ELP.

Q And so if the general partner on behalf of the partnership or any other limited partner were to sue a limited partner for breach, the limited partner should not be entitled to claim that a fiduciary duty is owed to that limited partner, right?

A No, you're missing the point, which is that -- what it means is, that the partner, the limited partner in default can't say you can't sue me because but the point is that if the general partner sues a defaulting limited partner, that chose in action is held on trust for the limited partnership, in other words, the entity as a whole, and it must be exercised by the general partner as a fiduciary for the non-defaulting limited partners.

So it can't be used -- the point it's making there is you can't use it as a shield if you are a defaulting limited partner, but it doesn't alter the nature of the general partner's obligations when he is suing the defaulting limited partner. I hope I've explained that clearly enough.

Q You've not given any opinions as to any of the claims asserted in the winding up petition?

A Not at all. Not for me. That's for Justice Asif.

MR. WINSTON: Can you give me one minute just to make sure. I think I might be done. If that's okay.

THE COURT: Um-hum.

MR. WINSTON: Pass the witness. Thank you, Mr. Phillips.

THE WITNESS: Thank you very much. Thank you.

THE COURT: I want to ask some questions.

THE WITNESS: Yes, Your Honor.

THE COURT: Did you provide an opinion on the

legal, equitable, and/or beneficial title of assets held on trust for the benefit of the Exempted Limited Partnership.

THE WITNESS: Well, yes. I can help with that. The legal beneficial title, they are all held on trust, if you look at the breadth --

THE COURT: By the general partner?

THE WITNESS: Yes.

THE COURT: So the general partner. If $10,000,000 comes into -- if there's a capital call for $10,000,000 --

THE WITNESS: Yes.

THE COURT: -- that money is put into an account

THE WITNESS: Yes.

THE COURT: In the name of the Exempted Limited Partnership, but that account is held by the general partner on trust for the limited partners. That's what I understand you to say.

THE WITNESS: Yes.

THE COURT: Okay. Who has the legal interest in the $10,000,000? The legal title to the $10,000,000?

THE WITNESS: That's held on trust.

THE WITNESS: It's held by the general partners.

THE WITNESS: On trust. Yes.

THE COURT: Okay. And who holds the beneficial title to the $10,000,000?

THE WITNESS: The same entity. It's the ELP.

THE COURT: Okay.

THE WITNESS: The important point, milady, is and it's important that one gets one's head around this. It's if one looks at 16-1, it is all rights. It doesn't matter if they're legal or beneficial.

THE COURT: So the general partner holds all the rights -- legal, beneficial, equitable -- to whatever assets come into the exempted limited partnership.

THE WITNESS: As a trustee.

THE COURT: As a trustee. Now here's a question. Why does anybody want to be a general partner? They have responsibilities, trusts, and fiduciary. What do they get out of it?

THE WITNESS: It's interesting in terms of what you've got is you've got a general partner, who is, as you rightly say, obligated just to manage it, in the interest of the exempt limited partnership.

And one of the points that the case cases make, and I think Mr. Justice Asif himself makes it in one of the cases, is as soon as the limited partners have lost faith in the general partner, he should step aside because he has no personal -- this is not about a financial interest. So what we've got and, you know, they go into this. They go into this arrangement, which is a specific statutory arrangement.

They go into this arrangement to raise money.

So if one looks at --

THE COURT: Well, that's why the limited partners go in.

THE WITNESS: The limited partners are investing money. The general partner wants to raise money. Now, it's -- I'm not trying to comment on the facts, but just look at this case. What one has got is one's got an investment vehicle where the general partner has persuaded the limited partners to invest however much it is, and that money is then being invested in the shares in the various portfolio companies.

Now the interest, it seems to me, if you ask why would you do it, the interest, it seems to me, putting aside the tax benefits, which is what it's up to -- the interest it seems to me is raising money for which become shares in an investment in the portfolio companies.

THE COURT: Which the general partner doesn't own. So I'm trying to figure out why, and maybe I don't need to know why, but it doesn't make sense to me, as you're explaining it, and that's probably not an issue. I was just curious. Why can't the exempted limited partnership do business in the Cayman Islands?

THE WITNESS: Because, I mean, it is exempted from -- one of the reasons is it's structurally exempted from

paying tax. Milady, no? Just no?

THE COURT: No.

THE WITNESS: Okay.

THE COURT: I just have a few basic questions, that I'm trying to understand relative to this because of the intersection between the bankruptcy law, which may look at things differently than the Cayman law does, or it may not.

The contract provides for jurisdiction in the state and federal courts of Delaware.

THE WITNESS: In relation to the LPA. Yes, ma'am.

THE COURT: In relation to the LPA, and it's pretty broad.

THE WITNESS: Yeah.

THE COURT: Is that a common provision in relation to Cayman exempted limited partnerships?

THE WITNESS: I'm not sure if I'm able to say whether it's common or not. But, milady, you're absolutely right that that does appear. So there's Cayman law, choice of law, and then there are the two jurisdictions.

THE COURT: Yes.

THE WITNESS: But that's for deeming disputes under the LPA, which is one of the reasons why the previous proceedings were in the Chancery Court, I understand.

THE COURT: Okay. Does that -- do my questions prompt questions from either of you?

MS. SELDEN: Not for this witness, Your Honor. I appreciate the question, but I think Mr. -- I don't have further questions for Mr. Phillips. Maybe give me one minute to make sure the rest of the room agrees with me on that.

THE COURT: Questions?

MR. WINSTON: I would like to take 30 seconds to follow up, but I'm not sure I need to ask anything.

THE COURT: Okay. Tell you what. Why don't we take you five minutes, and y'all can all caucus with your side too. Sorry, Dr. Phillips.

(Off the record at 4:42 p.m.)

(On the record at 4:57 p.m.)

COURT OFFICER: Please rise.

THE COURT: Please be seated.

MS. SELDEN: Thank you, Your Honor. We do have just a couple of questions for you, Mr. Phillips.

REDIRECT EXAMINATION

BY MS. SELDEN:

Q Mr. Phillips, do you know, as a general matter, whether General partners receive compensation for their role in Cayman exempted limited partnerships?

A As a general matter, I expect that they do.

Q Are you familiar with the concept of carried interest?

A Yes.

Q Is that one way a general partner might be compensated?

A I would expect so.
Q Are you familiar with management fees?
A Yes.
Q Is that another way a general partner might be compensated?
A Yes.
Q Were you asked to review the compensation arrangements for the general partner or the management entities or Dr. Harrison here?
A No, I wasn't.
Q Mr. Phillips, I hesitate to revisit the ELP Act, but I do have just one question, maybe two, in looking back at that. In looking at Section 16-1 of the ELP Act, you said that the ELP is a statutory trust, correct?
A Yes.
Q And the general partner holds legal title to the assets of that trust; is that correct?
A What 16(1) says is any rights or property of every description, including choses in action and right and so on and so forth. So every right is held on trust. So if and to the extent that, for example, that general partner, his name is, for example, on a bank account, something of that sort, the rights to the bank account are still held on trust for the ELP.
Q And I believe at one point, Mr. Phillips, you said the

general partner holds both the legal and the beneficial interest in the assets of the exempted limited partnership. Did you mean to say that?

A Probably not. Because there will be some things where he has written it. But what I want to convey is that his legal interest has no beneficial aspect to himself.

Q And who is it that holds the beneficial interest in the property or the assets of the exempted limited partnership?

A That is all for the limited partners.

Q Thank you, Mr. Phillips. Nothing further.

MR. WINSTON: No further questions, Your Honor.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you very much.

MS. SELDEN: Thank you, Your Honor. Mr. Saltzman will call our next witness.

THE COURT: Mr. Saltzman.

MR. SALTZMAN: Good afternoon, Your Honor. The next witness we'll call is Mr. Aebersold, who you may be familiar --

THE COURT: Mr. Aebersold.

COURT OFFICER: Raise your right hand. Do you affirm you will tell the truth, the whole truth, and nothing but the truth, to the best of your knowledge and absolutely?

THE WITNESS: I do.

COURT OFFICER: Please state your full name and

spell your last name for the record.

THE WITNESS: Robert Brandon Aebersold. Last name spelled A-E-B-E-R-S-O-L-D.

COURT OFFICER: Thank you. You may be seated.

MR. SALTZMAN: And, Your Honor, before I begin my examination, we're -- with their leave, we do ask Mr. Phillips if can he please be released?

THE COURT: Oh, of course.

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

THE COURT: This courtroom is open. You can come and go as you as you please.

MR. SALTZMAN: And, I guess, again, with the Court's permission and with the other side's consent, I would skip trying to credential Mr. Aebersold since -- because we had him last week here. It's a late hour, and I don't think we need to do it.

MS. TOMASCO: Your Honor, we've not been able to get a clear answer on whether or not they're offering Mr. Aebersold as an expert witness. For example, I can go through my entire bar examination of Mr. Aebersold, but we never got a list of exhibits Mr. Aebersold reviewed. We never got a report from Mr. Aebersold. We never got any method by which we could test the reliability of any opinions that he's going to express.

To the extent they purport to call him as an

expert witness, we object. I can take Mr. Aebersold on voir dire, if you would like, but the Debtors have never explained why we haven't gotten this basic information to cross-examine an expert.

MR. SALTZMAN: Your Honor, Mr. Aebersold was set for deposition yesterday. He testified as to the scope of his opinions. He testified as to what he was asked to do. We -- Mr. Block -- and I don't want to get into all the back and forth, but when we asked for a report from Mr. Block, we got a terse response saying, you know that the federal rules don't apply in these types of proceedings. We don't have to give you a report or list of exhibits.

So I'm not really sure what we were complaining about, but he sat for a deposition.

THE COURT: Okay. Well, so you are offering him as an expert?

MR. SALTZMAN: Yes. Yes. As we said in the deposition, we went off -- it may be that Ms. Tomasco doesn't know this. We went off the record at the deposition and clarified with counsel taking the deposition that he was being offered as an expert.

THE COURT: Okay. And as an expert on what?

MR. SALTZMAN: Restructuring and, in particular, advising clients who are filing for bankruptcy on financial distress.

MS. TOMASCO: Your Honor, I'm happy to take the witness on voir dire and make an argument as to why he is not an expert.

THE COURT: Okay. Then, I'll permit that.

MS. TOMASCO: Thank you.

THE COURT: And if you need to or you want to refresh any of his credentials after, you know, I'll hear that too.

VOIR DIRE

BY MS. TOMASCO:

Q Mr. Aebersold, I think your counsel just -- for the record, I'm Patty Tomasco with Quinn Emanuel. I'm counsel, proposed counsel for the debtors and debtors in possession. You've been asked to testify according to your counsel about, the factors to consider on filing a Chapter 11 petition. Is that correct?

MR. SALTZMAN: Objection. I think we'll get it. That's what I said. But --

MS. TOMASCO: I'm just setting the stage, I Honor.

THE COURT: If it's correct, if it's not, it's not.

A I thought it was more narrow than that. I at least thought it was analysis of financial distress prior to filing for bankruptcy.

Q So, you are a lawyer, correct?

A This is my deposition. I went to law school and passed the bar. But I retired and went to business school twenty some years ago.

Q All right. Let me just -- let me just skip ahead. You never practice bankruptcy law and you only practiced law for two years. Correct?

A I only practiced law for two years. I was in a credit group where the bankruptcy and restructuring group sat within my prior firm, but, yes, I was only there for two years and not a bankruptcy attorney.

Q And you never represented a debtor considering whether to file for bankruptcy, correct?

A As a lawyer?

Q As a lawyer?

A No. Not as a lawyer.

Q Now, you have you ever been a chief restructuring officer?

A No.

Q Have you ever been an independent director with respect to a prospective bankruptcy case?

A Not for an entity that was filing for bankruptcy.

Q And have you ever been a director on a board of a company when a company was considering whether or not to file for bankruptcy?

A Not that was considering to file for bankruptcy.

Q Okay. Now, you do not have a list that you've provided to counsel of all the documents you considered in preparing your opinion, which we still have not seen. Correct?

MR. SALTZMAN: Objection. I don't think this is voir dire. It's not his expertise.

MS. TOMASCO: Oh, it absolutely is. It goes to reliability, and I'll show why.

MR. SALTZMAN: Reliability is credibility.

MS. TOMASCO: Reliability means the data from which he drew his conclusions, a list of documents that he considered, is absolutely an element of reliability under Daubert.

THE COURT: I'll overrule that. I'll hear it.

A Sorry. Can you repeat the question?

Q You don't have a full -- a list of all the documents you considered in reaching your opinion, which we still have not seen. Correct?

A I do not have a list of every document. No.

Q So we know that you looked at a number of documents like all of the briefing, all of the declarations, all of the docket, all of the budgets, all of the documents in discovery, but we have no way of knowing what documents you actually relied on in reaching your conclusions or opinions that we still have not seen today. Is that correct?

A A couple pieces. I would not say that I've read every

pleading and every -- all -- I don't think I read quickly enough to have done all that. And what was the second part of the question?

Q Well, we have no way of knowing what documents you relied on in reaching your conclusions because you didn't tell us yesterday. Is that correct? Can I -- can we pull up, Mr. Aebersold's deposition at page 46, line 23? Do you see this question by Mr. Ezekielian (phonetic)? Do you have a list of documents provided in discovery that you viewed in connection with your testimony you are going to provide tomorrow? I do not have a list of them. But, yeah, I don't have a list of what has been provided. You see that question and that answer? Does that refresh your recollection?

A Yes.

Q All right. Now do you remember yesterday at your deposition, my colleague, Mr. Ezekielian, also asked you if a court had ever excluded any of your expert testimony in previous cases either in whole or in part?

A Yes.

Q And do you recall what your answer was?

A That I was unaware.

Q All right. And you said not to your knowledge. Correct?

A Correct.

Q Great. Can we pull up the Sabine (phonetic) decision

and hand that out?

MS. TOMASCO: May we approach, I Honor?

THE COURT: You may.

Q I'm going to direct your attention to the Westlaw page number 248. The document number of the Westlaw printout is number 39. If we could focus on the upper right hand corner of page 39. Oh, hold on. Wait. The next page. You're on 38 -- I'll give you a moment to review that.

A Sorry. I'm sorry. What am I reviewing?

Q This is Judge Chapman's opinion in the confirmation opinion on in re Sabine Oil and Gas Corporation 555 BR 180. Do you see that?

A Yes.

Q Does this refresh your recollection that part of your testimony, expert testimony, in that case was excluded?

A No. I would need to read it. I -- it is not. Okay. Is it -- what's the question?

Q Do you recall that Judge Chapman excluded your testimony because you did not produce or elicit exactly what numbers Mr. Aebersold reviewed with respect to the referenced companies and exactly how Mr. Aebersold used those numbers to arrive at a 60 percent volatility?

A Going back to 2016, sorry, no, I don't think I ever read this opinion. I just remember that we had won. I do see a phrase here. Finally, the Court reiterates that it is

not excluding Mr. Aebersold's testimony with respect to any element of the analysis -- blah blah blah. But you raising that sparked my memory that I think an analyst pulled data on Bloomberg in an Excel file for volatility, which is just math. And I think that one element is an issue. But I'm sorry. I do not recall the details.

Q Correct, Mr. Aebersold. So what happened in the Sabine case is that the committee objected to a portion of your testimony because it didn't have the underlying dataset with which to test its reliability, which is one of the Daubert factors. Is that correct?

A I'd have to read this entire opinion. I remember it was a Bloomberg printout that an analyst didn't save down on the drive.

Q And because your adversary was not able to look at the underlying dataset, Judge Chapman ruled that they didn't have a chance to test the reliability of the opinions that you were going to express. Do you recall that?

A I'm sorry. I don't.

Q Do you see at the bottom of the paragraph that that begins, but the fact Mr. Aebersold?

A Which paragraph is that?

Q The paragraph below this one, but the fact Mr. Aebersold, if you read the last sentence of that paragraph.

A The paragraph that you just directed me to?

Q Correct.
A As a result, the Court cannot conclude that Mr. Aebersold's 50 percent to 70 percent range, and consequently, the 60 percent midpoint of that range is a reasonable conclusion to draw based on the referenced company's data analytics or otherwise.
Q Mr. Aebersold, does that refresh your recollection that unless the opposing party has the dataset with which to test your conclusions, the opinion will lack the reliability that Daubert requires?
A I'm sorry. Can you repeat the question?
Q Unless your adversary has the data or documents that you relied on in forming your opinions, your adversary cannot test the reliability of your opinions. Do you recall that result in Sabine?
A Other than what the sentence I just read, no.
Q Okay. Now with respect to what you're being asked to talk about today, are you being asked to talk about how to assess the stress or how to apply the LTL factors, what is the subject matter of your testimony?
A I was asked to analyze whether the fund was in financial distress when it filed for bankruptcy.
Q And using what data?
A The primary data we used were the digest, that is the report -- sort of the reporting between the fund and the LP,

the stock purchase agreements for each debtor portfolio company, and the filings that the debtor made upon filing. So SOFAs and schedules and the declarations and the first day pleading.

Q Why couldn't you give that answer yesterday, Mr. Aebersold?

A I think I did.

MR. SALTZMAN: Objection. I don't know the right form to do this in all honesty, I Honor, but there's -- it's a mischaracterization of his testimony.

MS. TOMASCO: I Honor, I've shown you the testimony. We move to exclude Mr. Aebersold on the basis that we have not been able to test the reliability or get a list of the documents on which he relied. This is a very -- as you know, the motion to dismiss and the motion for relief from stay have been on file for a very long time. Mr. Aebersold was identified only to us mysteriously sometime during his deposition yesterday as potentially being an expert. So not only do we have the untold surprise, but I believe Mr. Aebersold -- we cannot test what he's relied on. We don't know.

He referred to in his answer, I relied on all of the documents in this case. I relied on all of the declarations. I relied on all of that. This is the first time he said, I'm relying on specifically the financial

reporting between the GP and the LP. That was not an answer that he gave yesterday.

So what I would like to point out is a couple of things. To the extent that Mr. Aebersold is here to testify on what constitutes distress under the LTL opinion, I would suggest that that invades the province of the court.

THE COURT: It might.

MS. TOMASCO: And to the extent that court needs a citation, Killian v versus KeHE Distributing, 6th 2d. 761 F.3d. 574. The admission of this testimony is unfair surprise, and it violates the Court's duty to ensure that an expert does not testify as to what the case is and the law means.

Secondly, because we don't have the dataset that Mr. Aebersold relied on in reaching his conclusions because he was very cagey about it, he said it's everything, and he didn't give us a list, and he didn't actually give us his opinion. He simply said, I'm going to -- I'm going to talk about this, and generally whether or not it was in distress.

Well, as you know, distress is one of the factors that the LTL decision added to our rubric on motions to dismiss, and I would submit to the Court that that is calling for a legal conclusion.

The Court can hear from fact witnesses about what does the budget look like, what other assets were there

available during this time period. But, frankly, Mr. Aebersold doesn't have any personal knowledge of any of that.

And much like Sabine, and I would say history doesn't repeat itself, but it often rhymes, well, this is a perfect rhyme of the Mr. Aebersold's approach to his adversaries, and that is he's not going to tell them what he relied on, and they're left to guess on how to cross examine him.

And I would suggest that simply limiting his testimony to, you know, whatever is not a good substitute for vigorous cross examination if he's offering an expert opinion. I have no objection to Mr. Aebersold testifying with respect to his personal knowledge, of which I think he has very little, based on his recency in the case, but that's not why we're here. We're not here for somebody who has no experience representing -- being a CRO, being on a board, making the decision, thinking about all the critical decisions that the Debtor had to make in order to file these Chapter 11 cases, whether or not they were "in distress".

And for that reason, this is an improper ambush of an expert witness, and he should be excluded. He's welcome to testify as to his personal knowledge.

THE COURT: I response.

MR. SALTZMAN: Thank you, I Honor. Because I have three, but maybe four responses. I guess five. First, my

attempt to streamline this blew up spectacularly. Second, also not to the merits yet, but if there was a concern that counsel had, I really wish they had raised it with us last night, and we could have talked about it and hopefully resolved these concerns.

Now to the substance of the matter, it gives me no pleasure to do this, but there was a misrepresentation made to the Court. And here, I'm just going to read the question and answer from yesterday's deposition.

You said that -- question, you looked -- you said that you looked at other exhibits and pleadings that have been filed in the interim. Which exhibits and pleadings?

Answer. So here's a couple, and it's a long list of what I read. I read the Harrison declaration. I read all stock purchase agreements, and I've looked at the reporting from the fund to the LPs. I mean, there were a host of others. I've also seen some discovery, you know, WhatsApp conversations between professionals at the fund and of the GP.

That is what Mr. Aebersold is going to be relying on and to give his testimony today. He listed all of it.

I also not sure the relevance of Sabine in this case, which appears to be a case in which the other side didn't have the material and the underlying dataset. This is analysis of their financial distress or lack thereof. So I

don't see how Sabine can possibly be on point.

And finally, I'm not sure how to process the claim that they are incapable of cross examining a witness as to whether or not they were in financial distress or not. They had or they weren't. They have all those documents. They should have done that analysis. They should be quite ready to cross examine a witness about whether they agree with his opinions as to whether financial distress was there or not.

THE COURT: Okay. Here's what we're going to do. I don't know if Sabine is relevant or not, but I note that in Sabine, Judge Chapman apparently heard the testimony before she decided she was going to exclude part of it.

So, and I wasn't involved in Sabine. So but this appears to be a confirmation hearing. My recollection from reading about it is it was quite lengthy. I'm sure there was scheduling orders in place. I'm sure there were all kinds of procedures in place in that case to get to the confirmation hearing. Maybe there was more than one as I'm recalling.

So, I don't think it's necessarily, applicable here. But I'm going to permit the testimony. I don't know what he's going to say. I'll find out what he's going to say. If I feel that it's within the realm of my responsibilities to rule on legal issues, then I will ignore it.

The witness clearly, I don't think, can opine on

legal issues. He's not a lawyer even to start with. So, I'll hear it. If the debtors feel like they can't cross him tonight, I'll give you overnight, and you can cross him in the morning.

MR. SALTZMAN: Thank you, I Honor.

THE COURT: So I'll permit the testimony. And I'll -- I will keep whether any portion of his testimony needs to be excluded. I'll hear that afterwards. But I will also, as I said, give the Debtors an opportunity to review their documents and cross him tomorrow.

MR. SALTZMAN: Thank you, I Honor. And with your permission, I am going to ask him a few questions about his background.

THE COURT: As you should.

DIRECT EXAMINATION

BY MR. SALTZMAN:

Q Mr. Aebersold, where are you employed?

A At Rothschild and Co.

Q And what is Rothschild?

A It is a -- over 200 year old global independent investment bank.

Q And what is your title at Rothschild?

A I'm a managing director and the co-head of the restructuring and debt advisory group.

Q And when did you join Rothschild?

A I joined in 2024.
Q And before you were employed at Rothschild or joined Rothschild, were you employed somewhere else?
A Yes. I was with Lazard.
Q And how long were you at Lazard?
A Approximately 18 years.
Q And whether at Rothschild or Lazard, can you describe generally your experience in the restructuring field?
A Yeah. I've advised companies, investors, sponsors, creditors, government entities, parties and interests, and all sorts of situations where there's some element of distress. This could be Chapter 11 bankruptcies. This could be out of court exchange offers, capital raising in distress situations, buying distressed companies, making investment, it runs the gamut.
Q Have you advised and represented clients who are filing for Chapter 11?
A Yes, I have.
Q Do those clients include boards of directors?
A Most of them. There's been LLCs that didn't have a formal board of directors, but yes.
Q Do those clients include public companies?
A Yes, a number of them.
Q And have you advised client companies who would start to -- strike that.

Have you in advised private companies who were looking to file for Chapter 11?

A Yes.

Q When you advise clients who are filing or looking to file Chapter 11, has the issue of financial distress come up ever?

A Yes. It comes up.

Q And can you tell me what types of conversations you have with your clients who are looking at filing a Chapter 11 as it relates to financial distress?

A I'll just maybe step back here. The notion of talking to a board or a company about are you in financial distress? If I'm involved, typically, there's some element of that somewhere. Where it typically comes up is on if bankruptcy is being contemplated or on the eve of a bankruptcy filing. And listen, those board meetings are typically on a Sunday night when you do a Monday filing. We take those incredibly seriously. It's with counsel and you're putting a record in front of a board, the management team, say, how do we get here? If we're contemplating the filing for bankruptcy, here's an element. It's a -- it's a dark, sad day for most companies. I've had founders who founded companies and talking about bankruptcy making a record that shows that you need to file for Chapter 11, which no one wants to do.

And so the factors we see are typically guided by

counsel which says, talk to these six factors, talk to these seven. I've actually had counsel say, speak to these ten factors, and now doing the work here, I now know -- because I love the name of the case -- Rent-a-Wreck, that those are the ten that I've seen before.

Usually, you know, some of them overlap, so it's address these five or six.

MS. TOMASCO: I'm going to object, Your Honor. If Mr. Aebersold is going to refer to the name of a case, which has a list of elements that he's then going to say that he's applied in the past in advising clients on the eve of bankruptcy, that seemed to invade the Court's province.

He can talk about his financial analysis, but he can't talk about the factors that companies should look at in contemplating whether or not to file a Chapter 11. That is the Court's province.

THE COURT: Okay.

MR. SALTZMAN: Your Honor, I don't -- do you want -- I can respond or not.

THE COURT: Yes.

MR. SALTZMAN: I don't believe I asked him to invade Your Honor's province. I asked him when you advised companies who are on the verge of filing, what do you look at? And he said, I look at these factors, and I now know that these factors come from the case.

THE COURT: Yeah. I'm going to overrule it.

MR. SALTZMAN: Thank you, Your Honor. I'm going to move to qualify Mr. Aebersold as an expert, presumably, over an objection.

THE COURT: An expert on what?

MR. SALTZMAN: On restructuring and, in particular, financial distress on the eve of filing for what you look at on the -- as you file for bankruptcy as it relates to financial distress.

MS. TOMASCO: Your Honor, I don't believe that we've laid the foundation that Mr. Aebersold has any more specialized knowledge than the Court has, number one. That is the number one test for an expert.

I don't think he has any more specialized knowledge than I do or any of the other spectrum of professionals in here. We've always been -- we've all been in boardrooms on Sunday nights.

And so what is the nature of his expert testimony that cannot be linked by the Court from the facts of this case and the evidence?

THE COURT: I'm not sure that I do understand what it is he's going to testify to.

MR. SALTZMAN: Your Honor, what he's going to testify to is that he looked at the documents I just read from the -- his deposition, analyzed those documents and came

to a conclusion as to whether they were indicative of financial distress.

So this at least and I'm not -- and again, I'm not a bankruptcy lawyer, but in my world, this is a, like, classic economic, classic expert testimony as to I've looked at, you know, information in the world. I have applied my expert experience from years of advising boards and public companies as to what this all means and what you should look at. And having applied that expertise, I've reached these conclusions.

THE COURT: Well, I think he can testify as to the economics, as you say, of it. But I think there is a line somewhere between the economics of it and a conclusion as to what's financial distress.

MR. SALTZMAN: And I agree completely, Your Honor. I don't I don't tend to elicit from him the ultimate answer, was there financial distress, but rather having performed this analysis, what, you know, what is this indicative of? But I don't -- I agree with Your Honor. I don't think he intends to testify. Therefore, there was no financial distress.

THE COURT: I'll hear the economic piece. Let's hear some questions.

MR. SALTZMAN: Thank you, Your Honor. And maybe the way to shortcut this is just to go straight to the chart

and put the core of the testimony in front of Your Honor. May I approach?

MS. TOMASCO: What chart?

THE COURT: You may.

MR. SALTZMAN: I'm about to hand it out. Demonstrative.

MS. TOMASCO: I've not seen it.

THE COURT: Neither have I. Let's hand it out. Thank you.

BY MR. SALTZMAN:

Q Mr. Aebersold, is you -- is one of the things you looked at or considered the realistic estimate of liabilities in the context of this matter?

A Yes.

Q And did you create a demonstrative that helped demonstrate what -- the analysis you performed?

A Yes. Maybe I'll just take a quick step back here. The one thing that jumped out at me in the first day pleadings that I didn't fully understand was this notion of contingent liabilities. And so because, you know, the stuff is in schedules, they list what the potential liabilities are here. To understand what are said liabilities, yes, we put together a table based on the information documents that are previously discussed.

Q And can you, at a high level, maybe walk through what

this chart is trying to show and then we'll get granular?
A Okay. It's relatively self-explanatory, but just -- I'll just take the columns. Number one is the portfolio company. That's obvious. The second column is the purported unfunded commitment, which we just pulled directly from the Harrison declaration in terms of the -- those amounts. So, you know, unfunded commitments.

The next column, which is fully invested SPA amounts, that's basically just reading all the SPAs and the ways the SPAs work is they allocate funding in tranches in certain cases based on milestones. And it's based on those tranches, you just simply add them up and what's the maximum that could be said needs to be funded under a stock purchase agreement. And so that next column is simply, it's just addition based on the stock purchase agreements.

The next column is the total invested to date. This is pulled directly from the reporting from the fund to the LPs, what we refer to as digest. Again, that's just straight math, that's provided actually in the digest. And then Column C is simply A minus B. What's the maximum that could need to be funded under the stock purchase agreement, and how much has been funded to date according to the reporting from the fund to the LPs.

Q And in performing this mathematical analysis, did you see any disconnect between the amount in Column C, which is

the full like, the full invested SPA amounts and the total invested to date and the unfunded commitment amounts listed in Dr. Harrison's first day declaration?

A Yeah. We did have trouble tying those numbers out. I have to like, in all candor, what's frustrating about all this is numbers don't tie, which is frustrating. And so the best we could in our analysis in terms of where these unfunded commitments come from, the highest correlation is with approved budgets.

And again, for our perspective, that's not necessarily relevant in terms of commitments from the fund of the portcos. That's really between the fund and the LPs. But this -- the Chancery Court is like -- it's more than you would want to read on approved budgets, but that's the relationship between LPs and the fund. And it looks like those numbers are being cited in terms of what is the unfunded commitment from the fund to the portcos.

Q And then moving, I guess, to the right or two more columns, at least as to the eight debt or eight companies at the top of the third of the chart or so, what are the -- what are the milestone included or to be negotiated in remaining milestone columns? What do those show?

A So the milestones included, like, these first eight they don't even have milestones. It just simply says, we'll invest up to this amount of money based on milestones to be

agreed. Certain of them, if you go down past the first, because that's eight, there actually are milestones in the stock purchase agreement. And it says you do X, we'll fund Y. And so there's a number of them that actually have those milestones included.

Q Can we just go back to the original chart, sort of the full chart? Thank you. Focusing on the top eight companies, what's the significance of milestones to be negotiated or not negotiated as it relates to the realistic estimate of liabilities.

A Those milestones in stock purchase agreements, that's what triggers the need for a funding, or you could view it as an obligation to fund.

MS. TOMASCO: Your Honor, Mr. Aebersold is not a practicing lawyer. He's not a court. He's not put the language in front of the Court with which he can testify whether or not a document is legally binding. That is not his province.

So these last two columns in this chart are basically Mr. Aebersold opining on whether or not the Series A funding agreements are enforceable obligations as a matter of law.

MR. SALTZMAN: I don't believe that's what I asked him to opine on.

THE COURT: I think he's just saying it's like a

chart of what's in the SPAs. That's how I'm viewing this. It's a summary chart. If I went and looked at all the SPAs, here's what I would find. If it's wrong, then it needs to be cross examined. But I'm not taking his opinion as a legal opinion on whether what the milestones mean if that's the concern. I'm not doing that.

MS. TOMASCO: Once again, Your Honor, and I hate to beat a dead horse, but this has already been litigated in the Chancery Court with respect to the funding obligation. We know that Chancellor McCormick has said that the milestones are negotiable between the GP and the portfolio groups.

MR. SALTZMAN: Your Honor --

THE COURT: I don't think this says anything different than that.

MR. SALTZMAN: It doesn't, Your Honor. And the Chancery Court focused on the investment memos and the milestones in the investment memos, which is a document that governs the relationship between the LP and the fund. Here, we're looking at the fund and the and the, portfolio companies, which is a different set of issues altogether.

THE COURT: Okay. You can continue questioning if that was an objection, I'm overruling it.

MR. SALTZMAN: Thank you, Your Honor.

BY MR. SALTZMAN:

Q And so Mr. Aebersold, as you performed your analysis and looked at Column C, I see three of the three of the entities have zero or negative numbers in Column C. What does that signify?

A A minus B equals zero or less.

Q And what significance does that have as it relates to, if any, does it have as it relates to estimates of liabilities?

A That there aren't any. If the source of a potential liability is the stock purchase agreement, pursuant to the digest, all those amounts have been funded.

Q Okay. And when you summed up the total number of unfunded commitments from Dr. Harrison's first day declaration that are subject to this first bucket of companies that don't have milestones in there or have milestones that are to be negotiated in the SPA but have not been negotiated. How much is that?

A It's a $157,000,000.

Q Now I want to move to the bottom half of the chart. What's, I guess, what's the commonality among these five companies?

A These actually have milestones written into the stock purchase agreement.

Q We can take down the highlighting. I'm and if you want to, what I'm highlighting is the Aulos to Marlinspike. Thank

you. Go ahead. Sorry.

So you said these are all companies that have milestones negotiated in the SPA?

A. That's correct.

Q. Okay. And, again, focusing on column c that the top three, Allos, Sicidin, And Replicate (phonetic), what is the zeros or negative numbers there indicate?

A That per the digest that the fund, reporting to the LPs, that amounts have been funded in excess or equal to the full amounts under the SPAs.

Q So if you ignore you put Allos, Sicidin, and Replicate on the side, what two companies are left in this chunk?

A Athon and Marlin Spike.

Q Did you did you look at Athon at all, analyze Athon at all? As it relates -- as it relates to the roughly 8,000,000 that's being shown as unfunded commitment?

A The same analysis.

Q And what did you conclude about that $8,000,000?

A Well, there there's, tranches three, four, and five remaining. But what jumped out at me is they all are date specific milestones. So if you look at for tranche three, it's the DCN that's on or before 12/31/24, which is obviously passed. Like a tranche four, 6/30/25, it's already passed. And tranche five is the only one with the remaining date which is 03/30/25. But I mean, that's a month from now and

they haven't -- they haven't passed three or four. So it's hard to see how they're going to hit five in a couple weeks.

Q So that I guess that takes us to Marlin Spike. What conclusions, if any, did you need to derive about Marlin Spike as it relates to liabilities?

A That there were pursuant to the stock purchase agreements still $37,270,000 that have not been funded.

Q And did you look at all at the likelihood that that $37,000,000 would come due in the near future?

A Here again, and I'm not a scientist and I'm not, sort of these tranches don't even, the milestones don't make sense to me. But in this one, the remaining tranches are tranches four, five, and six. You can read it's hiring of CEO to DCN, filing the IND. Their achievements, and they're not date specific, but what jumped out to me in the digest, and I think we quote it here, is that they have no employees and no operations as per the reporting from the fund to the LPs.

MS. TOMASCO: Your Honor, to the extent that Mr. Aebersold is reporting on whether or not the milestones have or will be achieved, it's beyond his expertise.

THE COURT: I think it is too. I'm not going to hear it for that.

MR. SALTZMAN: Thank you, Your Honor.

Q How about so that that leaves one last company, Galvanize. What does this chart tell us about Galvanize?

A Galvanize, it does not have milestones, and it's already been fully funded.

Q And how much is the amount purported to be left according to the declaration of Dr. Harrison?

A It's like $100,000.

Q And if you compare the digest to the fully invested SPA amount, what does that tell you?

A That it's been fully satisfied.

Q So stepping back, is your performance analysis of comparing that unfunded commitment amounts to the fully -- to the difference between the invested to date and fully invested amounts and looking at the SPAs, what conclusions did you draw?

A As it relates to realistic estimates of liabilities? It's de minimus.

Q I know you testified earlier that you look at a whole host of factors, and I don't -- I want to be cognizant of the Court's direction, so I don't want to take you into detail about any of those. But I just want to ask you at a high level. Did you consider those factors when you thought about financial distress?

A Yes.

Q And did you, again, at a high level, did you come to any conclusions?

A Oh, like I said before, there's ten factors, and it's

hard to see how any of them apply to this fund.

Q And I guess I just have one last question. Have you ever been involved in a situation where a company or client was advocating for more liabilities than it had?

A No.

MR. SALTZMAN: No further questions. I want to take a second to consult.

THE COURT: Okay.

MR. SALTZMAN: Your Honor, I'm just going to put before the Court and the witness the documents that formed this chart so you have them in case you want to go back and look at them.

THE COURT: Okay.

MR. SALTZMAN: May I approach, Your Honor?

THE COURT: You may.

MR. SALTZMAN: It's got all the SPAs and the digest.

THE COURT: Ms. Tomasco needs a set.

MR. SALTZMAN: Yes.

MS. TOMASCO: Your Honor, I think we should get a list of the exhibit numbers that are in the binders as opposed to the binders themselves.

MR. SALTZMAN: Your Honor, if it works for you, I'm happy to read off the JX numbers, and the witnesses relied on them in forming the chart and reaching his

opinions.

THE COURT: Okay. I guess let's put on the record.

MR. SALTZMAN: So we've got JX 23, which is the Nine Square SPA; JX 24, which is the Nereid SPA; JX 20, I believe, six, which is the Aulos SPA; JX 27, which is the Apertor SPA; JX 28, which is the Marlinspike SPA; JX 29, which is the Evercrisp SPA; JX 35, which is the Replicate SPA; JX 30, which is the Red Queen SPA; JX 31, which is the Aethon SPA; JX 32, which is Deep Apple, excuse me, SPA; JX 33, which is the Ascidian SPA; JX 34, which is the Marengo SPA. There's also a JX 147, which has another version of the Aulos; JX 148, which has Replicate together with amendments; JX 149, which is Elstar, which is also, I believe, the company now known as Marengo; JX 150, which is a Galvanize Series B. And these are all agreed upon JXs, so there shouldn't be an objection to that.

There's also JX 58, which is Rimm's testimony from last week. I mean, I can't read. We also have JX 144, which is the Q4 2025 digest, which is also a form part of this chart. If there's one that I left off, I will apprise the Court and opposing counsel of it.

THE COURT: Thank you.

MR. SALTZMAN: Thank you, Your Honor.

MS. TOMASCO: Your Honor, I'm going to describe

this as an ambush, and we would like ten minutes to confirm before we start our cross.

THE COURT: Um-hum.

MS. TOMASCO: Thank you.

THE COURT: Certainly. Ten minutes' recess.

(Off the record at 5:51 p.m.)

(On the record at 6:03 p.m.)

COURT OFFICER: Please rise.

THE COURT: Please be seated.

MR. SALTZMAN: Your Honor, before I pass the witness, I was alerted by co-counsel that I never formally moved those all those JXs I read into evidence, which I intended to do. So I do that now.

THE COURT: Okay. Ms. Tomasco, any objection?

MS. TOMASCO: No objection.

MR. SALTZMAN: And I think I said with the Court's permission, it's labeled -- I just wanted to address something that came out of the exchange with Ms. Tomasco. We can do that later or at Your Honor's convenience.

THE COURT: Yeah, No. I'm not doing this.

MR. SALTZMAN: Okay.

THE COURT: Thank you.

MR. SALTZMAN: Thank you, Your Honor. I pass the witness.

THE COURT: Thank you.

CROSS EXAMINATION

BY MS. TOMASCO:

Q Mr. Aebersold, what are we calling this chart?

A We can call it the demonstrative.

Q Okay. When did you prepare the demonstrative?

A Preciseness. I asked my team to first put it together -- today's Wednesday. Potentially over the weekend.

Q Is there any reason why you couldn't have provided this demonstrative to the Debtors before your deposition?

A Well, it wasn't final at the time of my deposition, but I don't know.

Q Now, Mr. Aebersold, among the agreements and documents that you reviewed, you've reviewed no written correspondence between the general partner and the portfolio companies that are listed on this demonstrative. Correct?

A Sorry. When you say reviewed

Q Have you reviewed any written correspondence between the general partner, ATP III GP LP -- L -- let's see. Correct? And the portfolio companies listed here, Nereid, Nine Square, Marengo, Apertor, Deep Apple, Evercrisp, Initial, Red Queen, Aulos, Ascidian, Replicate, Aethon, and Marlinspike?

A Not for the purpose of putting this table together, but I have seen correspondence between the GP and portfolio companies.

Q But it's not anything that you relied on in putting this together, correct?
A Not in terms of the numbers that are on this page.
Q Okay. Now, so if you haven't seen any correspondence between the GP and the portfolio companies, you don't know what kind of written agreements they have. Correct?
A Not exactly. I think that we asked for all the written agreements, and what was provided was the SPAs.
Q Okay. And to your mind, that answers the question. Is that correct?
A No. Because if you're -- if you're saying that the GP has entered obligations that didn't tell the LPs about, is that what you're saying that there could be --
Q Oh, I mean, I'm sure we're going to get into that. I'm saying what did you review? What did you review?
A Yeah. I reviewed what we talked about. The SPAs --
Q Okay.
A The digest provided to the LPs.
Q All right. Now, so you do not -- let's pull up for example, the Evercrisp stock purchase agreement, which is JX 29.
A Okay.
Q Could you turn to 1.3(c) of that agreement?
A Yes, I'm here.
Q All right. Are you familiar with this provision of the

stock purchase agreement?

A Yes.

Q Okay. Would you agree with me that this would be the provision by which the GP had agreed with the portfolio company to fund additional amounts by purchasing more shares of the portfolio company?

MR. SALTZMAN: Objection, this appears to be exactly what Ms. Tomasco does not want the witness to be doing.

BY MS. TOMASCO:

Q All right, is this the provision that you relied on in your conclusion in the column that says remaining milestones, none negotiated? Is that where we get that conclusion? Or to be negotiated column or milestones included or to be negotiated?

A Yeah. Without rereading the entire document, this seems to be -- yeah. There could be another one that contradicts that, but it appears so.

Q But you're not a lawyer. Correct?

A That's correct.

Q All right. And you can't say one way or the other if this provision is or is not enforceable by either party. Correct?

A I'm not going to make a legal conclusion on its enforceability.

Q All right. And so when you write in your columns milestones to be negotiated or remaining milestones none negotiated, that's just, what, something that you concluded based on your review of 1.3(c), or how did you get that information for that column?

A That we'd asked if there were milestones and to provide them, and none were provided.

Q Who did you ask?

A Counsel asked.

Q But did you ask?

A I did not ask.

Q Did you have a conversation with Mr. Mandarino or anybody at B. Riley?

A On stock purchase agreements, no.

Q All right. Now, you understand that one thing that is important in assessing distress is the ability to pay debts as they become due.

MR. SALTZMAN: Objection, Your Honor. This is the testimony I was not permitted to elicit on her objection.

THE COURT: No. I think so. Sustained.

BY MS. TOMASCO:

Q In assessing the distressed situation of these debtors, did you look at the cash on hand?

A Well, yeah. So, again, the numbers don't tie. I tried to look at that. There's a -- it comes up in a couple

places. One, I think the schedule of assets and liabilities upon the filing as the fund shown, it's like 19,000,000 and change. And I also am drawing -- I think it was in Mr. Harrison's declaration, if not mistaken, that there was 14,000,000 of cash.

Q Okay. Now, did you then review all of the employment contracts that the Debtor has?

A You're talking about the fund here?

Q The fund and the portfolio company.

A I don't think the fund has any employment contracts, but not the portfolio companies.

Q All right. So it's your testimony today that the fund has no employment contracts with any party.

A I don't know.

Q You don't know. Did you review any of the leases of real property with any party that is a counterparty to either the fund or the portfolio companies?

A No. Because the total liabilities listed for the fund was, like, $212,000.

Q Right. But would that have included rejection damages that might arise from the rejection of an executory contract?

A We can do -- we're getting into rejection damages. No.

Q All right. Now, did you look at any other contracts between the portfolio companies and, for example, a contract research organization?

A Again, I only looked at the fund. This analysis is about the fund, not the portfolio companies. Those are separate corporations.

Q All right. Do you know what the word liquidity means?

A Generally.

Q And what does it mean?

A It's the availability of funding, whether it be cash or readily accessible cash.

Q Did you analyze how long the cash on hand would last to sustain funding the Debtor's operations?

A When you say the Debtors, I'm looking at the fund that doesn't have any liabilities currently in terms of, like, that are meaningful. And it has $19,000,000 of cash on hand and not -- this is before filing too. It had $97,000,000 in a judgment to draw $97,000,000. So that 19 on hand at the time and 97 pursuant to a court order, you have liquidity.

Q And but that's because you've deemed the stock purchase agreements to be unenforceable. Is that correct?

MR. SALTZMAN: Objection. He's not offering an opinion whether they're enforceable or not.

THE COURT: Sustained.

MS. TOMASCO: I think he is offering an opinion when he says that we don't count those for our analysis because he doesn't think they're enforceable. It's inherent in his opinion. But let's move on.

THE WITNESS: Your Honor --

THE COURT: No. No.

BY MS. TOMASCO:

Q Mr. Aebersold, are you aware that there -- that the US Trustee appointed a Unsecured Creditors' Committee in this case?

A Yes, and I met counsel.

Q Okay. And you're aware that they're asserting claims in these cases, correct?

A Who is asserting claims?

Q That the members of the Unsecured Creditors' Committee are asserting claims in this case.

A To the fund?

Q Against the Debtors?

A To the -- to the portfolio companies, I'm sure that they are. I wasn't aware that they were doing so to the fund.

Q Did you do any analysis of the effect of cessation of funding of the portfolio companies would have on their value?

MR. SALTZMAN: Objection. I don't know how to ensure that's within the scope of my direct. The effect of cessation of funds to portfolio companies?

THE COURT: Yeah. It wasn't. Sustained.

BY MS. TOMASCO:

Q Hold on. Mr. Aebersold, you testified that one of the

things that the Court should look at was the existence of the Chancery Court judgment as being a source of liquidity. Do you recall that just now?

A I said that the existence of $97,000,000 which was funded, yes, that is the -- in the way that you're using liquidity in terms of the fund needing it, yes, it's liquidity.

Q And you're aware that, as we saw earlier with Mr. Faulkner's testimony in JX 62 that would more viewed the Chancery Court judgment as not capable of recognition in the Cayman Islands. Do you recall that testimony?

A I was only here for a portion of it. I don't recall that.

Q Okay. Did that indicate to you that Rigmora was willing to honor the Chancery Court judgment and grant access to that source of liquidity?

A I wasn't here for that part of the testimony, I don't think.

Q Okay. Are you aware that Rigmora took the position in May 2025 that it had no outstanding capital commitments to the partnership as found at page 35 of the Chancery Court judgment?

MR. SALTZMAN: Yeah. I'm not sure if this is within the scope of my direct, what position was taken in the Chancery Court.

MS. TOMASCO: He testified that the 97,000,000 was an additional source of liquidity. And I'm asking how he came to that conclusion --

THE COURT: You can explore that.

MS. TOMASCO: -- when the Court has said three times that it didn't intend to honor its capital calls.

A Yeah. I've read the Chancery Court pleadings and opinion. They got a ruling in their favor, which is to say you got to pay $97,000,000 for liquidated damages, and that's on the eve of bankruptcy filing.

I can only imagine if I'm advising a board in terms of the need to file for bankruptcy and we just got a favorable ruling bringing in $97,000,000 and all of these contingent liabilities, if a board member didn't want to file and said, Mr. Aebersold, like --

Q I'm going to ask --

A -- is that a real risk?

Q I'm going to object to this.

A I would laugh at it.

Q I'm going to object to this because this is not the question that was asked.

THE COURT: No. I'm going to -- you asked an open question. He answered it.

BY MS. TOMASCO:

Q Mr. Aebersold, are you also aware that that Rigmora

took the position in June of 2025 that it was not required to fund any further capital under the limited partnership agreement, which is found at page 37 of the Chancery Court judgment?

A Just having read the pleadings and the judgment in that, I don't think the assertion is, like, we're out of money. It is that this is a closed end fund that has been fully committed, and there was a dispute over the math.

I think the allegation was there was 4 to 500,000,000 more, and that obviously wasn't the case according to the Chancery Court opinion. It said that there had been double counting, and then there was 97,000,000 left. These are closed end funds.

Like, the fact that that was even a dispute is strange to me and a reason you may doubt your general partner, but it's a closed end fund saying no, we've committed and paid all of that capital. That to me is not saying, oh, we're going to abandon companies, we don't want to invest and make money. It's no, this particular fund is closed, and it's hit its ceiling. And the Chancery Court said, no. Your math and how you add it up, you double counted an amount and you owe 97 more in liquidated damages.

MS. TOMASCO: Again, move to strike as nonresponsive. It was a yes or no question.

THE COURT: I don't remember the question.

MS. TOMASCO: The question was, was he aware that Rigmora took the position in June 2025 that it was not required to fund any further capital calls under the LPA.

THE COURT: Okay. I'll strike that. That's yes or no.

A The answer is that they alleged that the closed end fund was capped.

MS. TOMASCO: All right. One second. Your Honor, I pass the witness.

THE COURT: Any redirect?

MR. SALTZMAN: No, Your Honor.

THE COURT: Mr. Aebersold, you may step down.

THE WITNESS: Thank you, Your Honor.

MR. SALTZMAN: Your Honor, that reaches the end of our non -- of our -- well, we actually should say we reached the portion of our case that is adverse witnesses.

THE COURT: Yes.

MR. SALTZMAN: I think the arrangement that we had was that they -- that the other side would direct, and we would cross, and so the next witness we call is Perry Mandarino.

THE COURT: Okay. How many witnesses do we have left? So I know we have Mr. Mandarino and we have Mr. -- Dr. Harrison.

MR. BERDON: Yes, Your Honor. We have Dr. Liris

(phonetic), Dr. Harrison, and Mr. Mandarino. We had informed the Rigmora LPs of our intention to call a rebuttal witness, Michael Block. We think in light of the testimony we've heard today, we are going to withdraw that and not put on a rebuttal case through Mr. Block.

THE COURT: Okay. So we have three witnesses left.

MR. BERDON: That's correct, Your Honor.

THE COURT: Okay. Do you have a sense of how long any of them are going to be on the stand? Because we're at 6:25.

MR. BERDON: Your Honor, we can pick up with those witnesses first thing tomorrow morning, and we will get through them, I would imagine, you know, just after lunch and certainly within your time constraints.

THE COURT: Okay. Then, let's adjourn for the evening. We'll be back at 10:00.

MR. BERDON: Thank you, Your Honor.

THE COURT: Thank you. You can leave whatever you want to leave.

(Proceedings concluded at 6:23 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling February 26, 2026
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Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams February 26, 2026
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Wendy K. Sawyer, CDLT
Certified Court Transcriptionist
For Reliable

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
	Case No. 25-12177 (LSS)
APPLE TREE LIFE SCIENCES, INC., *et al.*,	(Jointly Administered)
	Courtroom No. 2
	824 Market Street
Debtors.	Wilmington, Delaware 19801
	Thursday, February 26, 2026
	10:04 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

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Agenda Item 8: Debtors' Omnibus Motion for Entry of an Order Authorizing the Debtors to File Under Seal the (A) Debtors' Motion for Entry of Order (I) Authorizing Use of Funds to (A) Fund Portfolio Companies, (B) Pay Management Company Expenses and (C) Pay Chapter 11 Expenses, and (II) Granting Related Relief; and (B) Debtors' Opposition to Rigmora's Motion to Dismiss [Docket No. 259 - filed February 3, 2026]

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(Proceedings commence at 10:04 a.m.)

(Call to order of the Court)

THE CLERK: Please rise.

THE COURT: Please be seated.

Ms. Selden, good morning.

MS. SELDEN: Good morning. Good morning, Your Honor.

Shannon Selden, of Debevoise, for the Rigmora LPs.

Your Honor, the Rigmora LPs have two adverse witnesses left to call in their case in chief, Mr. Mandarino and Dr. Harrison. However, debtors say that Mr. Liras, who they had proposed to call, has a conflict or a travel issue this afternoon and will be a brief direct and so we'll take him out of order and debtors will put him on first this morning.

THE COURT: That's fine. Thank you.

MS. SELDEN: Thank you, Your Honor.

MS. GOOD: Good morning, Your Honor.

THE COURT: Good morning.

MS. GOOD: Katie Good from Potter Anderson on behalf of the debtors.

I'd just like to introduce Mr. Lizotte from Murphy & King who will be handling the direct of Dr. Spiros -- or Dr. Liras.

THE COURT: Very good. Good morning.

MR. LIZOTTE: Good morning, Your Honor.

Andrew Lizotte, Murphy & King, co-counsel to the debtors.

I'd like to call Spiros Liras to the stand, Your Honor.

THE ECRO: Raise your right hand.

SPIROS LIRAS, WITNESS FOR THE DEBTORS, AFFIRMED

THE ECRO: Please state your full name and spell your last name for the record.

THE WITNESS: Spiros Liras, L-I-R-A-S.

THE ECRO: Thank you. You may be seated.

DIRECT EXAMINATION

BY MR. LIZOTTE:

Q Dr. Liras, can you introduce the Court to your educational and professional background?

A Sure. I obtained a Ph.D. in organic synthetic chemistry. After completing my graduate degree in post-doc studies, I joined Pfizer, where I worked for 24 years.

At Pfizer, I elevated through the ladder, became Vice President of Research. My predominant responsibility was basically to deliver small molecule therapeutics for the areas of cardiovascular medicine, in neuroscience -- both aspects of neuroscience, neuropsychiatry, and neurogeneration.

In the course of the -- of my career I was able to

deliver -- or actually lead teams, to be fair, to deliver more than 40 or 50 INDs that ultimately resulted into clinical trials for said compounds.

Q Dr. Liras, what does IND stand for?

A INDs, investigational new drug application. It's a quite comprehensive document. It is a regulatory required document that basically encompasses all research that supports essentially two things, which is what is a safe human dose projection in the exposure of such drugs in our circulating bloodstream and also beyond safety, how we determine efficacy -- the efficacy, how we determine safety, which is a very complicated series of experiments that frequently required evaluation and multiple *in vivos* species, rodents, dogs, and, at times, nonhuman primates.

To support an IND, you need to go through a whole cycle of evaluation from *in vitro* to *in vivos*, characterize molecules not only in their ability to actually perform the biology like you're expecting, but also to perform the ability -- their ability to function predictably in the context of other medicines.

As you very well know, for example, in the space of cardiovascular medicine and/or diabetes, anyone who takes a diabetic medicine for insulin management, for example, is usually on cholesterol medicine, sometimes on blood thinners, so on and so forth. So the whole compilation of projected

(indiscernible) regiment has to be provided in the context of a new entity.

And just to give you a statistic, for a 90 supply, we usually have to make probably close to about 5,000 molecules, of which one or two may be able to actually jump through the hurdles of the -- of becoming ultimately the -- capable for submitting the 90 document, which is heavily reviewed, then regulated by the FDA.

Q How long does it generally take to get to an IND?

A Yeah. Usually, at a minimum, five years. No, actually, five years of preclinical research, two years of what we call IND-enabling, on average, seven years or more.

Q How --

A Depending on the therapeutic area, I should say. If the therapeutic area is antivirals, it's a little shorter. If it's neuroscience or oncology, a lot longer.

Q In your experience, what would you say the range of cost is to get to an IND?

A Yeah. In my experience, over 40 or 50 of those -- and, actually, that's public information and those are published by the NIH. Somewhere between 20 to $100 million, depending on the disease area of the molecule, the complexity, the poly-pharmacology, the target population, the size of the patients, and so on and so forth.

So there's not a single value to actually -- default

value by which you can value and IND. It's a range.

Q How long have you been at ATP, or Apple Tree Partners?

A I joined ATP in 2019, September, after I spent 15 months

At Biogen, building and leading the external innovation, unionized Vice President of Research there as well.

Q Why did you choose to joint ATP?

A Yeah. I was late in my career. I was very interested in actually moving into Venture because Venture has this appetite and actually mission, core mission, to engage with breakthrough science.

ATP specifically had an outstanding reputation in returning value to shareholders and patients by virtue of investing on good projects. And also, it has the conviction and courage to actually engage in early research. Quite a few of our successful companies have become -- they have started from sponsor research agreement.

To me -- if you allow me for a second, this comment, in -- as a discovery scientist, it's extraordinarily important because ATP is probably one of the most capable firms, in my experience -- and I live in Cambridge, Massachusetts, so I know a lot of venture groups that actually are able to (indiscernible) academic basic research to entrepreneurs to track discovery and develop an expertise

and develop great companies, basically.

Q And what's position at ATP and what role do you perform in that capacity?

A I am a venture partner of ATP. My main role is to basically identify exciting breakthrough science that could deliver value. Other aspects of my job include networking with founders from academia and elsewhere that will help us partner in the creation of biotech companies.

I should say that most of the finders of -- all of ATP are renown scientists across the world, National Academy of Medicine, National Academy of Engineering, breakthrough prize winners, Nobel prize winners, amongst many others. So we pride ourselves on being able to interact with the best and the smartest in the world.

And once we do this and coalesce around an idea that we believe is fundable, we craft necessary documents to present to ATP's investment forum and seek investment for a company.

Q So now do you also have a role at the portfolio company lineup?

A Right. Once a portfolio company is launched, there is basically a significant amount of work that essentially focuses around derisking the early research that we essentially embrace and employ from academia or elsewhere.

So we actually stage companies in a way that are seated for a couple years to probe and ask questions about the

fundamentals of the science.

Subsequently, I really assume an operational role that ranges from building a portfolio, monitoring progress, building a team, and everything else that goes on with actually building momentum around the science.

Q Are you a cofounder of any of these portfolio companies?

A I am cofounder in -- at Deep Apple Therapeutics, Evercrisp, Initial, Nine Square Therapeutics, and Evercrisp.

Q Are you on the board of directors for these companies?

A All of them.

Q Okay. How do these portfolio companies obtain their funding to do their research?

A Yes. It's -- the process is fairly simple, but detailed. We craft -- after we -- you know, we form a partnership with a network of academics and cofounders, we work together to basically spell out the value of the technology, build a strong scientific thesis, then build a thesis for how this science could deliver valuable therapeutics.

Therein, we project forecasts and milestones for measuring projects and also project the valuation of an exit by doing direct comparables with others in the field.

We also produce risk mitigation strategies because, as you very well know, early research is never digitally precise

in terms of our projection and we -- you know, we produce alternative possibilities for enhancing the investment or responding to data.

Q So who do these portfolio companies get their funding from?

A ATP.

Q Okay. And what's the initial vehicle by which the funding is requested?

A We write a pretty comprehensive investment memorandum.

Q Okay. Now -- and can you describe to the Court what is the investment memorandum?

A It has a scientific thesis for why we chose to invest in the area. It describes the strength of the company and the strength of the science, the quality of the founders. It spells out steps that we will take to building a research team, specific actions we will take to de-risk the investment early on.

We also spell milestones by which -- that I -- usually as a framework by which ATP measures progress or gives ATP the ability to measure progress. And also, we describe risk mitigation factors. These milestones, as I said before, are basically forecasts. A lot can go wrong in early research.

It is our job, as experienced executives in research and development, to also mitigate the investment by producing alternative plans.

Q Okay. So you talked about milestones. Have you ever considered milestones or goals and objectives, however you characterize it, to be a fixed static requirement?

A Absolutely not. This is early research and, in fact, there's several reasons by which you can switch milestones or basically move beyond or alter. Some of them are scientific -- usually scientific. Sometimes they're strategic.

Q Okay. And so is there a point in the development of the science where you reach inflection points and how would you characterize those inflection points?

A We reach inflection points on the basis of data quite frequently. We look for those. And I think the trigger essentially three outcomes.

One of them is to stop if the science is not panning out. The other is to pivot if the science creates a new opportunity. And the other is go as planned, basically.

Q So you talked about pivots. Are pivots common in this industry?

A Nearly all the time. There is quite successful companies in the world that have pivoted from concepts, and I can name several examples if the Court requires that.

Q Okay. Do you provide periodic updates to ATP in connection with your early stage portfolio companies?

A Absolutely, with various means. We provide slides from

presentations, slides from both -- board presentations. We provide quarterly reports. We provide ad hoc requests for the status of the company by email and other means of communication and, also, we provide justification and projections for delivering on the value of the company every time we make a capital call. It's a requirement.

Q And as part of those communications, are there quarterly documents that are produced and, if so, what are they?

A The quarterly documents are basically a concise description of the progress of the company, of the deliverables, of the rationale for pivoting in a company, the health of the company overall in terms of the performance of human resource, the availability of the budget, the availability and the opportunity and activities that we take on to engage in partnership with external partners, amongst other things.

Q Okay. Let's turn to one of the portfolio companies, Apertor. Can you briefly describe what the science is that Apertor is pursuing?

A Yes. Apertor is pursuing what we call a molecular glue approach. Just to make it clear of what molecular glue means, it means that you design molecules that have the ability to bring two proteins together to perform essentially multiple functions, but the most important ones will actually

segregate a pathogenic protein from the place in the cell where it does damage and another function is to actually invite a protein to partner with a partner tha6 actually can enhance the biology and the therapeutic utility.

Q Okay. When did Apertor begin this science? Do you recall?

A Apertor was founded late 2020. We began operating the laboratory in late '20, early 2021 and within a year-and-a-half, we had determined that there was an opportunity for Apertor, given its breakthrough science that is based on synthetic biology, and I can explain what that is, to produce what we call molecular glues, according to the definition, a definition I gave earlier --

Q Now, if I could just interrupt you for a second. Are you referring to what you referred to earlier as a so-called pivot?

A Yes.

Q Okay. I apologize.

A And the pivot was -- thank you for reminding me. The pivot actually was based on scientific breakthroughs. The original -- it's a very important point, actually, and I think it takes some time to illustrate about the fiduciary responsibility and diligence ATP takes in building companies and profile them.

Apertor's original thesis was about creating

modifications of natural products that give different biology. We saw the results of this early research and we realized therein that there were molecules in those modifications that could be used as vehicles for doing what I described earlier as molecular glues.

Molecular glues is a highly valuable investment. The field, collectively, on a cross pharm and biotech, has invested in the last six to seven years about $10 billion in molecular glues. It's a very hot concept of chemical biology and drug discovery.

So in that case, with Apertor, we realized that there was an opportunity to create a glue that would modulate the function of a key protein, 40BP1, which, in its function, is involved in essentially suppressing or not dealing with the rapid emergence of cancer resistance, especially KRAS, which is one of the hottest targets in cancer or, sadly, we've discovered that even after therapy, resistance emerges within four months.

So Apertor basically devised this plan and within that change, we were able to deliver multiple compounds that (indiscernible) taken to IND.

Q Okay. You're aware that in May of 2025, a dispute arose between the limited partner and the partnership with respecting funding that led to litigation?

A I am.

Q Okay. So just prior to that, was your understanding that there was general agreement between ATP and Apertor as to the milestones or goals and objectives?

A Yes, because we --

MS. BORN: Objection. Are you calling for a legal conclusion as to whether there waw actually a contractor agreement or -- I just want to make sure --

MR. LIZOTTE: I'm asking for his understanding of whether ATP and Apertor had a general understanding or agreement, in his view, as to what science was being pursued and what funding was needed.

MS. BORN: And by ATP, you mean the Fund?

MR. LIZOTTE: I mean the Fund, the Limited Partnership. I mean -- we'll call it the fund.

MS. BORN: Okay.

THE WITNESS: Yes, because as a typical process, as I've said earlier, we supply quarterly reports. We supply justification for making pivots in those -- and we sought capital costs and those were approved.

MR. LIZOTTE: Okay.

BY MR. LIZOTTE:

Q And so as a result of this dispute that arose in May 2025, what was communicated to Apertor in terms of ongoing funding?

A That there won't be no more funding.

Q Were you aware of any other reason for the interruption in funding, other than this dispute that had arisen in May of 2025?

A Not at all. Apertor still had about $20 million in its Series A.

Q Okay. What are the principal components of the budget what these portfolio companies spend their money on? What do they need?

A Predominantly, it's payroll for human resource, laboratory, execution of key laboratory experiments, the agents that are important for that. There's other components like, for example, laboratory space and real estate.

Obviously, in California, very stringent environmental health and safety monitoring and, importantly, protecting the IP estate of a program -- of a project, a company.

Q Is there outside contract research as well?

A Absolutely, there is.

MS. BORN: Objection. I just -- in terms of relevance, we're here on the motion to dismiss the Fund and the GP and to lift to the stay as to the Fund of ATP and I think getting into the details of the funding that portfolio companies might need or liabilities that the portfolio companies might have is not relevant to that. Perhaps (indiscernible) motion last week.

THE COURT: Overruled.

MR. LIZOTTE: Thank you, Your Honor.

BY MR. LIZOTTE:

Q I'm sorry. I believe the question was is there also an outside contract funding component to this?

A Yes. Most of the companies that ATP is -- and I'm happy to produce a number of specifics, are very tightly managed financially. Our fiduciary responsibility I think is exceptional. We operate with companies that basically never break 20 or 23 employees across the board and, you know, while doing that, we deliver value that outmatches the performance of competitors.

And, in my opinion, if I may, this goes directly to previously made statements about the company has been valueless and hopeless.

Q So with respect to the employees at Apertor, what changed? What was the number employees and where did it go as a result?

A We had about 22 employees at Apertor at the end of the -- on June 17th, I flew out to San Francisco for a day where I conducted the reduction in force of 75 percent of the people. Apertor specifically went down to four employees.

Q And what happened to the internal lab space and work?

A Well, we very quickly reduced the amount work that weas doing -- that we were doing internally. We lost all the staff. We maintained some staff that could actually manage

extent of work. That went on for a while.

We had, thankfully, some vendors that actually had a lot of goodwill. Ultimately, that became impossible sometime in August or before that. Basically, active research stopped.

Q Okay. So how would you evaluate the impact on Apertor from this interruption of funding and the triage that you had to perform?

A Apertor was well on its way to deliver in IND within budget and on time. That was interrupted.

Q Okay. Let's move to Deep Apple for a moment.

Can you describe what Deep Apple performs and what your role is there?

A Yes. Deep Apple is one of the other companies that has become valueless and hopeless.

Let me just state briefly what Deep Apple is about. Deep Apple combines structure, structure of biology. That means what a protein looks like with computation of sciences to understand how a protein moves and then with what we call virtual screening, which is high compute power, to identify starting points for modulating the function of protein for therapeutic purposes.

Q Okay. So we previously talked about pivots. Did Deep Apple undergo a pivot as well?

A Very early in its live cycle, Deep Apple, sometime

in 2023, if not before, underwent a strategic pivot by choice and the reasons for that -- one of them is that, as you may recall, there was an explosion in interest, efficacy of the GLP-1 molecules for obesity.

A lot of us at Deep Apple had significant experience in obesity from working at Lillian Pfizer, predominantly, two major players in this phase, and saw an opportunity to actually deliver a differentiated concept for treating obesity.

Obesity, if I may say, is a complex disease that is characterized by essentially an early phase of weight loss and a later phase of weight loss means GLP-1, which is one of the most famous medicines for treatment of obesity, has a life cycle, because of the adverse events and concerns about muscle loss and muscle, basically, of about 30 -- 24 to 36 months.

So Deep Apple anticipated that because we had worked on GLP-1 and developed a portfolio that were going to supplement those treatments and extend what we call the weight phase loss for obesity.

Q And was that a successful pivot?

A It was an absolute successful pivot. We actually get -- got nearly 80 percent of our portfolio, as stated in the investment memo that was substituted.

That ultimately resulted in us getting a productive,

you know, relationship and collaboration with Novo Nordisk. That brought $73 million in your -- in up-front payments to the company and $812 million in overall.

Q So this pivot occurred in 2023. That was long before the May 2025 dispute that arose?

A By a longshot. In fact, the pivot was communicated regularly through our quarterly reports with exception of detail about the rationale and why.

The other thing that I should say is that Deep Apple's portfolio, in its totality, has been envied by the company. Deep Apple, while we actually selected Novo as our preferred partner because they're a leader in the field, we also had four contemporary -- contemporaneously term sheets for similar targets.

In fact, even today, the totality of the portfolio on Deep Apple is subject to strategic partnerships.

Q And when did the Novo Nordisk transaction occur?

A It was finalized on June 11, 2025.

Q So that was after the May dispute as to funding arose? Did that create any issues or concerns between the time of the funding dispute and the time of the Novo Nordisk transaction?

A Yes, quite a few. Some of them were technical. One of the technical reasons is because of tax agreements between Denmark, the jurisdiction where Novo is operating from, and

the United States.

There has to be an IRS sort of like form that allows us -- helps us not pay that tax in Denmark. That documents requires 45 minutes.

Subsequently, based on the contract, payment was going to be submitted to us within 30 days after closure of that particular condition. Deep Apple had money until August. So we had to very carefully plan that we wouldn't run out of money while being successful at securing the partnership. That required that we shut down programs, slowed down or actually terminated extent of work for some key programs which, you know, at some level, hurt our position competitively.

Q In the interest of time, I'll just try to shorthand some of this.

With respect to Initial Therapeutics, did it undergo a similar experience as Apertor in May of 2025?

A Yes. The funding was disrupted. Initial Therapeutics had delivered a molecule that was being considered as a clinical candidate. This molecule had suggested -- it was basically for HEEN cancer, hematological cancers.

We had demonstrated through In Vivo work that we had been able to extend life, in my eyes, by two-fold. However, we were not able to actually advance these two regulatory toxicology studies because the termination of the funding.

And the other program that we had, which was a PAN androgen receptor inhibitor, also was stopped, you know, in the tracks, basically.

I should say something about loss of opportunity here. The PAN AR receptor program is unique to the industry. The androgen receptor in cancer undergoes -- it's quite clever and it undergoes a number of mutations. Initial's technology, because it stops the formation of that pathogenic protein before it's actually mutated, captures all the known mutations, including the more important and killer one called AR-B7.

So we are quite excited about this program, and just by giving you a comparable, a company named Halda recently -- we had raised $226 million, unlike Initial's 50, was sold to J & J for over $3 billion. That transaction occurred months ago.

Q Okay. So just taking a step back now to the portfolio as a whole, in the context of your position, do you have an opportunity to consider information that's publicly available as to competitors, the state of their science, the amount of the funding that they're obtaining?

A We do that all the time as a matter of fact. You know, competitive intelligence is part of our work because we want to see how we differentiate, basically.

Q And based upon that analysis, how do you -- what's your understanding of how this portfolio that we've talked about

today compares to what's available in the marketplace?

A Yes. I will give you three examples. Two of them are Nereid, then Nine Square.

So, Nereid, for example, is now at IND enabling studies with the first molecule and it has advanced two of the most enviable programs in the industry. That is make one of the most oncogenic factors that threatens humanity, mostly women with triple negative breast cancer, amongst other cancers.

The other is TPD-43. It's a neuroscience target that has shown -- the only one that has shown that you can modulate what we call neurofilament light chain. It's basically a biomarker that shows degeneration of our neurons.

These are all diseases of aging, basically, right? And Nereid's technology is so fundamentally important because it goes beyond genetics. Genetics, as you very well know, tell us what is the target that causes disease. What it doesn't tell us is how does this target function in cells and this is what Nereid explores and that's why the science is quite compelling.

Our chief -- Nereid has raised $50 million and it has a portfolio of programs that are (indiscernible) enabling studies, are candidates seeking (indiscernible) optimization. Our chief competitor, DuPont, has raised $349 million for essentially the same position.

I can also give you an example about Deep Apple. The

closest comparison to Deep Apple is a company called Septerna. Septerna is now public. However, prior to their IPO, Septerna raised over $200 million and, again, supports the same type of pipeline in breadth and significance as Deep Apple does with the mere investment of $42 million.

Nine Square -- I should also say that because it's an important example for Nereid. In the distressed time that we've experienced since June, Nine Square, which is exceptionally visible because it has been funded twice by Michael J. Fox Foundation, that most important science supporting in patient advocate foundation for Parkinson's Disease, has, during the distressed times, sometime in November, received a term sheet for it from Ipson for $30 million, which actually will fund the company, once again.

However, we did not move to contracting because key studies that were required by Ipson, we weren't able to commit to in the summertime when we ran out of funds, basically.

Again, very competitive and very enviable and highly, highly capital efficiency managed portfolio in our hands.

Q Okay. I just have a few more questions.

So would you characterize this portfolio as hopeless investments?

A Absolutely not.

Q With appropriate funding, do you think this portfolio

of companies can both generate a meaningful financial return and contribute meaningfully to the health marketplace?

A We do and that's why we have actually produced and supplied to the Court a six-month funding that would get us -- will allow us to get to these major milestones.

One of the important distinctions that I would like to make, because I heard that yesterday, is that sort of like, you know, funding -- intermittent funding for eight weeks doesn't help these companies. Why is that?

These companies are operating and they're -- an expectation by vendors that we have to prepay for studies. So when we prepay for studies to make the exploratory board for a safety science in two animals, in two animal species, we have to commence, prepay, sign contracts, and actually date those contracts for initiation of work and completion of work so we can meet key objectives that will then support the -- ATP's ability to attract additional funding and aid the restructuring plan.

MR. LIZOTTE: I'll pass the witness, Your Honor. Thank you.

THE COURT: Thank you. Cross.

MS. BORN: Good morning, Your Honor.

It's Natasha Born, on behalf of the LPs.

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CROSS-EXAMINATION

BY MS. BORN:

Q Good morning, Mr. Liras.

A Good morning.

UNIDENTIFIED SPEAKER: (Indiscernible).

THE COURT: You may. Thank you.

THE WITNESS: Thank you.

BY MS. BORN:

Q Mr. Liras, you understand that you're here today to provide testimony in relation to the LPs' motions to dismiss the petitions for the Fund and the GP and for relief from the automatic stay in their cases?

A I have an understanding of that.

Q And you mentioned you're a Venture partner at the ATP Fund?

A That is correct.

Q And I think you mentioned earlier today that you sit on the boards of Apertor, Deep Apple, Evercrisp, Initial, Nereid, Nine Square, and Red Queen, is that right?

A That is correct.

Q And those are all portfolio companies of the Fund?

A Yes.

Q And you said that part of your role at ATP is to identify potentially exciting science that can generate value?

A That is absolutely correct.
Q And another part of your role is to take on an operational leadership position at the portfolio company level once the portfolio company is established?
A Yes.
Q And I think you told me on Monday when we spoke that you would describe your work, as a venture partner of the Fund, as being focused exclusively on the portfolio companies rather than Fund level decisions?
A That is correct.
Q And I think you mentioned you're a chemist by training?
A I am an organic chemist by training.
Q And you don't have an MBA on top of that?
A I do not.
Q As a venture partner at the Fund, you are not responsible for managing the Fund's finances, right?
A I am not.
Q And you don't review the Fund's financial statements?
A I do not.
Q You are not responsible for tracking the Fund's assets and liabilities at the Fund level, right?
A I do not.
Q And you're not responsible for tracking the Fund's obligations?
A I do not.

Q And you're not responsible for assessing when the Fund's obligations might come due?
A I am not.
Q You are aware that a Chapter 11 Petition for the Fund was filed on December 9th of last year, correct?
A I am aware.
Q But you do not recall being aware in advance that a Chapter 11 Petition was going to be filed for the Fund, correct?
A I did not recall being made aware.
Q And you were not involved in the decision to file the Chapter 11 Petition for the Fund?
A Not for the Fund.
Q And you have not been involved in discussions about reorganizing the Fund itself in connection with the Chapter 11 proceedings?
A I have been involved in some discussions that speak to the opportunity to maintain company as are or consolidate companies.
Q So you've been involved in discussions about reorganizing the portfolio companies, is that right?
A Based on scientific rationale.
Q But you haven't been involved in discussions about reorganizing the Fund itself?
A No.

Q Switching gears to the GP, you were not involved in the decision to file a Chapter 11 Petition for the GP of the Fund, right?

A No.

Q And you are aware that that Rigmora LPs have petitioned to wind up the Fund in the Cayman Islands?

A I have read that.

Q And you understand that the LPs have asked for the Cayman Court to appoint official liquidators, right?

A I understand that.

Q And I think you told me on Monday that you did not know what would happen after a winding up order by the Caymen Court, except that the official liquidators would be appointed, is that right?

A Yeah, I have no other understanding of that.

Q And at least prior to Mr. Phillips' testimony yesterday, you had no familiarity with the legal system in the Cayman Islands, is that right?

A No.

Q And you also did not have any familiarity with Cayman law governing the winding up of an exemptive limited partnership, is that right?

A No.

Q So I think you referenced earlier today in passing the Series A stock purchase agreements between the portfolio

companies and the Funds, is that right?

A That's correct.

Q Can we refer to those as SPAs?

A Yes.

Q And you read and signed SPAs as representative for the portfolio companies that you're involved with, is that right?

A That's right.

Q I'd like to take a very quick look together at the Evercrisp SPA, and that should be at Tab 2 of your binder which is JX-29, and I believe we've already admitted this.

Do you recognize this to be the Evercrisp SPA?

A Yes.

Q And I believe we're going to zoom in on your signature as President of Evercrisp. Do you see that here?

A That is my signature by Docusign, yes.

Q Let's turn to page 2 of the internal numbering and take a look at Paragraph 1.3(c).

A Yes.

Q I believe we may have looked at this in connection with Tomasco's -- with Ms. Tomasco's cross of Mr. Aebersold yesterday. Do you recall that?

A Yes.

Q And I believe you told me on Monday that the SPAs for Apertor, Initial, and Deep Apple all contain equivalent provisions to this, is that right?

A Yes.
Q To the best of your recollection was -- there was never an amendment to Evercrisp's SPA to reflect terms and conditions of agreed upon milestones, right?
A To the best of my recollection, there was no amendment.
Q To the best of your recollection, there was never an amendment to Apertor's SPA to reflect agreed upon milestones, correct?
A To the best of my recollection, correct.
Q And you do not recall any amendment to the SPA for Initial to reflect an agreement on terms and conditions of milestones, is that right?
A I do not.
Q And as far as you can remember, the SPA of Deep Apple was never amended to reflect an agreement on terms and conditions of milestones?
A I do not.
Q And you don't know whether the SPA for Red Queen was ever amended to reflect an agreement on terms and conditions of milestones?
A I do not.
Q And I think we discussed a little bit -- or you were discussing with counsel the short-term funding of eight weeks for the portfolio companies wouldn't make sense, correct?
A Yes.

Q And is that because the budget provides for portfolio companies to restart research?
A That it is not sufficient for eight weeks you're saying?
Q Well, is it your view that it doesn't make sense to just do eight weeks of funding because the budget provides for research to be restarted and it doesn't make sense to spend that money if you don't know whether more is coming in?
A I think that's correct. I think we are committing to a -- we supplied a very diligent six-month budget that makes these companies -- sort of like returns value to this companies.

MS. BORN: No further questions.

MR. LIZOTTE: Briefly, Your Honor.

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. LIZOTTE:
Q Dr. Liras, on the issue of amendments, you had previously talked before about the various ways that you communicated with ATP with quarterly updates, with presentations, and the like. Did you also communicate by email?
A Yes.
Q Okay. And what did you typically put in the substance of those emails?

MS. BORN: Objection. I think that's hearsay if he's just speaking to what the substance of his earlier emails were.

MR. LIZOTTE: Well, Your Honor, this goes directly to the issue of whether there's been an amendment in some capacity.

The stock purchase agreement specifically provides that all you need is a writing and I think the witness will testify, if given an opportunity, that the substance of what would otherwise be put in a formal amendment was addressed electronically.

MS. BORN: Well, we've asked several times for all amendments to the SPAs. We have not received anything like that and to now have a witness testify instead of having the writing up in front of us when the question is was a contract amended, I don't think that's proper.

MR. LIZOTTE: I believe all these documents were previously provided.

THE COURT: Well, I don't think it's hearsay so I'll overrule the objection.

BY MR. LIZOTTE:

Q So the question was what did you use electronic mail communication for in the context of your funding and operating relationship between the portfolio company and the Fund.

A Several means. Presentations from BoardEx. Presentations outside of BoardEx, quarterly reports that are highly detailed and, most importantly, capital call, justification, request for money, description of milestones that were submitted to General Partner Dr. Harrison and eventually to Rigmora for approval. We were never denied in -- with any of these things.

Q And was that your typical course of dealings when --

A Typical course of dealings across all companies.

MR. LIZOTTE: Okay. No further questions, Your Honor.

THE COURT: Dr. Liras, can I just clarify who do you -- who was your employer?

THE WITNESS: ATP.

THE COURT: ATP?

THE WITNESS: AT Aulos, ATP.

THE COURT: Life Sciences Ventures, L.P. or ATP III GP, Ltd?

THE WITNESS: My understanding is that it is ATPLS. But I can't claim that I've paid attention to that.

THE COURT: Okay. Thank you. You may step down.

THE WITNESS: Thank you.

(Witness excused)

MR. LIZOTTE: Your Honor, is Dr. Liras excused for the day?

THE COURT: Yes.

THE WITNESS: Thank you.

THE COURT: Thank you.

MR. LIZOTTE: Thank you.

(Pause in proceedings)

MS. TOMASCO: Your Honor, Patty Tomasco, Quinn Emanuel, proposed counsel for the debtors and debtors in possession.

The debtors would call to the stand Mr. Perry Mandarino.

THE COURT: Okay. This is where we start adverse witness but the debtor is going to direct first?

MR. SALTZMAN: Yes, Your Honor. I think -- we haven't rested so I think we're calling Perry Mandarino. I don't think it matters all that much but --

THE COURT: Mr. Mandarino.

MS. TOMASCO: I think we have some books to hand out.

PERRY MANDARINO, WITNESS FOR THE MOVANTS, AFFIRMED

THE ECRO: Please state your full name and spell your last name for the record.

THE WITNESS: Perry Mandarino, M-A-N-D-A-R-I-N-O.

THE ECRO: Thank you. You may be seated.

THE WITNESS: Thank you.

MS. TOMASCO: Just a second while we get -- may we

approach Your Honor to hand out the books?

THE COURT: Yes. Thank you.

(Pause in proceedings)

DIRECT EXAMINATION

BY MS. TOMASCO:

Q Good morning, Mr. Mandarino.

A Good morning.

Q So looking at your book, can we turn to Tab 1, and what does this -- what is this document?

A It is an analysis that I put together which describes, as of December 9th, the petition date, the cash runway that the companies had at the time.

Q Now, is this cash runway based on the same budget that's attached to the first and second funding motions?

A Yes.

Q And so these are -- the data underlying this document is well-known to the Court and to Rigmora?

A Yes.

Q And what does this demonstrative show? What is the intent?

A Sure. So the intent is to paint a picture of what the company's cash position and liquidity looked like at the time of filing and it was done in -- really in two categories.

One was ATLS, which is the management company and the debtor -- what eventually became the debtor PortCos and then

the three non-debtors.

Q Now, did you make any adjustments to the 26-week budget that was attached to the first and second funding motion in order to come up with this runway calculation?

A Yes. This analysis does not include professional -- Chapter 11 professional fees or litigation fees.

Q If those restructuring and litigation fees were included, what would be the effect on this runway calculation?

A It would -- there would have been, you know, tens of millions of dollars of more expenses.

Q And would that have meant that the debtors ran out of cash sooner rather than later?

A Yes. Given timing, yes.

Q Now, on December 9, 2025, how much cash did the Fund and ATLS have on hand?

A About $17.3 million.

Q Now, what about the other debtor portfolio companies?

A It was about $100,000.

Q In total?

A In total, yes.

Q So amongst Apertor, Evercrisp, Initial, Marlinspike, Nereid, Nine Square, and Red Queen, they had about $100,000 on hand, in total?

A Yes, only a couple of the companies did but it was

about 100, maybe a little over 100,000.

Q So all of the debtor entities, how much cash did they have on hand if you include both the fund and the portfolio debtors?

A $17.4 million.

Q Now, did you consider the availability of the $97 million proceeds of the Chancery Court judgment?

A We did not.

Q And why not?

A Well, there was severe opposition by Rigmora to that, to utilizing those funds and I guess history has proven that to be a correct assumption.

Q Have anything -- you've been in court every day that we've been in court before this judge, correct?

A Yes.

Q And have you heard anything in court that changes that conclusion about the availability of the proceeds of the Chancery Court judgment?

A Not for the full use of the $97 million, no.

Q Now, where do we see -- turning to the demonstrative, where do we see the $17.3 million figure?

A Well, it's 17.4. It's the --

Q 17.4.

A -- cash balance as of December 9th. It's the gray highlighted first row in the chart.

Q Okay. Just anticipating some questions that people might have, of the 17.4 million, was there any amount that ATLS planned to allocate to Aethon and Aulos, the non-debtor portfolio companies?

A Yes.

Q And how much?

A $5.8 million.

MR. SALTZMAN: Objection, Your Honor. We seem to be getting testimony about debtors' financing other than the Fund level debtors, which is what we're on motion for today. Whether the portfolio companies belong in bankruptcy or not is not the subject of today's hearing and so some of this seems beside the point.

THE COURT: It's true, but I have an argument that I should look at it holistically, and I'll deal with that. I assume this goes to that.

MS. TOMASCO: Correct, Your Honor, as the testimony will bear this out.

BY MS. TOMASCO:

Q Now -- and why did you make the allocation of $5.8 million --

A Sure.

Q -- to Aethon and Aulos?

A Sure. It was the Fund's responsibility, so this goes directly to the Fund, you know, what they were doing with the

money they had, and that $5.8 million was very important for Aethon and Aulos to continue their external R & D.

Q And by external R & D, what do you mean?

A Those payments were basically for the contract research organizations in order to continue their research.

Q And what kind of research are we talking about?

A In medical advancement to continue to make their products commercially viable.

Q Now, as to the rest of the 17.4 million, what is that used to pay for?

A For the expenses of the company; payroll, benefits, operating expenses, and, you know, external R & D at the portfolio companies.

Q But still excluding Chapter 11 and litigation expenses?

A Correct.

Q Now, what did you do after you calculated the total funds on hand?

A Well, so for the -- what we did was we needed to look on how -- give or take, how much -- how long that money would last that they had and it seemed that -- well, based on the projections and their normal operating expenses, that it was $4.5 million -- I'm sorry. It was $16.2 million of expenses which would have meant by, you know, around February 6th, they would have been short about $4.5 million.

So, in other words, they could not have paid their

expenses during that time frame.

Q So why did you -- what is the significance of February 6, 2026?

A Again, it was really the timing. It was, you know, somewhat -- it was when the company would have run out of money. It would have been during that week.

Q So just to recap, as of December 9, assuming normal operations, using the 26-week budget that your team has put together, the debtor -- the debtors would have run out of money by February 6, 2026 but for the Chapter 11 case, is that correct?

A Yes.

Q And now even as of February 6, 2026, what would have been the cash shortfall?

A I'm sorry. As of February 6?

Q February 6, 2026 what was the cash shortfall?

A Four-and-a-half million.

Q All right. Could the company have continued to operate in the ordinary course after February 6, 2026?

A They could not have continued to operate in the ordinary course before February 6, 2026 because they couldn't have gone negative.

Q Now, did you work on any other calculations in relation to the cash requirements of ATLS?

A Sure, and that's on the second part of the analysis.

We ran the same analysis through July 31st.

Q And what were the total expenses as of July 31, 2026, assuming normal ordinary costs -- course operations?

A Sure. So between February 6th and July 31st, those expenses would have been about $23 million -- 22.9 million.

Q And would that have also produced a cash shortfall?

A Yes. I mean the company started with zero cash so there was no money to pay those expenses.

Q And how much was the cash shortfall through July 31, 2026?

A And, again, theoretically, it would have been about $27.4 million.

Q Now, these calculations, did they cover Aethon, Aulos, or Replicate?

A They do not.

Q And why not?

A Well, they're non-debtors. Aethon, Aulos, and Replicate are non-debtors. Again, they had their own money. They had some of their own segregated cash and so we looked at those companies separately.

Q And for the non-debtors to continue to use their own cash, what would have been the net effect on their cash situation?

A So, you know, they could have -- through February 6th, they had enough cash. But then at least, you know, two of

the companies -- Replicate would have been short $13.2 million. Aulos would have had -- basically break even a couple hundred thousand dollars and Aethon would have been left with $5 million.

MR. SALTZMAN: Objection. Your Honor, I'm going to object to this line. I understand you overruled me under the theory that the ATLS debtors and the PortCo debtors are consolidated but we are now talking about non-debtors so it feels like it's even farther afield.

THE COURT: Yeah, I don't know how I'm going to come out on the issue, the legal issue of what gets to be considered, so I'll hear it. It may or may not be relevant.

BY MS. TOMASCO:

Q In light of the cash available and expected operating expenses, based on your experience as a restructuring professional, was the fund's decision to file Chapter 11 a necessary decision?

A Yes.

Q And why is that?

A Because they didn't have the money to operate. I mean, they would have had to, you know, do drastic and Draconian steps and not continue their business. The portfolio companies, the debtor portfolio companies, you know, including ATLS, would have run out of money.

Q Now, Mr. Mandarino, in making these analyses, you've

taken into account the various cash needs of the portfolio companies, correct?

A Yes.

Q And you understand from Rigmora's presentation last week that it contends that the portfolio companies don't need any cash, and I would want to turn your attention to Tab 4 in your notebook.

Do you recognize this document?

A I do.

Q And if you could turn to page 18 of that book.

A Yes.

Q All right. Do you see that?

A I do.

Q And when was the first time you saw that?

A In court during the post, during the closing arguments for the funding motion last week.

Q All right. And here, it says, the slide title is "The GP falsely claims that funding is urgently needed."

Do you see that statement?

A I do.

Q And do you agree with it?

A I do not.

Q And why not?

A Because it's wrong.

Q Let's look at the first entry in that chart where it

says, where it talks about B. Riley.

A Right.

Q I want you to turn to Tab 3 in your book.

Do you see that?

A Yes.

Q Okay. Now, I've taken the -- well, somebody's taken, not me personally -- taken the quote from Rigmora's chart and then we've put next to it, the full deposition quote.

Do you see that?

A Yes.

Q All right. Now, just using your own words, can you describe to the Court why the quote, with respect to B. Riley was inaccurate?

A Well, number one, it was incomplete. It was, you know, what they said was that PortCo companies had, you know, around $12.2 million. That was in my deposition. They quoted my deposition. And if I recall right, it was page 140 at the very beginning.

If they would have continued to read down further in the same exact answer, I testified that the other portfolio companies had thirteen to $14 million. And it was highly selective. It was incomplete and it was inaccurate. It was in the same answer that I -- that they -- that this was quoted, that I put the -- that I said the other companies had money. And so, it was, you know, I think what I would call

sin of omission.

MR. SALTZMAN: Your Honor, I'm confused by this line of questioning. I don't see it, at least, I can't see any disconnect between what was quoted and the actual quote.

THE COURT: I think the question --

MS. TOMASCO: I think that can be covered on --

THE COURT: I think the question is what are the facts, not the way somebody has put it in a demonstrative, but okay.

BY MS. TOMASCO:

Q Now, let's just take each portfolio company, in turn. Do you agree that Replicate does not need immediate funding?

A I do not.

Q And why not?

A Because it would have negative cash, as was shown on the demonstrative, down the road. And it needed, I mean, the Replicate, in our budget, I think they had $7.7 million and that's to fund external R&D.

MR. SALTZMAN: Your Honor, at the risk of wearing out my welcome, and just to preserve the record, we're now going debtor company by debtor company, asking about its needs on a funding motion -- on a motion as to dismiss a lift stay as to the fund. And I understand your ruling; I'm just creating the record.

THE COURT: You have a continuing objection --

MR. SALTZMAN: Thank you, Your Honor.

THE COURT: -- so you don't have to pop up every time.

BY MS. TOMASCO:

Q Mr. Mandarino, what about the cash needs of Aethon, what is the true situation with Aethon and its cash needs?

A I mean, again, Aethon has a little bit more runway, but nonetheless, it needs to, you know, it needs to be funded. The funding needs to continue.

Q Would the same be true with the rest of the portfolio debtors, as shown in the full deposition responses that we put into the demonstrative attachment?

A It would be.

Q Now, Mr. Mandarino, let's turn to Tab 2 -- oh, I'm sorry, I skipped over something. I'm trying to truncate and went too far.

Mr. Mandarino, in your experience as a CPA and financial professional in the restructuring world, are there -- without invading the province of the Court, are there other common tools that are used by investor shareholders to assess an entity's financial viability, is there a term that's used commonly in audited financials?

A Yes.

Q And what is that term?

A That is a going-concern.

Q All right. Now, outside of bankruptcy, what are the GAAP principles for giving a going-concern admonition in audited financials?

A So, a going-concern means that the company, any company, has, you know, at least for -- of the 12 months from the date of the audit report, has the ability to maintain its business in the normal course of operations, pay debts as they come due, and not be in a position to liquidate.

Q Using the GAAP definition of going-concern, on December 9th of 2025, did ATP LSV have sufficient liquidity to meet its obligations for the next 12 months?

A No.

Q Is that true, even if you take into account the ninety-seven-million-dollar proceeds of the Chancery Court judgment?

A Yes.

Q And why is that?

A Because $97 million wouldn't have lasted through the end of the year.

Q Now, let's move to Tab 2, which is -- it has not been admitted -- JX-120.

Do you see that document?

A Yes.

Q And what is that document?

A This is the -- sorry -- it is the motion for an entry of an interim and final orders for what we have been

referring to as the DIP financing.

MS. TOMASCO: Your Honor, I'd move to admit JX-120.

THE COURT: That's the financing motion?

MS. TOMASCO: Uh-huh.

MR. SALTZMAN: It's a court filing, but --

THE COURT: A court filing.

MR. SALTZMAN: -- I don't have an objection.

THE COURT: Okay. It's admitted.

MS. TOMASCO: Thank you.

(Joint Exhibit JX-120 received in evidence)

BY MS. TOMASCO:

Q Mr. Mandarino, if you could turn to the page that's, I call it ECF, but it's Docket Entry 313-1, page 115 of 142.

Do you see that?

A I'm there.

Q Okay. What is that document?

THE COURT: I'm not there. Say that again.

(Laughter)

THE COURT: Three --

MR. SALTZMAN: Nor am I.

THE WITNESS: It's page 115.

MS. TOMASCO: Page 115 of 142 of the first exhibit. So it's Docket 313-1, page 115 of 142.

THE COURT: Okay.

(Pause)

THE COURT: Okay. Thank you.

BY MS. TOMASCO:

Q Now, what is this document?

A It is the -- a plan term sheet.

Q Now, mandatory, are you familiar with the plan term sheet?

A Yes.

Q And did you review the plan term sheet before it was filed?

A Yes.

Q All right. Does the proposed plan term sheet seek to reduce Rigmora's share of residual value by treating Rigmora as a defaulting partner?

A No.

MR. SALTZMAN: Objection, Your Honor.

I'm not -- I'm really now struggling to understand what the terms of a DIP loan term sheet that was heard last week has to do with this motion before Your Honor today.

MS. TOMASCO: Your Honor, one of the elements under LTS is a legitimate restructuring purpose. This goes to that element and we're showing that the debtors' intent in this case is to restructure and not to continue to litigate.

MR. SALTZMAN: Yeah, and that would necessitate, you know, re-hashing all of last week's testimony that Your

Honor already has about how this improperly reduces fund assets to collateralize loans to debtor portfolio companies and basically siphons money off from the fund to the benefit of the least successful. I mean, we did this all last week.

MS. TOMASCO: Your Honor, this is a plan term sheet; it's not the financing motion itself.

THE COURT: Okay. I'll hear some questions on this.

MS. TOMASCO: I only have a few --

THE COURT: Okay.

MS. TOMASCO: -- so we're all on the same page.

BY MS. TOMASCO:

Q Mr. Mandarino, once again, does the proposed plan term sheet -- one question: Do you know what a defaulting partner is under the limited partnership agreement?

A Yes.

MR. SALTZMAN: Your Honor, is that -- is that a legal conclusion or are you asking his common sense on the issue?

MS. TOMASCO: I'm asking if he knows what the definition is under the limited partnership agreement.

THE COURT: Okay.

MR. SALTZMAN: No objection, Your Honor.

THE COURT: Thank you.

//

BY MS. TOMASCO:

Q Do you know?

A Yes.

Q All right. Now, you heard Mr. Bogdanoff testify earlier about how he was very offended by this element of the complaint in Chancery Court.

Do you recall that testimony?

A Yes.

Q Now, does the proposed plan term sheet seek to reduce Rigmora's share of residual value by treating Rigmora as a defaulting partner under the LPA?

A No.

Q Does the proposed plan term sheet provide Rigmora with a distribution in kind or through a pass-through entity of the Braeburn asset?

A Yes.

Q And is that, in your estimation, the most immediately valuable aspect of the debtors' assets?

A Yeah. We refer to it as the Braeburn pool, so the Braeburn asset. But, yes, I mean, it's certainly -- you know, I think there's been other testimony about it -- it's certainly the highest value.

Q And you also understand that pool four consists of the Syntimmune judgment and some other residual value items also?

A Yes.

Q And does the proposed plan seek to distribute in kind or synthetically to Rigmora, the entirety of those interests?
A Yes.
Q Well, it's 98 percent, correct?
A Its proportion, yes.
Q Now, what does the proposed plan term sheet propose to do with what we call the pool five assets, which includes the portfolio debtors, the hopeless investments that Rigmora wants to shut down?
A The plan term sheet anticipates that there'd be $300 million of exit financing in order to fund those companies in the future and then -- well, that's what it does, in order so they could continue their work.
Q So, with respect to pool five, the plan proposes to continue those entities as going-concerns?
A Yes.
Q Now, after filing this proposed plan term sheet on February 13th of 2026, it seems like a month ago, but it was only a couple of weeks, did Rothschild or anybody from Rigmora reach out to you, send any comments to the proposed plan term sheet?
A No.

MS. TOMASCO: No further questions.

THE COURT: Okay. Cross?

THE WITNESS: I'm sorry, could I get a water,

another water, please?

UNIDENTIFIED MALE SPEAKER: We can get you one.

THE WITNESS: Please. Thank you.

THE COURT: Someone, yes. Thank you. Lots of water.

UNIDENTIFIED MALE SPEAKER: Your Honor, (inaudible).

THE COURT: Yes, thank you.

THE WITNESS: Thank you.

(Pause)

CROSS-EXAMINATION

BY MR. SALTZMAN:

Q Mr. Mandarino, can we start by looking at Tab 1 of the binder that you used on your direct examination.

When -- I see this is a document dated February 2026, but I'm not seeing a date on this. When was this finalized in this form?

A It says December 15th, 2025 -- on Tab 1, right?

Q On Tab 1, the cover sheet, it says, "ATP portfolio company cash runway, produced in confidential, February 2026."

A Oh, I'm sorry. Tab 1 of --

Q Of your binder.

A Oh, I'm sorry --

Q Yes.

A -- I was in your binder. Excuse me.
Q No problem.
A And I'm sorry, you asked when was it completed?
Q Yeah, when was it completed in this final form?
A Late yesterday.
Q Okay. And looking at, turning the page over and looking at page 2, I notice it says that the projected cash flow balance would be negative in February 6th of 2026, right?
A Right.
Q And you understand the Cayman proceeding was going to happen on January 12th, 2026, right?
A I think that's the right date, yes.
Q So there would be a positive cash flow as of the date of the Cayman proceeding?
A Probably -- yes, absolutely.
Q And it goes negative on February 6th, 2026 because you're deducting $5.8 million allocated to Aethon and Aulos, right?
A Right.
Q And if you didn't make that allocation, it would still be positive as of February 6th, 2026, right?
A By about, you know, seven hundred, $800,000.
Q Okay. You can put that binder aside.
Mr. Mandarino, you work at B. Riley?

A Yes.
Q And B. Riley was engaged by ATP Life Science Ventures L.P. and ATP III GP, Ltd. on December 9th, correct?
A Yes.
Q And the fund-level debtors filed for bankruptcy on the 9th, right?
A Yes.
Q And prior to December 5th, which was the date the Chancery decision came down, you did not know if there was an urgency to file for bankruptcy, right?
A I did not.
Q And you had a kickoff meeting on December 6th, 2025 as it relates to the bankruptcy, correct?
A That's right.
Q And you recall that the bankruptcy filing occurred on a faster timeline than you had anticipated, based on your initial discussions regarding this case, right?
A Yes.
Q And please turn to Tab 2 of your binder -- strike that -- Tab 12 of your binder.

Do you recognize this as an email that you sent to Mr. Bryant R. Riley on December 8th, 2025?
A Yes.
Q In the bottom of that email, you wrote to Mr. Riley:

"We'll explain when we talk, but they need to file

Chapter 11 tomorrow. They may want me to be CRO."

Do you see that?

A Yes.

Q And then Mr. Riley responded to you, "That was fast," right?

A Yes.

Q And then your reaction is redacted for privilege, correct?

A Yes.

Q So you're not going to tell me what's behind that redaction, are you?

A I also don't remember.

Q Okay. And you can't -- and I can't refresh your recollection because you can't see it?

A That's right.

MR. SALTZMAN: Okay. We can take that down.

BY MR. SALTZMAN:

Q You do not recall any meetings with Dr. Harrison as it relates to this bankruptcy prior to that December 6th kickoff meeting we just discussed, right?

A There may have been -- I think I may have been introduced to him on a call on December -- if December 6th is a Saturday, which I think it was, I think I was introduced to him on a call on December 5th, maybe a few days before. I -- you know, it was murky.

Q Okay. You recall that one of the topics covered at the December 6th meeting was B. Riley's retention, right?
A Yes.
Q And the scope of the services to be provided by B. Riley did not include advising on whether or not to file for bankruptcy, correct?
A I don't remember what we talked about, specifically.
Q So let me see if I can refresh your recollection.
MR. SALTZMAN: Can we pull up transcript 24.
BY MR. SALTZMAN:
Q And this should be Tab, maybe, 11 of your binder. But we're going to go to tab -- I'm going to go to page 24, lines 15 through 17.
MR. SALTZMAN: Why don't we give the witness a little bit more -- I apologize -- let's give him, like, 11 -- go up to 11. Yeah, that's perfect. Let's pull that out, all the way down to 17. There we go.
BY MR. SALTZMAN:
Q Does that refresh your recollection that the scope of the advising did not include whether or not to file for bankruptcy?
A Yeah, I didn't understand your question. I didn't realize that's what you were asking, but yes, it is not related to that.
Q That's fine. It's not a memory test.

MR. SALTZMAN: We can take that down.

BY MR. SALTZMAN:

Q At your deposition, you testified that you did not recall any discussions with anybody at B. Riley regarding the reasons the fund-level debtors filed for bankruptcy, right?

A That's right.

Q And so I take it, the redacted language we looked at was not you communicating to Mr. Riley, the reasons why the timing needed to be accelerated?

A I don't remember. I mean, that whole email was, as you can point out in my deposition testimony, was we need to get internal approvals when we get new clients, so I needed that process to get done quickly.

Q And you cannot tell me whether one of the reasons the fund-level debtors filed for bankruptcy was to stop the winding-up proceeding in the Cayman Islands without revealing privileged communications, right?

A Yes.

Q And to the best of your recollection, your entire understanding of the factors considered by the fund-level debtors as to whether to file for bankruptcy is based on communications that were with counsel, right?

A Yes.

Q And so you cannot testify as to your understanding as to why this bankruptcy was filed, without revealing attorney-

client communications, right?

MS. TOMASCO: I'm going to object. I don't think that's accurate. He has testified extensively as to the reason for the fund-level debtors to file, but to the extent that this question is trying to get at attorney-client communications, he's suggesting that that was actually discussed.

MR. SALTZMAN: Your Honor, I'm not sure this is a proper objection. I mean, I --

THE COURT: I'm not sure it is either.

MR. SALTZMAN: The witness -- I believe Ms. Tomasco is testifying for the witness at this point.

THE COURT: Yeah, I don't think it is either.

You can cross. You can rehabilitate. You can do whatever, but I'll hear the question. Overruled.

BY MR. SALTZMAN:

Q The question is, and so you cannot testify as to your understanding as to why this bankruptcy was filed without revealing attorney-client communications, right?

A Yes, and I think I probably have it in the transcript, as well. I wasn't the decision-maker of the filing of the bankruptcy, right, and so in that context, that's how I would answer your question. I wasn't decision-maker.

Q That's fine.

And you cannot tell me what was driving the timing of

the bankruptcy filing without revealing attorney-client communications, right?

A Again, I wasn't a decision-maker on the filing of the timing.

Q Let's turn to Tab 1 of your binder.

Do you recognize this document as your declaration in support of the Chapter 11 petitions and first day motions?

A Yes.

Q And if you turn to page 3, do you see it says, "Events and reasons leading to the debtors to file for Chapter 11"?

A I do.

Q And in paragraph 5, you assert that one of the reasons leading to the debtors filing for Chapter 11 was a nonpayment of the capital calls, right?

A Yes.

Q And you were able to make that statement without revealing attorney-client communications, even though you testified earlier that your entire understanding of the factors considered by the fund-level debtors as to whether to file for bankruptcy is based on communications with counsel, right?

A I'm sorry, you lost me.

Q Well, I'm pointing out that you assert, here, reasons why the fund-level debtor have filed for bankruptcy, even though you testified that your understanding as to why they

filed for bankruptcy came from communications with counsel?
A I'm sorry, I'm not -- I don't know if that's a yes-or-no question or...
Q It's a yes-or-no question.
A This language is consistent with Dr. Harrison's declaration, as well, so it's sort of one of the reasons.
But you asked me questions about the timing and all the reasons why. This is certainly one of the reasons why, that counsel found appropriate to put in.
Q This is one of the reasons counsel felt it appropriate to put it in your declaration?
A No, that was -- well, you're mixing my words a little bit -- that it was appropriate to disclose.
Q I see. So, counsel decided what factors could and couldn't be disclosed to the other party as to the reasons, withholding some for privilege, and allowing others to go forward?
A You'd have to ask counsel.
Q We do have a motion *in limine* on this issue. When Mr. Taft took your deposition, you could not recall whether the Rigmora LPs had proposed to pay the full $96 million in compliance with the Chancery Court's order prior to the actual filing of the fund for bankruptcy, right?
A Yes.
Q And let's turn to Tab 2 of your binder?

MR. SALTZMAN: And I'm not admitting this into evidence; this is for -- just to see if it refreshes the witness' recollection.

BY MR. SALTZMAN:

Q Mr. Mandarino, do you see an email from Mr. Kaprow of RLF to Mr. Barlow and others from Quinn Emanuel, dated August 12th, 2025?

A Yes.

Q Sorry, it's European days.

It was December 8th, 2025. I was confused myself there for a second.

A Yes.

Q Okay. And I just want to know, have you seen this document before?

A No. I don't know if I've seen the email.

Q So this doesn't refresh your recollection as to whether you knew that the Rigmora LPs had proposed paying the full $96 million, in compliance with the Chancery Court's order, prior to the actual filing of the fund for bankruptcy?

MS. TOMASCO: Objection; form. It lacks foundation.

That's not what this email says. This email says -- it simply attaches a proposed form of order. It does not say that they're going to pay.

Mr. Mandarino said he hasn't seen it, so questions

about this are outside the scope of this witness' knowledge.

MR. SALTZMAN: I'm asking if it refreshes his recollection. If it doesn't, it doesn't, and I'll put it aside.

THE COURT: Yeah, you can ask if it refreshes his recollection.

MR. SALTZMAN: That is the only question.

THE WITNESS: I don't remember seeing this.

BY MR. SALTZMAN:

Q Okay. And you can put it aside.

Mr. Mandarino, you did not review Cayman law procedures for winding-up, prior to filing your first day declaration, right?

A No.

Q Please, let's go back to Tab 1 and let's go to paragraph 7, which I believe is page 4 of your declaration.

In your first day declaration, you state that the Cayman Islands winding-up would be catastrophic for all stakeholders.

Do you see that?

A Yes.

Q And I believe you testified at your deposition that the basis for that assertion was the next sentence that says that it would be a pure liquidation and forced fire sales of the interest in portfolio companies at distressed prices, and it

continues.

Do you see that?

A Yes.

Q That statement is based, at least in part, on communications you had with counsel between December 9th and December 15th, right?

A I don't know.

MR. SALTZMAN: Can we pull up Mr. Mandarino's deposition. Let's go to page 71. I think it's lines 9 to 23.

BY MR. SALTZMAN:

Q This is Tab 11 of your binder, Mr. Mandarino.

A Page 71?

Q Yes, and you may have to go to page 70 to get some context for the line of questioning and, certainly, feel free to do that.

A Okay.

Q But if you start from the bottom of 68, the line of questioning really begins. Is this -- in this paragraph 7, you state that a question -- in this paragraph 7, you state that a Cayman Island winding-up would be catastrophic for all stakeholders, correct?

Right.

And then the question is: What's the basis for that statement?

There's an answer. The line of questioning continues and picks up on the line that I was pointing you to, which is on 71, where it says -- where you say:

"Okay. So, then, when you said there were discussions with counsel underlying your statement, when did those discussions take place?

"Sometime before December 15th.

"Can you be more precise than that?

"Sometime between December 9th and December 15th."

Do you recall giving that testimony?

A I do.

MR. SALTZMAN: Okay. We can take that down.

BY MR. SALTZMAN:

Q And the counsel, with whom you had that conversation was Quinn Emanuel, right?

A Yes.

Q And, again, you were comfortable putting this in your declaration without revealing privilege, correct?

A Yes.

Q And at the time you made those assertions in your first day declaration, you did not know if Quinn Emanuel -- strike that.

You did not know if the Quinn Emanuel lawyer you had spoken to was qualified to practice law in the Cayman Islands, right?

A You know, there was, in remembering the first phone calls and during this time, it was -- it was also the -- well, the answer to your question is no.

Q Okay. And you reviewed the second funding motion in this case before it was filed, right?

A I did.

Q Okay. Can you turn to Tab 3 of your binder.

Do you recognize this as the debtors' motion for entry of an order -- I'm not going to read the whole thing -- but do you recognize this document?

A Yes.

Q Okay. Can you turn to page 37, in particular, Footnote 24.

And do you see in that footnote there's a reference to prudent official liquidators?

A Yes.

Q And do you see that that footnote asserts that such prudent official liquidators would likely pay partnership funds to portfolio companies as part of their powers?

A Yes.

Q And you understand that the proposed liquidators in the Cayman Islands are Alvarez & Marsal, correct?

A Alvarez & Marsal, yes.

Q I cannot pronounce that correctly to save my life. I don't know; it's not so hard.

And that firm has a good reputation in the insolvency industry, right?

A Yes.

MR. SALTZMAN: Okay. You can take that down.

BY MR. SALTZMAN:

Q Let's turn back to your Tab 1, your first day declaration, and let's go back to paragraph 5 on page 3. The last sentence makes some assertions about KYC concerns and fear of future sanctions making it nearly impossible for entities associated with Dr. Rybolovlev to obtain outside financing, right?

A Yes.

Q And at your deposition, you stated that this assertion is based on conversations with counsel at Quinn Emanuel and some documents and testimony they pointed you to, right?

A Yes.

MR. SALTZMAN: Okay. You can take that down.

BY MR. SALTZMAN:

Q You were in the courtroom when Mr. Bogdanoff testified -- Bogdanoff testified yesterday, right?

A Yes.

Q And so you heard that Julius Baer is a bank with which Rigmora has a relationship, right?

A Yes.

Q And you heard that JPMorgan is a bank with which

Rigmora has a relationship?

A Yes.

Q And you heard that Goldman Sachs is a bank with which Rigmora has a relationship?

A Yes.

Q And your heard that Barclays is a bank with which Rigmora has a relationship, right?

A Yes.

Q Do you know how many other banks Rigmora has relationships with?

A I do not.

Q Let's turn to a new document. Let's turn to Tab 4 of your binder.

Do you recognize this document as the GP's bankruptcy petition?

A I do.

MR. SALTZMAN: And can you turn to page 4 of that for me, please.

BY MR. SALTZMAN:

Q Do you see that this lists assets for the GP of one to $10 billion?

A Yes.

Q And at the time the GP made this filing, you did not have an understanding of what the basis for this amount was, right?

A Yeah, I mean, I didn't have -- I didn't do an analysis of it, but, you know, generally -- but, no, not specifically.
Q But subsequent to the filing of the papers, you formed an understanding as to the basis of these estimates, right?
A Yes.
Q And the source was the 2024 financial statement of ATP Life Science Ventures L.P. and its subsidiaries, correct?
A That's one of the sources.
Q And the listing of one to ten billion in assets of the GP reflects a consolidated amount across the debtors, right?
A It would reflect whatever these debtors owned, I believe. I don't want to draw a legal conclusion on a petition.

MR. SALTZMAN: Let's turn to Tab 5.

BY MR. SALTZMAN:
Q This is -- do you recognize this as the ATP Life Sciences L.P.'s [sic] consolidated financial statements?
A Yes.

MR. SALTZMAN: And I believe this has been moved into evidence already, but just to make sure I'm not wrong about that, can we move this into evidence?

THE COURT: Any objection?

MS. TOMASCO: No objection.

THE COURT: It's admitted.

(Rigmora Exhibit received into evidence)

BY MR. SALTZMAN:

Q Okay. Can you turn to page 9 of this document.

And do you see here, it says, "Note 1: Nature of operations"?

A Yes.

Q And I'm actually going to -- I wanted to orient you as to what note we were looking on, but I'm going to turn to page -- to note -- to the second page, page 10.

And the middle paragraph at the top of the page that begins, "The general partner..." do you see that paragraph?

A Yes.

Q Do you see the last sentence of that note 1 says: The general partner does not have an economic interest in the partnership.

Do you see that?

A Yes.

Q Nevertheless, the GP's filing lists the partnership's collected, consolidated assets as its assets?

A Right.

Q Let's turn back to Tab 4, where we were before and let's go back to page 4.

Do you see that the GP's bankruptcy petition lists liabilities of one hundred to $500,000?

A Yes.

Q And is that also a consolidated number across the

debtors?

A I don't know; I wasn't involved with preparing this.

Q Okay. Let's go to Tab 10 of your binder. This is the statement -- schedules of assets and liabilities for the GP entity.

Do you see that?

A Yes.

Q And can you turn to page 14 of 43?

A Yes.

Q Now, I have to get there. Okay.

And do you see that, instead of listing one to ten billion in assets, it lists zero dollars in assets?

A Yes.

Q And do you see instead of listing one hundred to 500,000 in liabilities, it lists over 221 million in liabilities?

A Yes.

Q Okay. Let's go to Tab 6 of your binder.

Do you recognize this document as the fund's bankruptcy petition?

A Yes.

Q And let's go up to page 4 of this document.

This document also lists one to ten billion in assets, right?

A Yes.

Q And it also lists one hundred to 500,000 in liabilities, right?
A Yes.
Q I'm sorry?
A Yes.
Q And so, neither the fund's petition, nor the GP's petition lists $221 million in liabilities, right; they both list one hundred to 500,000 in liabilities?
A Yes.
Q Okay. Let's turn to Tab 7 of your binder.
Do you recognize this as the schedule of assets and liabilities for the ATP Life Science Ventures L.P.?
A Yes.
Q And if you turn to page 10 -- it's actually a little bit -- I want to go to Schedule E/F, which is the second-to-last schedule, sort of towards the back of the papers, and let me give you a second to find that.
Are you there, Mr. Mandarino?
A I am.
Q Oh, terrific.
And I want you to go to page 10 of that schedule. Do you see that lists 221.7 million in unsecured claims?
A Yes.
Q The 221.7 million in unsecured claims are all scheduled as contingent, unliquidated claims, right?

A They're marked off as contingent and unliquidated, yes.
Q And none of those claims are marked off as being disputed, correct?
A That's right.
Q There were conversations with counsel about whether or not these portfolio claims should be disputed, right?
A I believe so.
Q But you cannot tell me the process for determining whether to dispute these claims, without revealing privileged attorney-client information, right?
A Yes.
Q You do understand that this amount, 221.7, represents the potential claims by portfolio companies against the fund, right?
A They represent claims that are contingent or unliquidated, pursuant to the Series A agreements, funding agreements, that the fund is, based on the Series A agreements, is obligated to pay the portfolio companies.

Yeah, subject to all the things you're all arguing about -- and I'm not making legal conclusions, any of that, okay -- so let's get the facts straight.

So I thought it was appropriate, because I actually signed these statements and schedules, so I prepared, I helped prepared these, as opposed to the petitions. What I felt was appropriate, as well, is that they should be

disclosed. This is a disclosure. The U.S. Trustee, you know, we have a 341 meeting. They ask questions about it. We should disclose it as contingent and unliquidated, which means the amounts may change.

So if you're right on some of your things that milestones, whatever happen, they're not due or they could be contingent or maybe it's not a claim. So -- it should be listed. These schedules are prepared for disclosure in bankruptcies and so that's why they were listed as contingent and unliquidated, for transparency, and then people could fight about it.

Q And I'm not trying to suggest, Mr. Mandarino, that you did anything improper; I'm simply trying to understand the numbers and why they were scheduled, but I appreciate that.

A And I think I just answered that.

Q Yeah. And so, to the extent that you were involved in the decision not to have the fund dispute the claims, you relied on the advice of counsel for that, right?

A That's right.

Q Okay. And the counsel's advice you relied on represents both, the portfolio debtors, to whom the fund supposedly owes some of these amounts, and the fund that decided not to dispute the scheduled amounts, right?

A Well, Murphy & King was always, it was based on both, Quinn Emanuel and Murphy & King, who represents the portfolio

debtors.

Q You relied, at least in part, on discussions with Quinn Emanuel, correct?

A And Murphy & King.

Q And at least, in part, on Quinn Emanuel, right?

A Yes.

Q Okay. And Quinn Emanuel represented both, the debtors -- both, the portfolio companies and the fund, right?

MS. TOMASCO: Objection; asked and answered.

THE COURT: Sustained.

BY MR. SALTZMAN:

Q As to December 9th, 2026 in your role as CRO for the fund, you had not yet conducted an analysis of the likelihood of any of these scheduled portfolio claims coming due, right?

A Right.

Q And as of December 15th when you filed your first day declaration, you had not yet conducted an analysis of the likelihood of any of these scheduled portfolio company claims coming due, right?

A Yes.

I mean, for both answers, when you say, "coming due," I'm not exactly sure what you mean, so maybe I should retract both answers and ask you what do you mean by "coming due"?

Q Whether -- when and how much these amounts would be if they ever have to get paid.

A Right. And so here, they're marked as contingent and unliquidated to reflect that exact understanding.
Q And as of February 18th, 2026 when you were last deposed, you had not conducted an analysis of the likelihood of any of these scheduled portfolio company claims coming due, with "coming due" being how I just defined it, right?
A It's subject to all this litigation.
Q Okay. And when asked about Aethon, you agree that the contingent, unliquidated claims associated with Aethon may, in fact, be zero, right?
A Could you point me to where you're reading?
Q Yeah. I'm -- let's see if this refreshes your recollection.

MR. SALTZMAN: Let's just pull out Mr. Mandarino's transcript.

THE WITNESS: Okay. I'm sorry, Aethon is a non-budgeted debtor, so yes.

BY MR. SALTZMAN:
Q Okay. And just shifting gears, you testified at your deposition that you were unaware of any milestones having been negotiated for Apertor, right?
A That's right.
Q And you testified at your deposition that you were unaware of any milestones having been negotiated for Evercrisp, right?

A On -- as of the 18th, that's right.
Q And you testified as of the 18th, you did not know whether Initial and the fund had negotiated any additional milestones, right?
A Yes, specifically, I did not. Right.
Q And you testified you did not know whether Red Queen and the fund had negotiated additional milestones, right?
A Right.
Q And you testified that you did not know whether Deep Apple and the fund had negotiated additional milestones, right?
A Right.
Q Okay. Let's turn back to Tab 7 of your binder. This is the schedules of assets and liabilities for ATP Life Science Ventures, and can you turn to Schedule A/B?
A I'm sorry, which one?
Q Schedule A/B.
And do you see this lists, roughly, $14.4 million in cash?
A Yes.
Q Okay. And if you flip a few pages to page 11 of 12 in the same schedule, do you see that line 71 lists about $19.6 million in notes receivables?
A Yes.
Q And these are not listed as doubtful or uncollectible?

A Well, I don't think they have to be listed as doubtful or uncollectible; that's not a requirement of these statements and schedules, unless I'm reading this wrong.

If you could point me to a box that's asked -- that that's checked?

Q No, I'm just establishing what it shows.

And if you go to line 75, do you see there's a description of other contingent, unliquidated claims or causes of action?

A Yes.

Q Okay. And this describes an IP claim, right?

A Right.

Q And the amount that's listed here in the schedule is contingent and undetermined.

Do you see that?

A I do.

Q Can you turn a little bit earlier in the same document to the tenth page. Starting from the beginning, it's number 10 at the bottom, hopefully.

THE COURT: You're in the narrative?

MR. SALTZMAN: I'm in the narrative; exactly, Your Honor.

BY MR. SALTZMAN:

Q And do you see there's a -- it says, "Part 11: All other assets," do you see that?

A I do.
Q And then, you see there's a Question 75: Other contingent, unliquidated claims or causes of action.
Do you see that?
A Right.
Q And do you see it describes, approximately, it says that certain debtors are party to two matters before the Delaware Chancery -- Court of Chancery in which they stand to receive judgment payouts. Debtor ATP Life Science Ventures L.P. is a potential beneficiary of an approximately three-hundred-and-seventy-million Chancery Court damages award judgment.
Do you see that?
A Yep.
Q And then it goes on to describe the 70 -- the ninety-seven-million-dollar award from -- in the Chancery litigation that we're all too familiar with?
A Yes.
Q Do you have a sense of when this three-hundred-and-seventy-million damages award might get paid out?
A It's subject to litigation, and I've learned to never predict the outcome or timing of litigations when your counterparty is, essentially, AstraZeneca, you know, a company that's probably worth -- I know their market cap is, like, hundreds of billions of dollars. So, it's an award

that was obtained by the company. This was meant, again, for transparency and full disclosure to describe what the asset is and the reason it's on the statements and schedules -- I'm sorry -- on the schedule of assets, as contingent and unliquidated, because it is contingent. And it's unliquidated because while I know the debtors think it's a great claim and they'll ultimately win, the ultimate number is uncertain and it is, you know, it is not something that, you know, to put on the statements and schedules as an asset. It's, you know, it's there and this disclosure covered the full picture of that litigation.

Q So, there's a potential three-hundred-and-seventy-million dollar judgment in favor of the fund out there?

A Yeah, there is.

Q Okay. Let's go back to your first day declaration, Tab 1, and let's go to page 4, paragraph 6.

Do you see that you --

A I'm sorry --

Q Yeah?

A -- Tab 1?

Q Yeah, Tab 1 --

A You said page?

Q -- page 4, paragraph 6.

A The paragraph on my first day declaration, page 4, has paragraphs 10 to 13.

Q Oh, I think that they're two documents, like, that's a second document behind your first. So if you go to the front of your tab --

A I'm sorry.

Q No, I had the same problem a minute ago.

A Sorry.

I'm here.

Q Yep.

And do you see that it states that the refusal to honor capital calls has directly caused a severe liquidity crisis across the partnership portfolio companies?

A Yes.

Q And as of December 9th, you had not done an analysis of the solvency of the fund, right?

A No.

Q And so we're on the same page, you understand that insolvency can be defined in two ways?

A Yes.

Q There's a balance sheet insolvency, right?

A If you mean do assets exceed or not exceed liabilities, yes.

Q All right. And then there's a cash flow or a liquidity insolvency analysis?

A Yes.

Q Okay. And you have not -- because you have not done a

solvency analysis, you cannot say that the fund is now, or has ever been insolvent under any definition of that term, right?

A No.

Q No, you can't say that?

A No, I can't say that.

Q Okay.

MR. SALTZMAN: No further questions.

THE WITNESS: Wait, I want to make sure I understand that question. Could you ask it again?

(Laughter)

MR. SALTZMAN: We should get the record clear --

THE WITNESS: Yes.

MR. SALTZMAN: -- so I have no objection to that at all.

BY MR. SALTZMAN:

Q The question was, because you have not done a solvency analysis, you cannot say that the fund is now, or has ever been insolvent under any definition of that term?

A I don't agree with that statement.

Q Okay.

A That's how I'll answer it.

MR. SALTZMAN: Can we show Mr. Mandarino his deposition testimony on page 112, lines 8 through 12.

MS. TOMASCO: Are you talking about insolvency

from a balance sheet perspective or --

THE COURT: Let's let the question -- I'm going to let the question go.

(Pause)

BY MR. SALTZMAN:

Q If you go to page 118, lines 8 through 12 --

A I'm sorry, 118 or 112?

Q 118 -- oh, sorry -- thank you, 112, lines 8 through 12.

Do you see that the question was -- did you do an analysis -- I'm going to start at the top just to give you context:

"Did you do an analysis of the solvency of the fund prior to December 9th filing?

"Answer: No.

"Have you done an analysis to the solvency of the fund since December 9th filing?

"No.

"Do you have any basis on which to state that the fund is now, or has ever been, insolvent under any definition of that term?

"I can't say. I haven't done the analysis. It's complex. It's nuanced. It's detailed."

Did you give that testimony?

A Yes, but this was as of February 18th, and as you asked me when I prepared the analysis that I did my direct on; it

was finished yesterday. So the answer has changed since the 18th and yesterday.

MR. SALTZMAN: No further questions, Your Honor.

THE COURT: Thank you.

MS. TOMASCO: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. TOMASCO:

Q Mr. Mandarino, you, at one point, were a certified public accountant?

A I was. I'm inactive.

Q All right. Do you know what happens when a company consolidates its financials with its affiliates?

A Yes.

Q What happens to intercompany debts?

A They generally get extinguished. They -- (indiscernible) it's consolidated, someone has the receivables, someone has the payables, so they don't show up on the balance sheet.

Q Okay. Would you mind turning to Tab 6 in the binder that --

A In the Debevoise binder?

Q In the Debevoise binder, correct.

Do you read the two descriptions, estimated assets on a consolidated basis with all affiliated debtors and estimated liabilities on a consolidated basis with all affiliated

debtors, do you see that?

A Yes.

Q Does that explain why the liabilities do not include the intercompany 221 million that's reflected on the schedules?

A It could be.

And I wasn't preparing, in the preparation, but that sounds right.

Q Now, you testified that you were not a decision-maker as to whether or not to file?

A That's right.

Q But since becoming the chief restructuring officer of the debtors, you've since accumulated information that informs your opinions today, correct?

A Yes.

Q And, specifically, what is -- what are, in your mind, the definitions of insolvency that are employed in bankruptcy cases in Chapter 11?

A So there's two, I mean, depending on different things, right. There's the balance sheet test: Does the fair value of assets exceed the fair value of liabilities? That's one. But, you know, that's sort of theoretical, like, preference cases, things like that.

But from the real world, it's liquidity: Can you pay your bills as they come due? You know, if a company -- you

know, thinking about the answer on my last question by Mr. Saltzman, you know, that whole testimony, while it was about the balance sheet side and that's why I said it was nuanced -- didn't do a lot of work on it -- but from -- it was blatantly clear to me, right, even when I first got involved and heard about it, you know, it's like the company had -- has all these obligations. Even at the time for funding the portfolio companies, you need -- the partnership, right, had the obligation or had, you know, the intent to, in the normal course of business, to fund dues, like, between 40 and 50 million. Our funding motion has it in at 39 and a half for this period.

It was clear they didn't have the $39 and a half million. There was, you know, I did read the, you know, the final judgment that came down from the Chancery Court. It was pretty nasty stuff that was going on between the companies and you couldn't make the assumption that that 97 million was going to be used, was going to be available, right. And we're still fighting about it, right; we had a funding motion hearing last week, right. We're still not allowed to use that money; Rigmora's objected to it.

So we happen to be right and I think that's telling and so when you look at this, you know, based on my experience, I mean, the company was severely distressed, right. They didn't have -- they had $17 million, right, over 10

companies. And if you want to put the nondebtors aside, fine; it's $17 million over eight companies. And that is -- you know, I bet the esteemed folks at Alvarez & Marsal would probably agree with me on that, too, right. And, plus, if there's a Cayman liquidation, right, then it's a liquidation. That suggests that there's distress there, too.

So, I mean, when you look at this, it's almost like a "seeing the forest through the trees" type of thing. It's so clear there was distress.

Q Mr. Mandarino, setting aside the 97 million that's subject to the second funding motion, how much cash does ATP, the fund debtor have on hand currently?

A The management company, ATLS, has 2.4 million -- just a tad under 2.4 million.

Q In your opinion, is that sufficient to cover the administrative costs of this case?

A It is not.

MS. TOMASCO: No further questions.

THE COURT: Thank you.

MR. SALTZMAN: I regret that I have a very small --

THE COURT: Okay.

MR. SALTZMAN: -- amount of recross.

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RECROSS-EXAMINATION

BY MR. SALTZMAN:

Q Mr. Mandarino, you were asked to look at Tab 6 of your binder and, in particular, the estimated liabilities. And I pointed to a parenthetical that read, "On a consolidated basis with all affiliated debtors."

Do you see that?

A Yes.

Q And as of the time of this filing, the debtors, there were no portfolio companies that were debtors, correct?

A I think they filed a few days later.

Q Right. So there were no PortCo debtors at this time, correct?

A Right, since they filed a few days later. Right.

Q And you gave some testimony that you recall now that your discussion that you had done, you hadn't done any -- you couldn't testify about insolvency, under any definition of that term, but you now remember that was actually the balance sheet part of that test?

A That's my recollection.

Q Yeah. Well, let's see if I can refresh your recollection. Can you go to page 110.

A I'm sorry, what page?

Q 110 of -- sorry -- Tab 11, page 110, which is your deposition transcript.

Do you see there's, at line 5, you're asked a question about a footnote that has something about solvency in it and you go on to give an answer.

Do you see that?

A Yep.

Q And do you see, you say end:

"Insolvency is defined, could be defined under two ways: balance sheet or that, you know, commonly referred to as the liquidity or cash flow test."

Do you see that?

A I do.

Q So, on page 110 you're defining what the two ways to look at insolvency are, right?

A Yes.

Q And then just a page and a half or so later, maybe two pages later, you're asked:

"Do you have any basis on which to state that the fund is now, or has ever been, insolvent under any definition of that term?"

Do you see that?

A I'm sorry, what page?

Q You page 112.

A What line?

Q Lines 8 through 10.

A Right.

Q Do you see that, and then you gave your answer.
A Right.
Q Okay.
MR. SALTZMAN: No further questions.
THE COURT: Okay. Thank you.
Mr. Mandarino, you can step down.
THE WITNESS: Thank you, Your Honor.
(Witness excused)
MS. SELDEN: Your Honor, I see it's approaching 12 o'clock. If I'm recalling correctly, the Court has a hard stop time constraint at 3:30 this afternoon --
THE COURT: Correct.
MS. SELDEN: -- is that correct?
Your Honor, we had called Mister -- we had agreed with debtors that Mr. Liras be called first as an accommodation to his travel schedule.
THE COURT: Yes.
MS. SELDEN we did have some objections to the scope of his testimony, but I understand it was broad. We're now at noon with three and a half hours left. I am a little concerned about timing.
Our next witness is Dr. Harrison. I do expect that to be a lengthy examination on our part. We had contemplated that it may work to have him be called on direct first and crossed after. I would like to call him as an

adverse witness, first, to be sure that we address that testimony up front. I haven't had a chance during Mr. Mandarino's testimony to raise that with my counterparts, but I do want to be clear with the Court and with the debtors that I am very concerned that if Dr. Harrison goes first and if the breadth of his direct testimony is as broad as the other witnesses, we won't have time to complete this cross today. So, I propose to call him adversely first, given that he has testified on direct multiple times in these hearings already and that we are short on time.

THE COURT: Okay.

MR. BERDON: Your Honor, we had an understanding with the other side that we would take things in the normal order and that we wouldn't be able to put our witnesses on direct first and followed by a cross, and now, as counsel has suggested that that be switched up at the last minute with respect to Dr. Harrison, I don't think there's a reason to believe that we won't be able to (indiscernible) covered.

I also don't think that there's a reason for prejudice to fall on the debtors to not be able to get Dr. Harrison's direct testimony out in opposition to the motion to dismiss. It doesn't seem to me that there should be a bias in favor of the movant. So we oppose this, here.

THE COURT: Okay. Since the debtors have the burden, I'm going to permit them to put Dr. Harrison on and

we'll see where we get to. We'll just continue working through lunch and let's see how far we get.

Let me ask a question, since we have a break here and the funding motion has come up multiple times. Have I got the complete record? I'm not aware that I have the complete record on the funding motion, because there were evidentiary issues or deposition transcripts, so I don't think I have that, do I?

MS. SELDEN: Your Honor, we do have an agreed record and I do think we need to get it over to you, so we'll make sure that we do that before the end of the day today.

THE COURT: Okay. Thank you.

Let's take five minutes. We're in recess.

(Recess taken at 12:08 p.m.)

(Proceedings resumed at 12:19 p.m.)

THE CLERK: Please rise.

THE COURT: Please be seated.

MR. BERDON: Good afternoon, Your Honor.

Andrew Berdon for the debtors, Quinn Emanuel. According to our agreement, we're calling Dr. Seth Harrison.

THE COURT: Dr. Harrison?

THE CLERK: Please raise your right hand.

SETH HARRISON, DEBTORS' WITNESS, SWORN

THE WITNESS: I do.

THE CLERK: Can you state your full name and spell

your last name for the record.

THE WITNESS: Seth Harrison, H-a-r-r-i-s-o-n.

THE CLERK: Thank you, you may be seated now.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. BERDON:

Q Good afternoon, Dr. Harrison.

A Good afternoon.

Q You testified in January and last week, so I'm not going to go through the things that you've covered in detail before. I'm going to start with some, just sort of level-setting.

Can you remind the Court what your role is, if any, in the debtor ATP Life Science Ventures L.P.?

A I'm the managing director of the general partner.

Q And what is that general partner called?

A ATP III GP.

Q ATP III GP, Ltd.?

A Limited, yes.

Q And is there a debtor called, colloquially, ATLS?

A Yes.

Q And what is ATLS?

A One of the management companies that manages the fund.

Q And is it incorporated in any particular jurisdiction?

A It's a Delaware C Corp.

Q And where is the principal place of business of the debtors?
A New York and there are satellite offices in the Bay Area and in Boston.
Q I'm going to refer to ATLSV as the "partnership debtor" or "the fund" is that okay?
A Yes.
Q And ATP GP III Ltd. [sic] will be "the GP."
A Understood.
Q Thank you.
How do the debtors get funded?
A The GP calls capital, according to an approved budget, the capital is paid into the fund, and then the fund funds the portfolio companies.
Q And, Dr. Harrison, how are you compensated?
A I have a fixed management fee and I receive profits, interest in the fund.
Q Is the fund compensated in the typical two and twenty that the Court might have heard about?
A No, it is not.
Q Starting with the two; the two is typically 2 percent of assets under management.
Is the management fee tied, at all, to the amount under management?
A The management fee of a typical venture fund is 2

percent or more, depending upon the model, of the total capital commitments. It can be tied to AUM, or assets under management.

In our case, it's a fixed fee. I receive a fixed fee. It is not related, in any way, to the amount of capital commitment or under management or the amount of capital called. And then there's a separate budgeted fee for ATLS.

Q So ATLS' fees go to what purpose?

A ATLS employs the team that is the nerve center of the portfolio companies.

Q What type of titles or roles of people are you talking about?

A Venture partner, entrepreneur in residence, principals, various consultants who we use, general counsel, finance team, et cetera.

Q And you said that that was paid by a set amount; is that right?

A Yes, a budgeted amount that is -- also winds up being fixed and it's paid semi-annually.

Q Now, we've heard a lot about the portfolio companies that are affiliated with the fund.

Do you hold any roles with those portfolio companies?

A I'm on the boards of most, if not all, of them and in some cases, I'm chairman of the board.

Q Do you have any ownership positions, personally --

A No.
Q -- in any of the portfolio companies?
A No.
Q Are you compensated for your participation in those board of directors?
A No.
Q Is there a colloquial analogy that you use when describing the management model for the fund-level debtors and the portfolio companies?
A Yes.
Q How do you do that?
A Well, colloquially --
Q Or what do you call it?
A We call it hub and spokes, and what that means is that the management companies and the fund serve as the hub of the portfolio companies, which are the spokes. That gives us the ability to found [sic], manage, and control them until they're essentially old enough to go out on their own.
Q And was Rigmora involved in establishing this structure?
A Yes.
Q How so?
A Dimitri Rybolovlev and I spent hours and hours and hours together, prior to the current troubles, and he was avid and enthusiastic about developing this model. And we

spoke about it extensively, over years. He followed the hiring of the senior management team with great interest. And so, yes, it was very well-known and understood and enthusiastically embraced.

MR. BERDON: Your Honor, if I may approach the witness with a couple of binders?

THE COURT: Yes.

MR. BERDON: Thank you.

BY MR. BERDON:

Q Dr. Harrison, while the iron is still hot, you will recall that -- well, were you here for Mr. Mandarino's testimony where he was asked about the banking relationships between Rigmora and various commercial banks?

A I was here for that part, yes.

Q Have you, over time, had discussions with folks about the possibility of their acquiring equity interest in the fund?

A In the fund and its portfolio companies.

Q That was going to be my next question.

A Yes.

Q In connection with those conversations, have you run into headwinds that were attributable to regulatory and KYC issues?

MS. SELDEN: Objection, Your Honor. As to the substance of the conversation, its hearsay.

THE COURT: Okay. I don't think that was the question.

Give me the question again.

MR. BERDON: I asked if he ran into headwinds that were attributable to the KYC and regulatory issues.

THE COURT: You can answer that question. Overruled. It's a yes or no question.

THE WITNESS: Yes.

BY MR. BERDON:

Q Was one of those conversations with Novo Ventures?

A Yes.

Q And was there an individual named Jim Trenkle?

A Yes.

MR. BERDON: Your Honor, we have a document that was inadvertently left off the JX list but was Exhibit 10 of Dr. Strebula's deposition in the Chancery Court case. And it was produced to the other side and made known to them but I fully concede that it was not added to the JX list in this case. And we would seek permission to do that unless there is an objection from the other side.

MS. SELDEN: To the extent Mr. Berdon is seeking to admit Mr. Trenkle's statements, those are out of court statements apparently being admitted for their truth. I object to them as hearsay. I also object that we haven't seen this before on the heavily negotiated JX list and it is

not a deposition exhibit in these Chapter 11 cases but appears to be an exhibit from a deposition in August of 2025 in the chancery cases.

MR. BERDON: Your Honor, I'm not admitting it for the truth of what Mr. Trenkle is saying. I'm admitting it solely for the impact on the recipient. In other words, it doesn't matter if those --

MS. SELDEN: That is a very fine line to parse.

MR. BERDON: No, that's exactly the rule.

MS. SELDEN: Your Honor, if there are witnesses who had themselves provide testimony about headwinds we haven't heard from them. Debtors haven't produced them. We are (indiscernible) to headwinds. I very much object to the introduction of out-of-court statements for the truth of these matters.

If there are witnesses who debtors want to call to testify to do this, they would have identified them in their interrogatories. They could have identified them when we asked for witnesses. They could have produced them for depositions. There is has been nobody that debtors have put forward to testify as to these headwinds other than Dr. Harrison. He can testify as to his personal knowledge but I object to the witness using this email to get in Mr. Trenkle's statements which are out of court hearsay.

MR. BERDON: your Honor, I am not looking to

accept them for the truth of whether or not these facts actually occurred inside Novo Ventures. Its solely for the purpose of did he receive these statements from Mr. Trenkle irrespective of their truth and its Soley for the impact upon the recipient.

THE COURT: Okay. I will overrule it.

MR. BERDON: Your Honor, I would move what we marked as JX-299 into evidence.

BY MR. BERDON:

Q Do you have a copy, Dr. Harrison?

A It's in front of me on the screen.

Q Dr. Harrison, is this an email exchange between yourself and Mr. Trenkle?

A Yes.

Q And without ascribing particular meaning to Mr. Trenkle's version of events, were you able to move forward with conversations with Novo Ventures after November 19th, 2023 with respect to a potential equity investment in one of the portfolio companies?

A No, we were not.

Q Mr. Trenkle told you, essentially, he was going pencils down?

A Mr. Trenkle wrote that he was pencils down based upon his compliance team.

Q Please just answer the question. Mr. Trenkle told you

that he was pencils down. That is what he told you?
A Correct. Yes.
Q Dr. Harrison, can you please describe for the Court the beginning of your relationship with Dr. Rybolovlev going up to -- coming up to his first investment in ATP LSV?
A Well, the first investment was in ATP III.
Q I'm asking you to describe the history leading up to his investment in ATP LSV briefly. An overview, please.
A I will --
MS. SELDEN: Your Honor, I will, just because I am sensitive to time and that we have heard this testimony before, make the objection that those conversations circa 2012 bear little relevance to the lift stay motion and the motion to dismiss.
MR. BERDON: Your Honor, I will withdraw the question.
THE COURT: Okay.
BY MR. BERDON:
Q Did there come a time, Dr. Harrison, where you and Dr. Rybolovlev came to an understanding about the formation of what was then called Apple Tree Partners IV, L.P.?
A Yes.
Q And was that memorialized in what we colloquially refer to as the LPA?
A Yes.

Q And taking a look at what is in your binder as JX-0, do you recognize that as a copy of the LPA?

A Yes.

Q Now, Dr. Harrison, I think you have described before two foundational elements of the LPA that were, essentially, key to your decision to enter into it. Do you recall that testimony before?

A Yes.

Q What are the two foundational elements that you refer to?

A The first is that I understood that with the investment for a billion and a half no limited partner was going to give full discretion over that amount. Therefore, I propose the concept of budgets for a project but that once a budget was approved -- and that Dmitry would have the full ability to approve or not any budget and we would give all the information he wanted but that once a budget was approved I would call like a GP, and I would have -- I and my team would have full authority to run the projects so that the fund became a (indiscernible) of those budget approvals. That was axiom number one.

The second was that because we had a single source of funding that a counterparty risk was technically massive and catastrophic, albeit at the time viewed as micro. And I knew that in negotiating with any counterparty to the fund that I

would be asked about single partner funding; therefore, the second was a global default that would act as a deterrent to not miss capital calls and those are the two pillars of the LPA, in my opinion.

Q And as a businessman, not as a lawyer, do you understand that those are incorporated -- those fundamental principals were incorporated into the LPA before you signed it?

A Oh, absolutely.

Q Are you familiar enough with the LPA to identify for the Court the provisions that we're talking about?

A No. I'm sorry, not by number.

Q That's fine.

Dr. Harrison, we've heard a lot about the negotiation and discussion of budgets with Dr. Rybolovlev. Please tell us about the opposite side of that set of conversations, the conversations that led to the formation of the portfolio companies. How -- and with whom did they typically occur?

A I will try to be brief.

Q Please.

A The goal was to hire a team with a massive and deep network, which we did, and then to ask the team to source deals.

Q By "team" you're talking about people who were employed, essentially, by the fund?

A Yes. The fund and the management company.

Q Okay. So you put together a team that had wide contacts and then used them to source deals, is that right?

A Yes.

Q Okay. Once they sourced a deal, can you describe the progression that then led to the decision on whether or not to become affiliated?

A There would be many, many conversations and communications among our team and founders of such institutions of IP or technology, in some cases source companies. Those conversations would lead to an initial idea or more than an initial idea, a somewhat formed idea of a project. I would know they were going on and, in some cases, participate in them but they would reach a certain level of maturity where (A) it was time to share them with Dmitry, which we did.

And assuming that he was sort of giving it a go, like that is a good idea, we would then take the next step in taking that formation and bringing it to an initial research plan which associates with numbers, budgets, what it takes to achieve the research goals, and begin architecting basic terms of what would become a series A agreement.

Once you have a term sheet and your initial set of budgets to fund the program you start to develop a number, like what will be the size of the series A round. And that,

in turn, I would socialize with the family office, with Dmitry. Again, this is over, at least, six months of lots and lots of discussions on both sides. And at some point, things mature.

Q In some cases did the series A funding agreements that you signed contain a specific set of negotiated milestones?

A Yes.

Q And generally speaking, what were the purpose of those milestones?

A Control.

Q Meaning what?

A The background here is that the --

Q Dr. Harrison, let's really -- what do you mean by "control?"

A By control I mean the ability of the GP to have discretion over whether or not to fund as milestones are achieved, modified, or missed.

Q Dr. Harrison, where there other examples where there were no milestones built into the series A funding agreement?

A Yes.

Q Would Deep Apple Therapeutics be one of the examples of one that did not have built in milestones?

A I honestly don't recall. If you are representing that that is one of those I --

Q I don't need to represent. Can you turn to JX-32 in

your binder.

A I'm there, yeah.

Q Do you recognize this as the series A funding agreement with Deep Apple Therapeutics from December of 2021?

A I do.

Q And was it signed on behalf of ATP?

A I believe so.

Q Can you turn to page ending -- the Bates Number 340.

A Yes.

Q Do you see a signature there?

A I do.

Q Is it your signature?

A It is.

MR. BERDON: Your Honor, we move Exhibit JX-32 into evidence.

THE COURT: Any objection?

MS. SELDEN: No objection, Your Honor. I believe all the SPA's were moved into evidence yesterday.

THE COURT: I think they were but if not its admitted.

(Joint Exhibit JX-32 received into evidence)

BY MR. BERDON:

Q Let's turn to Section 1(c) -- I'm sorry, that's a misstatement.

Can we turn to Section 1.3 initially. And,

Dr. Harrison, in particular, I would like you to take a look at Section -- let's take a look at Section, defined the initial closing.

Do you have a recollection of what the investment was at the initial closing of Deep Apple?

A The total size of the round or the first tranche?

Q First tranche.

A I don't recall.

Q But here there is an, in 1.3(a), agreement to purchase up to an aggregate of $47 million additional shares?

A Yes.

Q Okay. Taking a look at Section 1.3(c), does that deal with milestones?

A Yes.

Q So, after the initial closing of Deep Apple, were there conversations that you participated in where there were additional investments made by the fund in Deep Apple over and above the initial closing amount?

A Yes.

Q And before those additional investments were made, what type of conversations went on?

A Heavy, diligence, lots of discussion about what the company was doing and should do given the state of its research and what was going on in the markets in general.

Q And were there written communications between yourself

and Mr. Liras?

A Given the state of its research and what was going on in the markets in general.

Q And were there written communications between yourself and Mr. Liras regarding research programs?

A Yes.

Q And were those email communications also relate to progress?

A Yes. Emails, texts, many, many meetings, PowerPoints, yes.

Q And in connection with those meetings, were agreements ultimately reached with respect to the amount that Deep Apple would be able to pull down from the GP for its next tranche of financing?

A Absolutely.

Q And were those put in writing between yourself and Mr. Liras by email?

A At least.

Q Did you ever execute a formal written amendment to the series A funding agreement putting all the future milestones on one place?

A No.

Q Did anyone at Rigmora ever ask you to provide details about the cadence or amount of capital that was being called down to portfolio companies?

A Yes.
Q Were those conversations frequent or infrequent?
A Frequent.
Q Was there a single paydown of capital from the fund to Deep Apple that was not approved by Rigmora?
A No.
Q And did Rigmora ever ask to see the series A funding agreements with Deep Apple to your knowledge?
A No.
Q Did they ever ask to see whether there was an extant set of milestones against which you were measuring Deep Apple's progress?
A No.
Q How did you keep the Rigmora LP's informed as to the substantive progress at Deep Apple?
A There were, as I've indicated, many, many meetings with Dmitry and we would discuss different portfolio companies, by in large, of interest to him. And to the extent that Deep Apple came up, we talked about it. Also, in every digest or critical report we detailed out the progress of Deep Apple.
Q I'd like you to please turn to JX-172 in your binder. Do you recognize what has been marked as JX-172?
A Yes.
Q And what is it?
A It's our second quarter 2025 digest.

Q And was this sent to Rigmora?
A Yes.
Q And was it sent to Rigmora as the ordinary course of business?
A Yes.
MR. BERDON: Your Honor, we move in JX-172.
THE COURT: Any objections?
MS. SELDEN: No, Your Honor.
THE COURT: Its admitted.
(Joint Exhibit JX-172 received into evidence)
BY MR. BERDON:
Q And, Dr. Harrison, I would like you to turn just one back in your binder to JX-144. Do you recognize it?
A Yes.
Q And what is it?
A That is the fourth quarter 2025 quarterly.
Q Was this sent to Rigmora?
A Yes.
MR. BERDON: Your Honor, we would move in JX-144.
THE COURT: Any objections?
MS. SELDEN: No, Your Honor.
THE COURT: Thank you. Its admitted.
(Joint Exhibit JX-144 received into evidence)
BY MR. BERDON:
Q Dr. Harrison, I'd like to direct your attention to the

period of approximately second quarter of 2023.

A Okay.

Q Was there a big corporate development at Braeburn in the second quarter of 2023?

A Yes.

Q What was that?

A Its main product that we had been working on getting FDA approval for years was finally approved.

Q And in connection with that good news was there a cost associated with it?

A Yes. The next cost was going to involve launching the -- the product is called Brixadi and the launch of Brixadi was the next major cost.

Q And what was -- well, did you estimate the likely launch cost for Brixadi together with management at that time?

A Yes.

Q And how much did you assess would be needed for the launch?

A $75 to $150 million.

Q Payable over what period of time?

A I would have to remember what cash flow breakeven was estimated to be and how far you needed to exceed but it would have been a year and a half or two.

Q And at the time of approval, was Rigmora -- had Rigmora

approved a budget to fund the Brixadi launch?

A Yes.

Q And in what form did that arrangement --

A It took the form of a royalty purchase agreement.

Q When you say a royalty purchase agreement can you give us just a brief description of what that entailed?

A Yes. We provided Braeburn with -- the fund provided Braeburn with up to $200 million. That entitled the fund to a 40 percent royalty that was subject to certain conditions up to a five X payback on that $200 million up to $1 billion.

Q Okay. Why was the structure of a royalty finance used there as opposed to some more typical debtor equity?

A Because we were blocked from providing either debt or equity.

Q And what was the cause of that block?

A There was a series B investment round. We had backed the company through all of its development in a series A round that had totaled hundreds of millions of dollars over many years. And when things look ready to be -- when Brixadi looked like it was ready to get approved there was a lot of excitement in the investment world and we corralled a group of late-stage pre-IPO investors, top names. I believe the round was $105 million and we did 35.

Typically, in those rounds the series B -- you have series rights in the rounds in terms of whether you're able

to do certain thing, negative covenants. And the series B had a right to approve or not whether or not you could do an equity financing or debt financing. And I can go into the details but they chose not to.

Q So, the royalty financing was chosen as a way to achieve a financing that did not run afoul of the negative covenants, is that right?

A Correct.

Q Were there eventually conversations that you had with Rigmora about alternatives to their providing the funding to enable the launch?

A Yes.

Q Can you briefly tell us about those conversations?

A They involved getting something called launch debt from an outside debt provider. Launch debt is a thing in our industry. Its viewed as a low-risk way of funding launch and there are lots of groups that do it.

Rigmora wanted us to do that because they did not, at the time, want to write a check for $75 million they said because of liquidity issues. We said absolutely. Then we went out and obtained a term sheet and that term sheet did not work out due to that debt providers KYC issues. We then scrambled and got two other term sheets and chose Hercules.

Q Now, you said that there was a negative covenant preventing any additional borrowing. What happened to that

negative covenant in the series B's?
A We bought the non-ATP series B at a discount.
Q And so the purchase of the series B interest were part of the debt financing, essentially?
A No. We used the royalty purchase agreement and called down approximately $30 million to buy the non-ATP series B.
Q Understood.
Around the time of the close of the Hercules transaction, was there a dispute between ATP and Rigmora bout Braeburn?
A Yes.
Q Can you explain what the dispute was?
A It was surprising. On the eve of the close of the Hercules deal, Rigmora sent us a distribution request for Braeburn.
Q Now, when you say "distribution request" was there a part of the LPA that entitled Braeburn -- withdrawn.
Was there a part of the LPA that entitled Rigmora, under certain circumstances, to call for the distribution of Braeburn?
A Yes. Amendment 20 had a conditional distribution rate.
MS. SELDEN: I would object to the extent Mr. Berdon is calling for a legal conclusion and also to the extent that we are going back into the history of now two lawsuits prior to this one and the Braeburn litigation. That

seems to me quite far afield from the motion to dismiss, although, I guess it's two-party dispute, and the lift stay motion.

So, to the extent you were asking for Dr. Harrison's personal views, I don't object. To the extent we're getting into legal conclusions, I do and I remain concerned about time.

THE COURT: I am taking it as his personal view, not a legal conclusion.

BY MR. BERDON:

Q You made mention to amendment 20.

MR. BERDON: Ms. Selden, has the LPA and all of its amendments been admitted into evidence?

MS. SELDEN: I believe the LPA and all of its amendments have indeed.

MR. BERDON: Very good. So then I don't have to move in amendment 20.

Thank you.

BY MR. BERDON:

Q Would you just turn to JX-20 in your binder, please.

A Yes.

Q And to the best of your understanding is amendment 20 the document that gave rise to certain rights of Rigmora to call for the distribution of pool Braeburn?

A Yes.

Q And did amendment 20 actually create pool Braeburn?
A Yes.
Q Okay. What was your response when Rigmora asked for an immediate distribution of pool Braeburn in 2023?
A Our response was to ultimately decline the request on the grounds that it would crater the Hercules deal and remove the most valuable asset from the fund after we had had prior conversations brought up by Dmitry that (A) he desired to selectively default on the post 5-1 and 5-2 assets; and (B) that he wanted the global default removed. Those had occurred in the prior 12 months, both of which requests we did not honor.
Q Let's very quickly unpack that just a bit. When was the first time that Dmitry Rybolovlev made any of the statements that you just described to him about default or changing the terms of the LPA with respect to default penalties?
A I believe that it was the summer of 2023.
Q Did you have a meeting in New York in October of 2022 with Dr. Rybolovlev?
A Yes.
Q And at that time did you have any conversations about the potential for a default?
A I'm sorry, perhaps I misspoke. It was 2022, summer of '22.

Q And what did Dr. Rybolovlev say to you, in October of 2022, about his views towards a potential default in pool 5?

MS. SELDEN: Objection, Your Honor. Dr. Rybolovlev is not a party opponent in this case. I believe this calls for hearsay.

MR. BERDON: He is very much a party opponent in this case. He personally approved each and every budget that was approved. He approved the Braeburn budget, he approved the budget for all the pool 5 companies, and he was telling Dr. Harrison something that I will have Dr. Harrison testify to as his counterparty in the relationship.

THE COURT: So, are you saying he's an agent of the fund? What are you saying?

MR. BERDON: Dr. Rybolovlev is --

THE COURT: Or of the LP.

MR. BERDON: -- essentially, the LP. There is a Rigmora office, there is a (indiscernible) trust. He is the protector and settler of that trust.

MS. SELDEN: I think we have Mr. Bogdanov's testimony on that. We don't need Mr. Berdon's testimony. I do object, Your Honor, but in the interest (indiscernible).

THE COURT: I will overrule it. You can respond.

BY MR. BERDON:

Q To the best of your understanding, did Rigmora ever approve a budget without Dr. Rybolovlev's consent?

A No.
Q Did Rybolovlev personally talk to you about each and every budget?
A Yes, extensively.
Q Okay. What did Dr. Rybolovlev say to you in October of 2022 with respect to his views on the existing budgets for pools 5-1 and 5-2?
A He stated that he would like to default on them.
Q And was there an implication in your mind about the relationship between Braeburn and his desire to default in pools 5-1 and 5-2?
A Yes. As Braeburn became the funds most valuable asset, the distribution of Braeburn, to me, when it was suddenly requested implied that the next step was to choose not to fund the existing contracts on the companies on which he had said that he wished to default on. And that was one of the reasons that we declined the distribution request.
Q And what happened after the GP declined the distribution request in 2023?
A There were a fair number of discussions, as you imagine. In the end, Rigmora withdrew the distribution request and we closed the Hercules deal.
Q What were the communications like between ATP and Rigmora through the end of 2023 into the beginning of 2024 concerning Braeburn?

A The end of '23 and the beginning of '24 they were just about Braeburn's launch and how it was going.

Q Did the family offices and Rigmora's interest in the progress of pools 5-1, 5-2 or 5-3 remain center focused for them?

A It was not center focused, no. In fact, I went back and looked at my calendar to recall the very many meanings I have had with the family office and Dmitry. It's remarkable that between December of 2023 and July, August of '24 there was almost no communication except for monthly Zoom's to review the Braeburn budget versus actual sales forecasts.

Q What was the next major, call it, inflection point in your relationship with Rigmora after that period of discussions about Braeburn?

A Well, again, it involves Braeburn. Braeburn had done remarkably well. Just super-quickly management that we had hired and nurtured actually pulled off what we understood to be what was looking like one of the best pharmaceutical launches done in the past 20 years. They were over 2X their forecast.

People in the industry know that if you are on that ramp and it extends for 18 months that sort of locks in your sales and then the value is a multi-figure sale. That is kind of how it works. And there we were eight or nine months post-launch in an over 2X forecast. So, people were very

excited about that. It was the middle of the summer and out of the blue I received another distribution request for Braeburn.

Q And when you received the request, what was your response?

A The same -- well, I was surprised.

Q When they made the distribution request was there a time limit that they imposed for your response?

A Two days.

Q And did you respond within two days?

A I believe our response was two days is a short time, we need more time to consider.

Q And what happened at the end of the second day?

A They sued us in Cayman for the distribution. And we were shocked.

Q Dr. Harrison, did you want to be in litigation with Rigmora in --

A Absolutely not.

Q Have you ever wanted to be in litigation with Rigmora?

A No.

Q Okay. So, when they sued you in Cayman in 2024 did you want to litigate that case through to the end?

A No.

Q So what did you do about that?

A I went to Dmitry and I said can we possibly settle

this.

Q And when you say "you went to Dmitry" you mean literally you went to Dmitry?

A Yes.

Q Where was he at the time?

A Monaco, I think.

Q And was that case then settled?

A Yes.

Q And I think we heard some testimony from Mr. Bogdanov that there was both a settlement agreement and an amendment to the LPA at that time?

A Yes.

Q And what was the amendment to the LPA?

A Amendment 22.

Q And is that in your binder as JX-22?

A Yes.

Q Now, at the time of this amendment, were there portfolio companies that were in financial distress?

A Oh, yes.

Q And was there an effort on your part to get the family office, Rigmora, to approve new budgets in connection with the settlement of the Cayman action, the amendment 22?

A Yes.

Q Were you successful in getting those new budgets at that time?

A No.
Q Now, between the time of your getting sued and the execution of amendment 22 was there a management change at Rigmora?
A Yes.
Q What was that?
A Rigmora's CEO had been somebody called Anna Kolonchina who I believe had been in that role since 2017. And there was a close relationship among Anna Kolonchina, the Anna at the fund, Anna Batarina, myself and Dmitry. The four of us would meet frequently by Zoom and in person, and make all the decisions related to Rigmora's participation in the fund; every amendment, every capital call, every budget, every forecast. And she left.
Q So, you ended up negotiating amendment 22 with Mr. Bogdanov?
A I did -- we did.
Q And was there a description of the need for new budgets that was actually built into amendment 22?
A Yes.
Q Can you turn to page 4 of the amendment at numbered Paragraph 26?
A I'm there.
Q You with me?
A I am.

Q So, which companies at this time were listed here as needing new budgets?

A Ascidian, Aulos, Nereid, Replicate, and it should also include Nine Square, I believe.

Q Thank you.

Are there dates here of any significance to you?

A Yes. We put in the cash outdates.

Q When you say "cash outdates" what do you mean?

A The dates -- the estimated months on which each of those companies would run out of cash.

Q And some of them were weeks away, is that right?

A Yes.

Q After amendment 22 was executed and the lawsuit was signed, did you make budget requests for any of these companies?

A Yes.

Q And do you recall the date that those went in?

A We did it immediately and for some reason I do recall the date just because it was December 24th. I believe this was signed on the 21st. I could be wrong. So, we were right on it because we knew that we needed the funding, it was critical.

Q And in the period that followed, were you able to get approval for a new budget for Replicate?

A For Replicate, ultimately, yes.

Q Were you able to get one for Ascidian?
A No.
Q Aulos?
A No.
Q Nereid?
A No.
Q Nine Square?
A No.
Q And was the -- did the cash outdates there end up being ameliorated?
A Well, in the case of Aulos, ultimately, the CEO stepped up to finance the company in our place, which is awkward. In the case of Replicate there was a small amount of a budget increase, I believe, that we used to fund the company and then fortunately within a few weeks of its next cash outdate it managed to close on some corporate deals that gave it cash to survive at that time for another, approximately, 12 months but not work on any of its internal programs.
Q Did Nereid ever get any additional budget or financing?
A No, it did not.
Q How about Nine Square?
A No, it did not.
Q Now, we heard from Mr. Bogdanov yesterday that one of the impediments to making progress on the budgets was a lack of information provided by the GP. Did you hear that

testimony?

A I did.

Q Okay. At -- when you made these budget requests what, if anything, did ATP do in terms of making information available to Rigmora?

A We sent them the budget requests. We sent them a full dec describing what the company was doing and in a departure from our normal practice, given what we thought were the sensitivities, given that we had just gone through a settlement of a lawsuit, we actually opened data rooms for Rigmora to explore.

Q Well, the Chancery Court dealt with some of what happened in between. So, we're not going to relitigate that here but --

A May I add just one thing? We actually brought management to Monaco over days for these companies for full presentations to Dmitry and Yuri, and a consultant with as much confidential information and back and forth as you could imagine, which was unusual.

Q Now, there was also an allegation that Mr. Bogdanov made about a request for an audit in June of 2025 and the GP's allege refusal to make information available. Do you recall that testimony?

A I do. Yes.

Q Do you recall when the request for an audit was first

received by the GP?
A In June.
Q And that was after the lawsuit had been filed?
A Yes.
Q And after there was a motion to expedite discovery?
A Yes.
Q Okay. Did you instruct anybody to withhold any discovery from Rigmora with respect to the finances of ATP?
A No. Absolutely not.
Q As far as you are aware, were they given full access to ATP's books and records in the discovery process under the supervision of the Chancery Court?
A Yes, of course.
Q Did you come to learn something about who had actually hired Crowe?
A Crowe meaning the accountant?
Q Yes.
A Yes, I did.
Q Okay. What did you learn?
A Debevoise hired them.
Q And this was after the lawsuit had been filed, right?
A Yes.
Q Okay. Now, Mr. Bogdanov gave some colorful testimony about his reaction to finding out that there had been a lawsuit filed on May 30th and capital calls received. What

was going on at the fund between May 15th and May 30th that had an impact on your decision whether to sue Rigmora?

A We were in a turmoil. My judgment was that over the past three years at that point we had been dealing with an LP upon whom we were solely dependent who, essentially, was, by various means, trying to get out of its contract. That is what one could include by implication; although, we were trying not to look at that because I think the relationship, in many ways, had been so productive.

On May 15th what was shocking, no words, was that here in writing actually explicitly stated everything that had been implied by their words and actions but we were basically trying to deny. And at that point we had to confront that they intended to not honor the contract that supported the fund.

Q Turning just quickly to JX-200 in your binder is --

A I'm sorry, JX which?

Q JX-200.

A Yeah.

Q Is this email that you have been talking about, the May 15th email?

A Yes.

Q So, when you say you perceived that the Rigmora Limited Partners were looking to get out of the contact what do you mean?

A I mean they expressly stated -- you mean in this email or the prior pattern of actions?

Q After you read this email you said that your reaction was to -- I will tell you what, let's start again.

What was your reaction when you read JX-200?

A I have no words. I was like this is --

Q Well, you need words, Dr. Harrison.

A It was in black and white that Rigmora intended to breach the LPA.

Q And in what way did you perceive this as being a statement by Rigmora that they intended to do so?

A In what way? Sorry.

Q What about this email led you to conclude that Rigmora was going to breach the LPA?

MS. SELDEN: Objection, Your Honor. I'm fairly certain that we completed a litigation over Dr. Harrison's view that Rigmora had breached the LPA. He has testified at length about this email in the Chancery litigation. I have tried not to object but at this point it feels like we are right back in Chancery Court on the same question of what the LPA requires with respect to this document. So, I would object as to relevance.

THE COURT: What's the relevance?

MR. BERDON: The relevance, Your Honor, is that there is a, from here on out, unrelenting series of

statements and actions by the Rigmora LP's designed to make sure that the preclinical companies never got another dime of funding and that they would have the sole option as to whether or not to fund the clinical companies. And that has led directly to the filing of this bankruptcy petition on behalf of the fund level debtors.

THE COURT: Okay. So you say it's part of the basis for the determination to file.

MR. BERDON: Absolutely.

THE COURT: I'll hear it for that.

BY MR. BERDON:

Q So Dr. Harrison, I'll ask you a couple of questions. In this email, what did the Rigmora LPs say about their willingness to fund the pre-clinical companies?

A They had no willingness to fund those existing budgets, and they were insisting that we write them off.

Q And what did they say about their willingness to consider new budgets for clinical stage companies?

A Only if we wrote them off they might consider funding the necessary budgets for clinical companies at their discretion.

Q After --

A I have to add, I'm sorry, it was the last paragraph that at least as a non-lawyer I found astounding.

MR. BERDON: Can you blow up the last paragraph

please?

THE WITNESS: I should remind you, however, that the SLP that, you know, Rigmora do not presently have any outstanding capital commitments to the HP fund, and therefore has full discretion over whether to agree to fund investment proposals you come up with.

BY MR. BERDON:

Q And the previous sentence there, did that come into your thinking as well? "The SLP are available to initiate these discussions immediately upon your agreement to wind down or liquidate the early stage companies?"

A Yes, of course. Yes, that did certainly come into my field of view, yeah.

Q Okay. From May 15th through December 9th, had you ever seen any indication by the Rigmora LPs of a willingness to fund anything other than write off expenses for the pre-clinical companies?

A No, I have never seen any indication of that kind.

Q Had Rigmora offered $15 million in interim financing?

A Yes, they had indeed.

Q And that was to be spread across seven companies?

A Yes. It was wind down expenses in their estimate.

Q We've heard a lot about the Cayman litigation. Do you remember the relationship in time between the filing of the Chancery lawsuit and the filing of the winding up petition?

A It was a week, ten days, something like that.
Q And to the best of your understanding, has Rigmora pressed forward in Cayman since the filing of that winding up petition?
A Yes.
Q And based on, have you reviewed Rigmora's filings in the Cayman Island winding up petition?
A Yes.
Q And have you provided evidence in that case?
A In the form of statements?
Q Witness statements, for example.
A Yes. Yes.
Q Have you ever seen an indication in the filings that Rigmora's made in the Cayman litigation that they considered the pre-clinical companies to be anything other than hopeless investments?
A No, I have not.
Q So let's get to the heart of the decision. On December 5th, you got a decision from the Chancery Court. Correct?
A Yes.
Q Okay. What do you recall the Chancery Court ordering?
A They ordered the specific performance or the payment of 97 million of the total of 106 million was it, of capital costs, and they capped the fund, Chancellor McCormick capped

the fund's subscriptions, meaning that the total amount that we had left to call was 125 millionish.

Q Now, did the entry of that judgment, that partial judgment, have an impact on your consideration of filing the petitions that were ultimately filed in this case?

A Yes.

Q What about the order caused you to have, to consider those things?

A Well, number one, there were a lot of accusations of bad faith which Chancellor McCormick dealt with. Number two, looking at the 97 million and understanding that we had called that capital for six months of relatively normal operations for the portfolio companies, we knew that that was, you know, essentially a bridge to nowhere. Looking at the Capita fund, to call another 25 to 28 million, that just added another, you know, piece of the bridge to nowhere. And looking at our obligations in the fund, just in the ones that we knew we had, let alone ones to bring the companies forward beyond the existing budgets, they totaled something like 350 million. So we were without any foreseeable resource to meet the obligations. And I can go further if you want, but that was --

Q No, but I want to be clear, in the Chancery Court action, there was a statement that there is about $211 million in budgeted but as yet uncalled capital. Right?

A Correct.
Q Okay. So when you talk about $350 million, you're not talking about any budgeted obligations of Rigmora, are you?
A No, was it 221, I think that was the number?
Q I think it was about that.
A Yeah, 221 of budgeted. But the balances in the LPA is the requirement to pay fees and costs of the fund for the duration of the contracts of the fund which is through February of 2031. And the approximate amount of the fees is the low 20s a year. So let's say that's 120 million, let's say you have 220 million, that's 340, 350, 330, that's a lot more than 125, a lot more than 97.
Q What other, what other facts influenced your decision to file a chapter 11 in addition to what you described as the $97 million being a bridge to nowhere?
A My business judgment at that time based upon the entirety of the pattern of actions and statements by Rigmora since 2022, and certainly based upon what they had said and done throughout the litigation in both Chancery and Cayman made me, I don't want to say certain, but almost certain that the money would not be paid unless there was an additional court process to ensure that it was paid, that there would be many, many difficulties on the road ahead to ensuring that Rigmora met even those obligations. And the way I looked at things, we had cash on hand, contingent inflows in the form

of the judgment, in the form of the Syntimmune judgment, other things, but no ability to ensure liquidity.

Q Okay. Let's talk just for a minute about the contingent nature of the Syntimmune judgment. Can you tell the Court the current status of the Syntimmune litigation with a layman's understanding?

A My layman's understanding is that we won the litigation. It was, Syntimmune is a company that we built and own 73 percent of that has an antibody for autoimmune disease that achieved clinical proof of concept in a very dramatic way. We sold it to ultimately AstraZeneca for 1.2 billion, 400 million upfront and 800 million in milestones. AstraZeneca had an obligation to exercise commercially reasonable efforts to continue to develop the product and they shelved the product. That emerged in dealings with them 2019 I guess, we sold the company in 2018 and we asked QE to investigate and indeed that's what occurred. We brought suit. Ultimately we won the judgment and I believe the total that is payable in the judgment is 360 or something in two cases right now, 370 million of which we would receive 73 percent plus a preference on legal fees that we fronted for the lawsuit.

Q And about how much did ATP front for the progress of that lawsuit?

A For the legal fees?

Q Yes.
A 25ish, I don't know the exact number.
Q Now, do you stand to gain personally from the outcome of the Syntimmune case?
A No, unlikely.
Q Briefly, why?
A Because Syntimmune or the residuals from Syntimmune fall into Pool 4. My profits interest in that pool requires hitting a high water mark of I believe it's 400 million, I don't know the exact amount. And the amount that we would likely achieve from gaining access to that cash I would not likely receive any at all, at least in the profit interest.
Q Okay. What motivated you to pursue that lawsuit?
A That AstraZeneca shelved the product was mortifying and wrong. That's the first thing.

MR. BERDON: Your Honor --

THE WITNESS: And, and -- excuse me. And then as GP, I have a fiduciary to pursue that value, and so we did. And I'm very happy that we won it.

BY MR. BERDON:
Q Could you flip to JX 221 in your binder? Do you recognize this as being one of the memoranda opinions issued by the Chancery Court in the Alexion --
A I do.
Q SRS v. Alexion case?

A Yes.

MR. BERDON: Your Honor, I move it into evidence as a public record.

THE COURT: Any objection?

MS. SELDEN: I mean I don't think it needs to be an exhibit into evidence. It's an opinion of the Court of Chancery, but sure, no objection.

THE COURT: Okay.

BY MR. BERDON:

Q And taking a look at what's been marked as JX 222, do you recognize that as another of the opinions issued by the Chancery Court in the case?

A Yes.

MR. BERDON: I would just offer JX 222 into evidence, Your Honor.

THE COURT: Okay. Do you want me to read these two decisions?

MR. BERDON: No, ma'am.

THE COURT: Then why are we admitting them into evidence? And that's the whole point. Are you going to give me a thousand documents in evidence and, but not expect me to read them? How do they impact my decision?

MS. SELDEN: I don't think that there is any reason this needs to be admitted into evidence, Your Honor.

MR. BERDON: Your Honor, they're evidence of

Dr. Harrison's diligence pursuit of value in the case even where he has no financial interest which is key to the allegations that are being leveled against him all day, every day for the last nine months by the Rigmora LPs. They are impugning his character, they are saying that he is spending money inappropriately. And here is an example of him investing the funds' assets in a way that is beneficial to the Rigmora LPs, and he doesn't have a dime to gain from it.

THE COURT: And how does that fit into the standard of a motion to dismiss? I'm just trying to figure it out. You guys, both sides, are just throwing mud at each other, spending a lot of money doing it, and then going back and forth and rebutting it. And most of it has nothing to do with what's in front of me. I doubt it has much to do with what's in front of the other courts. But if you want, both want me to consider this, then if it's going to come into evidence, I feel like I have to read it.

MR. BERDON: Okay, Your Honor, I'll withdraw the items from evidence and we'll move on.

THE COURT: I've got his testimony.

MR. BERDON: Understood.

THE COURT: Okay.

BY MR. BERDON:

Q From time to time, Dr. Harrison, does ATP value the portfolio companies?

A Yes.
Q And is that part of a regular process or is that done ad hoc?
A No, it's regular.
Q Can you turn to JX 112 in your binder, please?
A Yes.
Q Dr. Harrison, is JX 112 familiar to you?
A Yes.
Q And what is it?
A It's a letter, email transmittal of our quarterlies from our then CFO to -- is it Rigmora? I don't know. No, to me, yeah. Yes, it's account statements that we would then send on to Rigmora after I've reviewed them.
Q Taking a look at the page ending in 389, Dr. Harrison, do you recognize the tables that appear on page 389 and 390?
A Yeah.
Q And what are they?
A Looks like a table of our investments and assets at that time.
Q And as part of that process, is there a valuation column?
A Yes. Should be, yeah. Yes, fair value.
Q And during the course of your relationship with Rigmora, has Rigmora ever objected to the ascribed value to the portfolio companies that had been reached by Grant

Thornton from time to time?
A No.
MR. BERDON: Your Honor, I move JX 112 into evidence.
THE WITNESS: Or by any other auditor. There were auditors before Grant Thornton.
MR. BERDON: Understood.
Your Honor, I move JX 112 into evidence.
THE COURT: Any objection?
MS. SELDEN: No, Your Honor.
THE COURT: It's admitted.
(Joint Exhibit JX-112 entered into evidence.)
BY MR. BERDON:
Q Rigmora LPs have suggested that the funds, the partnership's funding needs to the portfolio companies are not really pressing because the portfolio companies can be kept in stasis for the periods of this case. Are you familiar with that?
A I am.
Q Can you briefly explain to the Court why funding from the bankruptcy process is important to you?
MS. SELDEN: Objection, Your Honor. I think this goes to the funding motion that we heard last week and not to the lift stay or to the motion to dismiss.
THE COURT: No, I'm going to overrule that. You

can answer.

THE WITNESS: Can answer. The companies in stasis are not generating any value and the job of the fund is to turn the opportunities that it chaperones, develops into value. And you do that by applying capital the right way. In this case, the company is only to be put on a footing again so that they can attract corporate partnerships and potentially outside equity runs. That doesn't happen with that investment.

Q And is it your belief that a restructuring is necessary in order to achieve that value?

A Yes, absolutely.

Q Has filing for bankruptcy alleviated some of the financial stress of the fund level debtors or the portfolio companies in your view?

A Not presently.

Q And why is that?

A Because we have still, we haven't been able to depart from the drip feed model.

Q Well, do you believe that the pendency of the case has any beneficial effects in terms of the ability of the fund level debtors or the portfolio companies to maintain personnel?

A The beneficial effects so far have been to enable us to potentially identify outside sources of capital to provide

exit financing and ultimately a different sort of fund financing assuming a plan of reorganization is approved.

Q And have you discussed that with members of the management team of the fund?

A Yes.

Q And have you been able to retain your key nucleus of talent over the last three to four weeks?

A Yes.

Q Over the last three months?

A Yes. We had some departures prior to the commence -- we had some earlier departures that were losses, but we managed them and now we have a nucleus.

Q Do you intend to use the bankruptcy process to confiscate 50 percent of the Rigmora LPs' interest in the fund?

A No, I do not.

Q What do you foresee or plan as the ideal way that the assets of Braeburn would be dealt within a plan?

A The ideal plan, which hasn't changed for a very long time, would be to distribute Braeburn into a separate entity that whereby the existing LPA waterfalls in carrying, etc., would be intact to take Pool 4 which contains the Syntimmune judgment and one other residual from a company that we sold a while back that has a bunch of royalties, called Corvidia, to take those residuals and put them into a separate company and

to have the rules of Pool 4 under the LPA apply. And then to have exit financing for a, the Pool 5 companies that remain and to organize them into some kind of new funding facility that would be backed by incoming limited partners and where in all cases Rigmora would receive a bankruptcy court approved valuation for those assets. I'm not sure how that deal would be structured, but that is to me the obvious plan so that the portfolio can go forward and achieve value and where Rigmora's value can be maximized.

Q Just to be clear, is it your intention to use the bankruptcy proceedings to have Rigmora declared a defaulting partner to avail yourself of the option of imposing a default charge?

A No, it is not.

MR. BERDON: I'll pass the witness, Your Honor. Thank you.

THE COURT: Thank you.

Cross?

THE WITNESS: May I just ask for a favor?

THE COURT: Yes.

THE WITNESS: I don't think, can I have a three minute bio break before this begins?

THE COURT: You can have five minutes, yes.

THE WITNESS: Thank you very much.

THE COURT: We're in recess.

(Recess taken at 1:40 p.m.)

(Proceedings resumed at 1:47 p.m.)

THE CLERK: Please rise.

THE COURT: Please be seated.

You may proceed.

MS. SELDEN: Thank you, Your Honor. And I will just note that it is 10 to 2:00.

THE COURT: Yes, it is.

MS. SELDEN: I am very concerned about the time constraint of the Court as I'm sure Your Honor is too. I don't know that I will be able to finish this today, but I'll do my best to --

THE COURT: You may not be able to.

MS. SELDEN: -- make as much progress as we can while we're here together.

THE COURT: I'm not rushing you.

MS. SELDEN: Thank you, Your Honor. I appreciate that.

CROSS EXAMINATION

BY MS. SELDEN:

Q Good afternoon, Dr. Harrison.

A Good afternoon.

Q Dr. Harrison, before I dive into a couple of different topics, there are a few things that you mentioned in your testimony with Mr. Berdon that I wanted to address up front.

Dr. Harrison, you mentioned a meeting in Monaco with Dr. Rybolovlev and certain portfolio company management last spring. Correct?

A In March, yes.

Q That was the management of just Aulos and Ascidian. Correct?

A Incorrect. It was Aulos, Ascidian and Replicate.

Q Aulos, Ascidian --

A And Marengo. Sorry, it was four companies, Aulos, Ascidian, Marengo, Replicate.

Q And none of those companies are debtors in these cases. Correct?

A Correct.

Q And Dr. Harrison, you have in front of you the exhibit binders that Mr. Berdon showed you. Correct?

A Yes.

Q Could you turn back to JX 200?

A Yeah, I'm there.

Q JX 200 is an email from Mr. Bogdanov to you dated May 15th, 2025. Correct?

A Correct.

Q You testified that you read this email when you received it. Correct?

A I did.

Q One of the things that you saw in this email is, if you

look in the first paragraph at about the mid-point, did you see that Mr. Bogdanov wrote that the SLP's position is therefore that further funding of those early stage companies will waste the ATP fund's assets. We understand you to hold a similar view as you recently proposed that the months budgeted for the early stage companies be reallocated to different investments which you would not have done if you genuinely believed that continued investment in the early stage companies was a good idea. You saw that, right, Dr. Harrison?

A I read these words. They have nothing to do with my intention, nothing to do with the reallocation proposal's intention. And Rigmora knew that.

Q Dr. Harrison, do you recall that you testified in one of many depositions at the beginning of October of last year?

A I do recall we have had a number of depositions, yes.

Q And do you recall that you testified in October of 2025 that the reallocation proposal that you made to the Rigmora LPs on April 29th, 2025 takes the 220.6 million in approved budgets and reallocates those amounts among the fund's portfolio companies?

A I do. And I believe I gave a ton of context for hours and hours in multiple fora including depositions which I'm happy to provide here if you'd like.

Q Dr. Harrison, do you recall that you testified in

October of 2025 that you discussed that April proposal to reallocate portfolio company budgets with Dr. Rybolovlev?

Q I do given the fact that it was clear that Rigmora did not intend to approve further budgets. The only thing to do was to look at existing budgets of $220 million or so and to see how we could use those to maximize value of the entire portfolio. And that would mean to take some funding from the pre-clinical companies that have been committed in budgets and reallocate that funding just to clinical companies that were in need.

Q Dr. Harrison, this is a yes or no question.

A I'm sorry.

Q Which is, when you received Mr. Bogdanov's email on May 15th, 2025 stating that we understand that you hold a similar view as you recently proposed that the amounts budgeted for the early stage companies be reallocated to different investments. That was after the April discussions with Dr. Rybolovlev. Right?

A The date of the May 15th email was after the April date, yes. But the wording of the email has no relationship to the discussions and no relationship to what I said nor what I or any of my team intended with the reallocation proposal.

MS. SELDEN: Your Honor, I move to strike everything after the first answer as nonresponsive.

THE COURT: You can, but if you think I'm going to

interpret this email that is favorably describing something to a Rigmora position as anything other than that, no. So, you can ask all you want, but this is -- I don't know where you're going with it.

MS. SELDEN: Your Honor, I am hoping to move past May 2025 and into the present moment in the Chapter 11 cases --

THE COURT: Okay.

MS. SELDEN: -- but I do think it is -- to the extent that we are revisiting last year's litigation, I think it is important to note that there is an abundance of testimony and evidence in the Chancery Court record which relates to reallocation proposals from April --

THE COURT: Yeah, but --

MS. SELDEN: -- understood by the Rigmora LPs in May --

THE COURT: But this email I can't possibly read the way you want me to read it. So, you can move on.

MS. SELDEN: Thank you.

BY MS. SELDEN:

Q Dr. Harrison, you understand that Chancellor McCormick's decision addressed the GP's claims with respect to budgets, correct?

A I'm not sure I understand the question. The GP's claims with respect to budgets.

Q You understand that in the Chancery Court litigation the general partner brought certain claims related to the Rigmora LP's approval rights over budgets for the portfolio companies, correct?

A Approval rights over budgets? I don't understand that. I'm sorry. I think that we had brought --

Q Let me ask a different question then, Dr. Harrison. You're not seeking to re-litigate in these Chapter 11 cases Chancellor McCormick's decisions, if any, with respect to budget rights in the LPA, correct?

A No, I'm seeking to reorganize the fund under Chapter 11.

Q And you are seeking to revisit Chancellor McCormick's decisions with respect to the budget rights in the LPA?

A I believe that I just answered the question.

Q I'm sorry if I misunderstood. What was your answer, yes?

A My answer was no, I am seeking to -- as the GP, I am seeking to reorganize the fund under Chapter 11 of the Bankruptcy Code of the United States.

Q And do you believe that seeking to reorganize the fund under Chapter 11 requires revisiting Chancellor McCormick's decision with respect to budgets in the LPA?

A I think you're asking me a legal question that I can't possibly even parse, let alone answer.

Q I'm asking for your intent as the general partner who has filed these Chapter 11 cases.
A I've already stated that my intent is to create a plan of reorganization that will preserve and maximize the value under the LPA for all the limited partners, yes.
Q Dr. Harrison, you haven't in your capacity as managing director of the general partner filed an appeal or notice of appeal of Chancellor McCormick's decision, correct?
A No, we have not.
Q Dr. Harrison, the fund's portfolio companies are divided into five different investment pools, is that right?
A Yes.
Q Those are pools --
A But, sorry, one of the pools does not have companies in it any longer. One of the pools is a pool of residuals. So, technically, it's in four -- in four different pools.
Q And when you say a pool of residuals, you're referring to a pool from which no active investments are made, is that correct?
A A pool of residuals means that we sold companies and there are milestone payments or, in the case of Syntimmune, a judgment.
Q The pools into which the fund is divided are pools for V-1, V-2, V-3 and Braeburn, is that correct?
A Yes.

Q And separate and distinct records are maintained for each pool, and capital contributions and distributions are accounted for separately on a pool-by-pool basis, is that correct?

A I believe so.

Q All of the debtor portfolio companies are in pools V-1 and V-2, correct?

A 5-1 and 5-2, yeah.

Q And you don't contribute any capital to pools 5-1 or 5-2, correct?

A No, not actively, I don't know if I -- I don't believe I did.

Q But you and your family trust Le Palm (ph) have a combined carried interest of about seven and a half percent in each of pools 5-1 and 5-2, correct?

A Correct.

Q That means that you and Le Palm, your family trust, get seven and a half percent of any net profits that those two pools generate, is that right?

A I'm sorry, say it again?

Q The fact that you and Le Palm have a seven-and-a-half-percent combined carried interest in each of pools 5-1 and 5-2 means that you would receive seven and a half percent of any net profits that those pools generate, correct?

A No.

Q What's wrong about that statement, Dr. Harrison?
A In my particular case, the high water mark of pools 5-1 and 5-2 is bound together with the high water mark of pool 5-3, in which I and my family I believe do have capital contribution requirements. And so, if there were a profit generated in 5-1 and 5-2 together, but it did not also exceed the combined high water mark of the 3 pool, I would not receive nor would my family trust receive any value.
Q And if the high water mark were hit in pools 5-1, 5-2, and 5-3, you and your family trust would receive potential payments on your carried interest, correct?
A Yeah, that's how carry works.
Q And you and Le Palm have contributed about one percent of the capital to pool 5-3, is that correct?
A I'm not aware of the amount. The creation of the pools and our capital contributions came at different times, and there were reallocation of assets from the original fund, ATP IV, LP, to the different pools. So, it's hard to track exactly where the contributions reside.
Q And, Dr. Harrison, the percentage of carried interest that you and Le Palm have in pool 5-3 is combined a little more than 11 percent, is that correct?
A That is I believe correct.
Q So, if pools 5-1, 5-2, and 5-3 were to hit their high water mark, you might receive seven and a half percent in

terms of carried interest on pools 5-1 and 5-2, and 11 percent on pool 5-3, is that correct?

A Yes.

Q In addition to your carried interest, you received annual compensation of about $3 million through ATVM, is that correct?

A Yes, that is my fixed fee and has been for some time. It would otherwise be salaried, but it's structured as a fee.

Q And ATVM is the management company referred to in the limited partnership agreement for the fund, correct?

A Oh, I don't know. There are two management companies, ATVM and ATLS, which is a debtor, and I don't know how they're specifically referred to unless you put the document with a page number in front of me.

Q Dr. Harrison, do you still have a copy of your first day declaration in front of you?

A No.

Q If not, then we have some binders that we will hand up to you, and I suspect that --

A Unless it's in --

Q -- we can remove some of the old binders --

A Is it in this binder her by any chance? I don't know. No, I don't have it in front of me.

MS. SELDEN: If we may approach, Your Honor, we will distribute some binders and perhaps remove some binders,

as I see the tower grows tall.

THE WITNESS: Do you want me to set aside this prior binder or will you use it?

MS. SELDEN: You could keep close to you your binder that Mr. Berdon provided to you, and Ms. Kelley can remove the binders from prior witnesses.

(Pause)

THE WITNESS: The binder is in the ready.

BY MS. SELDEN:

Q You have your binder? Great.

Dr. Harrison, if you could turn to Tab 4 in your binder, I believe you should find a copy of your first day declaration.

A Is this Volume 1? Yes.

Q Yes.

A Yes, it looks like my first day declaration.

Q And this is the first day declaration that you submitted in support of the Chapter 11 petitions in this case, correct?

A I believe so, yes.

Q And if you turn to paragraph 42 on page 21 of your declaration, do you see that?

A Yes.

Q And paragraph 42 of your first day declaration states,

"In addition to the partnership, the general

partner, ATLS, and the portfolio companies, there's a separate management company, ATVM, which I wholly own and which is the management company as defined in the LPA where ATLS was established later."

Do you see that?

A I do, yes.

Q Does that refresh your recollection that ATVM is the management company as defined in the LPA?

A Yes.

Q ATVM is paid a management fee, correct?

A Yes.

Q ATVM is not a debtor, correct?

A Correct.

Q But the general partner is a debtor in Chapter 11, correct?

A Correct.

Q And you signed the Chapter 11 petition on behalf of the GP, correct?

A Yes.

Q If you turn to Tab 2 in your binder, you should find JX-38, which I believe has been previously admitted into evidence. Dr. Harrison, do you recognize JX-38 as the Chapter 11 petition filed on behalf of the general partner?

A Yes, apparently signed, yes.

Q And if you turn to page 4 of the general partner's

Chapter 11 petition, under "Estimated assets," the GP identifies between one billion and ten billion in assets, correct?

A I'm sorry, where is that?

Q At the top of page 4.

A If you say it's there.

Q Do you see in the upper right-hand corner on page 4 of JX-38 the box is checked for one billion to ten billion in estimated assets?

A I'm sorry, maybe I'm on the wrong page.

Q If it helps, it's page 4 of 13 at the top.

A Oh, I'm sorry, I'll just look at the screen. Yes, I see it, the X in the box, yes.

Q And those are the GP's estimated assets on a consolidated basis with all affiliated debtors, correct?

A Yes.

Q And that's your signature below it on the page, correct?

A Yes.

Q And the only other debtors who filed their Chapter 11 petitions on December 9th were the fund and ATLS, correct?

A I don't recall the exact order, but that sounds right.

Q In the next box -- or row on page 4 of the GP's petition, do you see estimated liabilities?

A Yes.

Q And the GP identifies estimated liabilities of 100,000 to 500,000, correct?
A Correct.
Q Those are also on a consolidated basis with the fund and ATLS, correct?
A I believe so, yes.
Q Let's turn to page 9 of the petition. The GP lists its liabilities, its list of creditors with the largest unsecured claims here on pages 9 and 10 of the petition, correct?
A It just flashed on -- yes, yes.
Q And those sum up to approximately $200,000, correct?
A I believe so, yes.
Q The GP has no assets or liabilities other than those identified in its Chapter 11 petition that you signed on December 9th, correct?
A Correct.
Q The fund itself is also a debtor in Chapter 11, right, Dr. Harrison?
A Right.
Q Let's turn to Tab 3 in your binder, which should be JX-37. Do you recognize this as the Chapter 11 petition filed on behalf of the fund?
A It appears to be, yes.
Q You signed the Chapter 11 petition on behalf of the fund as well, correct?

A Yes.
Q And the fund's petition is also dated December 9th, right?
A Yes.
Q You reviewed the fund's Chapter 11 petition prior to signing it, right?
A Yes.
Q You understood the petition to be a representation of the fact to the Court made under penalty of perjury, right?
A Yes.
Q And if we turn to page 4 of this petition, the Chapter 11 petition that you submitted on behalf of the fund identifies one to $10 billion in assets, correct?
A Correct.
Q And the Chapter 11 petition that you submitted on behalf of the fund identifies 100,000 to $500,000 in liabilities, correct?
A Correct.
Q And if we turn to page 9 and 10 of the fund's petition, you see there its list of creditors and liabilities, correct?
A Correct.
Q And these are the same liabilities that appear in the Chapter 11 petition that you filed on behalf of the GP, correct?
A I'm sorry, doesn't it say Apple Tree Life Sciences,

Inc. here on the top? At least that's what I'm reading.

Q It does on that page. You're right, Dr. Harrison, but I think when we looked at the earlier page this should be, unless we're showing you the wrong exhibit, the Chapter 11 petition for ATP Life Sciences, L.P., the fund.

A I don't know what you're asking.

Q Well, let me ask you this question. Looking at the document before you at JX-37 filed --

A Is that what's --

Q -- on December 9th --

A -- on the screen or -- yes, JX-37 right in front of me, yes.

Q Let me just ask you if this list of liabilities is the same list of liabilities that we saw in the GP's Chapter 11 petition a moment ago.

A I don't know. I don't see a list of liabilities in this document; is there one? Ah, is that correct? No, that's still Inc.

If you would tell me where to look, I will do my best to look there.

Q I will ask you, what are you looking at in your binder, Dr. Harrison? What tab are you looking at?

A So, here is JX-37. JX-37 does not appear to have any list of liabilities, although it does have those little box ticks -- ah, I'm sorry. Here it is afterwards, yeah, but it

still says Apple Tree Life Sciences, Inc. So --

Q And does it --

A -- I'm confused.

Q -- say that in both the first page that you were looking at and on page 4 where I am directing your attention?

A On page 4? Okay. So, page 4, I believe it's JX-37, is a signature page with some boxes to tick.

Q I will clarify my question, Dr. Harrison, and then I think I'll move on, which is it appears to us that there is a typo where there is a deviation in the entity from the first page of the petition to the page that I'm looking at. But, you know, that's fine. Let's move ahead and, if we need to come back to it, we will.

A Happily.

Q You also submitted the declaration, your first day declaration in support of the Chapter 11 petitions and the first day motions for the GP, the fund, and the other debtors, correct?

A I believe so, yes.

Q And let's make sure we're looking at the right document. You have that in Tab 4 of your binder?

A Yes.

Q And if you turn to the last page, page 35, that's your signature?

A Yes.

Q And you executed your first day declaration on the 15th of December, 2025, correct?
A Yes.
Q Dr. Harrison, if you could turn back to page 2 of your declaration and look at paragraph 4.
A I'm there.
Q In your first day declaration, you state at paragraph 4 that the fund reached a total value of approximately $6.5 billion in early 2025, correct?
A Yes, correct.
Q You state in your first day declaration that the fund has made distributions to its limited partners of over $2 billion over the course of its life thus far, correct?
A Correct.
Q Dr. Harrison, could you turn to paragraph 29 on page 17 of your declaration?
In the second sentence of paragraph 29 of your declaration you state the same numbers with a little more precision, right?
A Yes.
Q You state that in the first quarter of 2025 the partnership's total value, including distributed and held value, was approximately $6.48 billion, correct?
A Correct.
Q You state in paragraph 29 that the partnership has made

distributions to the limited partners of $2.28 billion, correct?

A Correct.

Q That means the fund has just over $4 billion in what you refer to as held value, correct?

A Correct, at that time.

Q At the end of paragraph 29 you state that, when benchmarked against the top funds in the industry as of December 2024, prior to the Rigmora LP's defaults and repudiations at the LPA, the partnership has been one of the most successful in the field, correct?

A Correct.

Q If you turn the page, Dr. Harrison, you should see paragraph 31 and the word Syntimmune in bold italics. Do you see that?

A I do.

Q And you talked about Syntimmune a little bit with Mr. Berdon, correct?

A Yes.

Q Paragraph 31 describes Syntimmune as an example of the fund's success, right?

A Yes.

Q And you state that, in connection with the litigation against Alexion arising from the sale of Syntimmune, the fund obtained verdicts that are estimated to be worth

approximately $350 million, correct?

A Yes.

Q And those verdicts have yet to be paid out, correct?

A Correct.

Q Paragraph 25 identifies Braeburn as another example of success, right?

(Pause)

Q Do you see paragraph -- I might have misspoke the number, I'm referring to paragraph 32.

A Thirty two, I see that, yes.

Q I've looked at a lot of numbers today, so I'll try and keep them straight.

Paragraph 32 identifies Braeburn as another example of the fund's success, right, Dr. Harrison?

A Yes.

Q And in paragraph 32 you state that Braeburn is valued in the billions of dollars on a DCF basis, correct?

A Yes.

Q Braeburn is still wholly owned by the fund, right?

A Yes, the equity is.

Q Dr. Harrison, you can put that first day declaration aside for the moment -- not too far, but to the side.

A week before you submitted your first day declaration to this Court on December 15th, 2025, you submitted also in a court proceeding a second witness statement in the winding-up

proceedings in the Grand Court of the Cayman Islands, right?
A Right.
Q Let's pull that up. And it should be in Tab 5 of your witness binder. And I'll ask you if you recognize the document in Tab 5 as your witness statement submitted 8th December, 2025 in the Grand Court of the Cayman Islands Financial Services Division.
A It appears to be that, yes.
Q And, Dr. Harrison, if we could turn to page 39 and to paragraph 109, paragraph 109 of your December 8th Cayman Court witness statement identifies a few examples of the partnership's successes, right?
A Yes.
Q And the partnership there is a reference to the fund, correct?
A Correct.
Q And if you turn to the next page, page 40, and look at paragraph 109(e), here again in paragraph 109(e) you refer to Braeburn, correct?
A Yes.
Q And you describe Braeburn as a specialty pharmaceutical company, right?
A Right.
Q And in your December 8th, 2025 Cayman witness statement you state that Braeburn is expecting revenue of U.S. $280

million in 2025, correct?

A Yes.

Q Referring to Braeburn, you state that the business, wholly owned by the partnership and still private, is valued on a discounted cash flow basis at approximately U.S. $2.9 billion, correct?

A Yes, about 700 of which was distributed in the form of the royalty contract.

Q And if you turn ahead to paragraph 272 on page 103 of your December 8th Cayman witness statement, do you see that above paragraph 272 there's a heading that reads the Q3 2025 receipts?

A Yes, I do.

Q And paragraph 272 then states that, in 2023, the partnership received the following payments, and it refers to three payments with 2025 dates, right?

A Yes.

Q In paragraph 272(a), you state that the fund received almost 42 million on August 1st, 2025 from early repayment by Braeburn of certain convertible loan notes, correct?

A Yes.

Q In paragraph 272(b), you state that the fund received just over $20 million on July 31st, 2025 from Tendyne, correct?

A Correct.

Q And in paragraph 272(c) you identify a second smaller amount that had also been returned from Tendyne on August 8th, 2025, correct?

A Correct.

Q Dr. Harrison, you can set that witness statement aside for the moment.

Dr. Harrison, the fund has monetized certain of its assets in the past, correct?

A Correct.

Q And it may monetize certain of its assets in the future, correct?

A Yes.

Q The fund still has the potential to make future distributions of cash to its limited partners, correct?

A Correct.

Q The fund is currently invested in 15 portfolio companies, right?

A Right.

Q At least some of the 15 portfolio companies that the fund is currently invested in have the potential to generate returns for the fund, correct?

A Yes.

Q And some of those portfolio companies have the potential to generate potentially significant returns for the fund, correct?

A I believe so.
Q Yet on December 9th, 2025 you filed Chapter 11 petitions for the fund and the general partner, right?
A Right.
Q There had been no material change in the fund's financial position between the evening of December 8th when you filed the Cayman witness statement and December 9th when you filed Chapter 11 for the fund, right?
A No, we have had no change in the fact that we had access to almost no cash.
Q Dr. Harrison, do you recall that December 9th, 2025 was a Tuesday?
A I believe you.
Q Do you recall that Chancellor McCormick issued her written decision in the Chancery Court action on the evening of Friday, December 5th?
A Yes.
Q You reviewed Chancellor McCormick's decision over the weekend, right?
A I reviewed Chancellor McCormick's decision, yes.
Q You reviewed it immediately as soon as it was issued, right?
A I don't remember exactly when I read it, but I did read it.
Q Let's take a look at that decision. You should have it

in your binder at Tab 9.

(Pause)

Q I've got the right document on my screen at least, Dr. Harrison. Do you have the right document in front of you?

A Both screen and paper.

Q Great. Let's look at page 81 of the decision.

(Pause)

Q Among other rulings, Dr. Harrison, you reviewed Chancellor McCormick's grant of specific performance of the May 30th capital calls, correct?

A Yes, all but one.

Q And if you turn back to page 67 of that decision, you also saw that Chancellor McCormick wrote that Rigmora has the funds available to meet the capital calls, correct?

A I see that she wrote that, yes.

Q The day after Chancellor McCormick's order, on December 6th, you spoke with Mr. Mandarino, right?

A I don't recall.

Q You don't recall having a discussion with anyone about filing the fund for bankruptcy prior to Thanksgiving of 2025, right?

A I am not sure when we started having those discussions, they were in November.

Q Dr. Harrison, you recall that I took your deposition last week --

A Yes.
Q -- on February 17th of this year?
A I do.
Q And you should have a copy of your deposition transcript in Tab 1 of your witness binder in front of you.
(Pause)
Q Do you recognize Tab 1, Dr. Harrison, as your deposition transcript from February 17th, do you see that?
A It looks that, yes.
Q If you could turn to page 21, Dr. Harrison, and at line 8 do you recall that I asked you, "Do you recall, Dr. Harrison, having a discussion about filing the fund for bankruptcy prior to Thanksgiving of 2025?" And I said, "That's a yes or no question."
There was some back and forth about privilege, the end result of which is me asking you again, "Do you have such a recollection?"
And you answering, "No."
Do you recall that testimony?
A It's what's written here, yes.
Q You didn't discuss retaining B. Riley with Mr. Mandarino until after Thanksgiving, right?
A I'm going to do my best to remember dates and times, but honestly the entire process is a bit of a blur. And I know that of course prior to filing the Chapter 11 petition

we talked about it extensively, and that took place, I believe, starting in mid-November. I don't recall specific conversations with Mr. Mandarino during that time. If you would help me locate those in time, I'd be happy to help you.

Q I'm happy to do that and I had hoped Thanksgiving might be a useful anchor, but let's turn to page 36 of your February 17th, 2026 deposition, Dr. Harrison.

And do you see at the bottom of page 36, beginning at line 21, I asked you, "Do you recall the date on which you first discussed serving as a restructuring adviser with Perry Mandarino?"

And you answered, "No."

And I asked you, "Do you recall whether that was after Thanksgiving?"

And you answered, "Yes, it was after Thanksgiving."

A Yes, it was -- it was certainly after Thanksgiving.

Q It was your decision to file the fund and the GP for Chapter 11, correct?

A I as managing director of the GP considered many, many factors and chose that the best course to maximize the value for all the LPs was to file the fund and the GP for Chapter 11.

Q And just focusing then on the question of who, Dr. Harrison, you were the individual as the managing director of the general partner who made that decision for

the GP and the fund to file for Chapter 11, correct?
A I as the managing director of the general partner made that decision, yes.
Q There wasn't anybody other than you who was responsible for that decision, correct?
A Correct, no one else was in authority at that time.
Q And, Dr. Harrison, do you recall that you couldn't tell me at your deposition whether you engaged restructuring advisers for the fund prior to December 5th because you were instructed that doing so would waive privilege?
A I don't specifically recall. There were a fair number of privilege discussions during the deposition.
Q And do you recall you couldn't tell me at your deposition whether at any point you considered engaging counsel for the fund separately from counsel for the portfolio companies, again, because of a privilege instruction?
A I'm going to have to answer the question the same way. There was a blizzard of privilege issues that came up and I watched it.
Q And you couldn't tell me at your deposition whether you consulted with Cayman counsel in connection with the fund's filing or the GP's filing, again, because there was a privilege instruction?
A If that's what you represent to me, then yes.

Q I disagreed with the privilege discussion, but I'm not going to revisit that discussion here, Dr. Harrison, you'll be --

A I do recall --

Q -- probably glad to know.

A -- I do recall.

Q Let's move forward and look at Tab 10 in your binder. We started doing different colored binders so we could locate the right one, but that should be Tab 10 -- you tell me if you have Tab 10 in your binder, Dr. Harrison, and Ms. Sundelson will straighten me out with my own binders.

A I have a Tab 10 here, yes.

Q Perfect. Do you recognize that as the debtors' responses to a second set of requests for production and interrogatories?

A That is what it says it is, yes.

Q And do you recall I showed you that document during your deposition?

A I don't specifically recall, but if you represent that you did, I'm sure you did.

Q Let's see if I can refresh your recollection, Dr. Harrison. Do you see page 2 of that document an Interrogatory Number 8 that requests the debtors identify all the materials presented by or on behalf of the general partner's management and its advisers that Dr. Seth Harrison

received in connection with the written resolutions of the general partner dated December 9th, 2025, and exhibited to the Chapter 11 petitions, do you see that?

A I do.

Q And if you turn to the chart on the next page 3, I believe you testified that's the list of materials that you reviewed prior to filing the Chapter 11 petitions for the fund and the GP.

A That's correct.

Q And I will show you, if you look behind Tab 11, Dr. Harrison, at what's been marked as JX-118, you may recognize this as the document we marked as Exhibit 6 at your deposition in February, which is a demonstrative that lists the same Bates numbers as the prior page, but with the names of the documents, so it's easier to tell what they are. Do you see that?

A Yes.

Q And do you recognize that as the list of materials that you reviewed prior to filing the fund for Chapter 11?

A Yes, it looks it.

Q And one of the things that you reviewed prior to filing the fund for Chapter 11 was the audited financials for the fund for the year ending December 31st, 2024, correct?

A Yes.

Q Let's take a look at that, it should be in Tab 12 of

your binder, and it's JX-115 and I believe it's been previously moved into evidence. Do you recognize that, Dr. Harrison, as the consolidated financial statements for ATP Life Science Ventures as of December 31st, 2024?

A Yes.

Q And if you could turn to page 3, the fund's audited financials as of December 31st, 2024 reflect total assets of 3,967,000,000 and more, correct?

A Yes.

Q And they reflect total liabilities of just over five million, correct?

A Yeah.

Q And the list of liabilities here on page 3 of the financial statements don't list 221 million in liabilities to the fund's portfolio companies, correct?

A Yes, the SPAs would not be listed herein, but I'm not an accountant, so I don't know how they would be listed in general.

Q And there's no statement in these consolidated financial statements from Grant Thornton that the fund would be unable to pay its debts as they come due, right?

A This is in '24, so there was no indication that Rigmora was going to default.

Q So the answer to my question, Dr. Harrison, is yes, there's no going-concern qualification in these consolidated

financial statements?
A I think my answer would be of course not.
Q When you say default, Dr. Harrison, are you referring to the Rigmora LPs' nonpayment of the capital calls you issued in May of 2025?
A That's what it's called when you don't meet a capital call, it's called a default.
Q And when you refer to a default by the Rigmora LPs, do you mean to capture a default on what you believed to have been the Rigmora LPs' contingent subscriptions of 2.8 or $2.9 billion?
A No, on capital calls.
Q You're referring specifically to the nonpayment of the just over $100 million in capital calls on May 30th, 2025, correct?
A Yes, those.
Q And it's your testimony that it became clear to you sometime in the first quarter of 2025 the Rigmora LPs were not going to pay those capital calls?
A No, it became explicit in their May 15th email that they intended to not meet capital calls on those budgets.
Q When you received Mr. Bogdanov's email on May 15th, did you call Grant Thornton up and have them revisit their consolidated financial statements?
A No.

Q Did you provide that email to your auditors?
A I did not, no.
Q Have you provided Mr. Bogdanov's May 15th email to Grant Thornton at any point since May 15th, 2025, to your knowledge?
A To my knowledge, no, but they're going to audit the fund presently and I'm sure they will take into account any document they choose in valuing the assets.
MS. SELDEN: Move to strike.
BY MS. SELDEN:
Q Dr. Harrison, can you turn to page 23 of the consolidated financial statements from December 31st, 2024?
A Do you mean Bates number or actual --
Q I can give you a variety of numbers, but I'm referring to the page number 23, the bottom Bates number is ATP-2530025.
A Yes, I'm there.
Q And I am looking at Note 12 with a heading, "Subsequent Events." Do you see that?
A Yes.
Q Note 12 states, "The general partner has evaluated subsequent events through April 28th, 2025, the date as of which the consolidated financial statements were available to be issued. There are no subsequent events that occurred during this period that would require recognition or

disclosure in the consolidated financial statements as of December 31st, 2024 or for the year then ended." Correct?

A That's what it says, yes.

Q And, Dr. Harrison, if you could turn back to Note 1 on page 9 of the document, which is the page ending in Bates number 2530011, you see that that's Note 1, "Nature of Operations"?

A Yes.

Q And Note 1 continues on to the next page, which is page 10 of the document?

A Yes.

Q And if you look at the second full paragraph on page 10, do you see that?

(Pause)

A The one that begins, "The general partner who manages"?

Q Yes.

A Yes.

Q And if you look at the last sentence of that paragraph, Dr. Harrison, it states, "The general partner does not have an economic interest in the partnership; however, Dr. Harrison holds a limited partnership interest in the partnership." Correct?

A Yes, that's what that sentence reads.

Q Dr. Harrison, if you could turn to page 14 of the document which ends in Bates number 2530016.

A Yes.
Q Do you see on page 14 there's a Note 5 for contingent consideration?
A Yes.
Q And Note 5 identifies additional amounts from liquidated investments that the partnership believes will be realized at future dates and/or as future events are reached, correct?
A Yes.
Q There's no note for contingent liabilities?
A I don't believe the Series A agreements are -- to the extent that you mean that those are the contingent liabilities, I don't think they're reflected in here, but they may be, I don't know.
Q Dr. Harrison, you can set that aside for the moment and turn back to Tab 11, which is JX-118 and the list of documents that you reviewed prior to deciding to file the fund for Chapter 11. You also reviewed the limited partnership agreement and its Amendments 1 through 19 and Amendment 21, correct?
A Correct.
Q You also reviewed the Series A stock purchase agreements for certain of the portfolio companies, correct?
A Yes.
Q You reviewed the SPAs for Aethon, Apertor, Ascidian,

Aulos, Deep Apple, Evercrisp, Marlinspike, Nereid, Nine Square, Initial, Red Queen, and Replicate, correct?

A Correct.

Q You also reviewed the promissory notes for certain portfolio companies, correct?

A Correct.

Q You reviewed some of the documents regarding Braeburn, right?

A I'm not sure what you're referring to.

Q If you look on the second page of what's in Tab 11 as JX-118, do you see you reviewed the Braeburn pledge agreement, contribution and exchange agreement, subordination agreements?

A Yes, those are the agreements that the fund executed to enable the Hercules facility that we discussed earlier.

Q You also reviewed the quarterly digest for the fund for quarters 1, 2, and 3 of 2025, right?

A Yes.

Q And the quarterly digest for the fund for the third and fourth quarter of 2024, right?

A Yes.

Q Dr. Harrison, you don't recall asking for information regarding the fund's cash position in the week prior to filing it for bankruptcy, right?

A I knew the fund's cash position and I was in frequent

discussion -- or in frequent touch with our remnant finance group regarding how much cash we had all the time, and I believe I said that in my deposition.

Q You believe that you said in your deposition that you didn't recall asking for information regarding the fund's cash position in the week prior to filing it for bankruptcy, right?

A No, I believe that I said in my deposition that I knew the fund's cash position and that I asked for and received frequent updates regarding the fund's cash position from our financial group because it was so tenuous.

Q Dr. Harrison, if you look back at Tab 1 at your February 17th deposition --

A Yes.

Q -- do you see on page 68 at line 14 that I asked you, "Do you recall asking for information regarding the fund's cash position in the week prior to filing it for bankruptcy?"

And you answered, "I do not specifically recall, no."

A That's true, I did not specifically recall asking for the cash position at any one time during that week --

Q And you --

A -- but I was in constant dialogue regarding it.

Q And you don't recall whether you were provided with information regarding the fund's cash position between Thanksgiving 2025 and December 9th, 2025, correct?

A I don't recall a specific instance of the provision of that information, but that was very important information that I was in touch with via email and oral communications all the time since we were drip feeding and our cash resources were essentially cut off and dwindling. As I believe I said to you, when I needed to find something out, I would call up one of our finance people and say, how much cash, where is it? I would talk to Joe Yanchik and say, what's going on, what are we drip-feeding, how much is the drip feed, things of that nature.

Q I do recall that testimony, Dr. Harrison. I'm just wondering whether you recall that I asked you at page 68 -- on page 9 of your February deposition whether you were provided with information regarding the fund's cash position between Thanksgiving 2025 and December 9th, 2025, and you answered, "I don't recall if they specifically provided that information in that date range."

Do you recall that?

A I do recall answering that, but what I meant is that I didn't remember a specific instance. Though, as I think I made amply clear, I was almost in constant touch with various members of the ATP team about our cash situation, which was quite dire.

Q Dr. Harrison, you didn't consider in your business capacity filing the portfolio companies for Chapter 11 but

not filing the fund, correct?

A No, I did not consider that.

Q And you have no business opinion on that question, correct?

A No, I do not have a business opinion.

Q And you don't recall considering whether the fund --

A I'm sorry, wait. That was considered different times as we weathered the Rigmora funding crisis, yes, at different times different portfolio companies did consider filing separately for Chapter 11. I apologize.

Q No, I think you answered my question as I intended, which was as to this filing in 2025.

A Oh, for this filing? No, by then it was -- the fund was without resources.

Q And you don't recall considering as it relates to this filing whether the fund's investments in its portfolio companies might generate returns sufficient to satisfy what you believe were the fund's obligations, correct?

A I believe that I found that question during the deposition confusing, and I think we talked about it a fair amount. We can revisit it now, if you'd like, but the short answer is, did I think about selling Evercrisp to satisfy an obligation in Apertor or something of that nature? No. And did I think about selling the Syntimmune judgment? Yes. And what we found was that the market was not available to

realize the value or anything close. And did we consider whether or not to take an offer for Braeburn that was cheap that would have generated the cash to satisfy the obligations? No, because it was too cheap. So, to maximize the value of the fund, it was impossible to consider liquidating anything inside the fund to satisfy the obligations of the fund.

Q And by obligations of the fund you're referring to the $221 million in unfunded commitments to the portfolio companies that you discussed with Mr. Berdon?

A As I believe I testified in the deposition and today, I calculate that the obligations of the fund are approximately $350 million, and that consists of the commitments to fund the portfolio companies and the Series A agreements, plus various management fees and expenses through February of 2031, which are in the LPA and documented as the fund's obligations.

Q And out of that $350 million number you mentioned, approximately 130 million of that is fees and fund expenses through February of 2031, correct?

A It's an approximate number. The ATLS fee is approximately 18 million, the ATVM fee is approximately -- is three million, and then fund costs vary, ballpark four million, maybe five, and you add those together and multiply by five or six and you get that number. It's not possible to

make an exact prediction.

Q Those are fees and fund expenses that you believed the fund would continue to incur if it carried on and was not unwound in the Cayman proceeding, correct?

A Those are the continued obligations of the fund under the LPA.

Q And do you have an understanding whether the Cayman court would consider whether those were continuing obligations of the fund if the fund was wound up?

A No, I'm not a Cayman lawyer.

Q And do you have an understanding as to whether Chancellor McCormick addressed the nature of those obligations in her decision?

A I don't know if she did. I believe that one or more of the capital calls was for fees and fund expenses that she ruled that Rigmora was required to pay, and those capital calls were authorized by those provisions under the LPA, they're not subject to budget approvals.

Q And setting aside those fees and fund expenses subject to those two court proceedings, the balance of the $350 million that you're referring to is the $221 million that you believe the fund committed to its portfolio companies in its SPAs, correct?

A Yes, 220 plus 120 -- as I said before, the range is like 330 to 350, I believe.

Q Dr. Harrison, one of the main reasons you filed the Chapter 11 petition on behalf of the fund was because you believed the Rigmora LPs wouldn't meet their obligation to pay the capital calls as ordered by Chancellor McCormick, correct?

A Correct. That was one consideration.

Q And when you made that decision to file the fund for Chapter 11 on December 9th, you had no idea that Rigmora's counsel had emailed your counsel at Quinn Emanuel attaching Rigmora's proposed order of judgment calling for payment within ten days the day before on December 8th?

A I had an idea that Rigmora had sent in a proposed order and did not view that as any sort of guarantee of payment. And I also judged that -- as I've said, as I've testified, that as managing director of the general partner, even what I deemed the unlikely event that they paid the order, if an order were agreed to, that that 97 million was a bridge to nowhere. So, we were without the resources even with that 97 million to meet all of our obligations and that was my primary reason for moving the fund into Chapter 11.

Q But, Dr. Harrison, when you filed this multi-billion-dollar fund for bankruptcy on December 9th, 2025, you had never seen the email and proposed order of judgment that the LPs had sent on Monday, December 8th, the first business day after the Friday decision, proposing that the Rigmora LPs

within ten days of the entry of this partial final judgment and order would pay to ATP Life Science Ventures, L.P., the fund, $96,960,925.88 in satisfaction of the capital calls, had you?

A I had not seen that email, no.

Q In fact, you hadn't seen that email or proposed order until I showed it to you in your deposition last Tuesday, February 17th, right?

A That's correct, I had not seen that email.

Q And at your deposition your counsel asserted privilege and instructed you not to answer questions on whether you discussed that order with counsel at Quinn on December 8th or 9th, correct?

A If that was one of the privilege issues, then yes.

Q And it's your --

MR. BERDON: Your Honor, we would permit him to answer that question with a yes or a no at this time and not invoke privilege to instruct him not to answer that question with a yes or a no, unless Counsel wants to stand on the fact that she has a non-answer at the deposition and use that. I'm saying here live, essentially at trial, I'll let him answer with a yes or a no.

MS. SELDEN: I would love to have an answer. I had asked the same question at Dr. Harrison's deposition where I had said I'm asking a yes/no question, did you speak

to your counsel regarding the proposed form of order on December 8th, 2025, and the witness was instructed not to answer. I would have liked to have known that answer before today, I'm happy to have it now.

THE WITNESS: Yes.

(Pause)

BY MS. SELDEN:

Q And, Dr. Harrison, it was your testimony that you didn't know prior to filing for Chapter 11 that the LPs' counsel had followed up again on December 9th asking for comments on the proposed order, right?

A I don't know what to answer if it's a privilege.

Q Let's take a look back at Tab 1, which is your February 17th deposition, at page 86, and I'll ask you to look at line 10.

(Pause)

Q And, Dr. Harrison, you see that on February 17th, last week --

A I maintain that --

Q -- I asked you, were you aware that --

A -- I maintain the answer, yes.

Q -- as of the afternoon of December 9th, 2025 the Rigmora LPs had yet to receive any comments on the proposed form of order offering to pay the Chancery Court judgment within ten days of entry of the order, and you answered no.

A Yes, I'm sorry about the answer just now, I wasn't sure which was privileged, but yes, I stand by that answer.

THE COURT: Dr. Harrison, you don't need to worry about that, your counsel will assert privilege, if he chooses to.

THE WITNESS: Thank you very much.

(Pause)

THE WITNESS: So, I'm sorry, may I clarify? Even if privilege was asserted during the deposition, I should just answer unless --

THE COURT: You can answer questions unless and until your counsel objects.

THE WITNESS: Okay.

BY MS. SELDEN:

Q Dr. Harrison, there wasn't any point prior to filing the fund for Chapter 11 on December 9th that you considered asking the Rigmora LPs to shorten the time for payment of the final judgment to less than ten days, right?

A Right.

Q And you don't recall considering enforcing the judgment in the Court of Chancery if it wasn't paid, correct?

A I do not recall considering that.

Q And before you filed the fund for Chapter 11 you didn't take any steps to determine whether the Rigmora LPs had ever previously been the subject of a court-ordered judgment

requiring payment of funds, correct?
A Yes, you asked me that question, and I knew that the Rigmora LPs had been involved in a lot of litigations, mostly with successful ventures, and I had followed how they ended, but I don't know exactly if they wound up resulting in judgments against the Rigmora LPs and whether they paid.
Q And you didn't look at whether there were any judgments against the Rigmora LPs that had never been paid, right?
A No, I did not.
Q And you didn't take any steps to inform yourself of the mechanisms for enforcement of Chancery Court judgments, correct?
A No, I did not.
Q And as the managing director of the general partner of the fund you didn't recall whether you considered whether enforcing the judgment through the Chancery Court would be preferable to filing that fund for Chapter 11, correct?
A I didn't consider it because even had we received the money free and clear instantly it was insufficient to meet the fund's obligations. And so to go through some sort of protracted process to chase the money in Chancery Court or anywhere else made no sense and it didn't factor into any calculation whatsoever.
Q Dr. Harrison, isn't the real problem for the fund not that Chancellor McCormick ordered payment of $96 million in

capital calls just shy of the hundred or so million that you requested, but that she denied the relief that you were seeking with respect to the contingent subscription amounts and found that the Rigmora LPs' contingent subscription was $2.425 billion?

A You're asking is it a real problem for the fund, what do you mean? What's your question?

Q Withdrawn.

Dr. Harrison, it was -- you've told me it was important, in your view, to resolve the legal disputes between the general partner and the limited partners as soon as possible, right?

A Yes, that's why we filed for expedited relief in the Chancery Court.

Q And you understood that the winding-up proceeding was scheduled for trial in the Cayman Islands to begin on January 12th and to be completed within January of 2026, correct?

A I understood that.

Q And you thought that instead of going to the Cayman Islands and proceeding with that January 2026 trial another way for the legal processes involving the GP and the LPs to be resolved was for the fund to file Chapter 11, and halt those proceedings through the automatic stay and proceed instead here, correct?

A That wasn't the primary motivation. The primary motivation was to look at the values in the fund and to seek a plan of reorganization under Chapter 11, which I determined in consultation with counsel that the GP had the right to do. In looking at the Cayman action and in reading Rigmora's motions, at least as of December 9th, it was clear to me that Cayman would liquidate the fund and that would be an outcome that would harm the value of all the LPs, including Rigmora. So, as managing partner of the GP, I chose to exercise the right to file Chapter 11 to reorganize the fund.

Q Dr. Harrison, do you recall testifying during your February 17th deposition last week that you didn't recall whether you consulted with Cayman counsel between Thanksgiving of 2025 and your decision to file the fund on December 9th of 2025?

A I don't recall which testimony, but what I do recall is saying that it is not possible for me to remember pinpoint moments.

Q But that wasn't something that you discussed with Cayman counsel for the fund during the week leading up to this Chapter 11 filing, correct?

A I don't remember.

Q And you didn't know as of last Tuesday when I deposed you whether financial distress is a prerequisite for a debtor to avail itself of a Chapter 11 filing, correct?

A I'm not a lawyer and I -- if you're using financial distress as a defined term, I don't know what it is.

Q And you didn't know one way or the other whether financial distress is a prerequisite for a debtor filing Chapter 11, right?

A To the best of my knowledge as the managing director of the general partner, I sought counsel and determined that the fund had reached its limit on its ability to satisfy its obligations and had almost no cash resources to do so, and that made us eligible to file for reorganization under Chapter 11 and chose to do so.

Q In your view, when the fund filed for Chapter 11, its assets exceeded its liabilities by multiple, correct?

A Yes.

THE COURT: You don't need to cut off.

MS. SELDEN: Your Honor, just by me looking at the clock because I am thinking -- I do have quite a bit left to do, which I will start doing -- I will not be done by 3:30 and I am going to switch gears. So --

THE COURT: Okay. So, I have a meeting, which is why I have a cutoff. How much longer do you think you have?

(Pause)

MS. SELDEN: An hour. It may be shorter, Your Honor. It's document-intensive and if I -- it's possible it will go fast, it's possible it will go slow. I guess it's a

two-party question.

THE COURT: So, I think we could come back at 5:30 and continue. This is our last witness, right?

MS. SELDEN: This is our last witness and if Your Honor and everyone, the Court personnel don't mind, I think if we came back at 5:30, I would be happy to do that. I don't think it's more than an hour, I do think it's more than 20 minutes.

THE COURT: Okay, so we'll come back at 5:30. Do you want to start and take your 20 minutes, or do you want to stop here?

MS. SELDEN: Why don't we break here, and let everyone get a bite to eat and have a break. And I will pick up -- I think it will go faster if I take a break and just do this straight through.

THE COURT: Okay. We're going to take a recess. We're in recess until 5:30.

Dr. Harrison, please do not speak about your testimony during this break.

THE WITNESS: I understand.

THE COURT: Thank you.

THE WITNESS: Thank you.

THE COURT: We're in recess.

(Recess taken at 3:08 p.m.)

(Proceedings resume at 5:33 p.m.)

(Call to order of the Court)

(Witness resumes stand)

THE COURT: Please be seated.

Ms. Selden.

MS. SELDEN: Thank you, Your Honor.

BY MS. SELDEN:

Q Good afternoon, Dr. Harrison.

A Good evening.

Q We're back again.

Dr. Harrison, I want to switch gears a little bit from where we were before the recess and talk about some of the contracts at issue in this case.

Dr. Harrison, in the course of your investment career, you've been involved in numerous contract negotiations, correct?

A I have, yes.

Q And in the course of your time as the general partner, you've been involved in numerous contract negotiations, right?

A As the general partner of this fund, yes.

Q When you're involved in negotiating contracts as general partner on behalf of the fund, one of your primary goals is to do everything you can to be certain that the final signed contract accurately reflects the agreement that was reached between the parties, correct?

A Yes.
Q And one of the ways that you do everything you can to be certain that a contract accurately reflects the deal that was reached between the parties is to review the contract carefully, before it's executed, correct?
A Yes.
Q Another way that you do everything you can to be certain that a contract accurately reflects the deal that was reached between the parties is to review the contract multiple times before it's executed, correct?
A Possibly, yes.
Q Another way that you can be certain that a contract accurately reflects the deal that was reached between the parties is to retain counsel to assist in the negotiation and drafting, correct?
A Yes.
Q You've retained outside counsel to assist in the negotiation and drafting of contracts numerous times over the course of your career, correct?
A Yes.
Q One way that you do everything you can to be certain that a contract accurately reflects the deal that was reached between the parties is to review the contract with counsel, right?
A Yes.

Q Another way that you do everything you can to be sure that a contract accurately reflects the deal that was reached between the parties is communicating with the other side about the terms of the deal, correct?

A Absolutely. That's essential.

Q And before the fund enters into a stock purchase agreement or before you, as GP, acting on behalf of the fund, enter into a stock purchase agreement with any particular portfolio company, you review that stock purchase agreement, correct?

A Yes. We have a model that we tend to use across the portfolio, but yes.

Q And each time that you use that model or enter a stock purchase agreement on behalf of the fund in connection with a portfolio company, you review that particular SPA, correct?

A Yes.

Q And before the fund enters into an SPA with any particular portfolio company, you discuss that SPA with counsel, correct?

A Yes.

Q And the SPAs are the place that you look to find the extent of the fund's commitments to its portfolio companies, correct?

A By and large, yes.

Q Dr. Harrison, could you turn back to Tab 4 of your

witness binder, which should be your first-day declaration? And if you look to Paragraph 47 of your first-day declaration, that should be on Page 22. Do you see that?

A Yes.

Q Paragraph 47 of your declaration states:

"The partnership owes more than $221 million in unfunded commitments to certain of the PortCos."

Correct?

A Yes.

Q And if you'd turn to Paragraph 28 on Page 15 of your declaration, there's a chart there that includes a list of portfolio companies and descriptions, correct?

A Correct.

Q And Dr. Harrison, if you could turn to Tab 20 in your binder or --

MS. SELDEN: I will tell you, because the binders and big and awkward, we have pulled this out and we'll hand it around, Your Honor. If Ms. Lendelson might approach, we can hand you this standalone exhibit.

THE COURT: It's 20?

MS. SELDEN: It is.

THE COURT: Okay. I've got it.

MS. SELDEN: Got it? All right. I know the binders are getting old at this point.

BY MS. SELDEN:

Q Do you have it, Dr. Harrison?

A I do, yes.

Q And do you recognize Tab 20, which is marked as JX-119, as a demonstrative that was previously marked during your deposition last week, on February 17th?

A It looks the same, yes.

Q And this demonstrative includes the same information as the chart in Paragraph 28 of your declaration, but with an extra column on the right.

MR. BERDON: Lacks foundation. There's no testimony that he prepared it.

THE COURT: The demonstrative?

MR. BERDON: Yes.

MS. SELDEN: I -- he didn't prepare it; I prepared it. It's a demonstrative that we used and marked as an exhibit at his deposition. I'm prepared to use it as a demonstrative again here for ease of reference.

MR. BERDON: I understand, b ut the question is isn't it true that this is the exact same, except for the addition of a column, and I don't think she has established a foundation that you have personal knowledge of that. She can represent it, but I just think it's asking him to assume facts about a preparation of a demonstrative.

THE COURT: Okay. Sustained.

BY MS. SELDEN:

Q Dr. Harrison, I had prepared the demonstrative for ease of reference because it had pulled out those numbers in the righthand column at Tab 20, but we can say and look at Paragraph 15 -- or Page 15 or Paragraph 28 of your declaration.

Do you have that in front of you?

A I'm sorry. Which tab is it again?

Q I will set aside the demonstrative --

A No, but --

Q -- and --

THE COURT: Which tab?

A Where do you want me to go now?

Q -- spare you that. And we'll go back to Tab 4, which is your first-day declaration and turn, within your first-day declaration --

A Yes.

Q To Paragraph 28 and to the chart that follows on Page 15. Do you see that?

A Yes.

Q And this is the chart in your first-day declaration that includes a description of portfolio companies listed by name in the lefthand column. Do you see that?

A I do.

Q And in the righthand column is a description of the portfolio companies' funding needs and partnership

agreements. Do you see that?
A Yes.
Q And within the righthand column, for example, for Aethon, in the second sentence, you say:
"The partnership has a capital commitment of $8 million in favor of Aethon, which remains unfunded."
Do you see that?
A Yes.
Q And Dr. Harrison, in your first-day declaration, you included in this chart, in Paragraph 28, the amount of what you believed the unfunded commitment to each of the portfolio companies is, correct?
A Correct.
Q And if we were to pull out the amount of unfunded commitment identified for each portfolio company in the chart, in Paragraph 28, at Page 15 of your declaration, that would sum to roughly $221 million. Is that correct?
A I believe so, yes.
Q And that's the amount that you believe the fund has committed to the portfolio companies under the terms of their SPAs, correct?
A Correct.
Q And just to be clear, Dr. Harrison, although this chart speaks here of capital commitments in favor of each portfolio company, which remain unfunded, you believe that there is a

commitment by the fund to the portfolio companies pursuant to their SPA, on the one hand, and a capital commitment by the LPAs -- by the LPs to contribute capital to the fund on the other, correct?

A Yeah, they're symmetrical. We never made a commitment to a portfolio company without first obtaining a signed budget in that amount.

Q Okay. Thank you.

And I want to focus for now on the relationship between the fund and the portfolio companies.

And Dr. Harrison, there, when you refer to $221 million in commitments by the fund to certain of the portfolio companies, you're talking about the fund's commitments under the stock purchase agreements or SPAs, correct?

A Yes.

(Pause in proceedings)

Q So, if you'd look in your chart, at Page 15 of your declaration, at Deep Apple. Do you see that?

A I do.

Q And for Deep Apple, you state here that the partnership has a capital commitment of $9 million in favor of Deep Apple, which remains unfunded, correct?

A Yes.

Q And it's also your view that the fund has a commitment under its SPA to deep apple in the equivalent amount of $9

million, correct?

A I think that's what that says.

Q Dr. Harrison, let's look at the Deep Apple SPA, which I think Mr. Berdon showed you in his binder as JX-32 --

A Go back --

Q -- if you still --

A -- to that --

Q -- have that in front of you.

(Pause in proceedings)

A Yes.

Q And Dr. Harrison, you recognize JX-32 as the Series A preferred stock purchase agreement between Deep Apple Therapeutics and Apple Tree Partners, or ATP Life Science Ventures, LP, correct?

A Yes.

Q And if you turn to the signature page, which is at the page Bates ending ATP88340, that's your signature for the purchaser as the general partner of the fund, correct?

A Correct.

Q And Dr. Harrison, if you could look back at Section 1.3, do you see there it refers to the sale of additional shares of preferred stock?

A Yes.

Q And Section 1.3(a) provides that:

"After the initial closing, the company shall sell

and the purchaser shall purchase, on the same terms and conditions as those contained in this agreement, up to aggregate of 47 million additional shares of Series A preferred stock, the 'additional shares.'

Correct?

A Yes, I see that.

Q And if you turn to Section 1.3(c) on the next page, you see there it says:

"After the initial closing, the company shall sell and the purchaser shall purchase, on the same terms and conditions contained in this agreement as part of additional closings, up to an aggregate of 42 million additional shares at the request of the board and upon the company's achievement of certain milestones."

Correct.

Q And Section 1.3(c) goes on to say that:

"Milestones are to be negotiated in good faith by the company and the purchaser after the initial closing."

Correct.

Q And the last section of Section 1.3 states:

"Following the agreement by the company and the purchaser of the terms and conditions of a milestone, including the number of additional shares to be so purchased upon the achievement of such milestone, the company and the purchaser will amend this agreement to reflect such terms and

conditions of such agreed-upon milestone, including the number of additional shares to be so purchased upon the achievement of such milestone."

Correct?

A Yes.

Q And Dr. Harrison, if you'd turn back in the Deep Apple SPA to Section 6.9, there's a provision called "amendments and waivers," correct?

A Where -- where is that?

Q Section 6.9 on Page 15 of the document or the page Bates ending 88336.

A Yes.

Q And if you turn the page to Page 16 of the document, ending in 8337, do you see Section 6.12 of the Deep Apple SPA?

A Yes.

Q And 612 is headed "The Entire Agreement," correct?

A Yes.

Q And the entire agreement provision reads:

"This agreement, including the exhibits hereto, the restated certificate and the other transaction agreements constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof and any other written or oral agreement relating to the subject matter hereof existing between the parties are

expressly canceled."

Do you see that?

A I do.

Q And Dr. Harrison, if you look at the next page, at Page 17, do you see Section 6.16?

A Yes.

Q And Section 6.16 is titled "No Commitment for Additional Financing." Do you see that?

A Yes.

Q And Section 6.16 states that:

"The company acknowledges and agrees that the purchaser has not made any representation undertaking commitment or agreement to provide or assist the company in obtaining any financing, investment, or other assistance, other than the purchase of the shares, as set forth herein, and subject to the conditions set forth herein."

Correct?

A Yes.

Q And Section 6.16 goes on to state, "In addition, the company acknowledges and agrees," and then provides a list enumerated (a), (b), and (c). Do you see that?

A Yes.

Q Section 6.16(a) provides that:

"The company acknowledges and agrees that no statements, whether written or oral, made by the purchaser or

its representatives, on or after the date of this agreement, shall create an obligation, commitment, or agreement to provide or assist the company in obtaining any financing or investment."

Do you see that?

A Yes.

Q And Section 6.16(b) provides that:

"The company shall not rely on any statement by the purchaser or its representatives."

Correct?

A Correct.

Q And Section 6.16(c) provides that:

"An obligation, commitment, or agreement to provide or assist the company in obtaining any financing or investment may only be created by written agreement, signed by the purchaser and the company, setting forth the terms and conditions of such financing or investment and stating that the parties intend for such writing to be a binding obligation or agreement."

Do you see that?

A I do.

Q And Dr. Harrison, if you look to the end of the Deep Apple SPA, there's no written amendment hereto, correct?

A Correct.

Q Dr. Harrison, you can set that binder aside and turn to

Volume 2 of the binder that we provided.

(Pause in proceedings)

Q And before we turn to the next SPA, Dr. Harrison, just look back, if you will, at Tab 4 of this binder and your first-day declaration, back to that chart on Page 15.

A Back to Volume 1?

Q Yes. In my defense, I had hoped to simplify this with the demonstrative --

A I'll just look --

Q -- but I'll use your declaration --

A I'll look on the screen.

Q -- or you can see it on the screen.

And Dr. Harrison, you see at the bottom of the chart, on Page 15, a reference to Marlinspike, which is one of the debtor portfolio companies, correct?

A Yes.

Q And that refers to a commitment of $37.275 million in favor of Marlinspike, correct?

A Correct.

Q So let's take a look at the Marlinspike SPA, which should be Tab 29 in your binder or JX-28.

(Pause in proceedings)

Q Do you have that in front of you?

And Dr. Harrison, if you'd turn to the signature page ending in Bates Number 4430, there's your signature here on

behalf of the purchaser ATP Life Science Ventures by its GP, correct?

A Correct.

Q And you reviewed this Marlinspike SPA prior to signing it, correct?

A Yes.

Q And Dr. Harrison, if you'd turn to the beginning of the substance of the SPA and the page Bates ending 33410. Do you see this is a Series A preferred stock purchase agreement between Marlinspike Therapeutics, the company, and the purchaser ATP Life Science Ventures, LP, correct?

A Correct.

Q And if you look at Section 1.2 of the Marlinspike SPA, it's called "Closing Delivery," right?

A Right.

Q And Section 1.2(a) provides for an initial closing, correct?

A Correct.

Q And Section 1.2(b) refers to a second tranche closing, correct?

A Correct.

Q And Section 1.2(b) states that:

"If the board of directors of the company, in good faith, determines that the company has successfully achieved the second tranche milestone, as defined below, then the

company shall send a written notice of such determination to the purchaser, the second tranche milestone notice, as promptly as practicable."

Correct?

A Correct.

Q And Section 1.2(b) states that:

"Within 14 days following the purchaser's receipt of the second tranche milestone notice, the company shall sell and the purchaser shall purchase, on the terms and conditions set forth in this agreement, an additional $7 million shares of Series A preferred stock, defined as the second tranche shares."

Correct?

A Correct.

Q And that same language appears with respect to the third through sixth closings in Section 1.2(c) through 1.2(f), correct?

A Yes.

Q And if you look to the next page, under Section (k), you see the defined terms "second tranche milestone" through "sixth tranche milestone," correct?

A Yes.

Q And Dr. Harrison, you didn't review any tranche milestone notices with respect to Marlinspike prior to filing the Chapter 11 petitions for the fund and the general

partner, correct?

A Correct.

Q There are not tranche milestone notices on the complete list of materials that you reviewed, right?

A Correct.

Q And there are no tranche milestone notices at all with respect to Marlinspike, correct?

A I think, as has been amply testified, the way that the fund do business -- or does business with its portfolio companies was to micro-tranche milestones and adjudicate whether or not value would be created by future milestones and purchase the shares gradually.

That's why, in this case, in (I), the GP has discretion to waive the milestones. And in fact, because for -- since nine -- since 2022, we were slowing down the cadence of funding across the portfolio, we -- it was a guarantee that companies could not meet the milestones as set out, so we relied on that.

In addition, as I think has been testified to by others of my team and by myself, our job is to manage the companies in a very careful way to identify opportunities as they emerge because so many of them are at a quite early stage, and it's impossible to predict research. And a research result can spring up, and that becomes your next path.

And indeed, the entire portfolio's success story from

the early stage companies emerged in that way. So the SPAs to designed, to your point, of carefully reviewing the constructing contracts to give the GP complete discretion relating to milestones, whether they were enumerated or not.

Q And you had previously exercised the GP's discretion to purchase additional shares of Marlinspike on behalf of the fund. Is that correct?

A For every deal. That's what we did with Stoke, with Syntimmune, with Braeburn, with Corvidia, with Akero, every deal that succeeded, and we were following the exact same pattern here. The difference there was, of course, we were not asked to throttle back funding commitments.

Q And you're referring -- when you said "little I," you're referring to 1.2, Section (I). Is that correct?

A Yes.

Q And Dr. Harrison, still in the Marlinspike SPA, if you look ahead at Section 6.9, on the page that is 17 or Bates ending 426, you'll see Marlinspike's SPA also has an amendments and waivers provision, calling for any amendment, termination, or waiver to be with the written consent of the company and the purchaser. Do you see that?

MR. BERDON: Objection. That calls for him to interpret the agreement up. Up until now, counsel has just been reading and asking if it says that. This question is asking whether the provision, as written, has a certain

effect. I don't want to, you know, dance on the head of a pin here, but one is legal and the other is, you know, just have I read that correctly. And I will object to this question.

THE COURT: I'll sustain that.

BY MS. SELDEN:

Q Dr. Harrison, do you see that Section 6.9 of the Marlinspike SPA provides:

"Any term of this agreement may be amended, terminated, or waived only with the written consent of the company and the purchaser?

MR. BERDON: Again --

A I do.

MR. BERDON: -- the use of the word "provides" there, it -- objection.

THE COURT: Is that not precise reading or is that --

MS. SELDEN: I'm reading it verbatim --

MR. BERDON: You don't --

MS. SELDEN: -- Mr. Berdon. I used it to provide --

MR. BERDON: I'm sorry.

MS. SELDEN: -- for reference, so that we're looking at the same text.

MR. BERDON: (Indiscernible)

MS. SELDEN: But I'm just reading the --

MR. BERDON: I'm speaking to the Court.

Your Honor, it just -- I don't want to quibble. But the use of the word "provides" has at least two meanings.

THE COURT: Which provision are we in?

MR. BERDON: We're at the 6.9, Your Honor.

THE COURT: Okay. And what's the question, does this provide, is this?

MS. SELDEN: Yes. And honestly, I used "provide" in that it says --

THE COURT: Yeah.

MS. SELDEN: -- or the words here appear.

THE COURT: I'm going to --

MS. SELDEN: I am not asking -- I understand Dr. Harrison is not a lawyer. I also understand him to be the signatory and counterparty to each of these, and he clearly is familiar with them. I merely meant to read it to him.

THE COURT: Okay. Then it's overruled. You can answer the question.

THE WITNESS: The question is can I read what it says? Yes.

MS. SELDEN: For now, yes. Thank you, Dr. Harrison.

//

BY MS. SELDEN:

Q And Dr. Harrison, if you look below on that same page, at Section 6.1 of the Marlinspike SPA, you see the heading "Entire Agreement"?

A Yes.

Q And there is a provision there that states:

"This agreement, including the exhibits hereto, the restated certificate, and the other transaction agreements constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof and any other written or oral agreement relating to the subject matter hereof existing between the parties are expressly canceled."

Do you see that?

A Yes.

Q And Dr. Harrison, if you could look to the next page and Section 6.5 of the Marlinspike SPA, do you see a provision with the heading "No Commitment for Additional Financing"?

A Yes. It should be, more or less, identical to the other than you wed me. That means there's no equivalent to a Series B financing at this time.

Q I'm sorry, Dr. Harrison. I just couldn't hear you.

A I'm sorry.

That -- that means there's no commitment to a Series B financing at this time. That's what "additional financing"

means.

Q And do you see the words "Series B" anywhere in Section 6.15?

A No.

Q But you do see, in Section 6.15(c), that any obligation, commitment, or agreement to provide or assist the company in obtaining any financing or investment may only be created by a written agreement signed by the purchaser and the company, setting forth the terms and conditions of such financing or investment, and stating that the parties intend for such writing to be a binding obligation or agreement, correct?

A Correct.

Q And there's no written amendment to the Marlinspike SPA here, is there?

A No.

(Pause in proceedings)

Q Dr. Harrison, if you still have handy your first-day declaration and the chart on Page 15, in Paragraph 28 --

A I -- can we use the screen? Thank you.

Q Yes.

You see there, there's a reference to an eight-million-dollar commitment in favor of Aethon, correct?

A Yes.

Q So let's take a look at the Aethon SPA, which should

Tab 32 of your binder and JX-31.

Dr. Harrison, you recognize this as the Series A preferred stock purchase agreement between the fund and Aethon?

A Yes.

Q And this is another SPA that you signed, correct?

A It should be, yes.

Q And you reviewed the Aethon SPA prior to filing Chapter 11 petitions for the fund and the general partner, correct?

A Yes.

Q And if you look to the first sentence of the agreement, it states:

"This is a Series A preferred stock purchase agreement made as of December 16th, 2022, by and between Aethon Therapeutics and ATP Life Science Ventures, LP."

Correct?

A Correct.

Q And if you look at Section 1.2, it's called "Closing Delivery," right?

A Yes.

Q And Section 1.2(a) provides for an initial closing, correct?

A Yes.

Q And if you look at the next page, Section 1.2(b) refers to a second tranche closing, correct?

A Correct.

Q And Section 1.2(b) states:

"If the board determines that the company has successfully achieved the second tranche milestone, as defined below, then the company shall send a written notice of such determination, the second tranche milestone notice, to the purchasers as promptly as practicable and, in any event, no more than five business days following such determination by the board."

Correct?

A Correct.

Q And then Section 1.2(b) also states:

"Within 20 days following the purchaser's receipt of the second tranche milestone notice, the second tranche closing, the company shall issue and the purchasers shall purchase, on the terms and conditions set forth in this agreement, the number of shares of Series A preferred stock set forth opposite each purchaser's name on Exhibit A under the heading 'Second Tranche Closing,' at per share price equal to the purchase price designed as the second tranche shares."

Right?

A Right.

Q And the same language appears with respect to the third through fifth closings in Section 1.2(c) through 1.2(e),

correct?

A Correct.

Q You didn't review any tranche milestone notices with respect to Aethon prior to filing the Chapter 11 petitions for the fund and the GP, correct?

A Correct. Aethon, as so many of our companies, had done a pivot. It had done a deal with Revolution Medicines. There was no funding from the Rigmora LPs. Fortunately, the RevMed deal was funding the company. We had full discretion to accelerate the milestones or decelerate them or change them.

I believe, in that -- in this contract, it's in Clause (k) of the same section or whatever.

And we did what we do across the portfolio, which is exercise our best judgment to efficiently titrate in capital by giving the resources at hand to do our best to generate value.

Q So Aethon is another portfolio company in which you pivoted away from the milestones defined in the SPA to a different focus. Is that correct?

A Not an entirely different focus. But the projects that Aethon wound up doing were later discovered on the Aethon platform and, in fact, enabled by the partnership that it did with -- with Revolution Medicines, and that was a good thing.

Q And the milestones, as defined by the SPA, never

resulted in a tranche milestone notice being delivered by the Board of Aethon to the purchaser to trigger purchase obligations under the SPA, to your knowledge --

A I --

Q -- right?

A I don't know.

(Pause in proceedings)

Q And Dr. Harrison, for the five companies -- you'll be glad to know -- before I ask you this question, I will tell you we've looked at two companies with milestones in their SPAs, right? Marlinspike and Aethon?

A Yes.

Q And you're familiar that there are five companies with milestones defined in their SPAs, correct?

A I'm familiar with that number, yes.

Q You'll be glad to know I won't take you through all five --

A I --

Q -- of the SPAs --

A It's --

Q -- for the --

A -- appreciated.

Q -- milestones.

But I will ask you: For the five companies with milestones specified in their SPAs, the fund had no

obligation to invest further if the portfolio companies didn't achieve the specified milestones, correct?

A Correct. The -- the, quote/unquote, "missing" of a milestone gave the GP discretion as to whether and how to fund, and the missing or non-achievement of a milestone would have occurred, either because of developments within the company or a slowing down of the funding of the company or both.

Q And so the fund had the right, but not the obligation, to invest further if those five companies did not achieve their milestones, correct?

A Yes. We committed to founders and source institutions to fund the entire Series A. And for me, in reviewing these agreements, the governing language was always the "shall/shall," that we "shall" fund, and the company "shall" enable us to invest. And given all of the changes that were occurring, both in the natural way of research and managing that research, and in the very frequent requests from Rigmora to reduce funding, we were managing the flow of capital, sort of within the "shall/shall" framework, which, in my understanding, defined our commitment to the companies.

MS. SELDEN: Can we pull up Tab 16?

Q And Dr. Harrison, do you recall I took your deposition on October 6th of the -- of last year?

A Yes.

Q I know, you're like sure, you can't remember a day when I wasn't taking your deposition.

But I --

A Almost.

Q -- show you --

A Almost.

Q -- the transcript from your October 6th deposition --

A Is there a tab here?

Q -- and ask you to turn to Page 249.

A I'm sorry, it's tab which?

Q Tab 16.

A 16.

Q Sorry.

A Is it in the first binder, first volume?

THE COURT: Yeah.

(Participants confer)

BY MS. SELDEN:

Q Sorry, Dr. Harrison. Can you turn to Page 268 of that deposition?

Let's just skip that. There's a -- I had the incorrect page for you; and, rather than struggle with these pages, I will come back to that, if you need to.

But I think, Dr. Harrison -- do you recall that I asked you, in your October 6th deposition, whether the fund had the right, but not the obligation, to invest further if the

companies didn't achieve those milestones, and you agreed that would be one way to phrase it?

A I'm sorry. I can't recall.

Q Dr. Harrison, let's switch gears for a minute and look at one of the SPAs without milestones. I want to turn to Apertor.

But before I do that, if you still have handy the first-day declaration and the chart on Page 15, or we can put that on the screen for you.

With respect to Apertor, you referred to a commitment of $21 million, correct?

A Correct.

Q So let's look at the Apertor SPA, which is Tab 28 and marked as JX-27.

(Pause in proceedings)

A Yes.

Q And Dr. Harrison, you do recognize this as the Series A preferred stock purchase agreement between Apertor Pharmaceuticals and the fund as purchaser, correct?

A Correct.

Q And this is another SPA that you signed for the fund as the general partner, correct?

A Yes.

Q And Dr. Harrison, if you could turn to Section 1.3(a) on the first page of the agreement ending in Bates Number

631?

A Yes.

Q And Section 6.13(a) states that:

"After the initial closing, the company shall sell and the purchaser shall purchase, on the same terms and conditions as those contained in this agreement, up to an aggregate of 47 million additional shares of Series A preferred stock, the additional shares."

Correct.

A I'm sorry. Where -- you're in 1.2 or 1.3?

Q I'm in 1.3.

A 1.3.

Q Yes, it -- "the company shall sell and the purchaser shall purchase" -- and then the last sentence is -- this is an updating sentence to update the stock purchase agreement with the record of that purchase.

A At each additional closing, correct?

A Yes.

Q And if you turn to Section 1.3(c), it states that:

"After the initial closing, the company shall sell and the purchaser shall purchase, on the terms and conditions as those contained in this agreement, as part of an additional closing, up to an aggregate of 43,500,000 additional shares, at the request of the board and upon the company's achievement of certain milestones, to be negotiated

in good faith by the company and the purchaser after the initial closing, each a milestone."

Correct?

A Correct.

Q And it goes on to state that:

"Following the agreement by the company and the purchaser of the terms and conditions of a milestone, including the number of additional shares to be so purchased upon the achievement of such milestone, the company and the purchaser will amend this agreement to reflect such terms and conditions of such agreed-upon milestone, including the number of additional shares to be so purchased upon the achievement of such milestone."

Do you see that?

A I do.

Q And if you turn ahead in the Apertor SPA, it also has a Section 6.9 titled "Amendments and Waivers," correct?

(Pause in proceedings)

A Yes. Sorry. I see it, yes.

Q And Section 6.9 of the Apertor SPA states:

"Any term of this agreement may be amended, terminated, or waived, only with the written consent of the company and the purchaser."

Correct?

A Correct.

Q And turning ahead, again, in the Apertor SPA, it has Section 6.12, which provides "Entire Agreement." Do you see that?

A Yes.

Q It has Section 6.14, "Termination of Additional Closing Obligations." Do you see that?

A Yes.

Q And Section 6.14 provides that:

"The purchaser shall have the right to terminate its obligations to complete any additional closing if, prior to the occurrence thereof, any of the following occurs" --

And then has two provisions, (a) and (b). Do you see that?

A Yes.

Q And Section 6.14(b) states:

"The company applies for and consents to the appointment of a receiver, trustee, custodian, or liquidator or" --

And it goes on in (iv) to say:

"-- institutes any proceedings under the United States Bankruptcy Code."

Correct?

A Yes, I do.

Q Okay. You never considered exercising any termination rights under 6.14 of the Apertor SPA before filing the fund

for bankruptcy, correct?

A Not specifically, no.

Q And Dr. Harrison, if you'd look ahead to Section 6.16. The Apertor SPA also has a provision headed "No Commitment for Additional Financing," correct?

A Yes.

Q You didn't review any amendments to the Apertor SPA prior to filing the Chapter 11 petitions for the fund and the GP, correct?

A Correct.

Q And you didn't review any signed amendments reflecting milestones for Apertor prior to filing the Chapter 11 petitions for the fund and the GP, correct?

A Correct.

Q Dr. Harrison, as you have no doubt gathered, I am continuing to go down her list on Page 15 of your first-day declaration. And if you could look back at that and to Evercrisp.

For Evercrisp, you report a commitment of $49 million, correct?

A Correct.

Q And if you turn to Tab 30, which is JX-29, I think you'll find the Evercrisp APA.

(Pause in proceedings)

Q Do you recognize that?

A I do.
Q This is the stock purchase agreement between Evercrisp and ATP Life Science Ventures?
A Yes.
Q And that's another SPA that you signed as GP?
A Yes.
Q And Dr. Harrison, if you look at Section 1.3(a) on the first page of the Evercrisp SPA, you see it reads "sale of additional shares of preferred stock"?
A Yes.
Q And it has that same language about the purchase of additional shares and an additional closing?
A Yes.
It also has the language in (d), which talks about our ability to accelerate any purchase at any time.
Q And Dr. Harrison, you're looking ahead to Section 1.3(d) on Page 2 of the Evercrisp APA. Is that right?
A Yes.
Q And you're referring to Section 1.3(d), which reads:
"Notwithstanding the foregoing, the purchaser shall have the option, at any time and upon at least three business days' notice to the company, to accelerate its obligation to purchase all or a portion of the additional shares."

Is that right?

A Yes.

Q And you're pointing us to Section 1.3(d) of the Evercrisp SPA because it's this option to accelerate upon which the GP relied when making further investments in Evercrisp?

A No. I am pointing to this because, as with all the SPAs, the totality of the contract represents our commitment to the founders and the source institutions and the management to fund the entirety of the Series A amount at our discretion in helping the founders and management to develop the research platform, new medicines, and generally to build the value in a way that we always have.

Q And if you look at that, at Section 1.3(c), Dr. Harrison, you see Section 1.3(c) of the Evercrisp SPA reads:

"After the initial closing, the company shall sell and the purchaser shall purchase, on the same terms and conditions as those contained in this agreement, as part of additional closings, up to an aggregate of 65 million additional sales, at the request of the board and upon the company's achievement of certain milestones to be negotiated in good faith by the company and the purchaser after the initial closing, each a," defined term, "'milestone.'"

Do you see that?

A I see it.
Q And the next sentence reads:
"Following the agreement by the company and the purchaser of the terms and conditions of such a milestone, including the number of additional shares to be so purchased, upon the achievement of such milestone, the company and the purchaser will amend this agreement to reflect such terms and conditions of such agreed-upon milestone, including the number of additional shares to be so purchased upon the achievement of such milestone."
Do you see that?
A I do.
Q You didn't review any amendments to the Evercrisp SPA reflecting these milestones prior to filing the Chapter 11 petitions for the fund and the --
A No --
Q -- GP --
A I did not.
Q -- correct?
And if you'd turn to Section 6.9, the Evercrisp SPA also has an amendments and waivers provision, correct?
A Yes, it does.
Q And at 6.12, it has an entire agreement provision, correct?
A Yes, it does.

Q And at Section 6.16, it has a no commitment for additional financing provision, correct?
A Correct.
Q Dr. Harrison, looking back at your first-day declaration and at your chart on Page 15, and this time turning to Page 16 and looking at Red Queen, you report a commitment of about $23.6 million, correct?
A Correct.
Q And let's take a look at the Red Queen SPA, which is under Tab 31, and should be JX-30.
(Pause in proceedings)
A I'm there, yes.
Q And Dr. Harrison, you recognize the Red Queen SPA as another stock purchase agreement that you signed on behalf of the fund in your capacity as GP, this time with Req Queen Therapeutics, right?
A Right.
Q And if you look at Section 6.13(a) of the Red Queen SPA, this provides for sales of additional shares of preferred stock, right?
A 6.13(a) refers to a deemed liquidation. Sorry.
Q Oh, sorry. I said "6.13," but I skipped ahead in my mind. I was looking at Section 1.3(a), Dr. Harrison. Let's come back to 6.13 and start with 1.3.
And 1.3(a) of the Red Queen SPA provides:

"After the initial closing, the company shall sell and the purchaser shall purchase, on the same terms and conditions as those contained in this agreement, up to an aggregate of 50 million additional shares of Series A preferred stock at the request of the board of directors of the company."

You see that's what it says, which is what I mean by the word "provide" when I started reading.

A I do.

Q And Dr. Harrison, when you -- before you filed the fund for Chapter 11, did you receive a formal request from the board of directors of Red Queen to purchase additional Series A preferred stock?

A I believe so. We managed the company, the board and our venture partners operate very closely, and we knew exactly what they needed.

At one point, Red Queen was carrying out a clinical trial, which had a defined -- a cadence of funding. After that, in a accommodation to Rigmora, we stopped funding Red Queen, except on a drip feed basis.

And when you're drip-feeding a company, the idea that a board requests and you agree it's a bit formal. So I -- I don't know, honestly.

Q And Dr. Harrison, looking at Section 1.3(a), that next sentence reads:

"Following the agreement by the company and the purchaser of the terms and conditions of a milestone, including the number of additional shares to be so purchased upon the achievement of such milestone, the company and the purchaser will amend this agreement to reflect such terms and conditions."

Do you see that?

A Yes.

Q You didn't review any amendments to the Red Queen SPA prior to filing the Chapter 11 petitions for the fund and the GP, correct?

A Correct.

Q Dr. Harrison, looking back at your first-day declaration, at Page 15, you have a reference to Initial, which is one of the debtor portfolio companies, correct?

A And for Initial, you reflect a commitment of $21.728 million, correct?

Q Let's take a look at the Initial SPA, which should be behind Tab 25 and is JX-24.

Now it looks like I've got the wrong exhibit because it says Opal Biosciences, Inc. But Opal changed its name to Initial. Is that correct?

A I believe it did, yes.

I'm sorry. Which tab?

Q It should be Tab 25.

(Pause in proceedings)

A Yes.

Q And Dr. Harrison, this is another stock purchase agreement between the portfolio company and the fund that you signed in your capacity as general partner, correct?

A Correct.

Q And if you turn to the first page of the initial SPA and look at Section 1.3, you see Section 1.3 provides for the sale of additional shares of preferred stock?

A Yes.

Q And Section 1.3(a) states that:

"After the initial closing, the company will sell and the purchaser shall purchase, on the same terms and conditions as those contained in this agreement, up to an aggregate of 74 million additional shares of Series A preferred stock, the additional shares."

Correct.

Q And if you turn to the next page, there is Section 1.3(c). Do you see that?

A Yes.

Q And Section 1.3(c) has some of the language we've seen before about negotiation of milestones. Do you see that?

A Yes.

Q Including stating, in its second sentence, that:

"Following the agreement by the company and the

purchaser and the" -- "of the terms and conditions of a milestone, including the number of additional shares to be so purchased upon the achievement of such milestone, the company and the purchaser will amend this agreement to reflect such terms and conditions of such agreed upon milestone, including the number of additional shares to be so purchased."

Do you see that?

A I do.

Q You didn't review any amendments to the initial SPA reflecting agreement on milestones prior to filing the fund and the GP for Chapter 11, correct?

A Correct.

Q And Dr. Harrison, we've looked at Apertor, Evercrisp, Initial, and Red Queen, and they all have substantially the same language in Section 1.3 regarding additional closings and milestones, correct?

A I believe that's the case, yes.

Q And Dr. Harrison, if you look back at Page 15 in your first-day declaration, the total unfunded commitments that you report that the fund has to these companies with unspecified milestones under the terms of their stock purchase agreements is 21 million for Apertor, 49 million for Evercrisp, 21.7 million for initial, and another 23.6 million for Red Queen, correct?

A Correct.

Q And together with Deep Apple, that's about $125 million, correct?
A If that's what it adds up to, correct.
Q That's about half or a little more than half of the $221 million in commitments that you report the fund has to its portfolio companies, correct?
A That would be correct, yes.
MS. SELDEN: If I may take just one moment?
And I may be close to done, Mr. Harrison.
(Pause in proceedings)
MS. SELDEN: Thank you, Dr. Harrison. I don't have any further questions at this time.
THE WITNESS: Thank you.
THE COURT: Thank you.
Redirect?
MR. BERDON: Please.
(Pause in proceedings)
MR. BERDON: Bear with me, Dr. Harrison.

REDIRECT EXAMINATION

BY MR. BERDON:
Q To start, Dr. Harrison, did Mr. Bogdanov communicate with you, after December 5th, and before December 9th, to tell you that Rigmora intended to pay?
A No.
Q Isn't it true that Rigmora only paid after the

Chapter 11 filing? Correct?

A Correct.

Q And isn't it true that Rigmora, several weeks ago, filed a notice of its intent to appeal?

A Correct.

Q Now turning your attention to Cayman.

Is it your understanding, if ATP GP and the fund prevail in opposing the winding-up petition, would that free up any additional funding?

A No, it would not.

Q And to the best of your understanding, has funding disruption caused disruptions that had a direct impact on the progress of the research programs of the pre-clinical companies?

A Across the board.

Q And in your view, would it be appropriate to terminate funding agreements with companies under those circumstances?

A No, not at all. It's --

Q And why is that?

A Because our commitments to the companies and the founders is to develop the technologies into early-stage medicines and beyond.

And in the circumstances where we wound up depriving them of funding, initially reducing the funding that we had otherwise committed to them, then drip-feeding them, then

causing them to RIF, and then drip-feeding them again and putting them in stasis, I -- no, I don't think it's appropriate to cut them off if there is an opportunity there to fund, which, across the portfolio, we have.

Q Would the assertion of rights under those circumstances be consistent with the goals of the fund?

A No. The opposite.

Q Dr. Harrison, briefly, can you just turn back to the Evercrisp -- I'm sorry -- the Opal Bioscience preferred stock purchase agreement that, I think, correlates to Initial? And that's marked as JX-24 at Tab 25.

A Yeah, I'm already there.

Q Okay. Can you go to 1(c), please?

A Yes.

Q Okay.

A 1.3(c)?

Q 1.3(c), yes.

A Yes.

Q Now we've heard much of this read into the record. I won't belabor the point. In the first sentence, you see the words:

"After the initial closing, the company shall sell and the purchaser shall purchase" --

Is that the "shall"/"shall" that you were looking -- talking about before?

A That's the "shall"/"shall."

Q Okay. And taking a look down, the sentence that reads:

"Following the agreement by the company and the purchaser of the terms and conditions of a milestone, including the number of additional shares to be purchased upon the achievement of such milestones, the company and the purchaser will amend this agreement to reflect such terms and conditions" --

Did I read that correctly?

A Yes, you read those words correctly.

Q And that doesn't use the word "shall," does it?

A It does not.

Q Okay. Let's turn to Section 6.9.

(Pause in proceedings)

A Yes.

Q In 6.9 does the word "signed" appear?

A No.

(Pause in proceedings)

Q If you could indulge me and flip to -- actually, let's talk about Cayman again for a minute.

A couple hours ago, Ms. Selden took you to your wit -- December 8th witness statement in the Cayman action, where it talked about third quarter funding that came in to ATP. Do you recall that?

A Yes.

Q Has Rigmora indicated its intent to try to claw back money that was spent by the GP defending the case in the Caymans?

A Yes.

Q And do you believe that there is an active claim against the GP, arising out of that statement?

A I -- I'm not a lawyer, I -- I believe so.

Q And I think you testified on direct.

But about how much has the GP spent in litigation in Cayman?

A In Cayman, 10 -- 10 million plus.

Q Let's take a look in Rigmora's binder, Dr. Harrison, and let's turn to Tab 2. And specifically, let's go back to the -- it says, "Official Form 204." And at the top of the page, it says "Page 9 of 13." Tell me when you're there. That's the list of creditors.

A Yes.

Q Did you prepare this list, along with folks from B. Riley?

A I believe so, yes.

Q And let's take a look at the words that are in sort of fine print that say, quote:

"-- do not include claims by any person or entity who is an 'insider,' as defined in 11 U.S.C., Section 101(31)" --

Did you depend on B. Riley to help you determine what was or was not an entity that was to be listed on this schedule?

A B. Riley and other advisors.

Q And do you personally know, as you're walking around, the definition in the Bankruptcy Code of an "insider"?

A It was explained to me, and I found it confusing at the time, and I could not tell you exactly what it is.

(Pause in proceedings)

Q Can you just turn to Tab 5 of your binder please?

A The same binder or --

Q Yep, same binder, sir. And that's going back to your December 8th declaration. I just want you to identify for the Court what we're talking about here. Can you -- so it's Page 103 of your December 8th witness statement.

A Yes, I'm there.

Q Okay. So there's the amount there of $41.7 million, defined as "Braeburn notes," right?

A Right.

Q About $20 million, Tendyne earn-out, correct?

A Correct.

Q And about thirteen and a half million dollars, also, from Tendyne.

A Yes.

Q To the best of your understanding, has Rigmora

indicated its desire to claw back all of that money?

A Yes.

(Pause in proceedings)

MR. BERDON: No further questions, Your Honor.

THE COURT: Okay. Thank you.

(Pause in proceedings)

THE COURT: Thank you, Dr. Harrison. You may step down.

THE WITNESS: Thank you very much.

(Witness excused)

MS. SELDEN: Your Honor, Rigmora has no further witnesses to call.

I believe that we have moved, Your Honor, to admit into evidence most of the exhibits that we wanted to call to Your Honor's attention. But I understand colleagues -- my colleagues and debtors' counsel have been talking and hoping to kind of clean up that joint exhibit list, so that we have a reasonable set of materials to review and just the things that you -- Your Honor needs to review. That may benefit from some additional time before we close the record on the motion. I had hoped to have a list for you right now, but I am told I don't quite have that.

THE COURT: Okay. That's fine. I will look for that. I'll ask you to get that to me as promptly as you can because I want to make sure I understand the record.

MS. SELDEN: Thank you, Your Honor. We will do that.

THE COURT: Okay. So nothing further for tonight, no further evidence for today.

MR. BERDON: No, Your Honor.

THE COURT: Okay. So I understand that counsel has requested argument on the 6th -- on the 5th. Is that still on the table?

MR. BERDON: Yes, Your Honor.

THE COURT: Okay. Okay. I can put you in at ten o'clock. You are behind -- yeah, behind another matter. So you're welcome to come into the courtroom before -- that may -- which may or may not go forward. But you're welcome to come into the courtroom before then, but just respect the courtroom, to the extent that there's other counsel in here on another matter. But let's put it down for 10, and we'll take argument then.

MS. SELDEN: Thank you, Your Honor.

THE COURT: Okay. Anything further?

MR. BERDON: No, Your Honor.

THE COURT: We're adjourned.

(Proceedings adjourned to 3/5/26 at 10:00 a.m.)

(Concluded at 6:46 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling March 4, 2026
William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams March 4, 2026
Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable

/s/ Mary Zajaczkowski March 4, 2026
Mary Zajaczkowski, CET-531
Certified Court Transcriptionist
For Reliable

/s/ Coleen Rand March 4, 2026
Coleen Rand, CET-341
Certified Court Transcriptionist
For Reliable

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	Case No. 25-12177 (LSS)
APPLE TREE LIFE SCIENCES, INC., *et al.*,	.	(Jointly Administered)
	.	
	.	Courtroom No. 2
	.	824 Market Street
Debtors.	.	Wilmington, Delaware 19801
	.	
	.	Thursday, March 5, 2026
. . . . .	.	10:02 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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(Proceedings commence at 10:02 a.m.)

(Call to order of the Court)

THE COURT: Please be seated.

MS. GOOD: Good morning, Your Honor.

THE COURT: Ms. Good.

MS. GOOD: Katie Good of Potter, Anderson & Corroon on behalf of the debtors.

I understand we're here today for our closing arguments on the motions to dismiss and motions for relief from stay that were commenced -- the hearing for which was commenced on the 25th and 26th.

I am pleased to report that we have nearly reached agreement on the evidence. We -- I believe, yesterday, Your Honor's chambers was sent a copy of the amended joint exhibit list that was filed at Docket Number 427. Do you have a copy of that or do you need me to hand one up?

THE COURT: I might have a copy. Let me see. Yes.

MS. GOOD: All right.

So, from that list, there are a few -- there's many items that are in agreement and there are a few items that there was a noted objection, and those are highlighted in yellow.

Of those items, the debtors are no longer seeking to admit JX Numbers 131 through 133.

THE COURT: Let me find that.

MS. GOOD: Sure.

THE COURT: Hold on.

MS. GOOD: And those start at Page 8 on the list.

THE COURT: Okay. Say -- give me the numbers again.

MS. GOOD: 131 through 133 will not come in;

173, 175, 176, and 178, on Page 10;

And 231 on Page 12, and that continues all the way through 241 on Page 14.

THE COURT: Okay.

MS. GOOD: With respect to JX Number 116, which is on Page 7, that is a lift-out deck presentation. The debtors don't have an issue with the use of it or the admission of it, except for the fact that there are certain confidentiality concerns on this. We do have a version that highlights the proposed redactions, and I'm happy to approach with a copy if Your Honor would like to see that.

THE COURT: Okay. Thank you.

MS. GOOD: The debtors' concern with the items that are highlighted in this presentation, is that if a competitor of the debtors were to see the highlighted information, which is information related to --

THE COURT: Uh-huh.

MS. GOOD: You know, it's more technical data

related to this, or its information related to the progress and when certain items might be completed. That would put the debtors at a competitive disadvantage.

I understand Rigmora would have no issue with this item coming in under seal and a redacted version being publicly available, and we could follow up with a seal motion to address that. But I believe the U.S. Trustee would have concerns with that, and so I'm happy to turn the podium over to Ms. McCollum.

THE COURT: Ms. McCollum.

MS. MCCOLLUM: Good morning, Your Honor. Hannah McCollum for the U.S. Trustee.

This is the first time I've seen this exhibit, for one thing. I'm not sure ... I don't know how you just sort of move things into evidence without anybody authenticating them or providing any background for them. The parties, I guess, can stipulate how they want to stipulate, but this is not a trial where there's just two parties; there are other parties in this Bankruptcy Court to these bankruptcy proceedings.

So I just saw this, I look at it. I agree with the debtor that this is confidential business information and it should not be made public. I don't understand what we're doing with it. So why does it even need to be here? Why does it need to be in the record? Why does it need to be

sealed?

So that would be my objection because Your Honor said several days ago we're not sealing the courtroom.

THE COURT: Okay.

MS. MCCOLLUM: So we can't talk about it in detail on the record because we're not going to seal the courtroom. So why does it need to be here, in detail, under seal, in what record? I don't understand it.

THE COURT: Okay.

MS. MCCOLLUM: So that's my objection.

THE COURT: Okay. Thank you.

MS. MCCOLLUM: Thank you.

THE COURT: Any response?

MS. GOOD: Your Honor, this is not an item that the debtors are seeking to admit. It's an item that was produced on a professionals' eyes only basis. It's not the exhibit that we would seek to move in. We understand Rigmora would seek to move it in. And you know, our concern is just that, if this confidential business information gets out, it could be harmful, so --

THE COURT: Okay. Well, I think we're all in agreement on that. So Ms. McCollum raises fair points, so -- well, first of all, exhibits don't go on the docket.

MS. GOOD: Uh-huh.

THE COURT: So there isn't the concern that

there's something on the docket that has proprietary business information.

I will consider this, to the extent that I do. And if any of the -- I can't imagine that any of the confidential proprietary information is going to make it into my ruling in any detail.

MS. GOOD: Uh-huh.

THE COURT: So I don't think it's going to come out. Fair question, if somebody wants me to consider it, what they want me to consider it for.

MS. GOOD: Understood, Your Honor.

THE COURT: Okay.

MS. GOOD: With that, I would just turn the podium over to counsel for Rigmora to begin the closing argument.

THE COURT: Before we do --

MS. GOOD: Uh-huh.

THE COURT: -- Mr. Alberto.

MR. ALBERTO: Good morning, Your Honor.

THE COURT: Good morning.

So I've had your firm's retention papers on my desk, and I have one question. I noted in the disclosures that one of the nondebtor affiliates, Ascidian Therapeutics, Inc., is a current client in unrelated intellectual property matters.

MR. ALBERTO: Yes.

THE COURT: Okay.

MR. ALBERTO: I can extrapolate that out a little bit --

THE COURT: Okay.

MR. ALBERTO: -- if it helps, Your Honor.

THE COURT: Yes.

MR. ALBERTO: I pulled up the file. We disclose it as a current client because the file has not been closed. Our last invoice to Ascidian was $173 in October of 2024. We're not performing current work for them. The total amount that Ascidian has paid my firm throughout its history as a client was $4,092. I can confirm that we won't be doing any work for them during the pendency of the bankruptcy.

And you know, even with this as a nondebtor, I still believe we satisfy 1103 and the definition of "disinterestedness" under 101.

THE COURT: Okay. I don't know the extent to which the nondebtor affiliates are bound into all of this case. So I would also request that whoever worked on that matter be walled off --

MR. ALBERTO: Sure.

THE COURT: -- from the bankruptcy professionals and others who may be working on this.

MR. ALBERTO: We can do that.

THE COURT: Okay. With that, we'll --

MR. ALBERTO: Thank you, Your Honor.

THE COURT: With that, we'll sign your retention papers.

Okay. Ms. Selden.

MS. SELDEN: Thank you, Your Honor. Good morning.

THE COURT: Good morning.

MS. SELDEN: Shannon Selden of Debevoise & Plimpton for the Rigmora LPs.

And if we could approach, we have a deck, a somewhat formidable deck in size, which we will use as a reference and are passing around.

THE COURT: Thank you.

(Pause in proceedings)

MS. SELDEN: Your Honor, we're here on the Rigmora LPs' motions to dismiss the Chapter 11 cases of just two debtors that are parties to these cases, ATP Life Sciences, LP, the Cayman exempted limited partnership, and its general partner ATP GP III [sic]; or for relief from the automatic stay to allow the Cayman trial to proceed against the GP for purposes of winding up the fund.

Your Honor, the fund and the general partner do not belong in Chapter 11. Their petitions should be dismissed.

Fundamentally, the Chapter 11 petitions should be dismissed for cause under Section 1112(b) because they're not

"good faith filings," as that term is used here in the Third Circuit. As Your Honor knows better than anyone, Chapter 11 is a powerful tool for those who need it, and it gives debtors breathing room, protected by the automatic stay, to reorganize, but it's not open to all. It has a purpose and it has equitable limits, and these cases fall far outside those parameters.

In assessing whether a Chapter 11 petition is a good faith filing and within the equitable limitations of Chapter 11, the Third Circuit considers two prongs:

Whether they were filed for tactical advantage in litigation;

And whether they serve a valid bankruptcy purpose, which necessarily requires a showing of financial distress on the part of the filing debtor.

These cases fail on both counts for both debtors, the fund and the GP. They were filed for a tactical advantage, to avoid an imminent trial in the Grand Court of the Cayman Islands on the question of whether the fund should be wound up an the GP should be replaced, and they were filed without any evidence of financial distress on the part of either of these debtors.

Now, Your Honor, these cases also lack a valid bankruptcy purpose and fall beyond the equitable limits of Chapter 11 for another reason, which we discussed in depth

the other week and as we argued at length in our funding motion and by reference here. The fund and the GP had no property interest in the assets held on trust by the GP for the benefit of the limited partners prior to filing their Chapter 11 petitions; they have no property or assets in their estate now.

The general partner, as the agent, the fiduciary, the trustee, manages the fund. But as you heard from Mr. Phillips and his unrebutted testimony and from me in argument the other week, the GP holds those assets and those choses in action or legal rights in trust for the limited partners.

I won't repeat that argument today, but the complete absence of any debtor's estate is yet another reason these cases lack a valid bankruptcy purpose. With no pre-petition property, to become a post-petition estate, there is no property within this Court's jurisdiction. And that's a null set at the very center of these petitions, as we discussed at the hearing on February 20th.

I think that gaping hole in the center of these cases flows through to the motion to dismiss as yet another reason these cases lack valid bankruptcy purpose. And I want to pick up, as we move into this, where my partner Ms. Labovitz left off, and highlighted at the end of the hearing that, having filed these cases, the debtors have no realistic prospect of exiting Chapter 11 through the normal

mechanism of plan confirmation.

The Court can't enter any order that would affect or impair property that's not before it, including in connection with a DIP loan against the assets held on trust for the LPs and outside the debtors' estates, or the confirmation of a plan that purports to dispose of or impair property interests not before the Court and inconsistent with the applicable non-bankruptcy law of the Cayman Islands.

THE COURT: So you're --

MS. SELDEN: So to --

THE COURT: -- ignoring any contractual rights that the -- or how are you dealing with any contractual rights that the general partner has with respect to the fund assets? And I'll call them the "fund assets" because that's what the -- that's what the Partnership Act -- the Limited Partnership Act calls them.

MS. SELDEN: And Your Honor, the general partner's management responsibilities under the LPA and under the ELP Act are responsibilities to act with respect to those legal rights, as with respect to the underlying property, for the benefit of the limited partners; that is, the GP itself doesn't have any independent legal rights, other than to act on behalf of those for whom he serves as agent, fiduciary, and trustee.

THE COURT: I'm not sure that's what the authority

that you gave me says. And I don't know fully because, unfortunately, I only got an excerpt of it. But Goode on Principles of Corporate Insolvency Law gave me a section on trust assets, assets held on trust, Section 6-40.

But the next section, 6-42, assets which cease to be trust assets, which are -- the example given is they -- well, it says:

"Assets initially subject to a trust may cease to be so as a result of authorized dealings by the trustee."

And it talks about a case of a trading trust.

I'd love to have everything in Chapter 6. I can't get it online, I can't get it from my librarian. So I need to understand the scope of the trust. And I don't know that everything in Chapter 6 is going to be enough, but this is the authority that was given to me about trust assets and I want to understand it.

MS. SELDEN: Your Honor, we can certainly make that available to the Court.

I think, for purposes of the Cayman Exempted Limited Partnership, we'll -- the references that we provided -- and I'm not sure kind of where in our briefs we were citing to that, Your Honor. I would want to go back and check and kind of unpack that.

But I do believe that, in thinking about the trust of the Cayman exempted limited partnership, that is

fundamentally driven by the ELP Act itself as a statutory trust; and that there is not, to my knowledge, anything in Cayman law, in the ELP Act or in the authorities and cases interpreting it, that would allow the general partner of a Cayman exempted limited partnership to alienate from itself, as trustee, assets of the trust. That is, the circumstances that you're describing with respect to trusts do not resonate, in my understanding, with the way that the Cayman exempted limited partnership --

THE COURT: Well, they --

MS. SELDEN: -- works.

THE COURT: They permit the general partner to manage, they require the general partner to manage the assets of the partnership, which means, of course, using them. So the general partner has that responsibility to use them in the best interests -- perhaps in the best interests of the limited partners, but as he views it, as the GP views it, because the GP makes the business decisions.

MS. SELDEN: Your Honor, I think that the clause that you added to the use of the assets is essential, and where the real action is in describing what the general partner can do as the trustee for the exempted limited partnership. That is, the general partner holds the assets, not full stop, but holds the assets on trust for the benefit of the LPs, and must -- and can only take such actions with

respect to the assets in the exercise of his fiduciary agency and trustee duties for the benefit of the limited partners.

And looking at it through that lens is the essential function of the Cayman Exempted Limited Partnership Act; that is, there is -- actions taken as trustee or fiduciary with respect to those assets that are not in the interests of the LPs are not permitted --

THE COURT: But who --

MS. SELDEN: -- actions under --

THE COURT: -- decides that --

MS. SELDEN: -- the LP --

THE COURT: Who decides that, what's in the interests --

MS. SELDEN: Well, Your Honor, in --

THE COURT: -- of the LPs? Who decides that?

MS. SELDEN: In the typical case, and kind of in a non-bankruptcy or a non-winding-up circumstance, I think that the general partner, going about their daily business as the general partner managing the assets of the funds, is making those decisions.

But that is not without recourse by LPs, who believe that the general partner is not acting --

THE COURT: Yes.

MS. SELDEN: -- in their best interests.

THE COURT: Yes.

MS. SELDEN: And I think, Your Honor, that is why we have a winding-up petition in the Cayman Islands. It's not a retaliatory action. It is an action where the LPs believe that the general partner is no longer acting in their interest as the limited partners of the Cayman exempted limited partnership, but has shifted gears and lost their trust and confidence, and is acting in the interest of portfolio companies or in his own interests.

And that question is a question that is to be decided and was to be decided by Justice Asif in the Cayman winding-up proceeding. That is a question where, again, absent the bankruptcy, that was put to the Cayman Court, it was pending before the Cayman Court, and should be decided before the Cayman Court.

I don't think, Your Honor, that the bankruptcy and the Chapter 11 cases fundamentally change that.

One, as Your Honor knows from the pending motions and from the time we've spent together, we do think that those are questions within the jurisdiction of the Cayman Court --

THE COURT: Uh-huh.

MS. SELDEN: -- that can and should be heard there and should be sent back there.

But I think, also, Your Honor, the fact that the general partner has filed for bankruptcy and has commenced a

Chapter 11 proceeding on its own behalf alters the scope of its responsibilities. That is, it no longer has the freedom to manage the fund in all its respects. It is --

THE COURT: Why not?

MS. SELDEN: -- at that moment, supposed to be wound up. That is a matter of the Cayman exempted --

THE COURT: But that's --

MS. SELDEN: -- limited partnership.

THE COURT: That's not how the U.S. law works, so --

MS. SELDEN: It --

THE COURT: So why not?

MS. SELDEN: That is --

THE COURT: Until --

MS. SELDEN: -- a function --

THE COURT: -- the general partner is no longer the general partner, he -- it functions as the general partner.

MS. SELDEN: Your Honor, under Section 36(7) of the ELP Act, the filing of the bankruptcy triggers an immediate winding-up.

THE COURT: And that's -- that is contrary to bankruptcy law.

MS. SELDEN: It is a function of the Cayman Exempted Limited Partnership Act, which constitutes the fund

and gives the general partner the rights that he has, but also limits those rights, as a matter of statute, once he files.

THE COURT: It's the -- may also be the function -- it -- the law of many states, but, nonetheless, it's not enforced in bankruptcy. So you're asking me to ignore the bankruptcy law and look to the Cayman law on this, notwithstanding that I would ignore the state law, same state law, in this same circumstance.

MS. SELDEN: Well, Your Honor, I am, I guess, in that sense, where you are saying to me what is the rights and responsibility of the general partner at this point, and to manage the fund and to exercise decision-making authority with respect to its assets, including its legal rights. And those questions, what rights does the general partner have, arise and exist and are defined by the law that constitutes the fund itself, and that is the Cayman exempted limited partnership.

And I think, Your Honor, that U.S. bankruptcy law provides that kind of ordinary corporate governance continues despite the automatic stay. Fundamentally, the winding-up proceeding is a corporate governance question of --

THE COURT: That may be a reason to grant relief from stay.

MS. SELDEN: Uh-huh.

THE COURT: And I -- it's interesting whether that's a corporate governance issue or not. But that may be a reason to grant relief from stay, but I hear you arguing that that's a reason I should dismiss the cases, and so I'm trying to understand it in the context of you should dismiss the cases.

And in that sense, I don't know what's going to happen in the winding-up procedures. Maybe Justice Asif isn't going to replace the general partner and he'll -- it will continue to be the general partner. So I don't know that yet, and you're asking me to assume a result.

So I'm just saying, until the general partner is no longer the general partner, then, under the statute and the agreement -- well, certainly the statute -- it's the general partner can use the funds. The funds were put in to -- they're an asset. I don't know if they're property, but they're an asset of the fund, and the general partner is the one who makes all business decisions and manages the fund, including signing a check to say yes, this money goes here, yes, this money goes there, I'm paying this bill, et cetera.

MS. SELDEN: Your Honor, I think that that question -- and I do not want to assume a conclusion, and I think Justice Asif will hold a full and fair hearing on these questions. But I think that question is why this case needs

to return to Justice Asif, so that he can resolve that corporate governance question.

Your Honor is putting the question. Yes, for now, the GP remains the GP. He has not yet been removed, the GP is in place. And the fact that the GP is in place and the fund has not been wound up, at a moment in time when the fact of the GP's filing for bankruptcy would trigger a dissolution and winding up under Cayman law, where there was a pending winding up petition seeking to remove the GP; and where there are serious Cayman law questions, with the Bankruptcy Code overlay, as to the scope of the GP's authorities, under those circumstances, where Cayman law would strip him of those rights and bankruptcy law might view it differently -- although I don't think it should -- is a reason, Your Honor, why this case should return to the Cayman Islands for the winding-up proceeding.

I think that, as a matter of Cayman law, what a general partner can do, once it has filed for bankruptcy, has, in fact, fundamentally altered. That is, while the GP itself is in bankruptcy, it does not have free reign to manage the investments and run the fund in the way that it would in the ordinary course. There is an automatic dissolution and winding-up within 90 days of that filing. And that suggests and confirms, under Cayman law, that there's a recognition that, once the GP has filed, it's no

longer a suitable trustee, agent, and fiduciary for the fund; it needs to be the partnership is wound down, it's dissolved, the GP comes out.

And in this interregnum, where we are in bankruptcy here and a winding-up in the Cayman Islands, and there is this uncertainty, those corporate governance mechanisms, that question of who acts needs to be resolved for anything to go forward in an orderly way.

But I think, Your Honor, on these motions, I do want to call back to the issues that we had discussed on the 20th, which is, you know, these fundamental kind of Cayman exempted limited partnership issues about what comes into the estate and how it can be used and governed once -- you know, once these cases are filed. And I don't want to go back over that, although I do think this kind of question of, you know, how the GP can act and how Your Honor should view it while we're in bankruptcy is obviously a critical one to whether there is a valid bankruptcy purpose and how the bankruptcy can continue if the cases are not dismissed.

But I think, Your Honor, there's an easier and more straightforward answer on the motions to dismiss and on the motion for relief from the automatic stay, and that's the answer that LTL gives us, which is that cases filed for tactical advantage in pending litigation or that lack good faith because the debtors cannot show financial distress can

and should be dismissed.

And I don't think that there is any doubt, for the reasons that we were just discussing, that the GP obtained a tactical advantage in litigation by filing Chapter 11 for itself and the funds when it did.

By filing, on December 9th, Chapter 11 petitions in this Court, the general partner stayed a January 12th trial that, otherwise, would have proceeded before Justice Asif and, in our view, would have likely resulted in the removal of the general partner. That's our view on the merits.

But it's also our view on the merits, based on Cayman law, that says, when the LPs have filed a winding-up petition and asserted a loss of substratum or a loss of trust and confidence in the general partner, the general partner is to step aside and not cling to office. That's what Cayman law tells you. This is, fundamentally, a partnership. And fundamentally, when a limited partnership loses faith and trust and confidence in its fiduciary and brings a winding-up petition, Cayman law says that that GP should not cling to office and should step aside.

So we think, well, Justice Asif will hear that and will consider it and, honestly, Your Honor, had set aside a whole week for the trial itself, with a week of pre-reading and a week to follow the trial to write a decision, and was

clearly intending to give it time and care in evaluating the evidence before it and the testimony of the parties, as well as the legal arguments. I don't think that there is any doubt about that.

But there is Cayman law that favors and LP's claim to wind up the fund when it has lost substratum or lost trust and confidence. And by filing these Chapter 11 cases when it did, the general partner avoided that process in the Cayman Court by virtue of the automatic stay.

Now Your Honor noted, at some point in these proceedings, that, certainly, at this point in litigation, it may not sound that appealing to be the general partner of a Cayman exempted limited partnership, that there's an awful lot of responsibility. And in this case, the finances flow through the management entity, and not through the general partner, which really has no income, no assets, no liabilities.

But the general partner, through the management entity, is compensated in millions of dollars a year for that role, and enjoys some prominence and power over fund decisions and the investments that it brings, whatever the motivation. I think it's clear that it's something that this general partner is reluctant to give up. And the debtors' filings are filled with representations that one significant goal of filing these Chapter 11 cases was to avoid the Cayman

winding-up.

Now some of those representations are about what might have happened in the Cayman winding-up with respect to the assets of the fund or the portfolio companies.

THE COURT: Uh-huh.

MS. SELDEN: But fundamentally, filing the Chapter 11 cases was, by debtors' own representation and their own submissions to this Court, designed to achieve the result that it did, which is to have the automatic stay prevent that winding-up from going forward. And that is, by definition, a tactical advantage in that pending litigation between these same parties.

But Your Honor, the fund-level debtors' complete lack of financial distress is dispositive, even without that Cayman trial on the horizon. And I think these proceedings have been kind of replete with these issues of Cayman law and what it means to be a Cayman exempted limited partnership, how the GP is supposed to treat the limited partners, what Justice Asif might do in the Cayman Islands, what Chancellor McCormick did down the street.

But fundamentally, we are here in Bankruptcy Court before Your Honor. And the motion to dismiss before this Court can and should be decided as a matter of Third Circuit law and bankruptcy law, even without getting into all of these other questions about the status of the Cayman

proceeding.

There's no question here that, under LTL, a Chapter 11 petition serves no valid bankruptcy purpose and should be dismissed for cause under Section 1112(b) if the debtor cannot meet its burden to demonstrate financial distress. And LTL is adamant at that. It looks at prior precedent of the Third Circuit and it says well, we've considered kind of other factors and other reasons and even ways in which litigation might drive a debtor into bankruptcy, fundamentally, at the very core of Chapter 11 and at the core of any Chapter 11 petition is financial distress.

And so, of all the many factual and legal issues raised before this Court over the course of last week's hearing and the prior week's, the central issue for this motion to dismiss is really a simple one, and that I think that's whether the fund and the general partner have shown that they have the kind of financial distress that LTL and the Bankruptcy Code require.

That's the first question for today, Your Honor. And I think the answer to that is really a fundamentally simple no, that they cannot and have not met their burden to show financial distress. And for that reason alone, these Chapter 11 petitions should be dismissed.

There are other reasons to dismiss, too, other Bankruptcy Code reasons. And I think, under Section 305,

this Court should abstain from adjudicating these petitions. Abstention may be rare, but it's apt here, and it's apt here for all the reason that some of the precedent we've cited in our briefs identify:

That these are private management and partnership disputes, fundamentally, between the GP and the limited partners;

That there is a state or, in this case, a foreign court that has an efficient machinery for winding up this partnership and resolving an inter-partner dispute;

And there's no question, I think, that Justice Asif was well on his way to doing that and was just weeks away from trial when these cases were filed.

So I think the fact that the alternate forum here is foreign and the Cayman Islands, as opposed to a state court, adds another dimension of comity and also warrants abstention and dismissal under Section 305.

THE COURT: So let's talk about financial distress. I thought you were going to and you jumped right past it.

MS. SELDEN: I did.

THE COURT: So I think the argument I'm going to hear is that the fund is in financial distress because it owes obligations of $321 million or so, and it has, at best, another $28 million in contingent subscription, which, in

fact, Rigmora doesn't even think it has because Rigmora thinks it's already paid all of it and that it owes nothing any longer. And so -- and it needs to find an exit for its portfolio companies. So why isn't that distress --

MS. SELDEN: Your Honor --

THE COURT: -- sufficient to file a bankruptcy case?

MS. SELDEN: Your Honor, it's not distress, I think, for two or three main reasons:

One, the 350 million in alleged obligations is fundamentally illusory, and I will unpack why that is. But those are not obligations of the -- at all, as a matter of contract, much less the kind of obligations that create the kind of financial distress that will support of a filing for Chapter 11.

With respect -- and I want to go through that in some detail. Your Honor is right, I am going to spend some time on financial distress.

Before I get there, I want to say just a word about this contingent subscription issue and what it means for the fund to have fully drawn its capital commitments because I do want to spend quite a bit of time on financial distress --

THE COURT: Okay.

MS. SELDEN: -- and I'll just deal with the

contingent subscriptions and put it to the side, and then we're going to kind of go through the allegations of financial distress.

This was a fund that was reaching the end of its contingent subscriptions. And that was fundamentally kind of at the center of the litigation before the Chancery Court, where the LPs believed and argued that they had committed $2.425 billion under their subscription agreements; that they had invested more than that amount, $2.69 billion, through a combination of --

THE COURT: Uh-huh.

MS. SELDEN: -- 2.3 billion in cash and another three hundred plus million in deemed contributions; that is, cash that would have been distributed to them and reinvested --

THE COURT: Uh-huh.

MS. SELDEN: -- but was, instead, deemed distributed, and then deemed contributed back, taking their total investment above the 2.425 billion in contingent subscriptions. And that, Your Honor, is the one question on appeal in that chancery case, is whether that deemed contribution should have been counted in satisfaction of the contingent subscriptions.

Now the LPs did win in Chancery Court on that issue, but not on the deemed contribution. And that's where

Chancellor McCormick found that there is this headroom of about $125 million left for the LPs to contribute capital to the fund, and, of that, $96 million was in capital calls issued on May 30th and --

THE COURT: Uh-huh.

MS. SELDEN: -- ordered for specific performance, leaving that little bit of twenty-eight or so million dollars left on the contingent subscription on the Chancery Court's view of it.

So what does that mean for financial distress? Your Honor, it doesn't mean anything for financial distress? This is a closed-end fund. Under the LPA and the subscription agreements, the fund had a set amount of capital committed to it.

THE COURT: Uh-huh.

MS. SELDEN: The fact that the GP called that capital, drew it down, invested it, and deployed it into portfolio companies means that this is a mature and fully invested fund. It doesn't mean it's bankrupt, it doesn't mean it's insolvent, it doesn't mean it needs to file for Chapter 11.

It means that it's holding 15 portfolio companies, many of which are valuable investments, many of which are generating returns and capable of generating distributions for the limited partners of the fund. It means that the

general partner, at this point, should be focused on managing the existing investments of the fund and does not have new capital to invest in new investments. It can't make new money investments when it's fully drawn and committed its existing capital.

But that's the nature of a closed-end fund with a cap on its capital commitments. And it would be, I think, a great shock to many of my private equity clients and to the private equity industry or investment vehicles structured in this way, with a limited amount of capital commitments --

THE COURT: Uh-huh.

MS. SELDEN: -- to be drawn and invested in a fund that often has a set life span, to be deployed into investments and to learn that, once that capital is fully deployed and the investments fully made, that the general partner can then declare financial distress because it has no more capital to call and file for bankruptcy and replace its LPs is not the right answer.

That is not financial distress. It's a fully invested fund with a portfolio of available investments. And the nature of the work that it's doing in managing those investments, looking for ways to monetize them, to return investments, to make distributions, to exit, it's in a new phase in its life cycle. But that phase is not a phase of financial distress, that's a phase of a fully mature, fully

invested fund.

And I think what you're hearing from the GP is a desire to continue to make new money investments into portfolio companies at a point when it doesn't have the capital to do so.

THE COURT: So it should just stop, the GP should just stop?

MS. SELDEN: Yes.

THE COURT: And it should not invest anything further in any portfolio company that needs any significant long-term funding.

MS. SELDEN: Your Honor, I think that is the contractually correct answer.

I know that it -- the -- I know that it doesn't sound that appealing. And I think part of the reason it doesn't sound that appealing is the nature of the portfolio companies and the interesting work that they're doing and the kind of scientific research that they're doing and the hopes that they have for what that research will generate.

But the contractually correct answer is that there are two sets of contracts here in play, and those govern the legal rights and responsibilities and obligations between the fund and its limited partners and between the fund and its portfolio companies.

And on the one hand, the fund is set up to have

contingent subscriptions in a set amount.

THE COURT: Uh-huh.

MS. SELDEN: That set amount has been vehemently litigated and established by the Chancery Court at $2.425 billion. That amount has been almost fully paid in, fully paid in by my account. But I respect Chancellor McCormick's decision on that. And at the moment, we are -- you know, there's another twenty-five, $28 million left to draw.

There isn't a right, under the limited partnership agreement or the subscription agreements or the budgets or anything else, for the general partner to call more capital from the limited partners, to increase the pool of money that it --

THE COURT: Clearly.

MS. SELDEN: -- has to make investments.

THE COURT: It's not asking to do that.

MS. SELDEN: It's not asking to do that anymore, Your Honor. But I just want to be super clear that we have -- the general partner has brought before the Chancery Court and asked there for 2.85 billion on contingent subscriptions --

THE COURT: Because --

MS. SELDEN: -- and for the --

THE COURT: -- it's all --

MS. SELDEN: -- budgets --

THE COURT: -- based on documents and et cetera.

MS. SELDEN: Yeah.

THE COURT: But that's been ruled on.

MS. SELDEN: That's been ruled on.

THE COURT: That's been --

MS. SELDEN: So --

THE COURT: -- ruled on.

MS. SELDEN: So what do you do when you have a set pool of capital and the fund? Then I think the question before Your Honor -- when you say to me does the fund, at this point, just stop making new investments, the answer to that has to be yes, when it's fully called its capital and it doesn't have any more capital to invest --

THE COURT: Well, it partners, sometimes, with companies, right?

MS. SELDEN: Uh-huh.

THE COURT: It partners sometimes with companies, it brings in money. There are other investors in the portfolio companies. They're not hundred percent owned. So there is money coming in from other places, so it doesn't prohibit all of that from happening.

MS. SELDEN: It does not, Your Honor.

And I think Your Honor has gone almost exactly where I would have gone, which is to say the fact that the fund has fully drawn its capital and has invested what it can

does not mean that the portfolio companies cannot get new investments. It doesn't mean that they can't get new money. They can and have, as you have heard at some length, partnered with other companies, with other entities. They can get investments from other sources. They are free, inside of bankruptcy and outside of it, to raise money from other sources, and that can go on.

The fact that the fund has fully invested its capital does not mean, as a matter of contract or law, that the portfolio companies -- which are Delaware corporations with their own boards, their own employees, their own goals and aspirations -- cannot go out and raise money. There is nothing stopping them from doing that. There is no prohibition in any of the Series A stock purchase agreements or constitutive documents of these Delaware companies that prevents them from raising money, inside or outside bankruptcy, from sources other than the fund.

And I think, Your Honor, that cuts to kind of a fundamental question that has been very much on my mind throughout these hearings, which is you hear that, if the LPs are not replaced or the fund is not in bankruptcy or the fund doesn't invest in these portfolio companies, they are doomed. That's not true. They are -- they're not doomed by virtue of the fund not making further investments.

The portfolio companies are free, and can and

should, by all means, raise money through other sources. They can continue their science, they can reorganize, they can restructuring. As Mr. Aebersold testified, they can do a market test. And for those companies, the seven portfolio companies that are before Your Honor as debtors in these cases, we're not seeking to dismiss those portfolio companies and have no disagreement that they have financial distress and can avail themselves of the mechanisms of the Bankruptcy Code and of this Court to try to get more money in a place that's designed to facilitate that, right?

Financially distressed companies, like these portfolio companies, file Chapter 11 with frequency and come here and use the breathing space and the refuge that Chapter 11 provides to get a DIP, to raise money, to do a market test, and they are free to do that. And nothing about the fund's status as a fully invested fund, as a mature fund, as a debtor or a nondebtor, as a Cayman ELP is, in any way, impairing or affecting what the portfolio companies can do.

The link between the portfolio companies and the fund is one of contract and personnel.

THE COURT: Contract and?

MS. SELDEN: Personnel.

THE COURT: Personnel.

MS. SELDEN: That is, Dr. Harrison, who is the general partner of the fund, is the chair of the board of the

portfolio companies. And there is no doubt that the portfolio companies were, you know, started and funded with seed money through these Series A SPAs and, you know, are up and standing.

But they were stood up as independent Delaware corporations with boards of directors, with employees, with locations. They are supported by ATP. But as a matter of corporate governance, corporate separateness, corporate structure, and contract, they're separate entities. And they are free to seek funding from the market, from partnerships, and through these processes, and they have done that. And nothing about the fund is stopping them from doing that, nor are the LPs stopping them from doing that, Your Honor.

I think -- again, I do not want to go back into issues litigated in the Chancery Court, but I want to make two observations:

One is that, because the LPs are the 98 percent investors in the fund, and the funds' investments through the SPAs and the portfolio companies were their initial and main source of equity, the LPs have an interest in the success of these companies. And you've seen from our funding proposal and our DIP proposal that, using this process, the LPs would like those companies to be able to reorganize themselves in a way that is -- maximizes their value. And I think that is a useful thing.

The LPs are not -- we have objections to the way in which the GP has gone about it. But if this were a case solely about the portfolio companies, it would be a much simpler case, and you would have the support of the equity holders to do that, as I think you have seen over time.

And the other thing is you've heard a lot about the May 15th email from Mr. Bogdanov to Dr. Harrison and, again, I don't want to go back into that. But I do want to observe that there was a point at this time, you know, maybe in the first quarter of last year, where there were discussions about reallocating resources and restructuring these portfolio companies out of court, where a recognition that some of them are doing valuable and interesting work by having seven separate Delaware corporations with overlapping labs and overlapping personnel, is maybe not the right way or the most cost-effective way to support and manage that science.

So I think, Your Honor, that the fact that the fund has fully drawn its capital and invested it and was the initial investor in these portfolio companies is not indicative of financial distress on the part of the fund, nor is it prohibitive of the portfolio companies using Chapter 11 effectively to restructuring in all the sense; restructuring their debt and kind of restructure how they are organized and how they go about the work that they do. And the LPs can

consent to that and have offered terms on which they would. But they do have a disagreement, as we've discussed, about whether that can be done without their consent.

So I think Your Honor had asked about kind of, with this $25 million left, does it mean the fund is in financial distress. And I say to you no, it means the fund is fully invested, it's holding valuable assets. That's not financial distress.

So is the fund financially distressed because it has commitments to its portfolio companies or to its management entities in excess of the cash that it has on hand or the cash that it expects to receive? And I say to you that that is illusory, and these aren't real obligations.

Let me break them apart and take them in two pieces.

Of the 350 million, I think the first time Your Honor heard that, the first time that number was presented to this Court was in Dr. Harrison's testimony during the course of these hearings. That's not a number that you see in any of the schedules or SOFAs or first-day declaration or anywhere else. And that's because the 350 million that Dr. Harrison testified to includes, not just the $221 million in unfunded commitment to portfolio companies that debtors had been relying on, but also another 130 million in fees and expenses.

THE COURT: Right.

MS. SELDEN: So let me take that one thirty first because it's a little easier and it's going to take me time to go through the SBAs.

On the one thirty, that breaks down into two categories: One is 3 million a year to ATBM, the management entity, wholly owned by Dr. Harrison; and the other is estimated at roughly 18 million a year to ATLS. And Dr. Harrison testified here and in his deposition that that was projected, his hundred and thirty is projected out over 2031, over the course of the next five years.

So those are amounts paid exclusively to insiders that are not coming due any time soon, that are projected over the course of the next five years; and that, Your Honor, as of December 9th, four weeks before the Cayman winding-up proceeding that was set to consider whether the general partner and, with it, ATBM and ATLS, the recipients of these fees, should and would continue to manage the fund or be replaced, I think really throws into question whether there's any present or imminent or immediate sense of obligation around those numbers.

By debtors' own account, those are numbers and amounts that would be due over five years, but they are also due to entities that are fully insiders of the fund. And I'm told and understand that it is not unusual and would be

highly typical for kind of payments like that, management fees to insiders, to be renegotiated or dealt with outside of bankruptcy and not to necessitate a bankruptcy filing.

But I also know that, whether these entities were going to stay in place and continue to receive those fees over the future life of the fund was just about to be decided by Justice Asif in the Cayman Court and --

THE COURT: Well, aren't those two different things? I mean, I don't know. But if the Court decides to replace the general partner, does that mean it doesn't have a claim, contractually, for what it would have been owed under the contract just because the LPs decided that they weren't going to honor the contract and decided to replace them?

MS. SELDEN: Your Honor --

THE COURT: I don't know the answer to that, but it doesn't necessary suggest to me that it -- the two follow. I don't know.

MS. SELDEN: I think it does follow, Your Honor. And I want to pick up on and disagree with Your Honor's description of the winding-up proceeding as a situation in which the LPs decide not to honor the contract because that's not what the winding-up proceeding is and that is not what the LPs rights are under Cayman law. And I'm troubled --

THE COURT: Okay.

MS. SELDEN: -- by that --

THE COURT: They're asking --

MS. SELDEN: -- characterization.

THE COURT: -- the Court -- they're asking the Court and the Court has to find --

MS. SELDEN: Yes.

THE COURT: And in at least one of the cases I read, the Court didn't buy what the limited partners had to say about loss of trust and confidence. And I do assume that Justice Asif is going to hear evidence, if it goes there, and he'll make a decision.

But I don't know that it necessarily follows -- so that was a fair criticism of my characterization. I don't think it necessarily follows that the GP has no claim, but I don't know.

MS. SELDEN: I think it --

THE COURT: And certainly, as a bankruptcy matter, it's a claim. Nobody could suggest it's not a claim. At this point, it's a claim, contingent, unmatured, it's a contractual claim.

MS. SELDEN: Yes, Your Honor.

I think that the difference that I'm picking up on, now that I've fully immersed myself in Cayman law, is that the winding-up proceeding -- and I do think you're right, Justice Asif will consider it, in fairness, in its entirety, is both a question of the limited partnership

agreement, but also a question of Cayman statute and the ELP Act.

It is an unwinding and not a breach of a repudiation of contract. It is a statutory mechanism in which somebody who has put their trust and their billions of dollars in somebody as a fiduciary has a chance to go to court on one of two grounds, voluntary or compulsory, and to say we pre-agreed, we agreed voluntarily that we'd be wound up in these circumstances, or this winding up should be compulsory; that is, the Court should order it for reasons of law outside the terms of our agreement. And that's what the LPs have done.THE COURT: Which is why I'm not sure it's a governance dispute, but yes, okay.

MS. SELDEN: Yeah, fair enough.

But, again, now that I'm fully into Cayman law, I think Cayman law views it as a governance dispute because it's the ordering of relations between the partners and how they govern their internal affairs as fiduciaries, agents, and trustees. But, nonetheless, if the fund is wound up, where the fees are to be paid for management of the fund, where the fund no longer exists and is wound up and dissolved, my understanding, as a matter of Cayman law, is that so, too, are the underlying premises that the entity -- ATLS is wholly-owned by the fund; that is, it is an entity that sits under the fund and receives fees for the management

of the fund. If the fund is dissolved and wound up, I think that those fees --

THE COURT: There would be no fees.

MS. SELDEN: -- I think that those fees drop away, as a matter of Cayman law. That's 18 million a year over the next 15 years or 5 years. And I think that drops away as a matter of Cayman law, but I also, just to come back to it, this 130 million that you've heard about in fees is, as you say, contingent. It is not immediate. It is not coming due anytime soon.

And the question of whether it exists at all or it would fall away, was about to be decided in the court that has exclusive jurisdiction to do so and familiarity to do it. And I think there's no real claim there. That management agreement falls away and there's no evidence before Your Honor otherwise.

And just to come back to it, the --

THE COURT: Well, the evidence is it exists and --

MS. SELDEN: Is it?

THE COURT: -- the contracts exist. The requirement for payment of fees exist. And maybe this is because we're in bankruptcy land, but I have contracts in front of me all the time: somebody may have rejection damages; they don't exist today, but they're going to exist; that's a claim. If there was a bar date, they would have to

file a proof of claim or the debtor would say, you didn't do it, and so, is it a claim for bankruptcy purposes? I think it is.

Is it a liability that causes distress? That's what you're talking about --

MS. SELDEN: It --

THE COURT: -- and there could be a difference there.

MS. SELDEN: Yeah, I do think that there's a difference there, Your Honor. And when I say I'm not sure that there's evidence before this Court with respect to those claims, maybe on the ATVM three-million-dollar fee, but I don't think debtors who bear the burden on this motion to show financial distress, have put before Your Honor any contractual evidence or documentary evidence of the $18 million in fees coming due over the course of the next five years. I didn't see that in the hearing that we have had this week. And I have heard Dr. Harrison describe it as his best estimate, but I didn't see documents or evidence supporting that that claim exists in those numbers coming before this Court.

So, I think that is a question, but I also think it is a real question that that is the kind of concrete, real claim coming due in some imminent, immediate way for a specified amount in reality that creates the kind of

financial distress that would support a Chapter 11 filing. And I certainly don't think that that is true on the eve of the moment in the Cayman Court where the LPs were asking, effectively, for that management agreement to be terminated and the GP to be removed. And I also think, Your Honor, if it is not terminated and not removed and the fund continues with a GP in place, managing billions of dollars in assets, it's not a claim that exceeds the assets of the fund.

And you've heard from Dr. Harrison and seen in the record that the fund's assets, the many portfolio companies outside of this courtroom are continuing to generate returns and capable of being monetized. And the facts that a fund, again, has fully drawn its capital commitments and is fully invested, doesn't mean that it has no way to pay its fees. It has other means of generating cash and I don't think there's any showing that those fees, if they are real, exceed in any way, the fund's capacity to pay them in the short term or in the long term.

So, that takes me from three fifty to two twenty-one, Your Honor, and that takes us into the question of the debtors' claim, that because there are $221 million in unfunded commitments that are obligations, in their view, of the fund, and which, in their view, exceed its available cash, do those exist? Do they create financial distress? Do they support a conclusion that this was a good faith filing

and service of a valid bankruptcy purpose?

And for that, Your Honor, I do think the slides will be helpful, and I'll ask Mr. White (phonetic) to pull up Number 16, which shows you, Your Honor, when the debtors submitted their summary of liabilities, here in Schedule 4 for the fund, the only liabilities they identified are this $221 million. The other 130 million of fees aren't on here and neither is anything else. And the same number shows up for the GP, but we know that's double-counting. The same two twenty-one million are held or acted upon by the GP for the benefit of the fund.

And we know from Dr. Harrison's testimony in the hearing that when they are talking about $221 million in commitments are the fund to its portfolio companies, that's a contractual commitment and Dr. Harrison and the debtors are talking about commitments under the terms of the SPAs and Mr. Mandarino agreed with that.

Now, this, Your Honor, is a chart that we have pulled together, which reflects the fact that these SPAs fall into three buckets. And when I say to you that these obligations, the $221 million in unfunded commitments to the portfolio companies, is illusory as an obligation, this is what I mean. That $221 million arises exclusively under the Series A stock purchase agreements. Those stock purchase agreements fall into kind of two contractual categories and

one, third factual category. And what I mean by that is, there are seven portfolio companies that have stock purchase agreements that have the language in 1.3(c) of those agreements that calls for further investments after the initial closing to be made upon milestones, where the milestones are to be negotiated.

And for seven of those portfolio companies, those milestones were never negotiated and reflected in a formal amendment to the SPA. There is no final milestone and so there is no present or future obligation to fund upon a milestone, because that agreement on a milestone was never reached, documented, amended to the SPA. That is seven of these portfolio companies.

For another five portfolio companies, and these are the ones in green, the total amount reflected in the SPA where it says, "the fund shall invest up to X amount," that amount has been fully funded, so there is not and could not be any further obligation to fund under those SPAs.

And for two, which we looked at the other day, Aethon and Marlinspike, the SPAs do specify milestones in their terms and tranche the financing tied to those milestones. But the remaining milestones weren't achieved and can't really be achieved on the schedules they propose in the terms of the SPA and so, again, there is no obligation to fund, because the contractual precondition hasn't been met.

And I think, Your Honor, this is Mr. Aebersold's demonstrative from his testimony the other day, which is another cut of these numbers with a little bit more detail, which shows the unfunded commitments summing to $221 million on the left. The total amount in column A that the SPA contemplated the fund might invest -- you can invest up to this amount -- the total invested to date, as of the Q4 2025 digest, the remaining amounts, that is the difference between the total amount the SPA contemplated might ever be available to that company under its terms and the amounts invested to date is C. And then the contractual categories that I described follow.

And Your Honor will recall from testimony the other day and from seeing in the SPAs that there is, in each of them, a Section 6.16, which says any additional funding above and beyond this amount has to be in a written amendment, signed and agreed by the parties. And nobody has put any such agreements before Your Honor. This is entirely about the SPAs, what the SPAs call for, whether those are real obligations, where preconditions have been met, or whether they have been fully exhausted and funded.

And because --

THE COURT: So the argument -- so your argument -- I get the argument. So your argument is, notwithstanding the testimony from the general partner who runs the business of

the fund and says that the general partner, on behalf of the fund, has made these commitments --

MS. SELDEN: Uh-huh.

THE COURT: -- I should ignore them because, contractually, he couldn't have. Contractually, he didn't. Contractually, what?

MS. SELDEN: Yes, exactly, Your Honor.

And if you'll bear with me, let me unpack that content a little bit. I have moved forward here, which is to say, you know -- let me unpack the question that you just asked me a little bit, which is Dr. Harrison doesn't just say that he has made commitments, or the general partner has made commitments to the fund. He acknowledges, and nobody disagrees, that those commitments are in the Series A stock purchase agreements and are governed by contract. And the stock purchase agreements, themselves, say, this is the entire agreement. Each one of them has an integration, entire agreement clause.

THE COURT: But Rigmora is not a party to the agreements --

MS. SELDEN: No, Rigmora --

THE COURT: -- okay. And Rigmora is the one who's telling me that what the agreements have to be honored and that the fund couldn't agree otherwise, notwithstanding the language in the contracts?

I'm just trying to figure it out. You're not saying -- I don't hear you saying the commitments weren't made; what I hear you saying is they couldn't have been and they're not contractually viable.

MS. SELDEN: I'm saying something a little bit different --

THE COURT: Okay.

MS. SELDEN: -- than that, Your Honor, which is the following. First of all, why is Rigmora saying anything about these contracts? Anything, at all, the contracts are entered by the fund as the purchaser and, you know, the Rigmora LPs are, as you know, the limited partners in the fund and these investments were made fundamentally on their behalf. They're the beneficial owners of the interest in these companies.

THE COURT: And the general partner is permitted to do it.

MS. SELDEN: Yes, and I don't disagree with that, right. There's no disagreement that these are valid contracts that were entered by the general partner on behalf of the fund.

And the reason that I'm here today as Rigmora's counsel talking about these contracts is because they are the reason that these debtors claim that they are in financial distress, that is, that the fund has $221 million in

commitments, in obligations to its portfolio companies, that it is required to satisfy, but cannot, causing it distress that warrants a Chapter 11 filing.

And I fundamentally disagree with that, Your Honor, as a matter of contract; that is, you say to me I have an obligation -- not you -- but the debtors say to me, I have an obligation under the SPAs to fund this company in this amount and here is the contract that governs that obligation. And I turn to that contract and for seven of those contracts, for a total sum of $124 million or half of the alleged obligation, there is an agreement to agree, and that's what Section 1.3(c) is. It says after the initial closing, so there's no doubt that there was an initial closing and amounts were invested, but after that, the company will sell and the purchaser shall purchase on the same terms and conditions more shares upon the achievement of milestones. Those milestones are to be negotiated in good faith by the company and the purchaser after the initial closing. And this agreement, the SPA will be amended to reflect the terms and conditions of such agreed-upon milestones, including the number of additional shares to be purchased on its achievement.

So, that's an agreement to agree. It says in the future, the company and the purchaser are going to negotiate the terms that will govern that additional purchase and if we

negotiate the terms, we had set a milestone, we set the number of shares, when the purchaser has an obligation, pursuant to the terms of that written amendment, to make that purchase and acquire those shares. That would be a contractual obligation, right.

And for these seven companies, for this, 124 million of the 221 million, there is no testimony and no agreement anywhere in the record that such an amendment was reached. There is no agreement, with respect to the Series A funding, putting these future milestones in place for these seven companies. And you saw that testimony for Dr. Harrison, and I'm putting it up on the screen there.

And Mr. Liras or Dr. Liras says the same thing, that these agreements were never amended.

What Dr. Harrison tells you is that there was a lot of written communications; there were emails back and forth; there were texts; there were PowerPoints. There's no disagreement, Your Honor, that there was conversation with these portfolio companies about what they were doing and what additional money they needed or wanted to fund those projects, but no documents reflecting a written, amended commitment to purchase a sum certain of additional shares upon achievement of a specified milestone has been submitted by debtors to this Court; that is, they have not put before Your Honor any evidence of a contractual obligation to

purchase specific shares upon achievement of a particular milestone or event and without that, all you have in these SPAs is an agreement to agree and not a contractual obligation to purchase those shares at a specified time.

And what Dr. Harrison has testified to --

And Danny, maybe you can jump me ahead to Slide 40.

-- because I think this is important; although, I want to come back to this slide -- what Dr. Harrison has testified to, Your Honor, when you say the general partner had made commitments to the fund, to the portfolio companies, and didn't honor, have to honor those commitments, Dr. Harrison is testifying that when the fund was making additional investments into these portfolio companies beyond the initial closing, that was an exercise of the general partner's discretion. And there is, as we saw the other day in the SPAs, a Section 1.3(d), which allows the general partner to exercise its discretion to accelerate a purchase right and go ahead and invest further, even if the preconditions that I described to you haven't been established.

But, Your Honor, discretion isn't an obligation and I think that is, fundamentally, at the crux of our disagreement with the general partner and at the crux of this issue of financial distress on the part of the fund. Where,

outside of bankruptcy and with cash available to make new-money investments, the general partner did, under the terms of the SPAs that exclusively govern the fund's obligations to these portfolio companies, the general partner did have the discretion to make those further investments without having memorialized a written amendment to the SPA and the term of a milestone. Section 1.3(d) gives him that discretion.

But discretion does not an obligation make, and when we are in Chapter 11 and under Section 1112(b) and assessing whether there is financial distress, a desire to make further new-money investments, to continue exercising discretion and to invest in those portfolio companies, even a deeply held belief that it's the right thing to do, that it was the subject of discussion, that people are counting on it; that does not constitute an obligation sufficient to create financial distress for purposes of supporting a good faith, Chapter 11 filing.

And I think that goes back, Your Honor, to the bankruptcy purposes of Chapter 11, which is, debtors in Chapter 11 making good faith filings are dealing with maturities, with debts coming due, with real deadlines, with creditors at their door, with more creditors than their assets can pay off, and they need to deal with them as a group. The purpose of Chapter 11 and a restructuring in this court is not to facilitate discretionary investments on the

part of a fund that is holding a vast corpus of valuable assets out of court and wishes to continue to make new-money investments when it has exhausted the new money that it had. That's not a valid bankruptcy purpose. I don't think it's financial distress.

THE COURT: Well, if the discretion was exercised pre-bankruptcy --

MS. SELDEN: Uh-huh.

THE COURT: -- as opposed to now, but if the discretion was exercised pre-bankruptcy, why isn't that a commitment?

MS. SELDEN: It's not a commitment, Your Honor --

And, Danny, maybe we could go back to Slide 23.

I think, Your Honor, it's not a commitment because where you have in a contract, terms like these, right, like 1.3(c), which says for additional closings, effectively to be compulsory, it's the company and the purchaser have to agree upon a milestone and the shares to be purchased. Those are the terms on which the purchaser shall purchase, and the company must sell those shares. And then says, in the meantime, the GP has discretion to continue to make purchases.

And then you have sections like 6.9 amendments and waivers and 6.12, the entire agreement, which say, look, you can only amend these terms with consent of the company and

the purchaser, and this agreement reflects the entire and full or full and entire understanding between the parties. And any other written or oral agreement relating to the subject matter hereof existing between the parties are expressly canceled.

I don't think, Your Honor, in the face of an entire agreement and integration clause, that course of conduct, the dealing the emails, can trump the fundamental structure of the SPA and its contractual terms.

THE COURT: And what's the purpose of the discretionary provision?

MS. SELDEN: I think the purpose of the discretionary provision is to allow the exercise of discretion. And when I'm distinguishing between, Your Honor, you might think -- think about it in the reverse way, which is to say, if you're a portfolio company and you are a counterparty to the SPA with the fund and you say -- go to court and say, look, the fund is in breach of its agreement under the SPA to exercise its discretion to purchase more of my shares --

THE COURT: Not to exercise, but it did exercise. So, now, I expect it. It did exercise, not to exercise, but it did. I don't know.

MS. SELDEN: I don't think --

THE COURT: But I take it your argument is,

regardless, $221 million is still not enough to put the fund in distress, even if it were an undisputed obligation.

MS. SELDEN: I think that's right, Your Honor.

$221 million is not enough to put the fund in distress. With respect to these milestones, I -- I've, you know, litigated a lot of contracts. I like being on the plaintiff's side. I wouldn't take the plaintiff's side on a you have to honor a discretionary right to make further investments where there is a meaningful distinction, as a matter of contract law, between the discretionary right to do something and a contractual obligation to do it. And I think that's the contrast between 1.3(c) and (d), which is, here's an obligation; you have to purchase on these conditions. But you can invest sooner in the exercise of your discretion, but you don't get to enforce a discretionary choice like that if you are on the other side of it, as a normal matter.

And I don't think -- again, where debtors bear the burden, you've seen any evidence or argument from them to the contrary on that point. You've seen, again, a deep desire to continue making discretionary funding, but no evidence that that is mandatory or an obligation.

But, Your Honor, that's -- the other thing, I want to move on from the agreements to agree to some of the other categories. But before I do that, just again, on financial distress -- and Your Honor knows this and LTL tells us it --

but financial distress does require immediacy or imminency.

THE COURT: Uh-huh.

MS. SELDEN: There is a time component to this.

Again, if -- even if you were to credit what I think is a counterfactual hypothetical theory in which a discretionary right could be enforceable by the company, that has no time component. There is no set time on which a discretionary right to purchase more funds must be exercised.

There's a desire, no doubt, on the part of the portfolio companies, which you have heard from Dr. Harrison, to have the money sooner rather than later for their competitive advantage or to restart research projects or do the work that they hope to do. But, again, there's a -- that immediacy of desire and need on the part of some debtors, the portfolio companies, I don't think creates an immediacy of obligation on the part of the fund, where the funding provision that you're relying on is discretionary.

And I would view it differently, Your Honor, if you we were talking about amendments that had milestones and the milestones said, like, look, when this happens, you will make a purchase. That's a time certain. If the fund is running up against that, you might have immediacy. But this discretionary right is very open-ended and not creating that kind of time-pressured obligation on the fund that is typical in a good faith filing in Chapter 11.

But let me look at, maybe, Slide 31, which takes us ahead to the other companies like Marlinspike and Aethon, which have this very different language in their stock purchase agreements. And this is Section 1.2(b) of the Marlinspike SPA, and, Your Honor, this has that kind of time-driven specificity that the other seven SPAs are lacking, right.

So, after the initial closing and investment, the Marlinspike and Aethon SPAs have tranched closings, where the company, if it achieves the second tranche milestone and that has to be determined by the board of directors -- it can't just be an email; it has to be a formal board notice saying, We've achieved this milestone. We were delivering a notice in good faith that it has been achieved -- then there's 14 days after which the company shall sell and the purchaser shall purchase on these terms, an additional specified amount of shares. That's a contractual obligation upon occurrence of a specified event, the delivery of the notice, within a specified time, 14 days, to make a concrete purchase of a set amount of shares at the pre-agreed price. That's a contractual obligation to make a further investment on terms that these parties have agreed.

And that's the kind of language that was to be negotiated under Section 1.3(c) of the SPAs, where the milestones aren't present, but they were going to negotiate

these milestones. Here's what it looks like when you negotiate the terms of the milestone and the second tranche milestone is, itself, described below here in (K), which is: it's identified a hit; it's completed chemistry; crystallography; *in vivo* tolerability; it's ready to commence lead identification; it's biologically validated a second program; it's developed a platform. That's the kind of specificity of a milestone triggering an obligation to pay, that certain of these SPAs had, and that the first seven that we looked at didn't have but were to be agreed in the future. And that's important, because that's the thing that triggers, as you see here, within a specified time, an obligation to make an investment, the purchase of a specified amount of shares.

Now, for these two companies, you heard two things, I think, that are quite important from Dr. Harrison. One is that there were no tranche milestones delivered, so that precondition to the contractual obligation to purchase didn't occur. The Board didn't certify and the notices weren't delivered. And Dr. Harrison agrees that for the five companies with specified milestones, the fund has no obligation to invest further if portfolio companies didn't achieve the specified milestones. And he says, Correct, the missing of a milestone gave the GP discretion as to whether and how to fund and so on.

And I think, Your Honor, this testimony is important and I want to emphasize it, which is, even Dr. Harrison understood and testified as to this difference that I'm describing between obligatory investment and discretionary investment. Companies that didn't achieve their milestones, the fund didn't have an obligation to invest further. The GP had discretion, but not an obligation.

And it would be -- I hesitate to say -- unprecedented, because I'm not sure I read every case on this subject, Your Honor, but I am not aware of any precedent and I haven't seen any from the debtors in this case that would say the desire to exercise a wholly discretionary right, to make a further investment when one lacks the funds to do so, is the form of financial distress that warrants a Chapter 11 filing. It may be causing other kinds of distress, that is, it is distressing to want to be able to continue to fund and to exercise that discretion and to support these companies.

I don't discount that there's some distress here, but I do not think it is financial distress in the sense of obligations coming due without the cash to meet them. There's not an obligation coming due; there's the desire, but not an obligation.

And Dr. Rimm testified, you know, as to the inability of Marlinspike to meet its milestones and of Aethon

to meet its milestones. And these are the remaining milestones from Marlinspike and Aethon, one of which is a debtor here and one of which isn't, and some of the reasons that would summarize the sites to the stock purchase agreements and to the hearing as to why those milestones to unlock those tranches of funding have not and cannot be met.

And because those milestones have not and cannot be met, this obligation, where I don't disagree that under these SPAs, if the milestones were met, there'd be an obligation to fund. That's the language. But if they're not met, that obligation doesn't arise and that accounts for another $45 million of the 221.

So, Your Honor, between the SPAs, where the parties never reached agreement as to milestones and never put those obligatory triggers into the SPAs by amendment, that's 124 million, and the SPAs that had specified milestones that have not been met, you know, that's 169 million of the 221 million. Those aren't obligations.

And then, as to the remaining 54 or so, the debtors' own documents, these fund digests shows that the SPAs were fully funded. And by "fully funded," I mean the SPAs set a total amount where the fund will invest up to X amount and either obligatory, upon achievement of milestones, whether negotiated or not or discretionarily, but here's the total amount that we can invest, that we commit to invest.

And for these companies, Aulos, Ascidian, Replicate, and Marengo, those SPA totals have been fully satisfied, and in some cases, more than satisfied. So, that's what this is showing you here, where on the left, there's a claim to unfunded commitment that accounts for the balance of the 221. There's the total amount, up to which the SPA provides the fund might invest. There's the total invested to date and the overage.

And on the total invested to date, Your Honor, you heard a lot from time to time about the LPs starving the portfolio companies or an inability to make these investments. It's like, these are millions of dollars, tens of millions of dollars, hundreds of millions of dollars, billions of dollars, if you look over the life of the fund of investments. So, I think that's noteworthy. These -- none of these companies are debtors before Your Honor, but there are claims, again, of a desire to fund that are significant in amount, but again, there can't be any remaining obligation under the SPA, because the SPA provides for an investment up to an amount certain and those amounts have already been invested.

THE COURT: So it would all be discretionary?

MS. SELDEN: It would all be discretionary.

THE COURT: Okay.

MS. SELDEN: And, Your Honor, again, I think, you

know, litigation kind of always warps investment decisions or how you think about investment decisions. What we're here talking about are whether there were obligations. Do you have an obligation, such that it's causing financial distress?

For some of these companies that I've just showed you, both inside and outside of bankruptcy, the LPs have consented and don't disagree that it would be good to make further investments and that might be a discretionary investment. The question is whether it can be compulsory; or that the obligation was so real and concrete and immediate that it caused financial distress; whether it can be done without their consent. Like, that's another way in which the fully drawing of the contingent subscription restricts, to your point, Your Honor, what the GP can do in the day-to-day management on his own, responsible for the fund. But, certainly, one could ask to make more investments, and in some cases, and you see from these overages, there have been investments in excess of obligation; that is, discretion can be exercised, but that doesn't mean that it creates distress.

And so I think that brings me back to that slide that I had shown you earlier, Your Honor, which is -- you know, I'll just pause here, again, because I do think this really is a point of deep contention between these parties, but also a central point for the motion before, Your Honor,

on the motion to dismiss, which is, if you come to court and say, We need the resources and the breathing room and the space of Chapter 11, you must identify, as debtor, financial distress.

And I do not know, and debtors have not shown you -- I don't think there's a basis to conclude that their desire to continue discretionary funding in excess of a fund's capital commitments, amounts to the kind of financial distress that warrants a Chapter 11 filing.

THE COURT: And I take it I'm not allowed to look at the distress at the portfolio companies?

MS. SELDEN: Not for purposes of assessing the fund and the general partner, Your Honor. I think that's LTL. I think that's Owens Corning.

THE COURT: Well, LTL doesn't deal with a family of companies that have filed and I don't know whether it overrules the cases that have been cited in papers where courts consider other filings, like Judge Walrath's decision in JER/Jameson and the cases that follow from that.

MS. SELDEN: You're right, Your Honor, that I don't think LTL involves kind of a family or the kind of interdebtor relationships that some of those cases do, but I do think it explicitly considers the question of what you look at, which entity and says, you know, only the debtors' financial condition is determinative. And I think the

explanation that it offers, while the context is different, the explanation is telling and applicable here, which is that you look at the debtor, because it reflects the State law property interest to be given the same effect, inside and outside of bankruptcy.

So you look, again, to State law and say, well, State law would ascribe these interests, these assets, these liabilities, these contractual obligations to this debtor. I'm not going to ascribe more to this debtor in bankruptcy than I would outside of bankruptcy. I think that's a core principle in bankruptcy, generally, and that we've talked about in this case, in particular, and it harkens back. And LTL cites Butner for the principle that there's no reason we would look at those interests differently because the entity is in bankruptcy.

I think Owens Corning also deals with this, Your Honor, in a case maybe a little more similar and that there were more debtors where you might consider, but again, says, State law tells us we look at -- let me rephrase that -- which is bankruptcy law tells us that for purposes of looking at these entities, we respect the corporate separateness that they would have under State law.

And, here, look --

THE COURT: So, if I have a group of companies and 25 of them file --

MS. SELDEN: Uh-huh.

THE COURT: -- I need to look at every single one of them and decide whether or not it needs to be in bankruptcy and it has met the requisites, and that's a question I'm asking. That's what I have to do, I have to look at the 25 different entities -- this one is a holding company, this one is an operating company, this one -- and I have to look at all of them and decide each one of them individually has been filed in good faith, and you think that's what LTL tells me?

MS. SELDEN: I think --

THE COURT: I did a little research, I will say --

(Laughter)

THE COURT: -- to see if there was something after LTL, which addressed it in this context. Very quick, I didn't see it. Maybe the debtors are going to tell me there is some, but -- because I have the same questions for the debtors. But that's what you're saying, I have a group of 25 and I've got to look -- and somebody's going to pull one of them out and say, You have to look at this one.

MS. SELDEN: I am saying that, Your Honor. I'm sorry to say that. I don't wish that on you. I hope that that does not befall you.

That is what I'm saying, and I -- it is bringing -- I can give you an example, because it is bringing

back, maybe some PTSD for me, as to this chart, where you have to pull out debtor by debtor, and that's the SunEdison bankruptcy, where there's a HoldCo bankrupt entity; there's an operating entity; and a very complicated structure where it's a renewable energy company, so a publicly traded company and a HoldCo/OpCo structure, and beneath, then many structures. And I could draw it for you today because I spent so much time looking at that chart. I'm pretty sure there's a decided decision in the Southern District Bankruptcy Court over pulling out underneath those entities, the specific entities and the transfer of funds between them and what they were doing in Bankruptcy Court. And it can be an excruciating process and I don't deny that.

THE COURT: Was that for purposes of could this entity be, should this entity be in bankruptcy, or for some other reason?

MS. SELDEN: For the purposes of, is this entity liable for that entity's debt?

THE COURT: Well, that's different.

MS. SELDEN: Not a motion to dismiss --

THE COURT: Okay. That, I think is different.

MS. SELDEN: -- but I do think -- I don't know if it's that different, for this reason, Your Honor, which is where we're talking about financial distress, we're looking at, kind of, what are the obligations of this entity? Do you

have distress, such that you have to make payments? Do you have resources, such that you have the ability to make those payments?

I think these are, you know, fundamental concepts within bankruptcy, which is you come as a debtor into Bankruptcy Court; that's a meaningful and really transformative act.

THE COURT: Uh-huh.

MS. SELDEN: And when you come as a debtor into bankruptcy, you are saying as the entity, I am in financial distress. I have contractual obligations and debts that I cannot satisfy. I don't have the resources.

I think you look entity by entity. And I think --

THE COURT: And interrelationships don't matter?

MS. SELDEN: Oh, sure, interrelationships don't matter. I think that they certainly -- I wouldn't discount that entirely. I think they have some valance (phonetic). But I think the interrelationships, here, matter and there are reasons that you don't look at the portfolio companies for purposes of assessing the financial position of the fund, and that's because they are, as a legal matter, arm's-length relationships. These are seven separate Delaware corporations, each of which has its own board of directors. They have their own governance documents, voting rights agreements. The fund's relationship to them is as investor

and the fund's relationship to them is described and circumscribed, by the Series A stock purchase agreement or maybe in one case, a Series B.

That tells you what the fund's relationship and obligations to those portfolio companies are and --

THE COURT: And here, they're not wholly owned either --

MS. SELDEN: They don't --

THE COURT: -- the core -- the portfolio companies, or are they? I have that somewhere.

MS. SELDEN: I bet I have that somewhere, too, Your Honor. And you are maybe hitting the limits on my memory test.

I believe that most of the portfolio companies, in these Chapter 11s are portfolio companies, in which the fund is the sole investor. But, again, the fact that the portfolio company has debts and obligations, I don't think, as a matter of contract law or other law, passes through to the fund.

And you're not seeing, Your Honor, what I would expect to see if that were a valid argument. Like, sometimes somebody sees a portfolio company and makes a veil-piercing argument about the fund and tries to look through to satisfy those liabilities, and so you might have some veil-piercing theory of reaching through to the fund. And there are other

circumstances and other legal theories that might give you, kind of, that look-through that is, I think, at the heart of Your Honor's question.

But we're not aware of cases in which you look through the other way and say, for purposes of assessing this debtor's obligations, the fund's own obligations and assets, we should kind of sweep into it, entities, with which it has a contractual obligation as an investor and count against the fund, those portfolio companies' distress and obligations. I haven't seen law to support that. I don't think the SPAs support that.

And, Your Honor, we're still talking about a four-billion-dollar fund and I don't think that even if you did that, which I very much don't think you should and I don't think the debtors have given you any legal reason to do, even if you did that, I think this four-billion-dollar fund has assets in excess of anything that the portfolio company debtors are claiming here.

I think the reason it's confusing here is because it's structured, you know, the fund is an investor and the same person sits at the GP and on the Board and, certainly, they have had a close-knit relationship between the fund and the portfolio companies through the personnel, and these are early-stage companies. These debtors before Your Honor are in their early phases. They are still trying to identify,

kind of, the research that they want to pursue. They have, despite millions of dollars in investment, they're not close to INDs, as you heard from Mr. Liras. They're very much in the early stage and in need of more funding to go forward.

And so while they're separate Delaware corporations, you know, they have maybe closeness with their seed investor, but I do think LTL and Owens Corning and bankruptcy law say, look, you look at the financial distress of the debtor before you, certainly, on a motion to dismiss, and assess it on a standalone basis with the same kind of attention to separateness, both as a matter of corporate governance and as a matter of property law, that underlying State law, or in this case, Cayman law, would dictate.

And I think, Your Honor, when you do that for the fund -- look, for the GP, it's easy, right. The GP is here with no assets, no liabilities, nothing, except what the fund has. And you haven't seen any evidence from the GP other than that. And the GP's central claim is that it should be conflated with the fund or with the portfolio companies or just not looked at, at all, and kind of disregarded for purposes of this analysis.

But I don't think that's right. The GP is a debtor in Chapter 11 and it's a debtor that has not identified any basis, as a matter of fact, for financial distress of its own. It has no obligations. It has no

assets. It's just functioning in that general partner role.

It is getting one important thing out of its Chapter 11 filing and that's the benefit of the automatic stay to prevent the Cayman case from going forward. But it doesn't have any debts or assets of its own to reorganize.

THE COURT: Well, it has assets. It has a contract, right, so it has assets. I don't know if it needs to reorganize, but it has assets. We're sort of throwing things around a little loosely, I think, in the sense that a contract is an asset. So, how does it not have an asset? I don't know if it has a liability -- I'll have to think about that -- but it has an asset.

MS. SELDEN: In terms of its rights under the LPA?

THE COURT: It has a contract.

MS. SELDEN: I don't disagree that the general partner is a party to the LPA. I think, Your Honor, maybe I could have been a little more precise, which is to say the general partner hasn't presented any response to this motion to dismiss in satisfaction of its burden as its own debtor, any of the kinds of facts indicative of its own financial distress as a general partner. That's all I meant to say. Maybe "asset" was not the right word there, but I don't think the general partner has presented to this Court, in response to these motions, any of the facts that would support a finding of financial distress as to the general partner as a

debtor.

THE COURT: Okay.

MS. SELDEN: And as to the fund, we've talked about these liabilities, the central liabilities. They had *de minimis* liabilities on December 9th. Its own filing said it had $14 million in cash. I think Your Honor has seen these; these are its consolidated financial statements, which reflect, you know, incoming amounts from the portfolio companies, no outgoing obligations to the portfolio companies. Nearly $4 billion in total assets and just over $5 million in liabilities.

And I think Your Honor has heard from Dr. Harrison that the assets exceeded liabilities by a multiple. I don't think that's really in dispute.

In support of their retention, Quinn has agreed that the fund is solvent. There's a lot of residual value identified as of the end of the third quarter in the fund.

THE COURT: Is the fund liquid?

MS. SELDEN: In the sense, Your Honor, that it's generating returns and there's cash coming in?

THE COURT: In the terms of if it has cash. Is it liquid?

MS. SELDEN: Yes, I think it is, Your Honor. I think it's liquid in a couple of ways. Right now, the fund is holding. It came into bankruptcy with $14 million in

cash. Quinn says it's liquid in its retention filings.

THE COURT: Yeah.

MS. SELDEN: It has received $97 million in cash from my clients since the pendency of these cases on December 22. That cash is tied up in bankruptcy and it's in a segregated account, but it would have been paid into the fund and is in the fund for these purposes. Now --

THE COURT: Is it a fund asset?

MS. SELDEN: Yes, like anything else, the cash is held by the GP as an asset of the fund for the benefit of the LPs.

But I think to your question, Your Honor, Dr. Harrison testified about the cash coming into the fund at the hearing the other day and we looked together at the declaration that he submitted on December 8th, the day before filing these cases in the Cayman Court. And in that declaration and in his testimony before Your Honor, Dr. Harrison walked through the incoming cash for the fund and identified these amounts, which include 60 million-plus that came in, in the third quarter of 2025. Identified a total amount from the Syntimmune judgments that's expected to come in. Identified 280 million coming into the fund in 2025 from Braeburn.

So, as a general matter and as a specific matter, the slide that I'm showing you now, which has the cites to

the hearing testimony and the other sources, shows you that $60 million came into the fund in cash in July and August of 2025. $97 million was due to the fund as of the Chancery Court judgment on December 5th and paid on December 22nd. As of its filing, the fund had $14 million in cash on hand, and these big, outstanding numbers that are taken from Dr. Harrison's own testimony and in his own declaration in the Cayman Court about amounts that were coming in. And he also, you know, has testified that the fund has monetized assets in the past; that it can monetize assets in the future; and it has the potential to make future distributions of cash to its limited partners.

So, this is an investment fund. It's holding 15 portfolio companies. Seven of them are not doing well and are here in distress, but the rest of them are outside of bankruptcy. Some of them are very valuable. They are generating returns and capable of generating returns. And I think, Your Honor --

Danny, I'm going to the wrong way. Can you take me to Slide 51.

I'm going to show Your Honor one other thing here and this is the one slide from the deck that Ms. Good mentioned at the beginning of today's hearing, which is that in presentations to other investors, including in December of 2025 when these cases were filed, the general partner is

touting the financial performance of the fund and its ability to generate returns on top of paid in capital. Those are the TBPI numbers, and the DPI numbers, and the IRR.

So, at the same time that this fund debtor and its general partner are seeking relief here in this Court, in Chapter 11, they are out soliciting new investors on the premise that this fund is delivering best in cost performance and generating returns. And those returns mean returns of cash on top of invested capital distributable to the partners. I think that is important here, which is, again, to come back to the fact that the fund has fully drawn its contingent subscription and deployed all that money, billions of dollars into investments, doesn't mean that it doesn't have cash now and it doesn't mean it won't generate cash in the future.

So, overall and outside of this Court, and other places, and their consolidated financial statements, and their quarterly reports, and talking to other investors in the Cayman Court, the GP and the fund are touting big numbers. They're saying things like this is a $6 billion fund, it's made distributions of over $2 billion, it has great performance, it expects to receive significant cash, it is invested in companies that are doing well and expected to generate cash. That is a story of success that the general partner and the fund are telling everywhere but here;

although, they do tell it a little bit here, at least in the first day declaration and again in the schedules and petition itself, all of which admit this fund has billions of dollars.

So, I do -- you know, I am not losing sight of, and I don't want Your Honor to lose sight of, the fact that these assets are held for the benefit of the LP's and not within the bankruptcy estate but to the extent the question is whether the general partner, the fund, has debts or obligations in excess of both assets, I think the answer is a fairly obvious no. So, for that reason, Your Honor, I don't think there is financial distress here and because there's no financial distress, I think LTL tells you to dismiss the case.

I see, Your Honor, that I have been talking for a very long time and yet we have a whole other motion that I haven't even touched nor have I mentioned the fact that we paid in this, you know, $97 million and I just want to say one word about that and then I suspect either we could take a break or shift gears here.

On the $97 million I do want to say, Your Honor, you've heard, since the first day this case was filed, that one of the reasons the general partner and the fund filed was because they didn't know if the Rigmora LP's would honor the chancery court judgment and pay $97 million of cash into the fund. But you also heard from Dr. Harrison that he hadn't

even seen the proposed order that my clients sent through our Delaware counsel to Quinn on December 8th, the first Monday after Chancellor McCormick's Friday decision proposing to pay that order within 10 days, that he didn't see it. It wasn't shown until his February 17th deposition, and that these debtors didn't mark that up, didn't ask to be paid sooner, didn't wait the 10 days to see if the cash would come in before filing these cases, and didn't have any obligations with any dates coming due in those 10 days or at any point thereafter.

What was happening in and around December 9th was all litigation focus. There was Chancellor McCormick's decision on December 5th, Cayman witness statements went in on December 5th from our clients. I think the GP's were delayed and filed on the 8th. There was a final pretrial conference coming up on December 17th. There had been a conference before Justice Asif on December 1st where he made some rulings against the GP.

The things that were happening when these cases were filed were litigation related, reflecting the conclusion of the chancery court trial the movement into trial in the Cayman Islands on the winding up petitions. And I think, Your Honor, while there are many -- to ask then in a fund and with these kinds of investments you've heard about a lot of things that at the end of the day I think it is what it

appears to be, this is Chapter 11 cases filed for tactical advantage to get the benefit of the automatic stay to avoid the Cayman winding up proceeding by a fund and general partner holding billions of dollars in assets that are, by their own account, generating significant cash including almost $100 million due to them within days of the filing of these bankruptcy cases.

And I don't think under those circumstances, considering the totality of the circumstances, the litigation pieces and the financial distress, debtors can possibly meet their burden to show that this was a good faith filing. I think it should be dismissed for cause under Section 1112(b)m among the other reasons that we identify in our motions.

If Your Honor doesn't dismiss, we would ask for relief from the automatic stay to go back to the Cayman Islands but I will not go into the lift stay motion at this point unless Your Honor has questions about that.

THE COURT: Not really.

MS. SELDEN: Thank you, Your Honor.

THE COURT: Thank you.

Okay. Let's take 10 minutes and then I will hear the response.

MR. WINSTON: Thank you, Your Honor.

THE COURT: Thank you. We're in recess.

(Recess taken at 12:01 p.m.)

(Proceedings resumed at 12:14 p.m.)

THE COURTROOM DEPUTY: All rise.

THE COURT: Please be seated.

MR. WINSTON: Good afternoon, Your Honor. Eric Winston of Quinn Emanuel on behalf of the debtors.

I do want to say thank you to Your Honor and to your staff, this is now the fifth court day, really, about these proceedings. There's been a lot of boxes, a lot of papers, a lot of trees but I just want to say thank you for making the time for all of us.

THE COURT: That's the job.

MR. WINSTON: It's the job, I know, but still thank you.

With Your Honor's permission, I intend to proceed in the following fashion:

First, I'm going to discuss Section 109(a), which was not discussed but it's an important gating question.

Second, the nature of the partnership debtor and its interest in property under Cayman Island law.

Third, the impact of the general partners bankruptcy filing, which I think mostly goes to the stay relief motion but it did come up and I want to make sure I kind of put it in the right place.

Fourth, the nature of our good faith in seeking these cases before Your Honor.

Then last, the issues of comity and whether you ought to abstain under Section 305.

It's not my practice to hand out lengthy PowerPoints, it's just not something I typically do but we have prepared a binder for Your Honor with tabs and behind each tab has the argument and the evidence that we believe supports the arguments so that hopefully it will make it easier for Your Honor when you're flipping through rather than every single box possible that you can be more focused, and hopefully it will achieve that.

Your Honor, if it's okay, we can approach and hand it up.

THE COURT: That's fine. Thank you.

MR. WINSTON: It's a big binder but there's actually not that many pages.

THE COURT: Yeah, we could have been thinner there.

MR. WINSTON: Sorry about that.

Your Honor, I wanted to start with Section 109 even though it only shows up on page 41 of the motion to dismiss because I think it is the gating question. If you go behind Tab 1 you will see our evidence and authorities I'm relying upon. Section 109 provides that a person that resides or has a domicile, a place of business, or property in the US may be a debtor. The term "person" is defined in

Section 101(41) and it expressly includes, though it's a non-exhaustive list, partnerships and business trusts.

Apple Tree Partners Life Sciences Venture, L.P., is plainly a partnership and as such it is a person for purposes of Section 109. Mr. Phillips conceded it is a partnership. Section 2(m) of the limited partnership agreement requires the general partner to take steps to ensure its treated as a partner for US tax purposes. Again, demonstrating its partnership. Cayman law provides that exempted limited partnerships, and I will call them ELP's to just speed things up, exist if they satisfy certain conditions, which we have satisfied.

Limited partners are considered debtors all of the time under the bankruptcy code, Paper I Partners, 283 B.R. 661 from the Southern District of New York, held that a limited partnership is a proper debtor under 109 even though limited partnerships act through their general partner. And this actually, in many ways, ends the first debate. The bankruptcy code defines persons to include partnerships regardless of any other law, Global Oceans said that. You can't even look behind for any discretion because the statute says what it says.

It seems that Rigmora's argument is under its construction of Cayman Island law ELP's have no separate legal personality and because of that they own no property,

they're not a person. Rigmora cites no cases for the bankruptcy court to ignore what the bankruptcy code defines as "person" to include partnership.

If Your Honor were to accept that argument the first of two very unprecedented things would happen, being no Cayman ELP could seek Chapter 11 relief, Chapter 7 relief, or even be the subject of an involuntary even though its, obviously, a partnership and even though it may only have US assets, which in this particular one, if not all, virtually all of the assets are investments in US companies and to think about the impact on Cayman Islands as a place for investment.

Our entity owns US companies. Its headquartered in the US. The idea that it cannot either seek voluntarily or be the subject of a US bankruptcy because of Rigmora's interpretation of Cayman Island law restricting that makes no sense. It would also mean that the five that we found, and there may be more, but the five that we found, including one in this district before Judge Shannon, the Sea Launch case, never should have filed. It seems kind of crazy to think because Sea Launch confirmed a plan. MatlinPatterson has an extremely interesting decision about how to approve a settlement. We would encourage Your Honor to read that decision because it goes through a little bit of the history of Cayman ELP's and in particular, that particular Cayman ELP

was facing worldwide litigation and why it made sense to be in Chapter 11.

In fact, in that case, and the cite is 644 B.R. 418, the most aggressive creditor in the case, the Rigmora version in that case, didn't actually move to dismiss but did move to convert on bad faith grounds. And the judge said was approving the settlement but was inclined to deny that motion.

THE COURT: What was that cite again?

MR. WINSTON: 644 B.R. 418.

THE COURT: Thank you.

MR. WINSTON: And for avoidance of doubt, this partnership debtor is eligible under 109 for two grounds. Number one, and I will talk about this a lot more, it definitely has property located in the United States. Number two, its principal place of business is in New York. That is located in the United States. So, there is no doubt that, at least for purposes of 109, the partnership debtor satisfies. For exactly the same reasons, so does the GP but they haven't really argued about that particular point.

So, let me turn to -- now that we've established 109 and that its eligible to file now let's talk about what I think is the heart of the, what I will call, jurisdictional reason for trying to dismiss these cases and that is this notion that the partnership debtor doesn't

really exist and doesn't have any interest in property.

Now, according to Rigmora, the general partner apparently holds the assets in trust for the limited partners, individually and directly, not the ELP, and the ELP is just a name that is equal to the limited partners. It doesn't have any sort of standalone anything. And repeatedly, Rigmora tells Your Honor that under Cayman Island law the partnership debtor has no separate legal personality as if that ends the story, but this is wrong and in this regard, I'm going to break down the issues in a couple of steps. And this is behind Tab 2 if you want to see where evidence and authority is on that.

Though Rigmora actually never cites in either its motion to dismiss or its reply, Section 541(a), that really is the touchstone to the argument. Does the partnership debtor have any interest in property. If yes, then Rigmora's argument really does fall away. It's actually to me, after listening to Mr. Phillips who I had the honor or deposing and then cross-examining, he's a very interesting erudite scholar on cross-border insolvency, it's very clear that Cayman Island ELP's have assets and they have interest in property. It does explain why multiple ones have filed Chapter 11's in this case -- in this country, as I have noted.

It's important when Your Honor makes the ruling, you have to look at this generally. Like, it can't be only,

you know, to be generous to this case versus any other case, the rules should be the same if Rigmora's theory is correct. But I do think it's important to look at the course of conduct of the years that this thing has existed that helps bolster that, in fact, this partnership is an entity of its own and it has assets and interest in property.

Going back to 101, which is why I wanted to start there, the instant it filed this partnership debtor had an estate created under 541(a). And whatever is the property it has, its interest in property, that became part of its estate.

Now the case law construes interest in property under 541 very broadly. The Fruehauf Trailer case made this clear when it quoted the Supreme Court for the proposition to this end, the term "property" has been construed most generously and an interest is not outside its reach because it is novel, or contingent, or because enjoinment must be postponed. So, it's very broad.

Now how do we apply that to our Cayman ELP? We know, from Mr. Phillips's testimony and the statutory commands of the ELP Act, the partnership itself has assets. He testified that Section 4(2) of the ELP Act refers to the assets of an ELP and that a Cayman ELP has its own pot of assets, that is part of the stuff we have behind Tab 2. And, in fact, in this case, the ELP what it owns is a lot of

assets. You just heard about 15 portfolio companies, one of which I believe is wholly owned, that is Braeburn, the rest are majority owned but all of those are assets of the ELP.

While a general partner itself holds legal title -- and I know there as some interesting examination, Your Honor, when you asked the question of Mr. Phillips, what does the GP have, and he responded both legal and equitable title, and he kind of fixed that on redirect because I don't think he meant to say that. The point is this, before Your Honor you have the entire bundle of assets between the partnership debtor and the GP debtor. And Your Honor has the jurisdiction to protect those assets.

That is why two weeks ago, when we were arguing the funding motion, and I stood up last, and I said, you know, we made this proposal and we're trying to move this forward they said, no, fine but let's not make any mistake about it, Your Honor has the jurisdictional hook, Your Honor has the jurisdictional hook. And let me kind of go through a little bit of the Cayman law principles that help cement what I'm saying then and what I'm saying now.

THE COURT: So, do the limited partners have -- I want you to do that but do the limited partners have no interest?

MR. WINSTON: They do. They do. And, in fact, the limited partners interest in the partnership, and I think

the Privy Council used the term "proprietary interests," is analogous to the beneficiaries of a trust. I think the case law highlights that but when I get to the discussion of the cases you will see it doesn't change the fact that the ELP itself has interest in property and, in fact, can transact with them.

The key argument of Rigmora is this no separate legal personality concept. No separate legal personality. It doesn't have separate legal personality from its limited partners, the entirety of them, not individually, and the general partner. This argument really misses the point. The concept of a partnership having no legal separate personality is a trademark of the -- it's the hallmark of partnerships for centuries. It helps explain why general partners are liable because the general partner is liable for the debts of the partnership. If this wasn't a limited partnership, if it was a partnership everyone would be liable but it doesn't change the fact the partnership itself has assets and liabilities.

This entire notion of separate legal personality doesn't actually answer the question before Your Honor whether there is an interest in property under 541(a). And just to kind of walk this through the steps to get you there, starting with the notion of what is the partnership itself. We know under Cayman Island law it has to register itself.

So, there is a thing, an ELP. It can be a party to a contract.

If you look at every SPA, and I will certainly get to the SPA's later on good faith, but the document themselves, the counterparty is the partnership. It can sue and be sued. It can be wound up. It can go through a reorganization. It can even deregister and migrate to a different jurisdiction in a different forum. And the language of the ELP Act, at various places, strongly supports that the ELP is its own entity with its own assets, property, interest in property.

Section 4(2) of the ELP Act says:

"An ELP shall consist of one or more persons called a general partner, who shall, in the event the assets of the exempted limited partnership are inadequate, be liable for all debts and obligations of the ELP."

If there is a gap, the general partner is liable but there has to be something to establish the gap.

Section 16(1) describes property of an ELP using the word "of." It says, "Any right or property of every description of the ELP" has property.

Section 16(3) talks about the assets of the ELP can be subject to a floating charge. We heard from Mr. Phillips a floating charge is our version of a lien, that is -- it's just a form of a lien or mortgage. How is a

"lien" defined under the bankruptcy code, as a charge against or an interest in property to secure payment of a debt.

Section 22, I think it's, (l)(ii) concerns the purchase sale of an asset by or of the exemptive limited partnership.

These statutory commands all lead to the conclusion that the ELP itself exists and has an interest in property. And there are two Cayman law cases that actually support what we are arguing that have not been contradicted in any way by either Mr. Phillips or by the cases that he relied upon.

The first is Formation Group. The Court explained, at Paragraph 17 of that decision that Section 4(2) of the ELP Act, that is the one I brought Your Honor's attention to a second ago, clearly envisions that an ELP will have its own assets, debts and obligations. And it provides some general support for the proposition that as far as a winding up is concerned, an ELP does have its own pot of assets and liabilities which are capable of being wound up separate and apart from the general partners. But the Court continues, at Paragraph 39 it says Section 4(2) makes it clear that such legal entities, ELP's, have their own assets and liabilities distinct from the general partners who manage them and the limited partners who invest in them.

The Court then said, at Paragraph 37, I'm

reversing the order of it, "The fact that an ELP generally has no separate legal personality is entirely beside the point." That is exactly right, it is entirely beside the point. When a winding up is proceeding as commenced against an ELP, who needs to be the respondent to that is a side issue to the question of whether the ELP itself has an interest in property. Nothing that Mr. Phillips testified too or that Rigmora has argued, because they didn't even tough [sic] this in their papers, addresses this or why the result ought to be different in a Chapter 11.

Now, Mr. Phillips, in cross, tried to distinguish Formation Group by referring to Padma. It was -- you might have found it kind of interesting because Padma and Formation Group, in this respect, have nothing to do with this interest in property question. And he then argued that the decision by the Privy Council in Aquapoint allegedly resolved the debate in favor of Padma over Formation Group.

It is not only irrelevant to the issue you have to decide about what is and is not property of an ELP, he actually was wrong and, in fact, he kept on saying Padma referred to Section 33 of the ELP Act and I finally said -- sorry, he kept on using the term "36" of the ELP Act. I asked him, I said did you mean Section 33? He was like, oh yeah, yeah, I got that wrong. That is important because Formation Group and Aquapoint were debating how you start a

winding up under Section 36. Padma got it all wrong. And while it's an irrelevant decision for Your Honor's point, his attempt to minimize Formation Group just happened to be wrong too, just on different grounds.

THE COURT: So, are you saying Formation Group is not overruled in any way by later decisions of the Privy Council --

MR. WINSTON: Not at all.

THE COURT: -- setting forth what the characteristics of an ELP are.

MR. WINSTON: Not at all. In fact, they're consistent. They both say -- and I will talk about the other cases in a little bit but they all say separate legal personality. There is no debate about that. Only Formation Group and, what I'm about to get to, the Cayman Island Appellate Court in Kuwait Ports both say for purposes of determining the assets of the ELP itself, it's an irrelevant point.

So, in that respect let me talk about Kuwait Ports. And, again, Mr. Phillips didn't disagree with this at all in his declaration and he reaffirmed it on cross until I finally pointed stuff out to him. Paragraph 145, which is the ruling section of that decision, says:

"Thus, even though like an ELP a trust is not a separate legal entity. It can properly be said that the

trust, as well as a beneficiary, has a claim against a trustee for breach of trust and that such a claim can be considered an asset of the trust. It seems to us strongly arguable that the position is the same in relation to an ELP particularly given the general partner is also a trustee."

The import of that language -- and there is another section in the decision earlier on referring to Paragraph 144 that kind of gets to the same point. The import of that decision is if you treat an ELP like a trust, which the case law, you know, suggests it has those characteristics, and the beneficiaries of the trust can do things like bring a derivative claim or have their own direct claims, so can the trust itself. And if the trust itself can do it, it is, in fact, an entity that has an interest in property.

That then ties back to Formation Group that recognized this for purposes of a winding up, not a single other case under Cayman Island law or UK law -- and trust me, everyone is digging around for good on insolvency, we're going to get you that entire Chapter 6 but I am pretty sure nothing is going to contradict this. Why? Because at the end of the day, the similar kind of result in a Chapter 7 or Chapter 11 of a partnership in the United States.

THE COURT: Well, I agree, the black legal personality I just thought that's a general partnership

concept --

MR. WINSTON: Totally.

THE COURT: -- having been a general partner. So --

MR. WINSTON: It's like a law firm.

THE COURT: Yeah, that is what I'm saying. Having been a partner at a law firm that was not an LLP, or an LLC, or my name didn't have it following it and all that stuff. It's a general partnership concept.

So, are you saying that the Cayman cases that address it, which seem to be in the derivative -- the question of who can bring a lawsuit, who can be a defendant to a lawsuit, etc., that that is the legal personality concept is limited to that context.

MR. WINSTON: I don't know if it would be limited to just that context but that is the context in what those cases are largely addressing. And, in fact, Aquapoint, which is one of the cases that, you know, Rigmora definitely pushed forward but doesn't address the property question at all, nonetheless commented that in the case of the remedy for a derivative action, where does the remedy go, it goes back to the partnership and that is at Paragraph 25 of the decision.

THE COURT: As an asset.

MR. WINSTON: As an asset. I mean, I don't want to put words into the Privy Council's mouth that it doesn't

actually say it one way or another but that is clearly import. Like why would you ever say the remedy for a derivative action brought by a limited partner is it goes back to the partnership. That is because whatever the harm that was caused and the remedy for the harm becomes an asset. It has to be.

Nothing in those decisions supports their argument or Mr. Phillips's recitation that even though the ELP Act defines partnership and limited partnership separate from limited partners and general partners, it has its own definition and its own constituencies, that somehow its equal to the limited partners. It literally makes no sense because what happens when a limited partner sells his or her units, which can happen and, in fact, our LPA provides for that. Does that mean the partnership dies and gets resurrected? No, it just means they're selling their interest in the partnership. That is all it means. It doesn't mean the partnership's identity follows along with those units.

THE COURT: Well, it could mean, as I think it might, in a general partner, it dies and then it's a new partnership, essentially, with the new partners.

MR. WINSTON: There is certainly a historical understanding of that but I think, and I will get to the reorganization concept under ELP Act very shortly because I think it bridges to this, that like centuries old idea that

every partnership dies the minute one partner dies and gets resurrected. One, it doesn't apply very well to a limited partnership. Two, I don't think that's the modern trend or the modern understanding at all. That is why these cases very astutely recognize Formation Group, Kuwait Ports, yeah, it might not have a separate legal personality but, come on, it is its own entity with assets and its liabilities that matter.

THE COURT: So, we have -- obviously, we have Privy Council decision in Kuwait Ports. What do I do with that relative you're citing me to the appellate decision.

MR. WINSTON: Right. So, the Privy Council decision on Kuwait Ports affirmed the appellate decision. It did not reach these issues. So, I am not going to profess to understand what happens when the Privy Council affirms but doesn't address every possible ground because it wasn't before the Court and whether the underlying decision stands. That is clearly the case under US law. So, if the Third Circuit agrees with you on X and doesn't address Y it doesn't mean you've been overruled on one.

THE COURT: That's nice to know. Okay.

MR. WINSTON: I think that has to be the case; otherwise, like what is the point of any of these decisions. And, clearly, Mr. Phillips relied upon the appellate decision as a statement of Cayman Island law. So, why would you slice

the bread that way.

He also didn't address, and I think it is important, the notion that ELP's can be reorganized under Cayman Island law. That is a fairly new provision because it used to have a very difficult mechanism to deal with that but this is one place where maybe the US is ahead of the rest of the English common law systems about how to actually reorganize. They finally adopted, through the Companies Act, a way to reorganize.

There are limitations on that that don't apply here. And I'm not pretending that they can proceed with a reorganization under the ELP Act for this particular debtor but as I said before, whatever rule you're being asked to decide has to apply generally. If that is -- if an ELP can reorganize it means it exists, it has assets that can be dealt with, and, in fact, a Cayman Island ELP going through reorganization has to be insolvent, at least at the start. If that is the case, by definition, it is divorced from the identity of its limited partners because if it is insolvent, the limited partners draw out the money, nonetheless, the business can be reorganized and handed to creditors it has to exist. It has to exist.

In fact, if you look at Section 91(a) through 91(j) of the Companies Act, which is the reorganization, it kind of looks like Chapter 11. It's not a

perfect match but it certainly has similar characteristics.

The case law that I have gone through, and I don't know if you want me to spend more time on their cases. I think I have covered Aquapoint and Kuwait Ports but I'm more than happy to do more if you want me to, but I do want to talk a little bit about the course of dealing between Rigmor and the ATP representatives over the last decade, and this is behind Tab 3.

What does the evidence show? Financial statements were always prepared in the name of the partnership debtor. Rigmora received them without complaint. The partnership debtor is a counterparty to every share purchase agreement with Rigmora's consent in advance to entering into it. Why does that matter? The counterparty is going to sue, they're going to name the partnership as the defendant. Maybe they also have to name the general partner but they're entitled to sue in Massachusetts, or California, or Delaware, or New York, wherever the contract allows for it they're allowed to sue.

Capital calls were to be deposited in bank accounts in the name of the partnership debtor and that December 8th email, which you have already heard some argument about for a different reason actually establishes the concept that the partnership is its own entity with its own assets because the chancery court ordered the money,

the $97 million or so, to go the general partner. On December 8th, prepetition, it was Rigmora that said can we send it to the partnership itself.

THE COURT: You mean in the decision?

MR. WINSTON: The decision itself says it goes to the general partner.

THE COURT: Okay.

MR. WINSTON: So, that was Rigmora saying, wow, wow, wow, we don't want it to go to the general partner, we want it to go to the partnership. And we're like, fine, I mean it's the partnership money ultimately anyways, fine, but it doesn't make sense if Rigmora, as the limited partner, is ordered to pay money if it's really just paying it to itself unless the partnership itself had some sort of separate existence.

I do want to talk very briefly about Justice Asif's November judgment, which was a ruling that concerned how the winding up petition implicated costs. That is what that decision was about.

At Paragraph 47 he did comment, like the other decisions that Rigmor relies upon, that an exempted limited partnership does not have separate legal personality from the limited partners and the general partner. But he went onto say, and I'm going to quote, "Neither side appears to fully grapple with the consequences of this in the arguments that

have been advanced before me."

THE COURT: Yeah, I sympathized with that.

MR. WINSTON: I sympathize as well because he wasn't being asked to decide anything that was in front of him and it's in the context of a winding up of the partnership governed by the ELP Act, and I've already talked about how the ELP Act supports the proposition that we're saying.

Now, I am going to have one last argument in this section and then I'm going to move onto the other things. This goes to this idiosyncratic state law point that my colleague, Ms. Tomasco, raised a couple of weeks ago. I want to only spend a little bit of time on it because Your Honor doesn't have to reach it. Like if Your Honor agrees with me on Cayman Island law you definitely don't need to reach this issue at all but just to cover my basis let me flag it.

The point is this: when the partnership filed, again eligible under 109, so we're not through the gateway, estate is created, 541(a) now is triggered. The Supreme Court in Butner said you generally look to state law, and I think that that would include foreign law, I think that is the right outcome there, unless federal -- some federal interest requires a different result.

The Third Circuit in Nejberger, in 1991, said the label that state law affixes to a particular interest in

certain contexts is not always dispositive. The principal question is whether the substance of the right or interesting question brings it within the scope of estate property. What Nejberger was dealing with was a Pennsylvania liquor law -- liquor license law which said that the liquor license did not belong to the debtor. Clear state law.

The Third Circuit said, you know, it may be so but we're free to look at the real substance and the common sense, and the actual circumstances, the course of dealing, to see whether that make sense. And the Third Circuit, in a later case, kind of followed along with that.

I think if you look at the reality of these interests, stock ownership in US companies which under Delaware law, because these are largely Delaware corporations, Delaware law says they are located here in Delaware under 8 Delaware Code Section 169, I believe. Why would you then say, you know what, they're not really property of the party that owns them even though that entity can be a debtor in the United States.

So, if Your Honor believes that Cayman Island law isn't what I say it is, even though I think the only authorities to touch upon it all come out our way. Butner and the Third Circuit, I think, give Your Honor discretion to say the reality here is that this was an investment in a US company where the idea that they could transact with it was

always going to be true. And as long as they can enter into Chapter 11, which they can, we can override idiosyncratic laws and certainly would match up with why there has been Cayman ELP's that have filed Chapter 11 already. The last thing, I think, anyone would want to do is something unprecedented which is to say for some idiosyncratic reason these can never be debtors, which is exactly their argument.

THE COURT: It is the argument.

MR. WINSTON: All right. Let me turn to, unless Your Honor --

THE COURT: But I will say that none of those cases -- well, I will ask, none of those cases dealt with the issue of whether the ELP could be a debtor.

MR. WINSTON: None of them -- I would say it this way, because Your Honor is right, is it -- the simplest answer is usually the right one, maybe because it makes zero sense to treat these as like the only entities in the world that cannot be debtors in the United States even though they are headquartered here, their partnerships, and they have property here.

If that is the case every single one of those cases not only was ineligible under 109 but the Court lacked the jurisdiction to deal with the property under 541(a). And it just can't be right. I think Your Honor doesn't need to go down the very unprecedented and weird outcome that they're

advocating for as opposed to statutes, cases, commonsense lead to the right result.

Let me talk briefly about the impact of the general partners filing and the stay -- I think the associated stay relief motion. This wasn't talked about too much in argument. So, I don't know if Your Honor has a lot of questions about it but let me kind of run through it and if there's anything that Your Honor is worried about, I will address it.

I said this before, there is no dispute the general partner itself is eligible under 109 and it clearly has interest in property. Your Honor correctly pointed out, it is the party to a contract, that contract gives its rights, that is property. The extent of that property and the value of that property can be debated but it clearly has property.

Now, Rigmor has taken pot shots wondering why the general partner also filed for Chapter 11 because, you know, the partnership is solvent, therefore it has very low chance of being sued for anything though Rigmora has made some threats about the general partner having personal liability. It doesn't matter because in order to make sure Your Honor has the jurisdiction over the bundle of assets and has the right parties here, it makes no sense to leave the general partner out of this. And in that respect, it may not have

any liabilities greater than the rest of the partnership, though, again, Rigmora has made threats about that personally but it's much better to have all the parties before Your Honor to maximize value, which when I get to good faith is part of my presentation.

Again, if you look at those five other Cayman ELP cases, the general partner always files. It makes sense because even though the general partner shouldn't have anymore liabilities then the ELP itself, why not make sure it's before Your Honor so that Your Honor has the benefit of not some rogue actor on the outside. There is nothing improper about that and it doesn't go to the jurisdictional issues under 541(a) or 109.

Now, on stay relief they have made the argument that because the general partner filed Chapter 11 under the LPA it must commence a windup or participate under the windup of the partnership and the partnership itself terminates. That is the thrust of what they want Your Honor to grant relief from stay for to have Justice Asif decide as a matter of Cayman Island law. I don't know what is the point of all that because there is a couple of pretty obvious answers to this.

One, because the general partner has filed for Chapter 11 the automatic stay protects it and its not compelled to do anything. It shouldn't be compelled to now go

wind up something that it doesn't want to have wound up. Again, it's not being wound up under Cayman Island law, it's not part of that, it's just seeing its partnership get wound up.

Two, the partnership cannot be automatically deemed terminated because of the general partners filing because the partnership filed first and its protected by 541(c) that is completely missed in their argument and in their papers.

THE COURT: So, that was a deliberate choice to file it first to get that protection.

MR. WINSTON: It was certainly something that was very important to protect the partnership interest just like if -- I'm sure Your Honor has considered these things or have heard debtors talk about this. Why we filed in the Third Circuit instead of the Second Circuit where the headquarters is. Making sure we're not messing up Catapult or West Electronics. Of course, we're going to take every step to protect what we think maximizes value.

THE COURT: Okay. So, because the general partnership was filed first, what follows?

MR. WINSTON: Because the partnership itself filed first?

THE COURT: I'm sorry, no, because the -- which one filed first?

MR. WINSTON: Limited partnership.

THE COURT: Okay. So, the limited partnership filed first and what follows from that?

MR. WINSTON: It cannot be automatically terminated under the agreement simply because the general partner subsequently filed. It's a 541(c) issue.

THE COURT: So, it's the stay then that protects the partnership?

MR. WINSTON: I mean, its 541(c), so its existence, its property rights cannot be disrupted by, you know, a law, or a contract, or anything that would forfeit it because of an insolvency.

THE COURT: Okay.

MR. WINSTON: Let me turn, if I can, Your Honor, now to what I think is a lot of the facts that is about the good faith issues. A number of the tabs will address this but I will point you to the tabs as I get to the specifics.

The Third Circuit, in this district's case law, has addressed good faith up and down. I am not going to belabor Your Honor with a rundown of every case. Obviously if you want me to talk about any of them I will but you are no doubt very familiar with them. You have, in fact, throughout these hearings pointed us to the cases that we all didn't scramble and make sure we know what those are but a few key principles stand out.

Number one, a debtor can be solvent but it needs to have some form of financial distress including liquidity constraints.

Number two, and this relates to number one, a debtor not need wait for the house to have burnt to the ground before it calls the fire department.

Number three, there must be a valid bankruptcy purpose, meaning to maximize property available to creditors or stakeholders and to preserve a going concern but part of that valid bankruptcy purpose is that the bankruptcy should not be filed to take advantage of the code just to hurt a creditor, like what happened in Integrated Telecom.

Courts analyze good faith wholistically such that if there are multiple debtors or multiple affiliates impacted by or benefit the debtor that counts towards good faith. The two cases that I think best illustrate that are EHT US1, 630 B.R. 410 from 2021, and Energy Future Holdings 561 B.R. 630. In both of those cases the courts analyzed the good faith of the debtors and how they were impacting each other including the preservation of intercompany claims, including in the case of EHT where the subsidiaries debtors only source of financing outside of bankruptcy was through debtors themselves or affiliates, and the parent debtor had an identity of interest with those subsidiaries that help demonstrate good faith.

Your Honor asked the question of LTL, and this is the second unprecedented thing I've heard. I didn't know this was going to come up so I'm kind of free flowing this one. I am very familiar with LTL because I was arguing Aearo Technologies to knock it out when LTL came down and totally randomly, the guy that I argued Aearo Technologies with, we did the closing together, also argued LTL and I just saw him when we were on the break. He was in some other room and he came out, we hugged and whatever, it was great.

What it tells me is that not only does LTL say nothing about the very unprecedented argument being addressed by Rigmora that you need to look at a multi-debtor case in isolation of each debtor to determine good faith, even though they are integrated, even though they are dependent upon each other, even though the entire purpose of one is to help the other, nothing in LTL remotely touches upon that. The other thing that was missed about LTL was the context of that decision and the ones that it relied upon and the ones that it followed.

In that context, in that particular case, was the Texas two-step. I am vehemently against those things. I think they are hopefully wrong and I am glad the Third Circuit came out the way it did. I hope the Fourth Circuit finally gets it right sometime soon but the purpose of that case was to protect a non-debtor solvent entity in a

manufactured Chapter 11 where while the Third Circuit very much took it on and said, okay, we're going to look at this, that manufactured debtor had no financial instability and never could because of the nature of that case. Context matters.

Nothing like that remotely exists in this case, nothing. This partnership debtor is -- doesn't matter but for its investments in its portfolio companies. Its portfolio companies, as admitted by counsel in many circumstances, are financially distressed. So, if the business of the partnership is to invest and grow these things and that business is being threatened, its being threatened.

I am going to talk more about this but LTL does not mandate in any way a test that they are propositioning. It would lead to like every debtor that has a multi-debtor -- every debtor enterprise that has a multi-debtor circumstance, a crazy outcome of trying to look at these each in isolation when you can't. You can't easily break them apart.

THE COURT: How related do the multi-debtors have to be to each other? How integrated do they have to be to each other for me to consider that?

MR. WINSTON: I think there is no hard and fast rule, and I don't want to create a hard and fast rule, I think its facts and circumstances but that is the good faith

test. Objectively, when Your Honor looks at it gestalt but also through these tactical litigation advantages, two party disputes, financial distress, valid bankruptcy purpose its always going to be facts and circumstances. They can change. Some may make sense, some may not but there is no hard and fast rule, you just apply these principles to the circumstances and that requires context. LTL doesn't disturb that.

THE COURT: Okay. And LTL's reference to Owens Corning is that not -- does that not direct the Court to where to look in terms of corporate separateness.

MR. WINSTON: I -- there is no doubt you will always have to consider corporate separateness. No one is saying you shouldn't do that and we're not arguing substantive consolidation or something along those lines but the existence of corporate separateness doesn't mean you ignore the reason for the business.

So, even in cases like, I'm just again going off the top of my head, Seadrill down in the Southern District of Texas that was a company that had silos of debtors. Each silo had its own assets and yet they all filed together and there was certainly litigation about how value should advocate amongst various things but no one would ever have thought it was a bad faith filing by bringing in this one valuable silo to help subsidize the rest. It may just be a

value allocation under the plan but that happens all the time in Chapter 11 cases when there is a multi-debtor, multi-company enterprise like this one.

Now, you are going to hear more from the committee about this, I suspect, when they stand up but that is what this business was and that is how it was setup. In fact, Your Honor, this has not been really talked about but, you know, there is 22 amendments to the LPA. If you look at the original LPA the way this was originally set up is the LPA provided that the limited partnership would invest in a corporation that would then invest in portfolio companies. That was the original setup for them in 2012. In 2018, under Amendment 14, they got rid of that. So, the partnership directly owned the portfolio companies and it was after that amendment that you saw all of these portfolio companies other than Braeburn start to get developed because the idea was to have the partnership hug its portfolio companies.

I didn't actually realize this at first, but it was finally pointed out to me, just to kind of like symbolically show this, many of the portfolio companies are named for apples because the parent is Apple Tree. You heard Dr. Harrison kind of talked about this, the idea of it's the nerve center, it's the one that is the parent protecting the children. You protect the children until they're grown up and then --

THE COURT: Well, are you going to talk about, in your good faith, the argument that this is a mature fund.

MR. WINSTON: I will cover that, yes.

THE COURT: Okay, because I want to hear about that.

MR. WINSTON: Absolutely. If it's okay with Your Honor, and I will certainly get to that, I don't -- you know, you, obviously, tell me --

THE COURT: As long as you get to it.

MR. WINSTON: I would like to talk a little bit about the actual evidence. I am going to start with their witnesses and then come back to our witnesses. And I think when I get to our witnesses we will cover some of the points that you just raised.

So, you heard from three of our witnesses, Dr. Harrison, Mr. Mandarino, Mr. Liras, and you heard from Mr. Bogdanoff, Mr. Faulkner, and Mr. AAebersoldd. What did this testimony and what are the several key documents; not the like, you know, gigantic list of exhibits that many people haven't even talked about but the key documents, what do they show.

Let me start with Mr. Bogdanoff. Here this is going to be Tab 4, but I think the upshot of his testimony is that Rigmora really didn't like getting sued, really didn't

like getting sued, to compel it to meet capital calls and face the possibility of being deemed the defaulting partner under the limited partnership agreement that it signed. So, it retaliated, brought a winding up proceeding. It also did other things but it brought that.

Much of the testimony that you heard really is about complaining about what was litigated in the chancery court and the chancery court ruled against it. In fact, Tab 4 we put that in to show his testimony here and what the chancery court found. Why does that matter? We're not trying to relitigate the chancery court at all. We view it as done. We didn't appeal from the portion of it that we didn't prevail on. It is, in fact, over but the proceedings in that and the positions Rigmora took in that inform the business judgment about putting these debtors into Chapter 11. It goes to the objective good faith because of what was going on leading up to December 9th and the decision by the chancery court.

While we didn't prevail on everything, definitely did not, we did prevail on the capital calls, the $97 million, but equally important, the chancery court validated what the general partner had been doing including suing to compel capital calls and even suing to declare Rigmora as owing more even though we didn't prevail on that. And at page 59, the chancery court made this clear, there is no

factual basis to question ATP's good faith. The chancery court found Rigmora's intentions were to liquidate. It also held that it acted in a pretextual manner, pages 27 and 38. So, that mix helps inform when we get to December 9th, which I will talk about in a little bit.

Now, Mr. Bogdanoff's testimony did not challenge this and the first part of this goes to the notion of the mature fund. The purpose of the partnership was to invest in medicine related companies through 2029 with two one-year extensions at the general partners' discretion. So, in other words, 2031. And it was the general partner, not Rigmora, that was to manage the investments, including having close relationships with the portfolio companies. And while Rigmora has repeatedly talked about how much they have invested they don't like to also mention how much they have already gotten back, which is in excess of $2 billion. In many ways they're playing with house money at this stage.

As late as November 24th, 2025, Rigmora was telling the world that seven of these portfolio companies were hopeless investments. One was Deep Apple. And you know we spent a lot of time on that in cross-examination. That is because in between when they commenced the winding up petition and when they submitted the amended winding up petition in November 2024 -- November 24th, 2025, Deep Apple had a very significant co-investment that Mr. Bogdanoff

admitted in cross-examination show that the general partner was doing something correctly with respect to Deep Apple and yet they still continue to treat it as a hopeless investment.

Again, these are the things that were informing the decisions on why to file. Failed to mention that multiple times, after the May 15th letter, which was a cataclysmic event, nonetheless Dr. Harrison kept trying to engage with Rigmora to find solutions. He provided no testimony what would happen if the winding up were successful and they got foreign liquidators appointed, how they would do anything. No testimony about that at all.

We know from Mr. Phillips that foreign liquidators can do various things. And I will talk about Mr. Faulkner in a second about these particular foreign liquidators, but there was no testimony about how are they going to be funded, where is the money going to come from, what happens when the partnership debtors -- the portfolio debtors run out of money, nothing. He also did not testify that Rigmora would give up the appeal from the chancery court and let the partnership and the general partner use the $97 million without conditions.

THE COURT: What does that all go to? This all, like, subsequent to the filing.

MR. WINSTON: Well, his testimony is what is leading up to the filing, that's -- I want to make sure we

talk about chronology correctly because, again, we're not trying to litigate anything. It's what helps inform Dr. Harrison and Mr. Mandarino on December 9th, it's looking at this mix of facts. And what is important about the $97 million is the subsequent events after the filing kind of proved the fear that we have: One, it took the bankruptcy to get them to give the money, but they first tried to hold it up in escrow in Chancery Court even after the bankruptcy had been filed, and they did appeal and in the midst of the cross-examination of Dr. Harrison last week they filed their appellate brief to the Delaware Supreme Court.

So, they are not giving up at all on that and the idea that, oh, we now have $97 million, you know, free of conditions, we've been fighting since day one to use that money and we're still fighting about it, and we're hoping Your Honor will eventually give us the access to it so we can fund the portfolio companies. They haven't given up on that. And so the idea that we were supposed to take the risk of trying to chase them around the world because they have no assets in the United States, the BVI company, long history of sticking a finger in our eye, yeah, we weren't going to take that risk. That's why that testimony and what is not in that testimony matters.

That brings me to Mr. Faulkner. And I'm always a little surprised when people call their lawyers to testify as

fact witnesses, it's something I don't really want to do, so I was surprised to hear it. I think the point was to talk about the chronology of the winding up, but he left a lot out too, and you'll see that behind Tab 5.

One important thing that has not been discussed, but it is definitely front and center in the Cayman Islands, is under section 18(n) of the partnership agreement, it says, "if a party desire to terminate the partnership or such party's participation therein, it shall negotiate in good faith with respect thereto." That never happened; when they launched their winding-up petition, that never happened. That's not for Your Honor to decide whether that's a breach, we're not asking for that, that's not at all what we're asking, but it again informs that Rigmora has no problems taking very precipitous actions without telling anyone that we would argue is in violation of contractual rights, and then what happens? We've got to litigate about it. We spent a fortune litigating in Chancery Court, we are spending a fortune in this case litigating, I don't know why, I don't know why.

And I think it speaks volumes that at so many points leading up to December 9th this is what we were facing. There was the -- you know, using the ten-day gap in June to run to go get the blocking injunction, which prevented us from taking certain actions because of the

Cayman Island court. They tried to do it again in September 2025 when they ran to appoint provisional liquidators using a gap in time that the Chancery Court had given them, I mean, provisional liquidators to take over the partnership debtor right at the moment that the portfolio companies were in drip-feeding mode with zero ability to be financed and the Chancery Court litigation not resolved. I mean, that was an insane move. Not surprisingly, when the Chancery Court found out about it, the court said, quote, "I am extremely skeptical of Rigmora's strategy. I have read the motion papers seeking emergency relief in the Caymans and they seem to rest on scant premises."

Even after December 5th, there's no testimony or documentary evidence that showed that they were now willing to negotiate with us by calling up and saying, hey, guess what, we're going to give you the $97 million, let's talk about making sure the portfolio companies are financed. We still have our disagreements, we don't trust you, whatever, but we do want to save the investments, which we know you want to save. None of that happened, and so the filing happened the second business day after the Delaware Chancery Court's decision. And I am going to talk about the timing in a little bit about tactical litigation advantage, I'm just giving you a little bit of the background of their witness testimony.

And so the last fact witness, I guess, was Mr. Aebersold, and they called him a testifying expert. He had been a fact witness the week before; he's getting a million dollar retainer and a $250,000 monthly fee. That doesn't sound like a testifying expert, but so be it. I think that the thrust of his testimony is his opinion that the partnership debtor was not in financial distress, as I guess he interprets the Third Circuit law.

Now, he also left out some testimony -- or left out some facts in his testimony or admitted it in cross-examination. He admitted the partnership debtor has no ability to raise capital to pay its commitments under the shared purchase agreements, and I'll talk about whether those claims or not, but he admitted there's no ability to raise capital. He offered no analysis of any annual operating expenses or how those can be met, and he was very much aware that Rigmora had taken the position it was not required to fund any further capital calls.

That hopefully has addressed and disposed of their evidence, now let's talk about our evidence and how it fits into the various architecture that the Third Circuit has established for good faith.

Tactical litigation advantage. The only evidence that they have pointed out as to why we engaged in a purported tactical litigation advantage is, one, we filed the

petitions about six weeks before the trial was scheduled in the Cayman Islands. This isn't on like the day before a foreclosure by a lender that's going to forfeit rights, that's not the case at all, and it wasn't filed to re-litigate matters by trying to like bring one litigation into a bankruptcy like between the debtor and somebody over contract rights or whether a lease had been terminated or anything like that. And the winding up petition doesn't remove the GP, that's not what the winding up petition does. And so what was the timing of it? And the testimony and the argument should make it very clear to Your Honor it's because of the Chancery Court's decision and the fear that we had resulting from it, that's why we filed when we filed, not because of something happening six weeks later.

Rigmora might have been able to change all of this had they done what we wished they had done, which was to be not so hostile, but I think events have proven that we were not wrong in assessing their hostility and made the decision when we did. They again point to the December 8th emails, Dr. Harrison not seeing that, and I'm not sure why that matters because the December 8th email just merely says here's the proposed form of order, it offers nothing to demonstrate any intention whatsoever to actually pay it or pay it without conditions.

They pointed -- you didn't hear this in argument,

but they said it in their papers, a December 11th letter that we sent to the Chancery Court. So, this is post-petition, but it explains that we had filed. They said that we're just there to avoid a liquidation of the portfolio companies. We are here to avoid a liquidation of the portfolio companies because that letter stated expressly, quote, "to put the fund and its portfolio companies in a position where they can reorganize and put resources to work."

They commented that we didn't produce privileged emails. I think every Chapter 11 debtor on the verge of filing probably has communications with their counsel and they're not supposed to be produced, that can't be evidence of good or bad faith. And they've pointed to a single email from Mr. Yanchik to Dr. Harrison -- again, you didn't hear this in argument, but I want to make sure we cover it -- that was a devil's advocate email. And if you look at the reference in that email, that's exactly what Mr. Yanchik was doing, playing the black hat, saying, okay, let me pressure test this, but the decision was made to file anyway. It shows in fact they thought about how to do this the right way.

Moreover, this tactical litigation advantage fails for obvious reasons. I told you that we filed because we partially won in the Chancery Court. And what the litigation that was pending was not between Rigmora and the GP, it was

between liquidation and preservation, because all Rigmora was trying to do was wind up. That's a liquidation, that's what the Chancery Court found. We were trying to avoid a liquidation; we wanted to preserve. I don't know whether we will ultimately be able to do so. I talked a little bit about what the benefits of this Chapter 11 have been already, but there is no doubt on December 9th that exactly was the intent, and there's no evidence to contradict that, Dr. Harrison and Mr. Mandarino testified to this.

In fact, Rigmora has failed to identify a single case where a debtor commences a Chapter 11 to seek to reorganize and avoid a liquidation in a foreign insolvency proceeding, how that could ever constitute a tactical litigation advantage. The case that is closest to it is Northshore Mainland, which they cite in comity abstention section. That's an interesting one to cite because that involved the Baha Mar Hotel in the Bahamas. The court actually denied a motion to dismiss as a bad faith filing precisely because the debtors were seeking to reorganize and not liquidate, but the court did abstain -- and I'll discuss this when I get to comity -- precisely because the material asset was the hotel in the Bahamas. Every material asset is here.

And if you look at Tab 6 you'll see we have a lot of evidence from Dr. Harrison, Dr. Liras, Mr. Mandarino

explaining why we filed, not to gain a litigation advantage, but to secure funding and a path to preserve the value of these portfolio companies that were collapsing. You saw the financial statements for the end of 2024. It was in 2025 that a lot of these started to go into a drip-feeding mode. And there's findings by the Chancery Court, testimony from Ms. Carson and Dr. Eisenberg, and then testimony last week talking about how harmful that has been, but there is still value to be saved. We are not at the Chapter 7 stage.

THE COURT: So was the automatic stay just an ancillary benefit?

MR. WINSTON: Look, the automatic stay, as the Supreme Court held in Midland, is a fundamental protection. And so the issue of it being a fundamental protection, I don't want to run away from the fact that we were happy to get the benefit of the automatic stay, but is it a driving force, oh, let's file for bankruptcy just to get the automatic stay? Of course not, of course not.

And one of the things that came out in the testimony of Dr. Harrison and I want to -- I was going to get to in a little bit, but I'll get to it now -- whether we won or lost the winding up wouldn't change the outcome. We would still be out of money, still no ability to finance the portfolio companies; they were on the verge of collapsing. So, whether we defeated the winding up or not -- and Your

Honor commented, Justice Asif presumably is going to hear the evidence and not prejudge anything if we get to that -- it doesn't change the outcome, and that's what Dr. Harrison testified to and there is no evidence to the contrary.

The point being, sure, the automatic stay is helpful, we were hoping to get a breathing space precisely so that we could do the things that Chapter 11 is supposed to do, but it wasn't the main purpose.

Two-party dispute, which I didn't hear a lot about in argument, but it certainly has been raised and, again, I want to make sure I'm giving you everything that Your Honor needs to deny these motions. Like tactical litigation advantage, it makes no sense to view this as a two-party dispute. And I think you're going to hear from the committee on this point in a little bit, but, again, it's not a choice between A and B, it's a choice between liquidation and preservation. There are multiple limited partners, not just Dr. Harrison and his family and Rigmora, but there's a lot of sweat equity limited partners people that contributed their hard work and earned limited partnership units in exchange for that, they count. I don't know why anyone would want to pooh-pooh them; they're the one reason why these portfolio companies have had success.

Within the portfolio companies, if you haven't seen the schedules yet, we filed them last night, they have

employees, they have vendors, they have landlords, they have contract counterparties. Braeburn, which is not a debtor, it has secured debt owed to a third party. The partnership debtor pledged its stock in Braeburn to secure that debt and there was testimony by Dr. Harrison that, prepetition, they considered selling their interests in Braeburn, as well as interest in the Syntimmune judgment, which is ongoing litigation, partly why my partner Mr. Bruens is not here today because of that litigation, it didn't want to sell those at fire sale prices. That's a GP doing the right thing saying I don't want to take a liquidation number if I don't have.

And of course, unlike some Chapter 11 cases that Rigmora might want to point to, this one did attract a creditors committee that is here and in fact joins us in opposition to the fund debtor motions to dismiss, and I think that speaks volumes.

THE COURT: So do I not look at the fund level and say, at the fund level, this is a two-party dispute? The general partner and limited partners clearly have different ideas of how the fund should be wound down.

MR. WINSTON: Right. So, I don't think that turns it into a two-party dispute. What it does do -- I mean, otherwise it would be like, well, I think you should manage this company differently than I want to see it managed, that

doesn't make it a two-party dispute. It's about how the business ought to operate. The business in this case is a choice between liquidation and preservation, and that is true, and I promised I would get to this, about where we are in the stage of this fund. As a result of the Chancery Court's decision, even though we litigated the point and the Chancery Court at least found we acted in good faith in doing so, we are at the end of our committed capital. But just because we're at the end of our committed capital doesn't mean that this is a private equity fund that has to be wound down. This thing exists for another four -- three years, three years at least, plus two more if the general partner wants to do so. Why? Because these particular kinds of companies, these early stage companies take time to develop, and that's when they're not even interfered with.

You heard about the success of Braeburn, but Braeburn had a lot of hiccups along the way -- it's now valuable, even though it's not throwing off cash, it's still a valuable asset -- precisely because it needed the time. That is true for all of these portfolio companies and, as they migrate from early stage to clinical and then clinical to commercialization, that is the life of the fund. Right now --

THE COURT: Well, that's not the life of the fund, that's the life cycle of the portfolio companies, right?

MR. WINSTON: It is, but the two -- like the whole purpose of the partnership is to invest and grow these companies, that's the purpose of what is stated in the agreement and so you have to see it through to the end. Just because by virtue of a litigated outcome we're now restricted in terms of the maximum amount of capital we can get from our limited partner doesn't mean we're not entitled to try to grow them and maximize their value. To accept their premise that just because we have a cap on how much we can raise we now have to sell these things because they're out of money makes no sense. And that --

THE COURT: Well, but isn't that the question of how a fund at the end of its life cycle -- and I don't know if that's -- if that's in 31 or if that's -- I mean, there were several things, right? There's the term of the fund, there's the committed financing, right?

MR. WINSTON: Yes.

THE COURT: Those are things that bound what happens within the fund and --

MR. WINSTON: Correct.

THE COURT: -- and I would think that those are limits that the parties negotiated when they entered into the partnership agreement, what's the term of it going to be -- what's the purpose of it going to be, what's the term of it going to be, how much committed financing do we have, those

would be -- there may be other provisions that are parameters on the fund, in the early years there's plenty of capital, if you can make the capital call consistent with how one has to do it. As you get to the end, either the parties are going to agree or the parties aren't going to agree. Could one result have been the limited partners say, you know what, we want to increase our funding commitment, that could have been one thing, another thing could have said let's agree to borrow money, another thing could have been let's spin this one off, another one could have been let's consolidate these four portfolios which seem to be compatible in that fashion and save some overhead costs.

There could have been all kinds of things that happened, but is -- don't you start thinking about that as you're approaching the end of the fund?

MR. WINSTON: Oh, I think that's true and I'm not -- I'm certainly not disputing that, but we're nowhere close to that because -- I mean, again, this thing has gone through 22 amendments. I talked about one amendment bringing it closer between the portfolio companies and the partnership, but there were other amendments that led to increases in commitments. And so I think that goes to your point, but that's well more than halfway through the life of the partnership per the terms of the agreement. And then they started investing in portfolio companies and so they

need time to mature.

This litigation started in 2025. Had the litigation not resulted and had we had peace in our time like we did beforehand, we wouldn't be having this kind of colloquy right now because of course the partnership would be doing the investing and the growing as we got closer and closer and closer to 2029, and then the GP would have to decide whether to extend a year and then extend another year, but we're not close to that and that was not the way this was designed. This was designed so that as they started to invest in portfolio companies in 2020, 2021, 2022, you can look at the dates of those SPAs because that tells you when they were starting, that's -- over a live period that's going to take years. And so the idea that you're going to cut it off now under this theory that it's a mature fund because we're out of limited partner capital based upon a litigated outcome I think would be very dangerous to the notion of using venture capital in this way because it would tie capital commitments to managing the investments when that is exactly what is not supposed to happen.

And, moreover -- I feel pretty positive about this, so I'm going to say it, I feel pretty positive about it -- this was not the basis by which they sought winding up to say, well, you know, we're at the end of our lifespan of this partnership, let's just wind it up now, that's not what

happened. They brought this in retaliation for the Chancery Court decision saying they've lost trust in Dr. Harrison and their seven hopeless investments. They didn't say, oh, it's a mature fund, that's not the basis for it, and that would be rewarding them for making this argument now because they brought litigation that forced us to spend lots of money not on the portfolio companies but defending the right to fund the portfolio companies. That can't be an analysis of how to view the good faith of the filing to try to like save these limited partner companies, otherwise it would be just a Chapter 7, you just liquidate, and that makes no sense.

I want to talk -- I mean, I think I've covered a lot of this, but I think I want to talk a little bit more about financial distress, and it's behind Tab 7. I've already covered the LTL point in the sense of what I think LTL really stands for, but I don't think there really is any uncontroverted evidence that the portfolio companies were financially troubled, they had undergone drastic cuts, and it was because of the lack of funding coming from the partnership. And I would encourage Your Honor to read Dr. Harrison's witness statement that was filed in the Cayman Islands on December 8th, Rigmora introduced it as JX-230, and in particular paragraphs 17, 18, and 267 to 271.

And the Chancery Court also commented about the negative aspects of these lost fundings at pages 42 and 43 of

its opinion, the talent loss, the delay that (indiscernible) disrupted R&D. There was no other source per the terms of the contract to obtain financing and we've been restricted now about the maximum amount we can do. The GP itself had expenses. I know that you heard some argument that they don't seem to believe the expenses, but there is tens of millions of dollars every year spent on the development of things at the portfolio company.

And it's not just Dr. Harrison sitting as the chairman of the board, the partnership is the majority or a hundred percent shareholder, majority shareholder of most -- there are others, but it's the majority shareholder, they install officers like Dr. Theros (ph), who's the chief medical officer, Dr. Eisenberg's chief medical officer at some of these portfolio companies. The closeness of these two means financial distress at the portfolio companies is going to hurt the value of the partnerships that has no ability to finance them.

In fact -- I know I commented on this earlier, so I apologize for repeating myself -- prepetition they considered selling Braeburn and Syntimmune to raise money to keep these portfolio companies going beyond their drip-feeding that was just slowing their death. And Dr. Harrison correctly decided not to fire-sale those things, but it shows how they were trying to save this business and were

considering options. No debtor should be forced to cannibalize a crown jewel if it doesn't have to.

Rigmora has pointed out that there was a lot of cash on hand. You saw a slide that they put up, I think it was -- what page did they have on here -- oh, page 50. And it's interesting when you looked at these slides because, as soon as we saw it, we were scrambling to make sure we get this all right -- these numbers are very misleading because all that the debtors had on December 9th was they say $14 million -- I think it was a little higher, like 17 million -- but the rest of these numbers do not count, they were either off the balance sheet because they had already been spent, the Syntimmune judgments are -- they haven't been paid because we're litigating, forcing to pay those and, by the way, you've got to pay for that litigation, and Braeburn isn't throwing off cash right now. The partnership was a lender to Braeburn -- again, an asset of the partnership -- but that got retired in 2025. But Braeburn isn't throwing off cash as an equity dividend because there's this royalty contract construct that has to be paid first and the partnership isn't the beneficiary of that.

So, going into the mix of facts on December 9th, the testimony was pretty clear. There was $17 million, there was a court judgment requiring payment of 97 million, but who knows whether we were going to get it. We've been engaged in

drip-funding that was never going to be sustainable, even the $97 million per the Chancery Court judgment would only last us six months. That is financial distress for this business and to say otherwise I think would ignore reality.

Let me turn to the notion of the commitments under the SPAs. They say just ignore them because they're not really commitments and they're not really claims and that, if you look just at the partnership debtor and take those out of the equation, there's actually not very much owed by the partnership debtor, it had $17 million, it would have been able to pay that and plus it's -- it is balance sheet solvent, which we don't dispute. I don't think that's how courts analyze this at all. I talked about EHT US1; I think that decision is very helpful on this point.

But even if you look at the SPAs -- and you saw them putting up the slides -- their analysis, we would submit, is wrong, and not only do the schedules of the partnership debtor list it as a liability, the schedules of the portfolio companies list it as an asset, and that's because no matter how you slice it, if the reason why you cannot meet your obligation to negotiate milestones in good faith is because you lack funding to do so, you're in danger of breach. And while we have stayed aligned between the partnership and the portfolio companies because we all want to see them get saved, if there's a meltdown, if the

partnership ends up in winding up and those portfolio companies here in Chapter 11 aren't, I expect the committee's counsel to be screaming and yelling about the portfolio companies suing for breach.

And if anyone thinks like this isn't a real risk, I would encourage Your Honor to look at the SIGA Technologies case from the Delaware Supreme Court, 67 A.3d 330 from 2013 where the court held a contractual provision requiring negotiation in good faith in a smallpox antiviral drug agreement was enforceable and it led to a $113 million judgment. I don't want to take that risk, I don't think we need to take that risk if these all stay here because you can manage all of it here, but it is not a joke that the obligations under the SPAs are obligations; they may be contingent, there may be defenses to them. Rigmora as a party in interest has a right to object under 502 -- I litigated this in Yellow before Judge Goldblatt as a shareholder -- they have that right, but it doesn't change the fact that they're claims.

THE COURT: Well, is there a difference between claim and a liability? Claim is a broad term. Are these liabilities, are these current obligations?

MR. WINSTON: The obligation to negotiate in good faith is a current obligation. Whether the parties on both sides agree to suspend it, defer it, that is between the

parties to the contract of which Rigmora is not part of.

It has been not surprising that the majority shareholder, which is the one that is responsible for ensuring there's funding and has very much articulated the desire to see these things proceed, and we brought Ms. Carson and Dr. Eisenberg here -- Ms. Carson is an Evercrisp CO, she's not an ATP employee -- to be on our side in this respect, we're aligned, but that obligation currently exists, the obligation to pay may be contingent. And for purposes of whether we filed in good faith or not and whether there was real obligations or not, we could ultimately be wrong about how we characterize them -- I don't think we are, but we could be wrong -- it doesn't change the outcome of the objective good faith because there is no testimony or evidence to suggest that Dr. Harrison or the folks representing the portfolio companies, or the ones that were the liaisons in between like Dr. Liras, ever believed there was anything other than an obligation to fund these things.

And in fact, when they made the capital calls and had to go litigate in the Chancery Court, at minimum that gives rise to an obligation, in my view, to pay. Whether we're ultimately right or wrong about that, there may be something that is in fact going to come before Your Honor, if for some reason we can't reorganize and get these companies into the right track as we have wanted to do, but it doesn't

change what happened on December 9th and nothing that they can argue now, even though I think they're mischaracterizing the documents because they keep ignoring some of the provisions that require negotiations in good faith, doesn't change that outcome.

I've already I think in many ways covered a lot of the remaining arguments for valid reorganization purposes, they all sort of ultimately bleed together, but I would encourage Your Honor to look at Tab 8 because we kind of summarized those points too.

I guess, in sum, and I'll just kind of come high level again our good faith, Your Honor is being asked to do something I think unprecedented by Rigmora for a third time, one was no Cayman Island could ever file -- Cayman Island ELP could ever file for its own bizarre reasons; number two, LTL means you ignore the holistic assessment line of cases; and number three is, is it ever bad faith when the undisputed purpose is to reorganize versus liquidate, and I think there's not a case that they can cite nor any Your Honor is going to find that suggests that is objectively bad faith. That is clearly what was going on here, clearly what was going on here, and I don't think there's anything they can demonstrate to the contrary.

All right. A few more minutes, I want to talk about comity, and then I'm going to be done. This is Tab 9.

And comity I think is kind of an easy one because the cases that they cite like really have nothing to do with the facts here. I mentioned Northshore Mainland, that's the Baha Mar case. Again, denied the motion to dismiss, but it abstained in favor of a very, very well developed proceeding in the Bahamas that got up to the Bahamas Supreme Court. But the key point in that case was the material asset that was the entire point of the reorganization was a hotel in the Bahamas, it's the Baha Mar resort, that just isn't applicable here.

THE COURT: I think -- that was Judge Carey, I think, right?

MR. WINSTON: It was, it was.

THE COURT: And I think he said this is where the party -- where did the parties expect that the dispute would be resolved.

MR. WINSTON: Exactly.

THE COURT: And he said in, wherever it was, the Bahamas -- I'm looking for my copy of that, which of course isn't here, but -- so what's the expectation here?

MR. WINSTON: This goes through in many ways the comity argument and there was a decision two days ago, three days ago called Xinyuan Real Estate, X-i-n-y-u-a-n Real Estate -- I think it's Southern District of New York or Rhode Island, one of the two -- very, very apropos, and I'll talk

about why in a second, but if you think about this from a comity perspective, which courts have done when they think about 305 and abstention with respect to foreign proceedings, where is the center of main interests? It is clearly not the Cayman Islands because there is no employees, no operations, no presence of anyone other than the fact that the partnership debtor happens to be incorporated there, but that's not in and of itself enough to establish comity. The comity is actually in the United States, it's either New York because that's where they're headquartered or it's here because of the ownership of the stock, but it is undeniably the United States.

And in Xinyuan Real Estate it was a very interesting fact pattern of a Cayman Island scheme of arrangement brought by the Cayman Island entity -- it was not an ELP, it was a corporation, limited -- LTD, so it's a company -- brought its own scheme of arrangement under Cayman Island law. Creditors then brought an involuntary in the United States Chapter 11. The company had no presence in the Cayman Islands other than the fact it was incorporated there, the vast majority of its assets were actually in the People's Republic of China, but it had some assets in the United States. And what the court held in denying the motion to dismiss or abstain in favor of the Cayman Islands was, even though comity really actually was in China, this was the next

best place, it clearly wasn't the Cayman Islands, and this was the place where we could marshal the assets and put time constraints to actually get resolution, which was not going to happen in the Cayman Islands. And that fact pattern, the idea that you look to where the heart of the assets are and which court can deliver, it really points to this Court and why the abstention argument under 305 makes no sense.

What can this Court do with these assets? They can impose time constraints on us. In fact, the Code does it because we have exclusivity that has a limited period of time. It certainly can seek the appointment of a Chapter 11 trustee if someone thinks we're mismanaging something or convert it to a 7. There's an opportunity to sell the assets that allows for you to sell free and clear even over disputed interests, there's provisions for adequate protection under 363 and 364 and 365, and there's a plan process, and that plan process gives rights to every party that is affected by the plan. For U.S. assets, this is in fact the right place for the interests of creditors and the debtor itself, for all of them.

THE COURT: Is that what I should be looking at, or is Rigmora right that this is really just a governance dispute?

MR. WINSTON: It is entirely not a governance dispute because this is not an issue of them suing the GP for

breach of fiduciary duty and having a derivative claim or interpreting how the limited partnership agreement works with respect to management of assets, they're just trying to wind it up and appoint foreign liquidators. It's just a form of insolvency proceeding, that's all it is, it is nothing like a corporate governance. Whatever corporate governance rights they think they have under the LPA, which I don't think are any because the GP manages the assets, they have. That's unaffected by this case unless for some reason the Bankruptcy Code trumps it.

THE COURT: And they continue to have?

MR. WINSTON: Unless like -- I mean, a plan can certainly alter rights, they have to be treated if they vote against the plan fairly and equitably, but unless the Code dictates a different outcome, whatever rights they have, they have. And trust me, we have thought very heard whether their objection to the use of funds to invest the portfolio companies, if they have any right to object to it under 363(c) because it's ordinary course, but we have brought that motion to Your Honor precisely because we're not a hundred percent sure whether the imposition of Your Honor's jurisdiction over those funds by virtue of the Chancery Court judgment gave them a right prepetition that we have to respect. And that's why that motion was brought forward, we just didn't spend the money.

THE COURT: So the contractual -- is it a right? I'm not sure -- the contractual right to seek a winding up petition is not a governance issue?

MR. WINSTON: No, no. That would be -- it's just a form of insolvency proceeding -- I mean, it's not insolvent here, but it's just a form of dissolution proceeding. That's not a corporate governance issue, that's -- like a corporate governance issue is like replacing a board of directors per a shareholder vote, they don't have that right, or like trying to get rid of an officer --

THE COURT: So, if they had had that right in the agreement, in the partnership agreement to simply replace, to vote to replace the general partner, you would view that more like holding a shareholder meeting?

MR. WINSTON: I mean, I don't think it matches very well for an ELP because that's just the way they're structured, but if this was a company, you know, shareholder voting rights for companies in Chapter 11 that right exists.

THE COURT: Right.

MR. WINSTON: They can be enjoined, that is true, because if they're being done for disruptive reasons --

THE COURT: Right.

MR. WINSTON: -- certainly, but they still have that right, they just don't have that right here and, I mean, for the limited partner to have the right to manage in that

way would mean they would be liable for the debts of the partnership because that's in the ELP statute.

Let me end on this because, even though we have -- I know it's probably --

THE COURT: No, you're fine.

MR. WINSTON: -- I apologize.

THE COURT: No, you are fine.

MR. WINSTON: Even though it has been incredibly -- incredible friction since we started this case, it's not us affirmatively pursuing Rigmora. Other than the stay enforcement motion, which was brought for a very specific reason and I think actually had its intended effect, which is why we offered the olive branch, we've done nothing antagonistic towards Rigmora directly. We have been fighting for our lives since then, but even despite the incredible distraction and cost -- and we really hope Your Honor decides to allow us the access to the second funding motion so the portfolio companies can do what they need to do -- we have attracted a tremendous amount of interest from outside sources to help fund these portfolio companies and provide a return on the companies that Rigmora itself thinks are hopeless.

You've already seen that plan term sheet, which is divorced from the DIP motion -- it was attached to it, but it's not a condition to it, and you heard from Oaktree's

counsel representing, that plan term sheet in many ways gives Rigmora what it wants, it gives them access to Braeburn, it gives them access to the Syntimmune judgment, which is in Pool 4, without Dr. Harrison in the way. Really, it's about the portfolio companies, and that's why I stood up and said -- I mean, they think they're worthless, they had Dr. Rimm come up here and trash them. Okay. Well, I think they're worth more than zero and, if they're worth more than zero, you're going to get your share of them, but we will never get there, ever get there if we're not here, and that's why this case was commenced in good faith.

Unless Your Honor has any further questions, I'm done.

THE COURT: Thank you.

MR. WINSTON: Thank you.

MR. ALBERTO: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. ALBERTO: I realize you've been on the bench for a while. I don't think i have more than ten to 15 minutes, if you would -- I'm happy to take a break before that --

THE COURT: No, let's do that, then we'll take a break.

MR. ALBERTO: Okay.

THE COURT: And then I will give Rigmora the last

word on their motion.

MR. ALBERTO: I appreciate it, Your Honor. For the record, Justin Alberto from Cole Schotz, counsel to the unsecured creditors committee.

We filed a joinder at Docket Number 247 and, as we stated in that joinder, the committee supports the debtors in their opposition to the Rigmora motions. And what I plan to focus on this afternoon is what I believe only my constituency can talk about and that is what is in the best interests of creditors, and I'm going to start by reiterating something I said during my closing argument on the funding motion, which is this is not a two-party dispute. The schedules were filed last night and unsecured creditors are owed at least $20 million on account of valid, yet unpaid trade and other claims. Schedules were filed at Dockets 429 to 442. And, Your Honor, as you've seen before, the amount owed to creditors will likely only increase as a bar date process is run in these cases. So, I think that's the floor of what creditors are owed here.

We believe we are the fulcrum constituency --

THE COURT: But they're owed at each debtor, separate debtors, separate creditors.

MR. ALBERTO: Uh-huh.

THE COURT: Okay.

MR. ALBERTO: That's correct. And I'll touch on

why I think financial distress is more of the holistic exercise that Mr. Winston referred to in his closing in a moment, if that's what you're getting at, Your Honor. I think either way, both the stay relief and dismissal standards and even abstention under 305, they include a consideration of what is in the best interests of creditors. The committee, as a fiduciary for all unsecured creditors in these cases, respectfully submits that our interests are best served by these cases remaining right here. We do not believe Rigmora has met its burden, we don't believe that stay relief or dismissal would benefit anyone other than potentially Rigmora.

And to hearken back to the colloquy about financial distress, Your Honor, I would submit that in many Chapter 11 cases that are jointly administered with affiliate debtors there are often times debtors within a corporate family tree that are not per se financially distressed, but when you look at the entire corporate family as a whole, I think you'd be hard pressed to find that those debtors that are not independently financially distressed are ineligible to be debtors when they are part of the larger problematic, financially distressed corporate enterprise. And I would point Your Honor to any case that has a PropCo and an OpCo structure. Usually, the PropCos -- I'll use JCPenney for example, we were committee counsel down there in that in

Texas, Saks has this component as well, but usually the PropCo companies are oftentimes solvent and have way greater assets than liabilities, that doesn't make them ineligible as a debtor.

I think you also see cases, Your Honor, that involve HoldCos that have no claims against them, really no assets or liabilities other than the equity in the OpCos underneath it and maybe sometimes securing secured debt, but that's not always the case with HoldCos. So, I really don't think that LTL, having been involved in all three of those bankruptcies, I don't think it stands for the proposition that Your Honor has to perform this exercise at every single debtor because Chapter 11 practice just -- it isn't performed that way. I think there are debtors all the time as part of corporate family trees that are not independently financially distressed.

And, Your Honor, if the quantum of unpaid claims isn't enough to justify that our voice should be considered today and when you're ultimately ruling on these pending motions, Your Honor heard last week a little bit from Mr. Winston that the potential intercompany claims here may very well exceed $200 million for unfunded PortCo obligations, this is critical because the creditors can use the Bankruptcy Code to pursue and monetize those claims to the extent it's necessary in a single forum, this court. In

fact, Mr. Aebersold admitted that the claims existed at certain PortCos under the SPAs. Mr. Liras testified as to his understanding that the fund's commitments to the PortCos are real economic obligations tied to the SPAs, and in fact he even confirmed that the PortCos relied on promised funding under the SPAs to operate.

The PortCos and their management team fully understand the fund level's financial responsibility to them and this expectation of continued funding, it's literally embedded in the very business model of each portfolio company, and without timely funding, predictably so, the PortCos suffered and, as Your Honor has become aware I think through testimony over the last two weeks, continued to suffer severe harm.

These intercompany claims are real and dismissing the fund debtors and bifurcating this family tree in two separate jurisdictions, I would submit, Your Honor, is going to create a tremendous amount of adversity between the PortCo estates here and I guess the eventual Cayman debtors that would have to necessarily play out in multiple jurisdictions. This would increase litigation and by extension the cost associated with litigation, and all of that is a recipe that I think leads to potentially a complete meltdown liquidation of the PortCos, which is not what my constituency wants to see at all. The creditors simply have too much a stake in

these PortCos, as demonstrated by the schedules that were filed last night, to take this risk, and this is the principal reason why we oppose the relief sought today. This Court provides a single forum capable of resolving every single issue facing all of these debtors.

Your Honor, this argument was supported through the testimony of Mr. Mandarino, who in his judgment and from his experience believes that winding up in the Caymans would, quote, "be catastrophic for all stakeholders." Mr. Mandarino characterized it as, quote, "a pure liquidation and forced fire sales at distressed prices."

This is not a value-maximizing result and it is not in the best interests of creditors.

And all that is to say, Your Honor, while Cayman law, we heard Rigmora's expert testify a little bit about this, it may offer some protections, Rigmora certainly has not shown that sending the fund level debtors back to the Caymans would best serve creditors or create anything but uncertainty, and what I think will eventually be the eventual death march that Dr. Harrison testified to two weeks ago during -- I believe that was during the funding motion.

For all the speculative protections that Rigmora offered through hours of testimony last week, we still don't know what would happen to the debtors in the Caymans other than what I stated before as the all but certainty that

litigation will increase, not decrease. There are simply too many unknowns about that process and we believe Rigmora is fighting so hard to have this Court defer to the Cayman proceeding because, in Rigmora's view, a Cayman proceeding will allow them to accomplish their goal of what we believe to be liquidating these PortCos without interference from current management. On the other hand, as we analyze what situation is better for unsecured creditors, we know several things about the Bankruptcy Code and the critical protections that it provides creditors beyond the automatic stay that Rigmora referred to earlier, those include a priority scheme that we're all familiar with, a voice through this committee, centralized claims resolution, a single forum to resolve all disputes concerning all of these debtors, and the means to effectuate a comprehensive restructuring that maximizes value for all parties involved. And this is why I'm standing here and unequivocally telling you that the debtors' creditors believe Chapter 11 is far more useful and better serves their interests than having the fund level debtors bifurcate it to the Cayman Islands.

Your Honor, I believe jurisdiction is entirely proper for all entities here in Delaware and, as Mr. Winston said, I would caution Your Honor against a ruling that could be read to preclude any ELPs from every filing for Chapter 11. I think that a ruling like that would implicitly

call into question any order of any court that oversaw an ELP Chapter 11. I don't think that that's where we should go with this, and I also don't believe that there's any credibility to the argument that these cases were filed in bad faith or without a valid reorganization purpose. You heard plenty of testimony from Mr. Mandarino and Dr. Harrison that these businesses needed to be preserved and that's why they sought Chapter 11. And in just three months, Your Honor, less for some of the debtors because some filed later, the debtors have made significant progress towards achieving their valid reorganization purpose and we see that through the Oaktree term sheet, which I know is not before Your Honor today, but it is important to talk about the progress that the debtors have made in the short time we've been here.

This type of Chapter 11 plan process contemplated by the Oaktree term sheet serves the best interests of creditors by preserving going-concern value and hopefully maximizing creditor recoveries. Rigmora's proposed financing, on the other hand, I believe evidences their desire to liquidate these companies and was nothing more than wind-down funding both in amount and in substance, in my view. It's completely un-actionable and you heard last week that that type of short, quote, "Band-Aid funding" simply doesn't work anymore for these debtors.

On the other hand, Oaktree, their term sheet

contemplates $300 million of exit financing to keep these PortCos as going concerns, as well as in-kind distributions of Braeburn to the LPs. This is exactly the type of homerun that debtors hope for when they file Chapter 11. With Oaktree, we have the potential for a concrete Chapter 11 pathway that maximizes creditor recoveries via going concern preservation while not necessarily even disadvantaging Rigmora. Let's move forward with these cases and achieve this goal, it is -- the debtors have made great progress towards it and that result benefits my constituency so much more than moving the fund level debtors to the Caymans, leaving the PortCos here, and everybody left trying to figure out what the heck to do.

And, Your Honor, the only alternative that we see to the extent we don't pursue a plan process with all debtors in this court is a liquidation or more of the stopgap funding that Rigmora is proposing that Mr. Liras testified won't work and makes managing the PortCos difficult in this world of expensive research requiring long-term contracts. I also think that the long-term contracts do play into the financial distress. Your Honor raised the point, is there somebody -- maybe it was Rigmora's counsel -- a temporal component of financial distress. Well, that temporal component must also be looked at in the context of the debtors' industry. This particular industry requires long-term contracts. So, saying

that these debtors tomorrow can make payroll does not mean that they are not necessarily financial distressed. If they can't enter into long-term contracts that are necessary to further these businesses, that's a devastating result for our constituency and, honestly, for many creditors like our committee chair, Baylor College of Medicine, who would like to see its science and IP ultimately commercialized here. They don't want it back, that is the science that formed the basis of Marlinspike, and simply saying that Marlinspike can make payroll tomorrow for example does not mean that Marlinspike isn't financially distressed or doing nothing with the IP.

Your Honor, I'm going to close with this. The committee supports the debtors' efforts here because we believe keeping these cases in Delaware is value-maximizing. It will reduce litigation, in my view, provides a single convenient forum for all disputes, and will enable the debtors to actually save these businesses. That's why we're here, that's what Chapter 11 is designed to do. This should be a win-win for all parties, and I think one must seriously question the motives of a dissenting party like Rigmora here. This court is a proper venue for these cases, the cases were filed with a valid reorganization purpose, there was absolutely financial distress, as I touched on, as I think Mr. Winston did a good job touching on, and Your Honor has

all the toys necessary to ensure the fairness of this process while protecting all parties' interests, not just unsecured creditors, but also Rigmora's. There's simply no reason to dismiss these cases or to grant stay relief. And, unless Your Honor has any questions of me, I'll rest.

THE COURT: Thank you. No, I do not.

MR. ALBERTO: Thank you, Your Honor.

THE COURT: Okay. We are going to take a lunch break. We'll be back here at 3 o'clock and I will hear from Rigmora.

We're in recess.

(Recess taken at 1:59 p.m.)

(Proceedings Resumed at 3:01 p.m.)

THE CLERK: Please rise.

THE COURT: Got to grab Ms. Selden. Okay.

UNIDENTIFIED SPEAKER: I'm happy to make their presentation, Your Honor.

THE COURT: Please be seated.

(Pause)

THE COURT: Ms. Selden?

MS. SELDEN: Your Honor, good afternoon.

Again, it's Shannon Selden, of Debevoise, for the Rigmora LPs.

Your Honor, we've heard quite a bit from the debtors and from the UCC and I want to address what I think

are a couple main points that they have raised and I will try to pick up such other stray points as I can and certainly want to address any questions that Your Honor has.

I will say at the outset that, in listening to the debtors' presentation and to Mr. Winston, I heard a lot of reasons why it makes sense for the portfolio company debtors to be here in Chapter 11 but not why it makes sense for the Fund and the General Partner to be here in Chapter 11.

And to be clear, as Your Honor has heard me say many times over the course of these hearings, these motions are not about the portfolio company debtors if they are able to use these Chapter 11 proceedings to garner interest, to get funding, to reorganize. You heard Mr. Winston end by saying that it's really about the portfolio companies and that's why these cases commenced.

These portfolio company bankruptcies, their petitions, their Chapter 11s, can and should go forward and nothing about today's motions or dismissal of the Fund or the General Partner or relief from the stay should stand in the way of those portfolio company bankruptcies, and that is because you should look at the Fund and the General Partner differently. They were filed first. They are separate entities. They are different in nature. They are different in kind. They are different in legal construct from the portfolio companies that are before Your Honor.

And, Your Honor, in Bankruptcy Court and under Chapter 11, the Court and the parties look at different debtors differently all the time. When you confirm a Plan in bankruptcy, you look at whether the 1129 factors are met for each of the debtors. When you approve cash management, you look at transfers from one company to another as transfers and they have to be tracked and approved. You don't look at the debtors as amalgamated mass. You look at them as separate debtors for lots of purposes under the Bankruptcy Code, including as filings.

And you heard more from Mr. Winston than from me on what it takes to be a debtor in Bankruptcy Court but that analysis, can this entity be a debtor, is, again, another place where you look at it debtor by debtor. Can this filer be a debtor here in the Bankruptcy Court.

I don't think, Your Honor, that a Cayman Exempted Limited Partnership can be a debtor in Bankruptcy Court. I think an exempted limited partnership, as Mr. Phillips testified and as the cases show, is different from a partnership under Delaware law, under U.S. law, where the Delaware Revised Uniform Partnership Act at Section 15-201(a) says on its face that a partnership is a separate legal entity.

AquaPoint and the Privy Council say the opposite for Cayman Exempted Limited Partnerships, that they do not

have separate legal personality, that the difference -- it's a difference in Cayman law. It's a difference that applies to this ELP, which Justice Asif has already looked at and ruled on in the course of another pending dispute between these parties.

But I think, Your Honor, you don't need to get to that question of Cayman law and if Your Honor doesn't want to set precedent on whether a Cayman ELP can be or not be a debtor under Section 109, I don't think you need to on these motions because these debtors should be dismissed for other reasons, and I want to just really focus on that for a minute, Your Honor, which is the fact, as a matter of law, as a matter of fact, as a matter of analysis here under Section 1112(b), that the Fund, the GP and the portfolio companies, shouldn't be considered together for this question of dismissal or good faith filing.

First of all, the Fund is an investor. It's an investment vehicle and if one investment is in distress and insolvent, that doesn't mean, as a matter of law or fact or practical intuition, that the investor is itself insolvent or that it's obligated to bail it out or that it's obligated to join it in Chapter 11.

And I know and am advised -- look, and I know from my own experience, although I am not a restructuring lawyer -- I know that filing Chapter 11 is a hard choice and

it's one that debtors do try to avoid and companies try to avoid and entities try to avoid and you don't file an entity as a debtor in Chapter 11 unless you need to.

That's a serious consideration, and that applies here where the Fund is an investor. If the investment is in distress and needs the refuge and relief that Chapter 11 provides, it should get it. By all means, file that entity for Chapter 11. But that doesn't mean that you bring the Fund in with it, too.

And while this question of ELPs, Cayman Exempted Limited Partnerships, filing themselves for bankruptcy may be an unusual one, the presentation in this Court and this courthouse or in any Bankruptcy Court of portfolio companies that didn't work out where the investment in that portfolio company and that portfolio company itself landed in some distress and needed to seek relief in Bankruptcy Court, that's not unusual. There are plenty of those cases. There's Food 52. There is David's Bridal. They're Gymboree. There's Toys-R-Us. They're collected at paragraph 41 of our reply brief on this motion.

But in each of those cases, there was a sponsor, Bain, CD&R, KKR, Apollo, that made an investment in a portfolio company through a fund and that portfolio company experienced some distress and filed for Chapter 11 and was able to use Bankruptcy Court to reorganize itself, to

restructure its debts.

But in none of those cases did you see or was there an argument or was it even considered that the fund or the sponsor should join the portfolio company in Bankruptcy Court to provide a perpetual source of funding.

THE COURT: But nothing precluded that from happening.

MS. SELDEN: I think something very much precludes it from happening, Your Honor.

THE COURT: What?

MS. SELDEN: And that --

THE COURT: What precluded that --

MS. SELDEN: The fact that --

THE COURT: -- in those cases?

MS. SELDEN: The fact that you need financial distress and that the very premise of a Chapter 11 filing --

THE COURT: So you think they all did an analysis, all of those cases, all those funds did an analysis and said, you know, I think we'd like to file for bankruptcy but we can't so I'm not going to file?

MS. SELDEN: No, absolutely not. I don't think it crossed their mind. I don't think that was an idea that any of those sponsors had and I don't think it's an idea that they should have. I --

THE COURT: But if they voluntarily decided, you

know what, I think I want to put my fund in, too -- I mean none of those cases that stand for the principle that the Fund couldn't file. They just didn't file.

MS. SELDEN: They didn't file. That's right, Your Honor. I don't think they stand for the proposition that a fund that was in financial distress and otherwise met all the criteria for a Chapter 11 filing couldn't itself file.

But I do think it is telling that it is possible and common to put into Chapter 11 a portfolio company that has a fund, that has provided its equity, that may be its controlling investor, that is a shareholder, and maybe a significant one, maybe the significant one, and it's possible to put that company into Chapter 11 and for that company to use Chapter 11 for what debtors are -- uses Chapter 11 for all the time, to find other financing, to reorganize, to emerge restructured and reorganized.

That doesn't require the presence of the Fund. I think that's what those cases are telling you. It is not mandatory. It's not necessary. It is possible to use Chapter 11 for the portfolio companies without the funds. That happens all the time, and that makes sense.

These are different entities and we respect, in Bankruptcy Court, state law or Cayman law that constitutes those entities and we respect corporate separateness and the

fact that you have a Delaware corporation that has a board and employees and a business and debts and needs to reorganize them and another entity with different constituents in a different financial profile and you look at those as such.

You heard from the UCC that the UCC doesn't have any creditors of the funder of the GP. These are all portfolio company level creditors.

And here, you know, it has come up, Your Honor -- I think Mr. Winston alluded to circumstances in which you might have a group of debtors that file together, and certainly that does not -- that does happen and there may be circumstances in which it makes sense for that to happen.

But part of that review and consideration is whether there are shared obligations, whether there are shared liabilities, whether there are guarantees, where there are cross defaults, where there are overlapping debts.

There is some interwovenness in the criteria that matters for the bankruptcy in Chapter 11 analysis where multiple debtors with those kinds of affiliations and overlap may file together. But you do consider the existence of those obligations debtor by debtor and say, okay, these both share in this debt and both need to file.

Debtors here aren't asking for a substantive consolidation. They are asking only for administrative

consolidation that everything be heard together but with this overlay of, even though we're not substantively consolidating, we want you to look at the Fund and the portfolio company debtors together, fundamentally as an enterprise or as a collection. We want to blur these lines and we want to blur these lines in Bankruptcy Court and in Chapter 11.

You know, the way they sound a little bit blurred sometimes in the testimony of debtors' representatives, that there's not a clearly delineated distinction between one's role as the general partner of the Fund and the Fund's roles in the portfolio companies and the portfolio companies' role and there is a sense then -- you have heard it from debtors' counsel that the purpose of the Fund is to fund the portfolio companies and it is -- it exists in service to them, rather than the other way around, and I want to come back to that.

But I think there's a way in which -- Your Honor, the debtors' proposition to you, if that is their thesis and their theory that you should look at the Fund and the GP and the portfolio companies together because, collectively, they are an enterprise with the Fund and service to the portfolio companies, there is no principal basis to look only at the portfolio company debtors in this Court.

Why would you look only at the portfolio companies in distress and not at the eight portfolio companies that are

just as much a part of this mythical or a hypothetical enterprise as the seven debtor portfolio companies and ignore those?

There's no principal basis to draw that distinction, other than that we're here in Bankruptcy Court and in Chapter 11 and the debtor portfolio companies are before Your Honor. But if the idea is because the Fund is the dominant investor in each of these portfolio companies, each of these portfolio companies were started by the Fund, have the GP serving as the chair of their boards and are named after apples and constitute an orchard together, like that's all of them. You can't just pick the bad apples and look at the ones in Bankruptcy Court. You must look at the entire enterprise if that's your theory. I don't think it should be your theory but if it is, what about Braeburn? What about Aulos? What about Marengo and Galvanized? What about --

THE COURT: If I do then look at it and look at the non-debtor portfolios, what -- where does that leave me?

MS. SELDEN: It means there's a lot more assets, Your Honor, in this enterprise. That is the -- you heard I think from Dr. Harrison. I don't have that cite right in front of me, but you heard him yesterday say Braeburn itself is worth, what, $2.9 billion? I don't have the numbers in front of me for each of the non-debtor entities but you have

heard over the course of these hearings ample testimony that those are separate standalone valuable companies. They're at a different phase in life than the companies here and, by that, I mean not just that they're not in bankruptcy but that they're clinical stage companies.

THE COURT: Um-hum.

MS. SELDEN: They are further along in their development. They have drugs or therapies that they are manufacturing or marketing. You know, they are in a different phase in life with their own businesses and their own boards, their own assets, their own obligations.

But if you're to look at this all together, you would have to factor in the significant assets that sit outside this Court but are also investments of the Fund.

Now, I don't think you should do that. I think, again, that goes, to my mind, deeply contrary to an overarching principal in Bankruptcy Court which is, again, the respect for kind of underlying state law or applicable non-bankruptcy law that says when we have corporate separateness, we respect it. We recognize that this company is different from the other one. We look at each on its own terms.

I don't think it would be at all a good precedent to say in cases in which a debtor shares a common investor with other companies within and without the Court that this

Court should then consider every other portfolio company in which that investor has made a control investment in assessing, you know, the estate, the bankruptcy case of the present debtor. That brings into this Court and before Your Honor vast kind of realm of other companies that don't need to be here and shouldn't be here.

You look at it as a debtor by debtor basis and I think that that holds true even if multiple debtors have filed. The ones that are here, you should consider debtor by debtor and the financial position of Marengo doesn't determine the financial position of Braeburn. I don't think creditors of Braeburn are looking to Marengo to satisfy their debtors. I don't think creditors of Nereid should be looking to Braeburn to satisfy their debtors. I don't think, in the absence of cross guarantees, crossing loans, crossing obligations -- like there are circumstances in which companies can join together and do that, but you haven't seen any evidence of that here. There's nothing in the record to suggest anything that looks like that.

You have one common investor that has made similar investments in many companies, some more successful than others. Some of those companies are out in the world conducting their business and some of them are here before Your Honor seeking to reorganize their businesses. But the financial position of each should be considered separately

and the financial position of each is separate from the fund that made the investment.

So that, Your Honor, as a matter of contract, governance, law, and just practicality, I think it would be inconsistent with bankruptcy law and state or Cayman law and an error to collapse the Fund and the General Partner into the seven portfolio company debtors, even though they're all here before you. I think it would be a mistake to do that for purposes of analyzing financial distress.

I do think that the law requires and the structure requires and the facts require consideration on a debtor by debtor basis, and for purposes of this motion, I'm not contesting the distress of the seven portfolio companies or their need to be here.

I am deeply contesting that the Fund and the General Partner need to be here. And on that, I also want to take just a moment to clarify something that I think is important to the way one might think about the Fund and its relationship to these portfolio companies.

You have heard many times from debtors that the Fund is here in service of the portfolio companies, that this is all about the portfolio companies and it exists to serve the portfolio companies.

I do not think that that is quite right. Certainly, as an investor in companies, one wants the

investment to succeed. If you're committing billions of dollars or tens of millions of dollars to investments, the goal most certainly is that that money be well spent, that it be used to advance the research and the science that was the premise of the investment, that that research and science go well and yield results, and that the company continue to develop and grow and attract more funding and move on to the further phases, to the IND, to the submissions to the FDA, to the place where it's a clinical stage company.

That certainly is a desire, and a sensible one, for anybody who's investing in companies like this. But it's not a *pro bono* exercise and I don't shy away from the fact that this Fund has yielded returns, and there have been significant distributions to the Rigmora LPs. Mr. Winston mentioned that. I think I added it on a slide. I think it's something Dr. Harrison is also proud of, that the Fund has had success and it has generated returns. It has many companies that are doing that that are not before Your Honor.

But that is -- one of the goals of this Fund is to make investment that will yield returns and I think you see that in a couple ways, one of which is in the SPAs that we looked at, Your Honor, the funding is tied to performance against milestones. There is either the prospect of negotiating milestones; you know, here are things that you will achieve, milestones in the development, and you saw what

some of those milestones look like. They're real specific as to what that company is trying to accomplish and that the accomplishment of those specified goals will unlock a new tranche of financing.

So there is a sense in which the funding here is not just to explore but to move directionally towards specified goals, with some discretion to invest otherwise, if those milestones aren't set in the SPAs that we looked at. So there is a sense in which funding is tied to performance.

There's also an expectation in this industry, biotech investing, that most investments will fail and that's -- I -- you know, that's hard. Like in BC funds and in biotech, the expectation is that most investments will fail. You hear that -- or Your Honor maybe didn't hear it but I think it's in the record here that the General Partner's expert in the Chancery Court, Dr. Rao (phonetic) put it at about a 1 in 10 chance of success for early stage biotech companies like this and Dr. Rimm, who you did hear from, put it at, you know, somewhere between 50 and 90 percent of companies like this fail.

So the idea that this is an open-ended commitment in perpetuity without limit in terms of time, finances, accomplishment, or performance, isn't really consistent with either the expectations of early stage biotech investing, this particular Fund, the terms of its SPAs. None of that is

really what's happening here.

And I think, also, each SPA has those total amounts that I showed you earlier, which is this again is not an open-ended commitment. It's a Series A Stock Purchase Agreement that says up to X amount of dollars, the Fund has the right to purchase shares in this company.

So there's a commitment to a set amount and for some of those companies that set amount has been met or exceeded. But, again, it's not open-ended.

And I think, Your Honor, you know, you've heard it a little bit in the course of testimony but each of these companies has moved and changed kind of far afield from what it was originally set up to do and it has had time and room and millions of dollars to do that.

You've heard Dr. Harrison describe it as pivots. You've heard Mr. Liras describe the evolution and the back and forth. Just to say, it is not -- you know, it's been five years, four years, several years for each of these companies and millions -- tens of millions of dollars and each of them has moved somewhat afield from kind of what it was originally set up to do. They have had some space to do that and if they have done that and haven't met their milestones and are struggling financially, it is not unreasonable to question whether further dollars should be put in.

And I just want to say that, also, Your Honor, because I think there has been a lot of criticism of the Rigmora LPs' concerns about further funding, references to drip financing, or starving these companies or not wanting to continue to fund, that's a question that a reasonable investor can raise when several years and many tens of millions of dollars have been put into a company that has not achieved what it set out to do and has moved in a different direction and is looking for more money to continue in that new direction or to continue to find a direction that will work. It's not an unreasonable question to raise.

THE COURT: It's not. But isn't the General Partner the one who makes the decision, ultimately, on whether funding should head down to the portfolio companies and whether the pivots are the appropriate pivots or not, because we all know that's going to happen, too.

MS. SELDEN: I think, Your Honor, as long as the General Partner is within a realm where it has the funds to do so and is exercising its discretion and is investing consistent with the terms of the LPA and the approved budgets, which the Rigmora LPs do have a view and a say so on, yes, I think -- I'm not here to contest really the General Partner's exercise of discretion outside of bankruptcy and prior to these cases to further invest in these companies.

But when the General Partner comes to the Limited Partners and asks for more money above their contingent subscription and to move money from one company for which it was budged to another company for which it was not -- which is, by the way, what the plan is to do with some of the $97 million that was called as capital for certain companies and is now being redirected elsewhere, at that point, I think where you're asking for more money or to use money that's been approved for one purpose than another purpose, it is a reasonable question and a fair question for the LPs to ask and the fact that they asked that question and had that dialog with the General Partner has literally nothing to do at this point with whether the Fund or the General Partner should be debtors in bankruptcy.

There's nothing about that discussion, about whether the LPs would provide incremental funding or approve reallocation or authorize new budgets that tells you anything about whether the Fund and the General Partner, on December 9th when they filed, or any time thereafter, are in financial distress.

So you've heard a lot about it and I want to address it for that reason because it disturbs me and I think it's a --

THE COURT: I think it goes to the good faith argument as to why the companies were filed, which the

Limited Partners may disagree with but they've challenged and so the General Partner's perspective as to why it filed could be informed by the relationship and the discussions.

MS. SELDEN: It could be, Your Honor, and I've heard that and I've heard Dr. Harrison. As you know, I've heard him. I've deposed him many times. I've heard him testify here. I've heard debtors' counsel argue this point and the notion that the LP's questions about further funding caused them to file.

But I think, Your Honor, that that goes to the question that I had discussed earlier, which is, you know, in a mature fund that's fully drawn its contingent subscription, you may ask for more money but it's not unreasonable to say no, especially kind of when you're in this space of your relationship and you might also be looking to wind down that fund and have somebody manage the current investments.

I will also say, Your Honor, we have heard more from counsel I think than from witnesses that one of the reasons to file here is because of how hard fought the litigation was, that there was litigation in the Cayman Court and that there was a lot of litigation in the Chancery Court, that that was very hard fought, that it was deeply contested, that there were motion practice, and I have heard it argued that because of that, there was a concern that at the end of the day, when the Court entered her judgment, that the

Rigmora LPs would not pay.

But, Your Honor, every case I've been involved in, and it's a few at this point in my career -- my birthday the other day was a big one and I've litigated --

THE COURT: I bet mine's bigger.

(Laughter)

MS. SELDEN: I'm not going to name numbers. I've done enough numbers today but, you know, I've been litigating at Debevoise for 25 years --

THE COURT: Yeah, mine's bigger.

MS. SELDEN: Yeah.

(Laughter)

MS. SELDEN: I will give you that. But I don't know about you, Your Honor, but every case that I have been involved in that involved a billion-dollar fund and contract claims in hard fought litigation in Chancery Court, in Bankruptcy Court, in the Southern District and State Court, is intensely litigated. I'm surprised to hear Quinn Emanuel think otherwise.

But I know that the fact that a case is intensely litigated in no way, to my mind, informs whether a party will respect the judgment that they fought to get and I think that that is not a fair inference to draw here. The Rigmora LPs defended themselves. They defended themselves vigorously, as they should and are entitled to do, and as the GP did and is

entitled to do in the Cayman winding up proceeding, at least up until the moment they filed here.

But the fact that these cases are hard fought does not mean a judgment will not be honored, and this was a judgment for a specific performance of capital costs. There's no evidence of missed capital costs. My clients have put in, again, billions of dollars into this fund in response to capital cost, including 7- or $800 million since 2022.

There's nothing to suggest that they were not going to pay this and I think Mr. Bogdanoff said in his 30(b)(6) testimony and his deposition that we would pay this and I think, Your Honor, you've heard to the contrary from Dr. Harrison that they didn't even consider responding to the Proposed Order of Judgment before filing, which we had sent on December 8th and followed up on December 9th, didn't consider waiting to see if it would be paid, didn't consider enforcing in the Chancery Court.

I don't think that a Chapter 11 filing was in any way necessitated by the fear that that judgment wouldn't be paid. There's nothing in the record to support that conclusion.

I think Your Honor has also heard -- speaking of fear, a lot of fear about the liquidation so-called process in the Cayman Islands and that that winding up process will be a fire sale or a liquidation or destructive of value of

the portfolio companies, and I want to unpack that a little bit.

I think counsel for the Creditors' Committee mentioned Mr. Mandarino's fears. Mr. Mandarino has testified, as has Dr. Harrison, that he wasn't involved in the decision to file the Fund or the GP. I don't think he's an expert on Cayman winding up proceedings, so I'm going to set that aside.

And I think these fears that you've heard from Mr. Winston and debtors argue that the Cayman winding up proceeding will result in a destructive fire sale of assets or liquidation really ignores the actual record on what that Cayman winding up entails and, on that, there's a fair amount of testimony relating to these winding up proceedings, and I just want to take a moment to unpack that.

One thing -- or question that came up was well, if this was a closed-end fund and we were close to the end of the contingent subscription, why wasn't that raised in the winding up proceeding. It was. It was raised in the winding up petition in a number of paragraphs; 37, 44, 47, 49, 52. That was very much on the Rigmora LP's mind and in their petition in seeking to wind up this fund as a recognition that it's fully invested and at this point, there's not any money to invest. That's a natural transition point and relevant to that proceeding.

You also heard a question well, why don't we raise fiduciary issues in the Cayman Courts. If that's a question that the Rigmora LP's had, why didn't they bring that up in Cayman Court and that really is, in many ways, Your Honor, what the dissolution and winding up proceedings are. It's the dissolution of a relationship based on a loss of trust and confidence where the substratum -- the loss of substratum is that the Fund, the partnership, cannot go forward as reasonably expected. Those are ways of saying I do not have trust or confidence in my fiduciary. I cannot continue as I am in partnership with my agent and trustee.

Those raise those kinds of critical issues and it is, of course, a question of governance, just as a director, as a fiduciary of a company, and when we think about directors as a governance matter, the General Partner is a fiduciary of the limited partners and in raising these kinds of questions of trust and confidence and inability to proceed is of that same kind of kind of governance question but in a fund structure rather than a corporate structure.

And so those are some of the premises of the winding up proceeding. I also don't think that there was any surprise and not unexpected to be in the Cayman Court. That is where this Fund is constituted.

The LPA, as Your Honor has pointed out, has a jurisdiction provision that is non-exclusive and selects both

Delaware and the Cayman Courts, but the Cayman ELP act itself in the winding up of a fund does require action by the Cayman registrar. It does -- it is subject to the exclusive jurisdiction of the Cayman Courts. You haven't seen any law or heard from anyone to contradict that.

It's no surprise that a winding up petition at the end of the life of the fund be in the Cayman Courts where it belongs, as a matter of Cayman law.

THE COURT: I will say I'm still struggling a little bit with whether it's a governance dispute, as opposed to a contractual dispute or some other dispute because the shareholders of a corporation can just hold an annual meeting. They don't need court approval. They can, as a matter of corporate law, replace the directors who can then replace management.

This is not that case. This sounds more like a lender remedy where the lender can go to court, who has a pledge, for example, and say I want to enforce my pledge agreement. Maybe they can -- actually, maybe in many instances, they can just -- the lender can just exercise the pledge without going to court.

There doesn't seem to be a mechanism in the partnership law that I've been pointed to, or the agreement which I've been pointed to, which gives the limited partners the ability to replace the general partners on their own

without going to court.

MS. SELDEN: They don't have it, Your Honor. That is a function of Cayman law and that's what makes the Cayman Exempted Limited Partnership unique, one of the many things that makes it unique, which is when you wind -- I mean you could wind up and if it were not contested; that is if the GP were not clinging to office, as Cayman law tells him not to, then you --

THE COURT: Well, certain cases they have that common --

MS. SELDEN: Yes. Then you could dissolve it and go to the registrar and delist the partnership. But the partnership is listed with the registrar in the Cayman Islands.

THE COURT: Um-hum.

MS. SELDEN: If you cannot agree amongst yourselves to unwind and separate and require dissolution in winding up, then that is a court-ordered process but that is a process in which the court is involved overseeing the governance of the fund and the removal of the General Partner, although I think, Your Honor -- I mentioned that because you cannot do it outside the Cayman Court -- that's why you would expect to be in the Cayman Court if you have reached a point of dissolution and shouldn't be surprised to be there, but I don't think, again, it has any bearing on the

motion to dismiss the Fund or the GP. Those are questions of Chapter 11 and whether or not as the governance question is, to some extent, neither here nor there on that particular question.

THE COURT: I think it bears --

MS. SELDEN: Unless Your Honor disagrees.

THE COURT: No, I do. I think it bears on the issue because I might -- not I might see, the Bankruptcy Code sees governance issues differently.

MS. SELDEN: Yes.

THE COURT: So that's why it can bear on these issues.

MS. SELDEN: Look, and that's why I think we've spent time on it in briefing and I'm still talking about it and I'm -- I am disappointed, Your Honor, that you think we haven't grappled significantly with Cayman law --

THE COURT: I think it's a hard issue.

MS. SELDEN: -- because I am trying.

THE COURT: I think it's a hard issue, which is why I'm asking questions.

MS. SELDEN: Yes.

THE COURT: I'm not asking questions to put anybody on the spot. I'm asking the questions that I'm grappling with.

MS. SELDEN: Yes, and I appreciate that, and I do

think, you know, in some ways -- and it may be an unsatisfying answer, but I do think it is the answer, the lead answer on this question, which is the unwinding of a Cayman Exempted Limited Partnership through the court process is a matter of governance because that is how Cayman law sees it and treats it and expects it to be treated. That's what you hear from Justice Asif. That's what you hear from Mark Phillips. That's what you can see in some of the cases which are cited in our briefs.

But just as the General Partner serves in this, you know, role as a statutory trustee, that is -- the LP doesn't exist kind of separate and apart from the ELP Act. They are intertwined in a way that Limited Partnership Agreements in the U.S. are not so intertwined with statutes and it's intertwined with the ELP Act in that way and when the General Partner is serving in that role doing the things that fiduciaries' agents or trustees do, the recourse for limited partners who seek to have new governance of their fund, responsible for acting as their fiduciary, they can't call a meeting and vote them out. This is not an available option.

The path that Cayman law provides is the voluntary or compulsory winding up and dissolution and then going to the registrar and taking the fund off the list. It can be re-registered with a new general partner, with new partners

reconstituted. It doesn't mean a fire sale. It doesn't mean a liquidation. But it does mean the end of that partnership and that relationship between that fiduciary and those limited partners and in that sense, just the shareholders might vote to replace their board; I need somebody new to run my business, when LPs want to do that same thing, Cayman law says come to Cayman -- if you can't agree, come to Cayman Court and get a winding up order and dissolution and the judge will oversee it.

And, Your Honor, that's not just a question of governance. That's a good thing. It's protective. That is -- the Cayman Court is involved in a responsible way for dissolving the partnership in an orderly and sensible fashion that preserves and maximizes the value of the assets.

It is not a fire sale. It's not a liquidation in the sense of like liquidation sales at Macy's. It is a -- and I think -- I'm recalling Mr. Phillips, who described the Latin sources of liquidation for me, and I will not attempt to do that again here, Your Honor, but it is a way of managing the dissolution and unwinding of the partnership in an orderly way, both as a question of governance and as a question of protecting and preserving and maximizing the value of the assets and returning them to their ultimate owners, the limited partners, and which, by the way, that means all the limited partners. It doesn't just mean the

Rigmora LPs.

Dr. Harrison and his family trust are limited partners here, too, and those limited partners can also appear and be heard in these proceedings.

And I think that's the mandate of the joint official liquidators. The mandate of the joint official liquidators is not to sell off assets. It is to extract and preserve value and they can do that through a process. They do that by talking to management. They can do that by distributing the assets and, as you heard from Mr. Phillips, it's a lot easier when there's no stack of creditors to satisfy, and there are not creditors at this Fund. You don't need to sell the assets to cash out people who have -- who are creditors against the Fund. There are assets and there are limited partners, and so that's a relatively straightforward process, or it would be maybe absent the litigation.

And I think -- that's not -- that process in the winding up proceeding is different from Chapter 11 in one way very material to today's discussion, which it doesn't require financial distress. It doesn't require insolvency.

I think Your Honor had asked about good and corporate insolvency and corporate restructurings. There are differences, again, between a Cayman ELP winding up and a corporate restructuring where I think you heard from

Mr. Phillips that the corporate restructuring has an insolvency requirement.

The ELP winding up process doesn't have that insolvency or distress requirement, again, because it's a governance mechanism. You don't need to be distressed to want to replace your fiduciary. This is the mechanism that's available to you when you've lost that trust or confidence or substratum or have a voluntary winding up.

So I think that's an important difference here. And I do think, in addition to Mr. Phillips describing the role of the liquidators and the way in which they maximize value, I think he also testified that they can distribute and not sell. There's no implication that any sale is necessary here.

And I think you heard from Mr. Bogdanoff also that the Rigmora LPs weren't planning on liquidating the portfolio through the Cayman winding up proceeding, that they were looking for other firms who might step in, that they were looking at ways to develop or keep some of the promising research or projects and salvage value.

So what the record here actually shows is that the winding up proceeding is an orderly one overseen by the court with liquidators, Alverez and Marsal, well-known to this Court, who have the authority, ability, and experience to preserve and maintain value and in no way necessitate a sale

that the Rigmora LPs were not themselves looking to sell, but to salvage value and, Your Honor, again, that makes sense.

The Rigmora LPs have invested so much into these companies. It does not make sense for them to light their investment on fire. Why would they do that? That is a counter-intuitive assertion and it is not supported by evidence in the record.

And it's not, Your Honor, just the Rigmora LPs who are seeing this. The GPs own funding motion admits, I think in a footnote, at footnote 24, that official liquidators appointed by the Cayman Court would view Paine Partnership Funds to portfolio companies as part of their powers and could seek the Cayman Court sanctions to make those payments and that's the kind of relief that Dr. Harrison seeks in his December 8th witness statement that he submitted to the Grand Court of the Cayman Islands the day before filing these cases.

So you're hearing a lot of argument that these Chapter 11 cases needed to be filed because the liquidation would have been devastating in some way. But there is no evidence in the record to support that conclusion.

The portfolio companies can be funded through the winding up proceeding. They need not be sold. There is a desire to maintain and maximize value. And I don't think there's any evidence that the winding up proceeding itself

would have this negative impact on the portfolio company debtors that are here in Chapter 11. It would remove these LP/GP issues that are in some ways an obstacle or distraction or certainly consuming a lot of this Court's time and resources here.

But there's no reason that these portfolio companies, who are still here in Chapter 11 with all the benefits that that entails, would be negatively impacted by that winding up proceeding in the Cayman Islands, except that the Fund wouldn't be here. But, Your Honor, where the Fund has no ongoing financial commitments to them and is not itself in distress, it does not need to be here and it should not be here and I think that's what the financial distress and tactical litigation prongs of LTL tell you.

And I also think, Your Honor, that when it comes to dismissing the Fund, it's not unprecedented. Debtors' cases are dismissed. Chapter 11 petitions are dismissed, including in the NRA case because there is a pending State Court dissolution action and the NRA had filed for bankruptcy to avoid that result.

And I think, Your Honor -- as I was thinking during the lunch break, we've heard an awful lot about many things over the course of these hearings, including today, and there are, admittedly, some tough issues of law and fact for Your Honor to deal with. But, overall, what you did not

hear from Mr. Winston and do not have in the record is any evidence to support a conclusion that the Fund itself or the GP are in financial distress, that this multi-billion dollar fund, holding $4 billion in assets, assets that are valuable, that, according to the GP, have and will return cash is in financial distress. The liabilities are contingent, at best, and certainly dwarfed by the value of this Fund.

And in those circumstances, the Fund should be dismissed and the portfolio company debtors can stay in Chapter 11 and user it to seek the funding.

And I will end where Mr. Winston ended but I guess with a twist, which is he ended by telling you this is about the portfolio companies; there is interest in them; we are using this process to get financing for them. That's great.

The portfolio companies can and should use Chapter 11 to seek financing. They can seek it from other sources, they are not entitled to it from the Fund, and dismissing the Fund and the General Partner will not in any way -- or should not in any way damage the ongoing Chapter 11 cases of the portfolio companies and the inquiry, Your Honor, where the burden is on the debtor, is whether those two debtors, the Fund and the General Partner, have the financial distress that is necessarily required in any Chapter 11 filing, and they don't, and for that reason, we would ask that they be dismissed.

THE COURT: Thank you.

Okay. Well, I appreciate the arguments of both sides. You've both given me a lot to think about. I will get out a decision as soon as I can. Unfortunately, I'm jumping into a discovery dispute tomorrow, everyone's favorite in a mass tort case, so could it get better than that?

So I'm not focusing on it in the next 24 hours, but I will get a decision out as soon as I can. I don't know if I'm going to write or issue it from the bench but I'll let you know, in any event. If I do it from the bench, you can appear remotely, but I will let you know.

So thank you, again.

And I guess I do now have a closed record on the Funding Motion and the DIP Motion and I do now have a closed record on this as well, in terms of the requests from each side for what should come into evidence. Right? Okay.

Okay. Thank you. We're adjourned.

COUNSEL: Thank you, Your Honor.

(Proceeding concluded at 3:53 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling March 6, 2026
William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams March 6, 2026
Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable

/s/ Mary Zajaczkowski March 6, 2026
Mary Zajaczkowski, CET-531
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/s/ Coleen Rand March 6, 2026
Coleen Rand, CET-341
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