Docket #0072 Date Filed: 6/11/2026

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
MEDLEY, LLC,	Case No. 21-10526(KBO)
Debtor.	824 Market Street Wilmington, Delaware 19801
MEDLEY LLC LIQUIDATING TRUST,	Wednesday, June 3, 2026
Plaintiff,	Adv. Proc. No. 23-50121(KBO)
vs.	
EVERSHEDS SUTHERLAND (US) LLP,	
Defendant.	

TRANSCRIPT OF HEARING RE:
Motion of Defendant Eversheds Sutherland (US) LLP for Summary Judgment Dismissing the Complaint
[Adv. Docket No. 26 - Filed May 2, 2025]
BEFORE THE HONORABLE KAREN B. OWENS
CHIEF UNITED STATES BANKRUPTCY JUDGE

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(Proceedings commence at 9:31 a.m.)

(Call to order of the Court)

THE COURT: Good morning, everyone. Good to see you. It's been a long time. Please be seated.

All right. So we're here on Eversheds' motion for summary judgment and I'm happy to hear from you.

MR. COLE: Good morning, Your Honor.

THE COURT: Good morning.

MR. COLE: My name is Adam Cole from the firm of Chipman, Brown, Cicero & Cole.

THE COURT: Yes.

MR. COLE: With me today is my colleague Alan Root and Alison Maser. And with me today is my client, Nick Christakos, who is from the General Counsel's Office of Eversheds.

THE COURT: Okay. Welcome.

MR. COLE: Thank you.

THE COURT: Good to see you again.

MR. COLE: Judge, we're here today on a motion for summary judgment. I'll give you some background of how we got here today.

Eversheds was the debtor's and its affiliates' principal outside counsel for years. It handled various matters and it was paid for those matters as counsel for Eversheds -- for the debtor, pre-petition debtor and its

affiliates and certain of its directors and officers.

The trustee, liquidating trustee, has sued to avoid the legal fees paid to Eversheds in the years preceding the Chapter 11 case of Medley. We're here today on the sum -- on summary judgment on a defense of release, the claims that were asserted in the complaint, to avoid those legal fees paid for preference and fraudulent transfer.

I wanted to just first start out by discussing Eversheds' role that led to where we are here. Eversheds was retained by the debtor, the pre-petition debtor, its affiliate, its parent Medley Management, and its certain D's and O's in connection with a Securities and Exchange Commission investigation. Eversheds represented these individuals and the parent in connection with the investigation, which started at some point in December of 2019. And it dealt with issues that I think the Court is probably more familiar than I am, at this point, through the bankruptcy.

As a securities lawyer, I can tell you that the investigation and the way lawyers represented different people is not uncommon. The SEC typically commenced an investigation by issuing a request for information to either a company or individuals within the company. And that, typically, in most cases, results in the company hiring counsel for itself and for any of the other affiliates and

D's and O's in that moment because, at that moment, the SEC hasn't said who they're looking at, what they're looking at in particular. It just has made a determination to start an investigation. So, at that moment, as is typical, Eversheds was retained to represent these various entities and people in connection with the SEC investigation.

And during that period of time, lots of documents are provided to the SEC, and it may lead to on-the-record interviews. And on-the-record interviews is typically like a deposition; it's not the same thing, but it's the SEC asking questions. And in that context, information is gleaned about where the SEC is going.

And from time to time, you'll have conflicts counsel come in and represent individuals if there's a -- if there's a concern that that individual may ultimately be a target. And that's hap -- that happened here it happened here. There were conflicts counsel.

And I think the best way to think about it as a bankruptcy judge or a bankruptcy lawyer is when a debtor brings in conflicts counsel to deal with potentially conflicting matters, and then conflicts counsel handles it, while debtor's counsel typically continues to represent the debtor on its other matters.

Oftentimes or sometimes, depending on how the investigation goes, the investigation would lead to what's

known as a "Wells Notice." A Wells Notice is not a complaint. It's a letter that basically says that we at the SEC, the staff at the SEC has made a determination that the company or certain people may have or did violate securities laws, and it expresses an intent to commence an enforcement proceeding. That Wells Notice is an invitation to the people who receive it to respond. And so Eversheds' role at that point in time was to respond to the Wells Notices.

At that point in time, Eversheds was representing the debtor, prepetition debtor, Medley Management, and somewhat each individual D&O. But each individual D&O also had its own story to tell, and each one of them provided its own response to the Wells Notice.

Typically, what will happen is -- and it happened in this case -- there will be -- there will be meetings with the SEC, different back-and-forth with the SEC. And then it goes into a lull.

It's not unlike this very motion. We filed the motion. It was fully briefed, I guess, in February or whatever. And the Court was working on it or reading it or whatever, and then scheduled it for oral argument. There was a lull. I can tell you I didn't charge my client any money and any time for that period of time between it being fully briefed to the time we're here today.

And that's no different than the SEC. The SEC is

determining what to do. That all happened here.

Now what makes this case unique is that, in the interim, there was the Chapter 7 -- Chapter 11 filing of the debtor. And obviously, when that happened, the SEC ultimately determined that it would not seek enforcement against the debtor, but did choose to seek enforcement against certain principals: The Taubes, who I believe are the principals of the debtors -- the debtor and its affiliates; as well as Medley Management, which was the debtor's parent.

Now, as part of the bankruptcy, as Your Honor knows, the chapter -- the liquidating trustee was appointed, which created a bunch of different interests that were bubbling up during this period of time.

The trustee -- and he was a good trustee -- his job is to and his interest -- and he expressed that interest clearly -- was to maximize recoveries for the creditors. And that was his -- that's what he did in connection with the agreements that we're going to look at today.

The Taubes and Medley Management, their interest is to try to get it all behind them without having to pay too much money.

And the SEC's interest is to pursue its enforcement proceeding and seek penalties and injunctive relief. And the SEC has bar relief [sic], it has penalties that it would seek

against an entity or a people who it finds violated the securities laws.

It was in those -- it was in that context that the trustee entered and negotiated the settlement agreement that we're here today to discuss. I have copies if Your Honor needs them, but --

THE COURT: I have the binders, I think.

MR. COLE: Okay.

THE COURT: If it's attached to the briefing, I'll have it.

MR. COLE: Okay. The settlement agreement was entered on or about March 23rd of 2022. There were negotiations that led to it. It's at the docket -- it's at Docket Number 28-1, there's a copy.

And simultaneously with that settlement agreement, there were two ancillary agreements, one mentioned in the settlement agreement it -- well, actually, both are mentioned in the settlement agreement itself. One is the forbearance agreement, and one is what we call the "side letter" with Eversheds.

In the settlement agreement, there was a release -- there is a release, and that's found in Paragraph 6.1, and that's entitled the "Liquidating Trust's Release."

Now, in his interest in trying to maximize recoveries for creditors, the trustee divided the case into

two different pots of money:

One pot of money would be recovered from the Taubes, and potentially maybe management or individuals who the trustee may go after for Chapter 5, you know, avoidance claims.

The trustee carved out from that D&O claims relating to the SEC investigation and other matters, potentially, that the Taubes and D&Os may have done wrongfully, the wrongful acts claims. The reason why those are carved out was that the trustee intended to maximize recoveries through recovering from D&O insurance policies.

So the release in the settlement agreement is directed towards what are called the "release claims," which are the Chapter 5 claims. And the release specifically carves out what's known as the "preserved claim," which are claims that the trustee decided he would assert against the D's and O's -- D&O policy in connection with a potential mediation that was to occur later on. The release is in 6.1 of the settlement agreement. And today's summary judgment motion relates to whether or not Eversheds falls within the scope of that release.

Your Honor, Eversheds does fall within the scope of the release. The release was -- the release in the settlement agreement is subject to New York law. We've submitted -- we've referenced New York's highest courts'

decisions on this.

And I don't believe, here on summary judgment, that there's much of a dispute as to a number of the elements of whether or not the release should apply. There's no dispute here, I believe, that there is -- that this a broad general release under New York law.

It states that the liquidating trustee releases Medley, which is the Medley Management, the Taubes and some others and a whole host of their family members and things and other people. And then it refers to:

"-- all legal advisors and attorneys for each of the foregoing."

And it defines them as the "Taube-related parties."

Now it then goes on to say that those Taube-related parties are released from all "released claims," and that's a defined term that's in the settlement agreement at -- in the preamble of the settlement agreement, Preamble Provision J, which specifically talks about the liquidating trust has other alleged "causes of action" -- and that's a defined term as well -- against one or more of the Taube released parties, including those arising under Chapter 5 of the Bankruptcy Code.

So the definition of "released claims" not only talks about typical claims that were not preserved, non-D&O-related claims. But it specifically points out that, within

the scope of claims that are being released are Chapter 5 avoidance actions.

It goes on. In Schedule 1, which is attached to the settlement agreement, it has defined terms, and I mentioned that "cause of action" is defined. And there, again, cause of action falling within the scope of released claims, includes claims, whether known or unknown, foreseen or unseen -- and that will become important in the argument today -- against any party. And then it says cause of action include, among other things, setoff, breaches of duties, (c) claims pursuant to, among other things, Sections 544 through 550, which obviously are avoidance actions.

I don't think there's a real question of fact. I don't think, if the judges will be -- if Your Honor will be -- rule consistent with New York law on how to define -- how to interpret a contract, I don't think there's any ambiguity as to what claims -- what claims -- are released.

I think the core issue is whether or not Eversheds falls within the definition of "attorneys," that is within the scope of the release. And again, I submit that there's no debate as to the facts here.

There's no debate that Eversheds represented Medley Management and others in the SEC, out of which investigation of this settlement arises.

There's no debate that Section 6.1 refers to all

attorneys.

And I believe the trustee contends that Eversheds were not attorneys for Management and others at the time of the settlement itself. I think that is the trustee's essence of his argument, that "all attorneys" does not include attorneys that were former attorneys. They say only present attorneys.

If we apply the law in New York on how these types of agreements are interpreted, Your Honor is in the state within the four corners of the agreement and its related agreements, and we think that the trustee says we should look at some of the related agreements.

THE COURT: It's your position that you were current attorneys --

MR. COLE: Yes.

THE COURT: -- correct?

MR. COLE: Yes.

THE COURT: Okay.

MR. COLE: And I can show you why without repeating too much of our brief. I'll just do it straight from the agreements themselves.

THE COURT: Okay.

MR. COLE: Item K in the preamble refers to the "Taube Parties." And it says:

"Medley, Seth Taube, Brook Taube" --

And "Medley" being Medley Management.

"-- and executives will enter into a forbearance agreement."

And that forbearance agreement is actually attached to the settlement as Exhibit A.

There's also a provision that's in Section 5 that makes the forbearance agreement a condition precedent to the release being effective.

Again, the question is: What did the parties think at the time they entered these agreements? And Your Honor need only look at the first -- of the preamble to the forbearance agreement to find the answer. This forbearance agreement, an agreement to mediate -- that's the agreement mediate with the insurers -- is entered into effective March 23rd of 2022. That's the date of the settlement agreement. And it's entered by and among Medley Management and its undersigned counsel, Brook Taube, Seth Taube, and some of the Ds and Os and they're undersigned counsel, and Eversheds.

And then it goes on. It says:

"Eversheds, in its capacity as counsel" --

This is as of March 22nd, March 23rd, 2022.

"-- in its capacity as counsel, *inter alia* for Medley LLC and Medley Management."

And Medley the Ds and Os are defined.

That agreement, which the trustee says I need to

take a look at, or you need to take a look at in determining what the intent of the parties was when they entered these agreements specifically says that Eversheds was counsel to Medley Management at the time of the settlement agreement.

And it makes sense for the trustee have done -- to have done that -- or the parties to the forbearance agreement to have done that because, in fact, Eversheds was counseled at the moment.

And I started out by telling you about the -- how SEC investigations work and how the decisions are determined because it was that lull period that there may be some question as to whether or not Eversheds was continuing to represent Medley Management. And the lull period is when the SEC was trying to determine whether or not to settle or whether or not to enforce.

If the settlement fell through, then Eversheds would be -- would likely be counsel in the SEC. And we know that because the trustee went out and obtained an affidavit from the lawyer who represented the Taubes in connection with the SEC investigation when -- in settling the SEC -- with the SEC and settling with the trustee himself. His name is Doug Koff. He was at the Strook firm at the time.

And he specifically said that he was retained to represent the Taubes in connection with, *inter alia*, the Medley LLC Liquidating Trust's investigation into potential

avoidance action claims arising under Chapter 5 of the Bankruptcy Code. So he was involved in the investigation of the -- with the -- of the trustee's investigation of the Taubes as to whether or not there was a Chapter 5 claim.

Then it goes on to say Adele Hogan, who they don't have an affidavit for, was at the firm of Lucosky -- and this is at Paragraph 3 of the affidavit, it's Docket Number 52-1 -- that she was brought in to represent Medley Management in connection with the avoidance action claims. She wasn't brought in as SEC counsel, she wasn't brought in as enforcement counsel, and with good reason, she's not an enforcement lawyer.

The only lawyer that was brought in to represent Medley Management in connection with this period of time was a lawyer to negotiate the settlement, which was the, you know, release -- the release claims. And that made sense, it made perfect sense. Medley Management and the debtor at that point were adverse, and Eversheds represented both in connection with the SEC prior to the bankruptcy. Eversheds could not represent Medley Management and the debtor at the same time in connection with a settlement agreement.

And secondly, to maximize recoveries, the trustee asked Eversheds to do two things: To forbear on its admin claim in this Court, but also not to seek recoveries from the insurance policies that the trustee was going to mediate --

the insurance that the trustee was going to mediate with in his effort to obtain a pot of cash to be delivered to creditors, and to allow that cash to be distributed first to creditors, up to a particular point.

So Eversheds couldn't represent anybody but itself in connection with any of these agreements. It made sense to bring in someone who was a separate party because, as happens in this Court all the time and we talked about earlier, conflicts counsel come in and they deal with conflicts.

THE COURT: And did the forbearance agreement address -- and I apologize, I'm not as versed in the forbearance agreement as you are. Did the forbearance agreement address the claims that Eversheds had against the debtor's estate, in addition to other claims that Eversheds held against insurable parties like the Taubes and --

MR. COLE: I think that it's better --

THE COURT: -- all the claims that they would have against the insurance policy?

MR. COLE: I believe it's better articulated in the side letter.

THE COURT: Okay.

MR. COLE: The side letter talks about -- I believe it talks about the Court approving the final fee and administrative claim, and the side letter deals with the administrative claim.

I think the forbearance agreement is broader, in a sense, because it not only deals with Eversheds, it deals with all the lawyers.

So, for example, if you remember what I read, it talks about, in the preamble, the signatories to the forbearance agreement are not only the individuals and the corporate entities, but it's also their lawyers because their lawyers would seek to obtain recoveries also, so it --

THE COURT: Let me ask it in a more pointed way.

MR. COLE: Okay.

THE COURT: What would have been the point of the forbearance agreement if you were, in fact, a released party, given that the release parties executed a mutual release of their claims against the estate under 503?

MR. COLE: Because --

THE COURT: Were you forbearing and waiving claims against the insurance policy beyond the scope of what could have been arguably released under the settlement agreement? Is --

MR. COLE: We were not waiving claims against the insurance entities, except to the extent that we were, we were delaying any of those claims, and to the extent that the cash that the trustee were to obtain from the insurance policies would first be used -- that we would not share in that cash.

THE COURT: I guess my point is, if you, arguably -- there is an argument by the trust that you could not be a released party because it makes no sense to even engage in the forbearance agreement because, if -- as a released party, you would have waived the 503(b) claim. So what would have been the point --

MR. COLE: I'm sorry. Waived what? Sorry.

THE COURT: The 503(b) admin claim against the estate.

MR. COLE: Right. But this --

THE COURT: So what would have been the point of the forbearance agreement?

MR. COLE: I think the forbearance agreement and the settlement agreement preserved the claim, the admin claim, that had been -- that may have been released for later, depending on what -- who was paid first, in other words, the -- which creditors were paid first. I think it allowed for that administrative claim to continue.

And in any event --

THE COURT: Okay.

MR. COLE: -- I don't believe --

THE COURT: So there's no argument that Eversheds is making that you had claims against -- claims for fees -- okay? That were incurred for representing nondebtor parties that you could have sought to be reimbursed under the

insurance policy and, thus, agreed to forbear them.

MR. COLE: That's correct because --

THE COURT: Okay.

MR. COLE: -- at the time -- at the time, the nondebtor members -- so nondebtor D's and O's -- were among the persons who the D&O policy protected. It wasn't so much the debtor. It's the -- it's a Side A policy and they were the direct beneficiaries of that policy.

THE COURT: So -- okay. I just want to make sure we're on the same page and I'm not asking my question -- and I could look to the agreement. But under the forbearance agreement, was Eversheds agreeing to forbear collecting those fees?

MR. COLE: Yes, it was --

THE COURT: Okay.

MR. COLE: It was forbearing collecting those fees until a future time.

THE COURT: Okay. So they were agreeing to forbear fees that they were entitled to reimbursement under the policy for not only the debtor's work, but for the D's and O's and other folks that they had been representing.

MR. COLE: I believe that's true because --

THE COURT: Okay.

MR. COLE: -- the insurance policies are -- the insurance policies, at the first level, were to the D's and

O's.

THE COURT: Right. And you had incurred fees for other parties, nondebtor parties.

MR. COLE: Well, that goes to -- well, yes, we incurred -- it goes to sort --

THE COURT: Yeah.

MR. COLE: -- of the heart of the case.

THE COURT: Yeah, you -- I mean, I think --

MR. COLE: -- the merits of --

THE COURT: -- you did.

MR. COLE: -- the case. We did.

THE COURT: Okay.

MR. COLE: But Eversheds --

THE COURT: I make no judgment on that issue. I just want to know what the scope of the fees being forbeared under that agreement are.

MR. COLE: Right.

And I think that it's important to understand that, again, this is typical in an SEC investigation --

THE COURT: Right.

MR. COLE: -- and I tried to make this clear --

THE COURT: Yep.

MR. COLE: -- that the corporate --

THE COURT: And I'm not getting into that.

MR. COLE: I understand, but --

THE COURT: And I don't think that's a relevant issue for summary judgment; and, if it is, I apologize.

MR. COLE: Yeah. I -- and I don't believe it is, but I wanted to just comment because I think that the -- I think it -- I think it matters for the context.

I went down the -- I did the history of the -- of an SEC investigation because, typically, the company pays for the defense and it's a joint defense, it's a joint effort. And the law is -- in my mind, is pretty clear that, when you have a joint effort, that the debtor and each of the individuals who are part of that investigation jointly benefit to the full extent of that investigation --

THE COURT: Uh-huh.

MR. COLE: -- and that payment.

Now I believe the trustee raises some other matters, one is the whole lack of consideration issue. And I think that's dealt with in the statutory law in New York. Section 15-303 of the general obligations law makes clear that you can have a release without consideration. It states a written instrument which purports to be a total or partial release of all claims, debts, demands, or obligations or a particular -- or a particular claim shall not be invalid because -- and I'm paraphrasing -- shall not be invalid because of the absence of consideration or a seal.

It allows for, for example, a release to release

third parties who are not -- who are not signatories to the agreement and are not providing consideration. I don't believe that's a valid argument.

The trustee also says that it was defrauded, it thought that Eversheds withheld information about what was paid in the preference period. I think that that field has been plowed already in this Court. I mean, when you reach a settlement, settlements are made for a whole bunch of different reasons. And they specifically say that there's no admission of liability or admission of fault. But there are a whole host of reasons why settlements are made.

But in any event, that's dealt with in the agreement itself. And there's a provision in the agreement, In Paragraph 7, that specifically says that the trustee waives any unforeseen claims. And the law in New York is that, when a trustee or a party who is represented by counsel has every ability to negotiate has a provision like that, then any fraud claim that it was -- somehow there was information that was withheld in reaching that agreement has been waived under that provision. And we cite the case law in our brief.

And finally, I think the trustee says that we've waived the release by not putting it -- by not alleging it in our original answer. I believe that the Federal Rules deal with that in Rule 15 in this case, as discovery was ongoing.

The --

THE COURT: You amended your release, did you not?

MR. COLE: I'm sorry?

THE COURT: You amended your answer --

MR. COLE: Right.

THE COURT: -- with agreement --

MR. COLE: And it was on --

THE COURT: -- of the parties.

MR. COLE: -- stipulation and it relates back to the original answer date.

THE COURT: Yeah.

MR. COLE: And that's the answer to that argument.

So with that, Your Honor, I would conclude that the -- based upon the law in New York, the trustee's un-communicated subjective intent is irrelevant. The affidavit that the trustee submitted is parol evidence. The question is whether -- for you today, is whether or not, as a matter of law, there's an ambiguity. We submit that there is no ambiguity. I believe the trustee also submits there's no ambiguity.

And this release is a handmade document. It was negotiated by multiple sets of lawyers from multiple parties at some of the biggest firms in the country. And it went through many different drafts, I'm sure. And therefore, the Court should read the release on its face and read the fact

that Eversheds is -- and it was an attorney, as of March 22nd, 2023, as stated in the very agreements that were issued in this case, among other things, that it was an attorney that fell within the scope of the rules.

THE COURT: Okay.

MR. COLE: Thank you.

THE COURT: Thank you.

Mr. Carr, good to see you.

MR. CARR: Good to see you again, Your Honor. For the record, James Carr of Kelley, Drye & Warren, on behalf of Plaintiff Respondent the Medley Liquidating Trust. And with me today, Your Honor, is the Trustee Anthony Saccullo of Saccullo Business Consulting.

Your Honor, Eversheds' counsel argues that, two years after filing its answer in June 2023, engaging in protracted discovery and participating in mediation, that the settlement agreement, dated March 23rd, 2022, released Eversheds from all claims the trust had against Eversheds, even though Eversheds is not a party to the settlement agreement, Eversheds is not named in the settlement agreement.

Your Honor, as I will soon demonstrate, the clear language of Section 6.1 of the March '22 settlement agreement, March 2022 settlement agreement, did not release Eversheds from claims that the trust had against Eversheds.

And if the language of Section 6.1 is not clear, the document, read as a whole, including the ancillary documents, which you already heard about -- and I'm going to get into them because they're very important -- what we call the "Eversheds letter" and the forbearance agreement make it clear that Eversheds would not release for the claims the trust has against Eversheds.

And there's one more point I'll make after I get through the documents is, as counsel said it, said what did the parties think at the time of the March 2022 settlement agreement. And I'll be very clear on what the parties thought because Eversheds' actions is very clear on what Eversheds thought.

So let's turn first to Section 6.1, as counsel mentioned. I'm going to read a little bit more of it. But it says that -- and the settlement agreement, Your Honor, is entered into between Medley Management, Seth Taube, Brook Taube, and the executives -- the Brook Taube Trust, and the executives listed in the exhibit to the settlement agreement.

So it says that the trustee releases these parties:

"-- all their respective affiliates, subsidiaries, family members, former trusts, former spouses, successors, heirs, and assigned, and other entities who are controlled by them, and their legal officers, directors, financial and legal advisors,

all employees, representatives, agents, vendors, and attorneys."

It's defined as the "Taube released parties."

Let's first start with New York law. We agreed with Eversheds that the March 2022 settlement agreement is governed by New York law and that, if the language is unambiguous, the intent of the parties is found within four corners of the document.

What I want to mention, Your Honor, is three rules of construction when interpreting a release under New York law that Eversheds ignores. These are important.

Number one, the Court should read the contract as a whole. And release provisions are subject to special rules under New York law based on a realistic recognition that releases contain standardized language and are given in circumstances where the parties are sometimes looking no further than the precise matter in dispute that is settled. Thus, while it has been held that unreformed general releases will be given its full effect where it is evident that the purpose is to achieve truly a general settlement, the cases are many in which the release has been avoided with respect to un-contemplated transactions despite the generality of the release form. Mangini, cited in Paragraph 36 of our opposition.

Two, and I'm quoting:

"When the evidence in the record, including the circumstances surrounding the release, evinces that the parties' intentions are not reflected in the general terms of the release, the release does not conclusively establish a defense as a matter of law."

United Air Conditioning, cited in Paragraph 24 of our opposition.

And third, Your Honor, quote:

"Although the release language is broad and includes a release of all causes of action, where the language is limited to particular claims, demands, or obligations, the agreement will be operative as to those matters alone and will not release other claims, demands, or obligations."

Lexington, cited in Paragraph 36.

With these rules of construction as guidance, let's go back again and look at Section 6.1.

Eversheds argues that it's one of the Taube released parties by virtue of the inclusion of the terms "their attorneys." And we can dispute what "their" refers to, but we don't need to.

So, to demonstrate that Eversheds was not a legal advisor or was not an attorney to the Taube released parties -- and we're talking particularly Medley Management -- in

March of 2022, we need to go back in time, we need to go back to April 2021 when the debtor filed an application to retain Eversheds as special counsel to the debtor in connection with the SEC investigation that was initiated in December 2019.

In the retention application, we learned that, prior to the initiation of this case, the debtor, Medley Management, Seth Taube, Brook Taube, and these same officers and directors had retained Eversheds to represent them in what Eversheds, in the declaration supporting the application, indicated as the "Medley Complex," in connection with the SEC investigation.

Notwithstanding Eversheds' unsupported allegation in its reply and what counsel said here today, that, quote:

> "Eversheds' role as SEC enforcement counsel was essential to settling with the SEC and finalizing the March 2022 settlement agreement."

The evidence, and quite honestly the lack of evidence, proves otherwise.

Eversheds, in its reply, says that missing from the trust's reply is evidence or a document declaring that Medley Management had terminated the relationship with Eversheds. A cite to a case called Beach TV Prop v. Solomon, so we look at that case.

That case, Your Honor -- and by the way, that case is in the context of a legal malpractice action, so you can

understand why the parties wanted to limit the representation. But it makes it clear that no formal withdrawal is required to end an attorney/client relationship.

And another case Eversheds cites, uses to support its position, JuxtaComm-Texas, the Court says the general rule is that the representation ends when the purpose of that representation ends.

The best evidence that Eversheds could produce was the deposition of Eversheds partner, Bruce Bettigole, on September 29th, 2025. When asked -- and this is in the record, Your Honor, I can point to it if you don't have it. But when asked if Eversheds was representing Medley Management in connection with the SEC settlement, not the investigation, but the settlement, Mr. Bettigole responded on Page 36, and I quote:

"We are still counsel, but Doug koff was certainly handling all those negotiations, up to and including drafting of the settlement. Whether we had" -- "whether we had become counsel to Medley Management, as well as the Taubes, at that point, I just feel like I'm unclear on that."

This is the primary attorney that was representing them in connection with the SEC investigation.

When pressed as to why Mr. Bettigole believed Eversheds was still counsel to Medley Management, Mr.

Bettigole responded on Page 37:

"To the best of my recollection, we hadn't withdrawn, we hadn't been terminated by Medley Management."

Well, let's see what the other evidence and lack of evidence exists. Start with number one:

According to legal invoices produced by Eversheds, the last invoice Eversheds sent to any Taube released party was on March 2021. That invoice reflected legal services Eversheds had performed for Medley Management through January 31, 2021.

Eversheds has produced no evidence to show their continuing representation after January 2021.

Eversheds did not produce any invoices, did not produce any emails, did not produce even a log showing at least one phone call to Medley Management that would demonstrate Eversheds was performing legal work for Medley Management after January 2021. Okay?

Eversheds did not produce any emails or logs showing at least one phone call -- one phone call to any member of the Schulte Roth team -- Schulte Roth, as you heard, Your Honor, was retained to represent Seth Taube and Brook Taube in the settlement negotiations with the trust concerning the avoidance action claims against the Taubes and Medley Management -- to demonstrate that Eversheds assisted the Schulte Roth team in the negotiations with the trust, in

resolving the avoidance action claims or, at the very least, Your Honor, in preparing the March 2022 settlement that took close to eight months to finalize.

It's another law firm, another law firm, Lucosky Brookman. So Eversheds did not produce any emails or a log of at least one phone call to any team member of the Lucosky Brookman team, which, as Your Honor heard, was counsel to Medley Management in the settlement negotiations with the trust concerning the avoidance action claims that were being resolved in connection with the 2020, March 2022 settlement agreement, not even anything associated with helping drafting this agreement.

So then we turn to the declaration of Doug Koff of Schulte Roth. And Doug, Mr. Koff, indicated in Paragraph 3, and I quote:

> "Schulte Roth represented Seth Taube, Brook Taube, in connection with the trust's investigation of potential avoidance action claims, and Adele Hogan of Lucosky Brookman represented Medley Management in connection with the trust's investigation of potential avoidance action claims."

In Paragraph 6 of the declaration, Mr. Koff goes on to state Schulte Roth worked on the draft settlement agreement on behalf of the Taubes and Schulte Roth exchanged multiple drafts with the liquidating trust counsel -- that's

Kelley Drye -- and Adele Hogan.

Your Honor, do you know who's missing from Mr. Koff's declaration? Eversheds. Not one sentence about Eversheds helping, working on, consulting with either Mr. Koff or Ms. Hogan in connection with the trust's investigation and settlement of the avoidance action claims against Seth Taube, Brook Taube, and Medley Management; not one sentence from Mr. Koff saying he exchanged drafts of the settlement agreement with Eversheds.

Why didn't Eversheds depose Mr. Koff? Why didn't Eversheds submit in its motion, or at least in its reply, after it saw the trust's response, a declaration from Seth Taube, Brook Taube, or Medley Management, just one sentence saying that Eversheds continued to represent us in March 2022?

And by the way, Your Honor, Medley Management is still around. In fact, Medley Management just recently sued Lowenstein and two partners in the New York State Court for malpractice in connection with the legal services that Lowenstein performed for Medley Management in its bankruptcy case. The lawsuit is on appeal, and Lowenstein just filed a brief response about two weeks ago on May 22nd. So these parties are still here, available, and could have filed a declaration.

Why can't Eversheds produce one shred of evidence

showing that it did something, anything, to demonstrate that it was still representing Medley Management in March 2022, or at least get a declaration?

THE COURT: Is it your position -- is it the trustee's position that, in interpreting the release --

MR. CARR: Uh-huh.

THE COURT: -- Eversheds, in order to be a released party, must have been performing work on the investigation on the subject matter of the release?

MR. CARR: On the subject matter of the release --

THE COURT: Of the release.

MR. CARR: -- not the investigation --

THE COURT: Okay.

MR. CARR: -- on the subject matter of the release.

THE COURT: All right. Okay.

MR. CARR: So let's take a look at this for a second. You know, Your Honor, from February 1st, 2021 to March 23rd, 2022, that's a thirteen-month period. Eversheds did not charge one dollar to Medley Management because Eversheds was being magnanimous, because there was a lull in the action? No, Your Honor. The reality is that the SEC investigation was over prior to the resolution of the avoidance action claims of Medley Management and the Taubes that led to the March 2022 settlement agreement. Kelly, Drye & Warren represented the trust.

What that -- represented the committee, as Your Honor may recall, and represented the trust in connection with settlement negotiations with the SEC. During the case, I spoke to Mr. Bill Uptegrove and Ms. Theresa Shore on what felt like a daily basis, trying to convince them not to file a motion to convert the case, convincing them not to fine the debtor because doing so would be punishing the very same bondholders the SEC was seeking to protect, and convincing them to have the fines imposed on Taubes and Medley Management come through the plan for distribution to bondholders instead of having the fines go to the Fair Funds provision of the Sarbanes-Oxley Act because the debtor's bondholders, in this case, Your Honor, may recall were individuals, they were moms and pops. They were not institutions. The bonds were held from brokerage accounts like, for example, Merrill Lynch or UBS.

But you know, we can continue now, Your Honor, looking at -- still, let's stay with Section 6.1 because, in Section 6.1 --

THE COURT: Well, before we close that thought, where is the evidence in the record that the SEC investigation was over at the time of the settlement?

MR. CARR: Oh, I'll get to that.

THE COURT: Okay. So it's in the -- it's in the --

MR. CARR: Well, Your Honor --

THE COURT: -- binder I have?

MR. CARR: Yeah, I'll get to that, Your Honor.

What we were waiting for, at this point in time, was what the conclusion of the SEC was going to be. I was doing my best to convince the SEC not to fine the debtor. That would have led to additional litigation in this Court as to whether or not these fines should be subordinated to unsecured creditors. And I was able to convince the SEC and, collectively, we were able to convince the SEC to have the fines go through the plan and then distributed directly to the bondholders after -- shortly after receipt of those funds.

And, Your Honor, you know, look at one of the ancillary documents, and we'll get to that. One of the ancillary documents that was entered into in March of 2022 specifically says that the 10 million -- you know, up to $10 million that's coming in. Now how did we know there was $10 million coming in? We're not clairvoyant. We knew because the investigation was over and fines were coming. We just didn't know the amount of fines. But we knew it was going to be up to 10 million. And I'll get there, Your Honor.

But before getting there, let's focus still on Section 6.1. Section 6.1 is very clear that former spouses, former trusts, including, but not limited to any trust that has been revoked or terminated, is also part of the released

parties. It doesn't say former counsel.

So, if you -- now let's take a look at the entire agreement and the ancillary documents. Because what did the parties think at the time of the March '22 -- March 2022 settlement agreement? That's important, as counsel indicated. That agreement resolved avoidance action claims, no question, we agree, avoidance action claims against Medley Management and Taubes.

In this adversary proceeding, Your Honor, the trust is suing Eversheds due to Eversheds' direct conduct. Eversheds also received preferential and fraudulent transfers directly from the debtor. Eversheds is not being sued derivatively based on its -- base don actions of their counsel -- of their clients Medley Management.

The primary case that Eversheds relies on, Wells v. Shearson Lehman, is inapplicable to the facts of this adversary proceeding By the way, Your Honor, we don't ignore it. We just cite more relevant, recent case laws on how to interpret agreements. Let's take a look at Wells for a second. It's important.

In Wells, the plaintiffs sued financial advisors for the exact same conduct that was the subject of a prior lawsuit that was settled. The claim in the second suit that led to the decision was based on the valuation of stock that was prepared by financial advisors, which was the same exact

issue in the prior suit where the plaintiffs sued the company. In this prior suit, the company and the plaintiff entered into a release that released anyone else in connection with the action. That's a defined term, "action."

The financial advisor's valuations form the core of the claim against the company. The Court ruled that the release in the prior lawsuit was clear because the financial advisors were, in fact, the anyone else that led to the conduct that was resolved in the first lawsuit.

Here, the trust is not suing Eversheds for any claims related to Medley Management. Rather, the trust is suing Eversheds, again, for its direct conduct. It had received approximately $5.3 million in payments pre-petition from the debtor.

Counsel for Eversheds makes a big issue about Section 7. And we look to the rest of the document. Unknown claims, and I'm want to turn to that provision, Your Honor. Let's read that provision. It says, and I quote:

"The releases in Section 6 are executed with the full knowledge and understanding by the Parties" -- That's a capital P; "parties" is a defined term. -- that there are more serious consequences and damages that are not known" --

And it continues to say that, the "parties," again, the defined term:

"-- knowingly, voluntarily, and expressly waive their rights that would limit this provision."

The defined term, the "Taube released parties," is not found anywhere in Section 7. Instead, Your Honor, if you want to see where it's defined, turn to the introductory paragraph of the settlement agreement. "Parties" is defined in the introductory paragraph as, quote, "Medley Management, Brook Taube Trust, Brook Taube, and Seth Taube," on the one hand, and the trust and the trustee on the other hand. Not included in this definition is Eversheds.

THE COURT: So is it --

MR. CARR: Yet the --

THE COURT: -- your position that only the parties could execute the release on behalf of their agents, and that, for direct claims, they would not be able to have released those --

MR. CARR: That's correct, Your Honor.

THE COURT: -- because they're not agents? Okay.

MR. CARR: So another section of this agreement that counsel turns to is a third-party beneficiary. Okay. Let's take a look.

But before doing so, under New York law -- and we cite the relevant cases -- only a contracting party -- Eversheds is not a contracting party -- or an intended -- and that's an important word -- "intended" third-party

beneficiary, can enforce the release.

As we know, Eversheds is not a contracting party and Eversheds is not an intended third-party beneficiary. How do we know that? Well, the agreement itself indicates third-party beneficiaries. Who is a third-party beneficiary? This is found in Section 22 of the agreement, "Third-Party Beneficiaries," that's the title. The "executives," that's a defined term -- and that's an exhibit to the settlement agreement, so you list all eight -- are third-party beneficiaries of this agreement and the releases contained herein. Eversheds is not mentioned in Section 22 as a third-party beneficiary. When a party uses a term in one part of the contract, but omits it in another part, courts are occluded from adding that omitted term to Section 22.

So now we're done with the agreement, but it's not the agreement, Your Honor, in and of itself, that's relevant; it's everything else happening with the agreement.

So I want to turn first, Your Honor, to the Eversheds letter because we spent some time on that. Your Honor had some questions. The questions were really geared towards the Eversheds letter, not the forbearance agreement.

THE COURT: Okay.

MR. CARR: The March 2022 settlement agreement contains a reciprocal release in Section 6.2. This is important. I want to mention the reciprocal release before I

get to the Eversheds letter because Your Honor's question was right on point. If the reciprocal release applies to Eversheds, Eversheds didn't have to sign the forbearance agreement and the Eversheds letter would be unnecessary.

Section 6.2 says --

THE COURT: Well, let's back up. It wouldn't be unnecessary if they had claims against the insurance that would not be 503(b) claims --

MR. CARR: That was the forbearance --

THE COURT: -- correct?

MR. CARR: -- agreement and that's correct.

THE COURT: Okay.

MR. CARR: But Eversheds had claims directly in this case, which I'll get to, in connection with its final fee application of approximately $2 million.

THE COURT: Right. So it's all the other actions that occurred.

MR. CARR: Yes. And --

THE COURT: And the side letter -- I'm sorry. The side letter was executed -- there was the forbearance and then the side letter.

MR. CARR: Yes.

THE COURT: And were they -- is that attached as a --

MR. CARR: Yes.

THE COURT: That's attached in these -- to the settlement agreement, correct?

MR. CARR: Yes. And --

THE COURT: Okay. I'm trying to find it for my own purposes here. I didn't know where --

MR. CARR: Exhibit 2.

THE COURT: -- it was in the binder. Okay. Of the Christakos declaration. Do you want a copy, Your Honor? We can hand up --

THE COURT: That's okay.

MR. CARR: -- a copy.

THE COURT: No. That's okay. I'll find it, if we're going to talk about it. Are we talking about it?

MR. CARR: Yes. Oh, yes.

THE COURT: Okay. Okay.

MR. CARR: That's an important agreement.

(Participants confer)

MR. CARR: We can hand up a copy, Your Honor.

THE COURT: All right.

(Participants confer)

MR. CARR: Both. We're going to talk about both. Both are relevant.

THE COURT: Oh, I have -- you know, I have it. It says "Agreement" at the top?

MR. ROOT: Yes.

THE COURT: Yeah, I'm there. Thank you, Mr. Root.

(Participants confer)

MR. CARR: Okay. So, you know, turning back to the Section 6.2 reciprocal release, Your Honor, the Taube released parties -- and counsel have you believe that Eversheds is a member of the Taube released parties -- released the liquidating trustee from any and all claims related to Section 503 of the Bankruptcy Code. Eversheds did not do that, they did not waive their claim. In fact, as I'll demonstrate soon, they pursued their claim and continue to pursue their claim, even in connection with the answers --

THE COURT: How can I -- so we're on summary judgment.

MR. CARR: -- that were filed.

THE COURT: I just -- procedurally, we're on summary judgment.

MR. CARR: Uh-huh.

THE COURT: And I do have to decide whether this is clear --

MR. CARR: Uh-huh.

THE COURT: -- and unambiguous. So walk me through how I can take -- I can look at those documents at this point.

MR. CARR: These documents are in evidence pursuant -- well, first of all, I think summary judgment -- I think

summary judgment is inappropriate, and I'll explain why at the end.

THE COURT: Right.

MR. CARR: The trust's interpretation of the agreement is plausible; it's correct, but it's also plausible. And quite honestly, Your Honor, if it's not, then summary judgment is inappropriate.

THE COURT: Right, right.

MR. CARR: So -- but I was going to get to that at the end because there's just a lot that counsel for Eversheds just glosses over or fails to mention. And counsel's right, the release date in the settlement agreement conditioned the effectiveness of the reciprocal release on the satisfaction of several conditions, two of which was the Eversheds letter and the forbearance agreement.

So turning to the letter, it's dated March 9th, 2022. And it basically says Eversheds will agree to forbear, not waive, from exercising its right to receive payment on its two-million-dollar administrative claim.

I want to focus the recital paragraph in the Eversheds letter. It says, whereas the liquidating trustee is negotiating a settlement, the Chapter 5 settlement, avoidance actions, of the liquidating trusts causes of action are covered by insurance against Seth Taube, Brook Taube, and Medley Management, the settling defendants -- they're the

ones settling, not Eversheds -- under which they will make a cash payment and up to a ten-million-dollar payment.

How do we know there's going to be a ten-million-dollar payment, Your Honor, on March 9th, 2022? Why? Because the investigation was over. That decretal paragraph makes clear that Eversheds is not intended to be a released beneficiary because the avoidance action claims being released are those asserted against, quote:

"-- in this document, the settling defendants, Seth Taube, Brook Taube, Medley Management."

If, however, Eversheds was released in this agreement, then Eversheds also released its two-million-dollar administrative fee claim that was awarded by this Court in connection with Eversheds' final fee application on January 26th, 2022. There would be no need for the Eversheds letter, by which Eversheds reserved its right to collect from the trust $2 million.

And I want to focus on the administrative fee claim. Just remember that, Your Honor, because that number goes from $2 million to four hundred and thirty to, all of a sudden, hey, let's waive it. But they never gave up the right to pursue it.

Before getting there, let's talk to -- the forbearance agreement. A number of parties entered into the forbearance agreement, one of which was Eversheds. And this

was Doug Koff's brainchild because they were trying to preserve insurance proceeds because, from our perspective, we sued the Taubes directly. If insurance covered it, it did; if it didn't, we sought lawsuits against the Taubes and meddling management.

But as counsel pointed out, they will preserve claims. The preserved claims were like D&O liability, things that would be covered under insurance. And the forbearance agreement provides that the liquidating trust is, in fact, a third-party beneficiary.

And one of the recitals to the forbearance agreement describes the release provisions as releasing -- this is the release provisions of the 6.1 of the March 2022 settlement agreement -- as releasing, I quote now:

Medley" --

And that's Medley Management.

"-- the Medley D's and O's" --

That's Seth and Brook Taube and the executives.

"-- and certain other individuals and entities from the alleged causes of action."

That's a defined term, as counsel correctly pointed out.

It includes avoidance actions, that the liquidating trust has against one or more of the "insured partied" -- another defined term.

"-- insured parties, Medley Management and its affiliates, subsidiaries, and executives."

Not Eversheds. Eversheds is not an insured party.

And again, if Eversheds was included in the release in 6.1, Eversheds would not need to be a party to the forbearance agreement because Eversheds would have released its two-million-dollar administrative claim.

At a minimum, Eversheds, which was very active according to counsel, during this time period, should have modified that clause indicating it was one of the released parties.

What did the parties think at the time of the entering into the March 2022 settlement agreement? Under New York law, Your Honor, the settlement agreement, the Eversheds letter, and the forbearance agreement should be read as one coherent document. And basic principles of contract construction require that the agreement be read to give effect to all provisions and to make sense at the time they were executed, not two and a half years later.

So, if Your Honor determines that Eversheds was in fact released in 6.1 as a Taube released party, then Eversheds, in fact, breached Section 6.2. And this is important because Eversheds has preserved its right since the final fee application was filed, I believe, in November of 2021 to pursue its administrative claim.

As Your Honor may recall, on January 23rd, 2023, the trust filed a motion to vacate an order retaining Eversheds as special counsel for the letter for the SEC investigation and that portion of the final fee order awarding Eversheds approximately $2 million. Why? Why did the trust do that? Because, during its investigation of potential claims, the trust discovered that Eversheds' retention application that was filed in April 2021 and the declaration of Eversheds partner, Mark Sherrill, filed in support of the application misrepresented both the amounts and the source of payments that Eversheds received during the preference period.

This is something certainly the trust -- the committee would have done when any counsel is retained. You've got to go through the Pillowtex arguments and, you know, do you have a preference or not. But you know what? We rely on the documents that are filed.

The Sherrill declaration states that during the ninety-day period prior to debtor bankruptcy filing, and this is a quote:

"Eversheds received a total of about $1 million on account of work performed for the debtor" --

And that Eversheds have been reimbursed by insurance carriers, not the debtors.

Two material terms of that declaration are false:

Eversheds received over $2 million in the ninety-day period and they received the money directly from the debtor.

After the October 18th, 2021 effective date of the plan, Eversheds filed a final fee application, again, filing a declaration with that final fee application. On January 26th, 2022, the Court entered an order awarding Eversheds $2 million in connection with the work they performed -- and I'm going to do air quotes here, Your Honor -- for the debtor during the bankruptcy case.

In January 2023, we prepared a motion to vacate because we had learned that no, you didn't receive a million dollars pre-bankruptcy, ninety-day period, you received $2 million and, by the way, you got paid directly from the debtor, not from the insurance companies. So we were going to vacate the retention order and we were going to vacate the final fee order.

On Friday, January 20th, 2023, I provided a draft of the motion to vacate to Eversheds. That was on a Friday. As I do with anyone, Your Honor, see if we can negotiate. Why bother the Court getting into litigation if we can negotiate? Eversheds didn't respond by saying the draft motion was unnecessary because Eversheds released its claims in Section 6.2 of the March 2022 settlement, no.

Eversheds responded on the Monday, the following Monday, January 23rd, 2023, by filing a third declaration by

Mark Sherrill, a partner at Eversheds, in which Mr. Sherrill admitted, yeah, you know what, we received $2 million during the preference period, not 1 million that, you know, I originally indicated, and the 2 million was received from the debtor, not from insurance. And they basically said we made a mistake, we made a mistake in counting, we don't know how to count 90 days.

Later that same day, when I saw it -- I didn't get a courtesy of a call -- I said, you know what, I told the trustee, let's file the motion to vacate. We did. Okay?

At no point during discovery did Eversheds say hey, by the way, we released our claims in Section 6.2. Okay.

But this is where it gets really interesting. During discovery, we obtained a letter that Eversheds sent to Travelers Casualty Insurance Company of America seeking reimbursement of defense costs related to the SEC investigation. Okay. In this letter, Eversheds admitted, admitted to the insurance company, that the legal services Eversheds provided to the Taubes, Medley Management, and the debtor in connection with the SEC investigation should be allocated among those clients. And by the way, the amount allocated to the debtor, $436,673.28, not $2 million. Well, and that's notwithstanding the declaration that was filed in connection with the final fee application.

Well, not surprising. Guess what happened, Your

Honor? We settled, never came before, Your Honor. We settled, provided Eversheds with an administrative claim now of $436,000, which Eversheds continues to press and pursue. So we settle. We enter into the motion to vacate settlement agreement.

Eversheds insists on including the following language in the agreement, and I quote:

"This stipulation shall not" -- "and no negotiations relating to this stipulation shall be admissible into evidence in any proceeding, including the adversary proceeding pending against Eversheds."

This adversary proceeding. Why? Because they're maintaining their right to pursue and collect $430,000. Again, what did the parties think back in March 2022? What did the parties think in January 2023? Eversheds is are not a released party.

Counsel spends a few minutes talking about a conflict and how they -- it was -- I don't think it was confusing, but there was a conflict, if you believe counsel's position, and I'll explain how. If Eversheds was, in fact, still representing Medley Management during the negotiations with the trustee regarding the resolution of the avoidance action claims, that means Eversheds was representing both the trust, on the one hand, Medley Management, on the other hand,

that ultimately led to the settlement agreement, the March 2022 settlement agreement. A simultaneous representation of both the liquidating trust and Medley Management would have presented a conflict under appropriate Delaware Professional Rules of Conduct. No waiver was ever obtained.

Counsel also spends some time talking about consideration. And Your Honor, we cite the appropriate law. But the trust cites New York case law that stands for the proposition that the scope of release can be inferred from the amount of consideration exchanged.

Eversheds seeks a release of claims based on its own independent liability to the liquidating trust. Eversheds provided no consideration to the liquidating trust for a release of approximately $5.3 million in alleged avoidance action payments that the debtor paid to Eversheds. The Court should not read into that agreement that this is an appropriate consideration.

Courts have been very clear -- and we cite those cases -- that you have to look at the consideration being provided in connection with the release. The Court should not see or deem consideration of forbearing. That's the consideration. They didn't waive forbearing their right to collect.

And by the way, they still had the right after a certain time, if Your Honor looks at the forbearance, to go

after the insurance companies. Eversheds, for whatever reason, chose not to do that. Why? I don't know.

It's also important, Your Honor, in the counterclaim, Eversheds' counterclaim, they still -- the counterclaim is still seeking to go after the trust for its administrative claim.

So the final point, Your Honor, I want to make because it's the final point counsel made is: If Your Honor believes that Eversheds is included as a Taube released party in Section 6.1 of the March 2022 agreement, Your Honor, we cite -- and I'm not going to go through all the reasons why Your Honor has the authority to say the release doesn't apply today. But one I want to focus on is the fraud issue because that's what counsel focused on.

Eversheds cites to a case called Centro to support the proposition that the trustee cannot recharacterize the claim as fraud to get around the release. We're not trying to do that. We agree. We agree with that case, Your Honor. The trust is not trying to recharacterize the claim it has against Eversheds as fraud.

What the trust is alleging is that Eversheds obtained the release through fraudulent conduct. In fact, you heard counsel here today say they were representing other parties than the debtor. But yet, when they filed the final fee application, all of Eversheds fees went to the estate.

And in fact, if you go on in Centro, it recognizes that procuring a release through fraud, not a claim of fraud, is an exception to the release.

At the time of the execution of the March 2022 settlement agreement, the trustee was not aware of any cause of action against Eversheds because of Eversheds' misrepresentation of fraudulent concealment from the filing of its original retention application through the filing of its final fee application. We had no reason to doubt that. It was only when we started looking at the documents to pursue avoidance action claims against Medley Management and the Taubes that we started to uncover the truth.

When we became aware, when the trustee became aware that these pre-petition payments were made to Eversheds, that's when we filed the motion to vacate. The motion to vacate then led to the insurance letter, which then led to the reduction of the claim.

You know, we continue to rely on these representations by Eversheds in connection with their final fee application. But Your Honor, to the extent the release provision includes Eversheds as the earliest party -- which we argue it does not, clearly -- Eversheds secured the release through fraudulent concealment and unclean hands. And we cite appropriate cases that says Your Honor does not have to enforce the release.

And then, in closing, Your Honor -- and I already mentioned this -- you know the standards for summary judgment. It's obvious we have a different interpretation. We think our interpretation is clear. But at worst, at worst, Your Honor, the release provision is ambiguous, which means the Court should deny summary judgment. If there are more than -- two or more plausible readings in connection with the contractual provision, it's ambiguous. Thank you, Your Honor.

THE COURT: All right. Thank you very much.

MR. COLE: May I respond?

THE COURT: You may. However, I have a meeting that I need to drive to that starts at 11. So how long is your reply?

MR. COLE: I'll do it --

THE COURT: Five minutes?

MR. COLE: I'll do it in five minutes.

THE COURT: Okay. Please.

(Laughter)

MR. COLE: I'll do my best.

THE COURT: Okay.

MR. COLE: Okay then.

THE COURT: I don't want to to watch the clock, but I've been watching it.

MR. COLE: All right. Okay. I would make this

longer, but I'll rattle them off.

THE COURT: Okay. Please.

MR. COLE: So -- if that's okay.

THE COURT: And I did read the briefing and I have --

MR. COLE: Yeah, I understand.

THE COURT: -- the benefit of the briefing, so --

MR. COLE: And I'm not going to try to repeat what's in the briefing. I just wanted to comment on item one. When we talk about releases -- and I believe counsel referred to the Mangini case -- the Mangini case. In New York, there is a distinction, the courts draw a distinction between releases found in form contracts -- so, for example, if you get on a ride, there's a release, and people just sign them. Okay?

This case is very different. This case falls within Wells. And Wells makes it very clear that, when you have phalanx of lawyers and a lawyer who's actually the party -- all right? They -- in an agreement that's fully negotiated -- right? The language that's in the agreement is the language that's meant. And they have an opp -- the counsel and the parties have an opportunity to carve out entities that were not supposed to be included in the language.

The best evidence, Your Honor, is -- when it comes

to whether or not something -- whether or not it was terminated, is Exhibit 4 and Exhibit 5. If you want to go outside the agreement, it wasn't terminated because Mr. Bettigole said that it was -- they were continuing waiting for the SEC to make its decision in Exhibit 4, in the reply brief. And then Reid Collins, who the trustee hired as its counsel, identified Medley -- I'm sorry -- Eversheds as counsel for Medley Management as late as January 26th of 2022.

The direct -- the argument that this was a direct claim against -- these are direct claims against Eversheds, that's always a point that is made with respect to general releases that have other parties in there. But this is unique. It's not really a direct -- it's a direct claim against Eversheds.

But if Eversheds were to have to cough up some of these fees, then Eversheds has a concordant right to go after the individuals and other parties, including Medley Management, for reimbursement. That's the reason why you have a broad release like this. That's the reason why you include the attorneys because the attorneys can seek back against the signatory parties. And that's set forth in some of the cases that we cited in our brief.

Paragraph 7, I believe Paragraph 7 was referred to. I think there was a mistake made. This is the unknown

claims.

Yeah, the parties -- the reference to the parties there is the reference to the Taube -- to the signatories of the agreement. It's the signatories who are releasing claims. Their knowledge and understanding is released under Paragraph 7. The fact that the -- all the Taube released parties are not defined as "parties" for purposes of understanding whether or not there are fraud claims is irrelevant. It's only directed towards parties, which are the signatories to the agreement.

The intended third-party beneficiary agreement -- argument is irrelevant because, again, not every person who is subject to a release is defined and an intended third-party beneficiary. There are other provisions in the agreement that the third-party beneficiaries enjoy, and that's the reason why they're identified.

The reciprocal release provision. Again, Your Honor asked me this question relating to this. I'm a little bit confused, but I'm going to try my best.

My understanding is that Section 6.2 says that there are reciprocal releases by the Taube released parties, right? That would mean that all claims are released a Taube released -- if all Taube released parties, who didn't -- even non-signatories, are part of that section.

The side letter reserves a claim that would

otherwise be released. It reserves a claim to seek reimbursement from -- under the admin claim. And the forbearance agreement allows for -- to seek relief from the insurance companies. Those claims are not waived or released under these side agreements. So it makes sense to have a side agreement, so Eversheds could continue to seek its admin claim that existed at the time and is referenced in the letter agreement.

The $10 million counsel makes a big point about how do we not know about the $10 million, how do we know about the $10 million. Well, that's easy, because it was a negotiated term of the settlement agreement. It's in Section 3 of the -- it says settlement payments. It says, in exchange for the releases, the Taube parties will pay $10 million.

This was two weeks later. The dollar amount was already negotiated and arrived at prior to the settlement agreement. That's typical in negotiating a settlement agreement. The monetary terms are typical. And they don't necessarily coincide with what the ultimate decision was by the SEC. There's no evidence in the record that says that the SEC dictated the $10 million.

I think that was the fact that the SEC was dealing with potentially a trustee or the Taubes on February 1st is irrelevant. And frankly, the law is that the SEC doesn't

agree to anything until the OIP is issued, and that wasn't until April of 2022.

Counsel spent a lot of time on lots of anecdotes as to what happened in the case and what they were doing at the time and all that other stuff. None of that is in the record. And they -- counsel could have -- in the same way Mr. Koff did, counsel could have put his own affidavit in and we could have taken that deposition and determined it.

Finally, on the fraud issue, the case law deals with and Wells deals with the valuation of the claims, whether or not there was information that was withheld to value the claims. That's what they're saying here, that Eversheds withheld information as to claims that could have been asserted under Chapter 5 against Eversheds. It's the value of the claims that were being released.

Counsel went into -- and my -- the final point is counsel went into a long colloquy about what happened in connection with the fee application. It is correct that there was a mistake made, I was -- I litigated that piece of it. It is correct that it was settled and it is correct that part of the settlement was to assert claims against insurance policies. But the -- again, I have to stress, none of that is relevant for whether or not the release applies and whether or not it falls within the scope of the release.

But secondly, there are reasons why people do

things, such as maybe the insurance companies are clients of the firm that make it really hard to go after the insurance companies, just hypothetically. There are other things that intervene when parties settle agreements -- settle disputes. It doesn't mean that there was some kind of fraud that occurred.

And in fact, the trustee himself -- and we cite this in our brief. The trustee himself testified that he had all the information he needed to know at the time of this agreement to be able to determine what transfers Eversheds received in the moment. The trustee cannot say that he was misled because he had the information himself.

And that's the reason why courts like Wells talk about this. It talks about, you know, that -- number one, that Eversheds was not a remote stranger that nobody knew about. And that's, by the way, I think, Delaware law. And it talks about, you know, it's not a handmade document; it's by sophisticated parties who have information.

And so for that reason, Your Honor, respectfully, I don't think -- I don't think the trustee has met his burden on summary judgment. I believe the settlement agreement is unambiguous, the release is unambiguous, and I respectfully request that the Court dismiss the case.

THE COURT: Okay. Thank you all very much for this argument. I have to adjourn. I'll take the matter under

advisement --

MR. COLE: Thank you, Your Honor.

THE COURT: -- and I will rule as promptly as possible. Thank you all so much.

MR. CARR: Thank you, Your Honor.

THE COURT: Thank you for the time.

(Proceedings concluded at 10:51 a.m.)

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CERTIFICATION

I 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 my knowledge and ability.



June 10, 2026

Coleen Rand, AAERT Cert. No. 341

Certified Court Transcriptionist

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