UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11 Case No. 24-11217 (BLS)
VYAIRE MEDICAL, INC., *et al.*,	(Jointly Administered)
	Courtroom No. 1 824 Market Street Wilmington, Delaware 19801
Debtors.	
	Friday, August 30, 2024 10:35 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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(Proceedings commenced at 10:35 a.m.)

THE COURT: All rise.

Please be seated.

Good morning. Mr. Reilley, good morning. Good to see you.

MR. REILLEY: Good morning, Your Honor. Nice to see you.

Patrick Reilley from Cole Schotz, on behalf of the Debtors.

Your Honor, the only item going forward today is the Debtors' sale motion. Thank you to Your Honor and to your chambers for hearing us this morning on the Friday before the holiday weekend.

THE COURT: Happy to oblige.

Mr. Winters will be presenting the sale motion and argument. We received permission for Mr. Winters to appear via Zoom.

THE COURT: Right.

MR. REILLEY: Thank you, again, Your Honor, for that accommodation.

Tabitha De Paulo from Kirkland will be handling the evidentiary portion of today's hearing.

Before turning things over to Mr. Winters, the Debtors have a presentation that we will -- we received permission to share the screen, Your Honor.

I have a hard copy if you'd like?

THE COURT: I'd like the hard copy, as well.

MR. REILLEY: If I may approach?

THE COURT: Sure. Thank you.

(Pause)

MR. REILLEY: So, now, Your Honor, I'd propose to cede the podium to Mr. Winters.

Thank you, Your Honor.

MR. WINTERS: Good morning, Your Honor.

Can you hear me okay?

THE COURT: I sure can.

Good morning, sir.

MR. WINTERS: Good morning.

Spencer Winters of Kirkland & Ellis, LLP on behalf of the Debtors. Your Honor, I asked that I might appear by Zoom; once again, at another important hearing, I spent the evening yesterday at O'Hare and even taxied out on the runway before, somehow, ending up back at my house. I looked into making it up there this morning, but it was going to be very, very tight, so I figured the better part of valor was to appear by Zoom.

THE COURT: No, I think that makes sense.

And, certainly, I have been -- I think everybody in this room has been through that precise experience, so --

MR. WINTERS: Thank you, Your Honor.

THE COURT: -- I'm happy to proceed today.

MR. WINTERS: Thank you, Your Honor.

Your Honor, when we were here on Monday, I thought that maybe a 15-minute adjournment or at least the balance of the day, was going to get us to a resolution. It did get us there with the secured lenders and we filed revised proposed orders on Tuesday reflecting that agreement with the secured lenders. Clearly, even the balance of the week didn't get us there with the Official Creditors Committee and so that's what we're here to address today.

The good news is I believe we're down to that one objection today, and that's the Committee's objection. The Committee filed a supplemental objection on the docket yesterday afternoon. We filed a reply overnight.

I have a very brief argument --

THE COURT: I have seen and read both of those documents.

MR. WINTERS: Great. Thank you, Your Honor.

I have a very brief argument that I'd like to present, together with the slides that we've got put up here, and then after yielding the podium to others, I'm going to ask my colleague, Ms. De Paulo, to call our one witness, Mr. Charlie Braley from AlixPartners.

THE COURT: Mr. Winters, let me ask you a question --

MR. WINTERS: Yes, Your Honor?

THE COURT: -- in terms of mechanics of today's hearing. Again, I appreciate getting submissions right before the hearing from both sides. I understand that this has been in active negotiation now for the better part of a week.

I think the Committee was careful to note that the Committee has no objection to the sales that are being proposed, but to the supplemental or specific issues, with respect to the use of funds, disbursement of sale proceeds, and the budget and funding for post-sale activities.

Is that a fair characterization?

MR. WINTERS: That's right, Your Honor.

I think we are really arguing today about the paydown and the holdback.

THE COURT: So the question I would ask is, just in terms of -- remind me if you would, I know that we started the hearing last week and then pretty promptly adjourned, but I don't know that we had admitted into evidence the various declarations that go to the Debtors' case in chief for purposes of approval of the sale, business judgment, good faith, the 363 standards, which, again, I assume are not in material dispute now. And so I'm just wondering if we ought to sort of deal with the record for the sale and then turn our issue to what seems to be the live dispute in front of us today.

Does that make sense?

MR. WINTERS: Yes, Your Honor.

So, you are right that I don't think the sales and the fact that the sales are value-maximizing are in dispute. You're also correct that the declarations have not yet been admitted.

Our plan for today was to allow for argument from all sides around the issue that's open, then I was going to turn it over to Ms. De Paulo, who's going to introduce the three declarations and call Mr. Braley. I don't think that there's any objection to the declarations going in, and I think that Mr. Braley will then get on the stand and testify about the narrow issue that's in dispute regarding the paydown and the holdback. The Committee will cross him, and then I think the Court can rule or take it under advisement at that point. So that's how we planned to proceed.

If you'd rather do declarations now, I'm happy to do that, as well.

THE COURT: Yeah, I think it would make more sense to do the declarations now and to do the -- elicit the testimony, and then I would hear argument from the two sides.

MR. WINTERS: Great, Your Honor.

THE COURT: You know, I don't want to -- obviously, I understand the dispute that is before me today, but just in terms of details, and if I were the buyer, I would want to make sure that the record got fully entered for a good faith finding, and then we'll deal with the dispute over what happens to sale proceeds, which is I think where we are.

So I would suggest that we proceed first with the decks.

MR. WINTERS: And, Your Honor, with the declarations and the live testimony from Mr. Braley, and then we'll do argument after that?

THE COURT: Yes.

MR. WINTERS: That sounds good to me, Your Honor.

In that case, I will turn it over to Ms. De Paulo to put those declarations in and to call Mr. Braley.

THE COURT: Great.

Ms. De Paulo, welcome.

MS. DE PAULO: Good morning, Your Honor. Tabitha De Paulo from Kirkland & Ellis, on behalf of the Debtors.

As Your Honor suggested, I would first move to admit the declarations. The first declaration of Ms. Elise Frejka was filed at Docket 403. Ms. Frejka is on the Zoom and available to answer questions, and we would request admission of Ms. Frejka's declaration into evidence at this time.

THE COURT: Very good.

The Court notes that permission has already been given for Ms. Frejka to appear remotely today for our proceedings.

I would ask if there are any objections to the admission of Ms. Frejka's declaration in support of the Debtors' case in chief for purposes of obtaining approval of the sales that are before the Court?

(No verbal response)

THE COURT: Hearing no objection, Ms. Frejka's declaration is admitted.

(Frejka Declaration received in evidence)

THE COURT: I would ask if there are any parties that intend or expect to cross-examine Ms. Frejka regarding the contents of her declaration?

(No verbal response)

THE COURT: Very well.

Ms. Frejka's declaration is admitted.

MS. DE PAULO: Thank you, Your Honor.

The second declaration is of Michael Schlappig from PJT Partners, which was filed at Docket 405. Mr. Schlappig is also on the Zoom and available to answer any questions.

At this time, we would request admission of Mr. Schlappig's declaration into evidence.

THE COURT: Very good.

And I would ask if there are any objections to the admission of Mr. Schlappig's declaration, again, as part of the Debtors' case in chief for purposes of the sales that are before the Court today?

(No verbal response)

THE COURT: Very well.

Mr. Schlappig's declaration is admitted.

(Schlappig Declaration received in evidence)

THE COURT: Is there any party that intends or expects to cross-examine Mr. Schlappig regarding the contents of his declaration?

(No verbal response)

THE COURT: Very well.

That declaration, is, likewise, admitted, without contradiction.

MS. DE PAULO: Thank you, Your Honor.

Finally, the Debtors have Mr. Braley here to testify live, but in an effort to streamline his live presentation, we would request admission of his declaration into evidence, which was filed at Docket 404.

THE COURT: The Court understands that Mr. -- Braley?

MS. DE PAULO: Braley.

THE COURT: That Mr. Braley is --

Welcome, sir.

-- that Mr. Braley is going to testify live. I would ask if there are any objections to admission of his declaration, subject, of course to the opportunity to cross-examine?

MS. DE PAULO: No, Your Honor.

THE COURT: Hearing no objection, Mr. Braley's declaration is admitted.

(Braley Declaration received in evidence)

THE COURT: Are there any other decks?

MS. DE PAULO: That is all the declarations.

THE COURT: Shall we call Mr. Braley?

MS. DE PAULO: Yes, Your Honor.

The Debtors call Mr. Braley.

THE COURT: Good morning and welcome.

MR. BRALEY: Good morning, Your Honor.

THE COURT: Please remain standing. We'll swear the witness.

CHARLES N. BRALEY, DEBTORS' WITNESS, SWORN

THE WITNESS: I do.

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

THE WITNESS: My name is Charles Braley, C-h-a-r-l-e-s B-r-a-l-e-y.

THE COURT: Very good. Welcome.

Have a seat, sir.

DIRECT EXAMINATION

BY MS. DE PAULO:

Q Good morning, Mr. Braley.

I know you have submitted a number of declarations in this case that the Court has reviewed, but since you haven't had the chance to present here in court, I would like you to introduce yourself to the Court today.

A Good morning, everyone.

I'm Charles Braley --

THE COURT: Can you pull the mic -- I'm sorry.

I can hear you just fine. Pull the mic a little closer to you so that the court reporter can pick you up.

THE WITNESS: Good morning, everyone.

My name is Charles Braley. I'm a partner and managing director at AlixPartners, currently serving as chief restructuring officer at Vyaire Medical, Inc.

BY MS. DE PAULO:

Q How long have you worked at AlixPartners?

A I've been with AlixPartners, cumulatively, just over 20 years and beginning in 2001.

Q How many years' experience do you have in the restructuring space?

A Over 20 years' experience.

Q Can you give the Court a few examples of companies that you have advised?

A Yeah. Some have been here in Delaware; others, in other jurisdictions. The cases I've been part of most recently, Mallinckrodt Pharmaceuticals, Basic Energy Services, NPC International, Bearingpoint International, RCN Cable, to name a few.

Q Since we're here today for approval of some sale orders, can you describe some of your experience as it relates to sale processes in Chapter 11?

A Yeah, I've been -- the overwhelming majority, frankly, of my cases have been -- have resulted in a sale of some or all of the business as part of the bankruptcy process. And I'm also familiar with the auction process. And, hence, the wind-down and estate obligations that result have having sold, you know, substantively, all the business as part of a bankruptcy process.

Q So what experience do you have as it relates to preparation of wind-down budgets and winding down estates?

A Considerable experience.

I've done it in at least, I'd say seven or eight cases, in some varying levels of complexity.

This one is a similarly complex situation, given its international operations, but it's something that I'm very familiar with.

Q Specifically in your role at AlixPartners, how have you participated in their analysis of wind-down situations?

A So, I am the co-lead of a subpractice within our restructuring practice that focuses on wind-down; myself and a couple other colleagues are the resident experience, if you will, for wind-down planning, preparation, and execution.

Q Turning to your work for the Debtors here, when was AlixPartners first retained by the Debtors?

A We were retained in March of '24.

Q In your role as CRO, what have been your primary responsibilities as it relates to the Debtors?

A It was to help advise the Debtors in the pre-bankruptcy process to consider options around a path forward. Since the decision was made to file the company, it's been in support of preparing and administering the cases, as well as operationally supporting the company in liquidity management, general business operations, and then most recently, as part of the marketing-and-sale process to support the company through those efforts.

Q Have you helped to prepare some demonstratives today to walk the Court through your testimony?

A Yes, I have.

MS. DE PAULO: Your Honor, my colleague Mr. Raphael is on the line.

Is he able to publish? And I also have hard copies available for the Court.

THE COURT: I would like a hard copy, but it looks like he's on and able to manage.

MS. DE PAULO: May I approach?

THE COURT: Yes, of course.

Thank you. Can you give one to my law clerk, please?

(Pause)

BY MS. DE PAULO:

Q Mr. Braley, today I'd like to talk to you about the Debtors' marketing-and-sale process, particularly, the sales we're seeking approval of today; some of the background with the lenders, as it relates to the sale; your forecasts and holdback estimates; and then a few responses to some of the arguments that the Committee has made.

Are you prepared to testify today on each of these topics?

A Yes, I am.

Q How were you involved in the Debtors' efforts to market and sell their assets?

A We supported the pre-sale process in helping the company develop marketing materials and diligence from interested parties in the lead-up to what was an auction on the vent side and, ultimately, an agreement of a sale agreement on the RDx side of the business.

Q Okay. Since we already admitted your declaration, I'm not going to go into a lot of the detail on the background there, but can you just describe, in particular, your role in participating in the auction?

A So, specifically, we were, obviously, in attendance and executing the auction in coordination with Kirkland and PJT. We were, I guess, the essential responsible party for evaluating the bids and understanding the economic impacts of the various bids in the different rounds that were conducted.

And in an effort to ensure that each, you know, subsequent bid did, indeed, constitute an overbid, met the value requirements to do so, and then were able to educate the remaining buyers and bidders on, you know, what their options were for moving forward with another subsequent overbid.

Q Why did the Debtors decide to conduct an auction?

A We believed in our reasonable business judgment that it was the value-maximizing path to realizing value for the estate for the constituents.

Q How would you describe the Debtors' engagement with the Committee and the lenders throughout the auction process?

A It was consent throughout.

We were -- after each round of bids, we would provide updates on what the updated bid profile looked like and the economic impact of that bid and provided, you know, consistent updates at day's end when we would adjourn into the next day.

It was a multi-day auction process, so -- and there were a lot of complicated bid dynamics, so we were trying to, you know, organize those, simplify them, explain them to the counterparties so they could understand where we were at in value realization.

Q Let's talk about the results of that auction first.

Which of the qualified bidders was selected as the successful bidder at the auction?

A That's ZOLL Medical, Inc.

Q What are the key terms of the ZOLL bid?

A The key terms of the ZOLL bid are, essentially, it is a going-concern acquisition of the ventilators business. It is both, U.S. and internationally. It has a $30 million proceeds -- $37 million proceeds headline number, but in addition to that, it has the assumption of a number of liabilities, both in the U.S. and internationally. And, in addition to that, it provides for continued employment of, you know, a great majority of the ventilators' employees.

Q Speaking of the continued employment, why was it important that this bid was a going-concern bid for the Debtors?

A It provides -- well, first of all, the ventilators business provides essential, life-saving equipment to the medical community in the U.S. and internationally, and has, you know, daily, lives are in their products' hands, if you will.

So it was important to ensure the continuation of those products into the marketplace, but in addition to that, it was important for, as a going-concern bid would provide the best path forward for both, the employees, the customers, and the vendor community that serves Vyaire.

Q What made ZOLL's bid the occasion attractive to the buyers?

A It was the highest and best value we received. It provided for meaningful recovery, and as I said, and it was, in our reasonable business judgment, it was an overbid amount from the nearest competing bid of approximately $1.2 million.

Q Let's talk briefly about the respiratory diagnostics assets sale. Are you okay if I call that "RDx"?

A Yes, I am.

Q Okay. That -- those assets were not subject to the auction, right?

A They were not.

Q Okay. Who had the Debtors selected as the successful bidder for the RDx assets?

A That is Trudell Medical Ltd.

Q Why did the Debtors select Trudell as the successful bidder?

A Trudell was the only actionable bid that we received during the process and was the one that was providing -- and also the one that, based on interested parties, was providing the most value.

Q How much time did the Debtors spend negotiating with Trudell to improve the terms of its bid?

A We spent a number of weeks negotiating specifics and providing -- be responsive to diligence requests that they had.

Q What, ultimately, became the key terms of the Trudell bid?

A The key terms of the Trudell bid were $53.5 million of sale proceeds. It is also a going-concern sale of the RDx business, both in the U.S. and internationally, and provides for continued employment of the RDx employee base. I think that's about it.

Q Why are the Debtors seeking approval of the Trudell APA today?

A We're seeking approval of the Trudell APA because, in our business judgment, it is the highest-and-best bid or offer, and it also constitutes a going-concern sale, and those were the primary objectives we were seeking at the outset.

Q So we talked about the vent sale. We talked about the RDx sale.

What is the total cash consideration that the Debtors expect to receive on account of those sales?

A Well, despite the success we had in finding buyers, the unfortunate reality is it's $90 million, which is below what we had endeavored to kind of achieve there, but it is, you know, nearly $90.5 million in total.

Q Before we get to what the Debtors intend to do with those proceeds, I want to talk about your engagement with the lenders over the last few weeks as the terms of those sales crystallized.

Are you familiar with the bidding procedures order entered by this Court?

A I am.

Q By the way, when did the Debtors file those proposed bidding procedures?

A The bidding procedures were initially filed on the petition date, which had been June 9th or 10th and I think the order was entered July 11th.

Q What did the bidding procedures provide in terms of the rights of the Debtors' DIP lenders as it relates to the sale?

A The DIP lenders had consent rights and there were obligations to repay proceeds at the time of sale back to them.

Q Okay. So in terms of the requirements for a qualified bidder, a successful bid, what were the requirements of the bidding procedures order?

A So the requirements of the bidding procedures order, with respect to the bids were there was a minimum bid requirement of $140 million in aggregate, and that's the shortfall I cited when I mentioned the 90.5, so we did not, ultimately, achieve that amount. But we did still believe that the auction process was the highest and best, you know, going to create the highest and best recovery value back to the estate.

Q So you mentioned that the bids didn't meet that minimum bid requirement.

What were the rights under the bidding procedures order if that requirement was not met?

A We could have been ordered to cancel the auction.

Q So, we obviously know that an auction went forward. The bid requirement wasn't met.

What happened here?

A We negotiated with the lenders to achieve their approval to move forward with the auction and the sale of the RDx, and continued pursuing the sale of the RDx business. And, ultimately, they conceded, subject to, you know, some negotiated outcomes.

Q Okay. The negotiated outcomes, what were those?

A The negotiated outcome was a reduction in the overall DIP size, as well as a sharing mechanism, where they would have, you know, a split of the recoveries that would result or that any recovery -- any improvement in value that resulted from the auction process on the ventilators business.

Q Okay.

THE COURT: So I just want to make sure of the timeline.

This was on the cusp of the auction?

THE WITNESS: Yes.

THE COURT: And there was an agreement to reduce the DIP by $5 million?

THE WITNESS: That's correct.

THE COURT: Okay. And then anticipating if the auction was a homerun, there was a sharing mechanism that the parties had agreed to, and, again, this was all agreed to on the 11th before the auction or when?

THE WITNESS: It was right before the auction, yeah.

THE COURT: When was the DIP reduction communicated to the Committee?

THE WITNESS: The DIP reduction was communicated to the Committee when the, I believe on the 20th or after we had both executed APAs and provided the initial motion to -- for the sale.

THE COURT: Very good.

Sorry for the interruption. You may proceed.

MS. DE PAULO: No, that's fine.

BY MS. DE PAULO:

Q When would the terms of -- when would the agreements to reduce the DIP actually go into effect?

A Ultimately, what was -- the impact of the DIP reduction would have been once the newly agreed upon amount of $40 million was fully drawn, there would be no more availability. So it was, essentially, the last draw that we had forecast of approximately $5 million was no longer going to be accessible.

Q Why did the Debtors ultimately agree to reduce the new-money portion of the DIP?

A The gain the lenders' consent to move forward with the auction. And also after doing an analysis to determine that, we believe in our reasonable -- in my personal business judgment, that it is adequate to get us through both of the sales. So we reevaluated the timeline and felt comfortable with the $40 million.

Q Okay.

MS. DE PAULO: Your Honor, I have an exhibit to review. May I approach?

I believe Your Honor has a copy of our exhibit binder --

THE COURT: I do.

MS. DE PAULO: -- but it's only one page, so I also have copies if you would prefer paper?

THE COURT: Oh, that would be better.

Thank you, Ms. De Paulo.

THE WITNESS: Thank you.

BY MS. DE PAULO:

Q I've handed you what was pre-marked as Debtors' Exhibit 5.

Do you recognize this document?

A I do.

Q What is this?

A This document is -- illustrates the weekly cash forecast projection through October 18th and the time period -- the timeline to get to the close of both, the ZOLL and Trudell sales.

Q Who prepared this document?

A I did.

Q How was this document prepared?

A It was prepared by estimating the weekly collection of accounts receivable, as well as estimating the weekly disbursements for a variety of payables, payroll, and other expense lines. And then, lastly, as estimating what the professional fees incurred would be on a weekly basis through the remainder of that timeline.

Q What does this cash forecast show in terms of the total DIP funds that the Debtors anticipate drawing?

A It shows a draw of up to $40 million. So the two remaining DIP draws that are reflected here, would take us up to the full commitment of $40 million.

Q Can you explain what this document shows in terms of whether the Debtors think that $40 million will be sufficient to get them through the closing of the sales uh?

A Yeah, we do believe that.

In my reasonable judgment, I think it is tighter than -- I'll concede the fact that it is tighter than what we previously had been forecasting; that said, we believe that there's reasonable cushion in the budget that will get us through and it reflects that cushion being global liquidity balances that, you know, are in the nine-to-eight-million-dollar range. That seems to be adequate liquidity to be able to absorb any possible shortfalls we might experience or variances we might experience on the way there.

MS. DE PAULO: Your Honor, I would move to admit Exhibit 5 into evidence.

THE COURT: Any objection?

(No verbal response)

THE COURT: Very well.

It's admitted.

(Exhibit 5 received into evidence)

MS. DE PAULO: Thank you.

BY MS. DE PAULO:

Q I'd like to talk now about --

THE COURT: Hang on just a second. I'm sorry.

Mr. Braley, I have a question. As I look at the ending international liquidity line for global liquidity, I see a net positive of a million and a half dollars.

THE WITNESS: Yeah --

THE COURT: And your testimony a second ago was that you saw eight or $9 million.

What am I missing?

THE WITNESS: So the first sale is scheduled to close in week 7, October 4th. And I was really focusing on the period through the first close, because at that point in time, Your Honor, the line item that reads "other non-operational," the thirteen seven fifty, it's not showing as cash in our accounts, but it's essentially funding the estate with a subset of proceeds that are intended to support the wind-down efforts.

So, while this does reflect, you know, a further deterioration in the cash, it's a model construct, I think, that's being reflected here, whereby, it's not giving -- it's not reflecting the fact that the thirteen seven fifty and the 1.7 that's on -- in week 9, would actually remain with the estate, so...

THE COURT: All right. I understand.

Thank you for the clarification.

You may proceed.

BY MS. DE PAULO:

Q So I want to talk now about the requirement of the bid procedures to pay -- use the cash to pay down the DIP.

A Uh-huh.

Q Have you helped to prepare a demonstrative to address this point?

A I have.

MS. DE PAULO: Mr. Raphael, could we go to Slide 2, please.

BY MS. DE PAULO:

Q Can you describe what this slide shows in terms of how the Debtors expect to use the cash proceeds of the sale?

A Sure.

At the very top section, it outlines the proceeds that are coming in from the two sales, as well as the estimated cash on hand at the conclusion of the second sale. As Your Honor pointed out, the 1.566 does tie back to the forecast, as presented, leaving approximately $92 million of total proceeds.

The division of those proceeds was going to be used as follows -- as shown on the bottom with $25.1 million of a holdback reserve intended for the future wind-down of the estate; there are transaction fees resulting from the sales that would be paid out; the repayment of the $40 million new-money DIP; and a small recovery on the roll-up; and then there are some remaining fees for the first lien agent's advisors that are due, as well.

THE COURT: One question I have for you, Mr. Braley, if I may interrupt, is, there's a reference -- I just want to ask -- you may be getting to this. I want to ask while it's still in front of mind.

As we talk about these, there's a point made in the Committee objection that notwithstanding the reduction of the DIP from 45 to 40, that the fees and the roll-up are a predicated amount of $45 million DIP; is that accurate? The fees and the roll-up that the lender is obtaining by virtue of the DIP, are calculated, still, according to a $45 million DIP?

THE WITNESS: Oh, I'm sorry, Your Honor. Yes, I now understand.

Yes, the $175 million roll-up gross value was predicated on a $45 million amount. The interest that's calculated here is only on the amounts drawn; however, some of the up-front and closing fees were as agreed to in the original $45 million DIP.

THE COURT: Very good.

You may proceed.

BY MS. DE PAULO:

Q So in terms of the $13.435 million recovery contemplated for the roll-up, can you give an idea of what percentage recovery that is on the total value of the roll-up?

A It's very small, unfortunately, and, again, an outcrop of the ultimate value that we were able to realize for the sales. But the $175 million original roll-up amount, less the $40 million still leaves a roll-up value of $130 million.

Even if you adjusted it down, it's still in excess of approximately 115 -- I'm doing fast math here, so I apologize -- so it's --

Q I didn't mean to put you on the spot.

A -- it's a pretty -- it's a less than 10-percent recovery on the non, new-money portion of that.

Q So the bottom-left corner has a holdback reserve of $25.1 million.

MS. DE PAULO: And if we could go to the next slide, Mr. Raphael, I'd like to talk a little bit more about this 25.1 holdback reserve.

BY MS. DE PAULO:

Q So, can you explain to the Court what is included in that $25.1 million, as shown on this slide?

A Yeah.

The reserves are effectively established for the use of these amounts, not to satisfy ongoing liabilities of the U.S. estate and some international entities, as well. As well as paying for a plan administrator, plan administrator's advisors, and other legal expenses that would be incurred, legal and administrative expenses incurred to execute the wind-down, and it's shown split between the U.S. and international balances that were estimated to develop the reserve balance.

Q This chart includes approximately $12.1 million on account of international payments.

Can you explain what those relate to?

A Yeah, it's a bit complex, but there are a number of legal entities internationally. Not all of those are going to be part of the transaction with ZOLL or with Trudell. But in many instances, there are legal entities where the full entity is not being acquired, but there are assets that need to convey to the buyers because they're part of the transaction.

And what we've done here is attempt to estimate the liabilities for those legal entities that are contributing assets to the buyers, the satisfaction of those liabilities in order to make sure that we're able to equitably satisfy the liabilities and secure the proper release of the assets and title to the assets.

Q So, why, specifically, have the Debtors included this $12.1 million in international amounts in their holdback reserve?

A We've done it to ensure that we can complete the sales and transfer the necessary assets. And these are estimates based on the company's books and records and our personal judgment, professional judgment.

Q Just to be clear, has any amount been committed to pay this $12.1 million?

A No, these are estimates at this point in time.

Q When do the Debtors expect that this wind-down, estimate wind-down budget would kick in?

A Immediately upon a conclusion of the sale, the second sale, the Trudell sale, which is expected to lag behind ZOLL. But, in fact, much of the work that's being outlined here is going to begin in earnest as soon as -- once the sales are approved and we'll begin to work to, both, transition the company for sale, as well as begin the wind-down efforts.

Q How long have the Debtors contemplated a wind-down budget in these cases?

A Since prior to filing. It was something we had contemplated, negotiated for, and discussed prior to filing.

Q Do you know when a wind-down budget was first provided to the Committee's advisors?

A So the wind-down budget, I think there's a version of that, that was provided on July 2nd. And, obviously, it's the wind-down budget and, ultimately, the amounts that underlie these reserve balances has been part of an ongoing recovery analysis that we've been sharing with the

Committee's advisors throughout the process since then.

Q What are your views on whether $25.1 million is sufficient to wind-down the Debtors' estates?

A We believe, or I believe in my personal business judgment that it is satisfactory to achieve the wind-down efforts that we've outlined here.

Q Just to be clear, why did the Debtors agree to the immediate $56 million paydown and the $25.1 million wind-down reserve?

A It was necessary to gain the consent of the lenders to approve the sales.

Q Based on your participation in the process, what is your understanding of the consequences if the Debtors and the lenders had not reached an agreement on the paydown and the wind-down budget?

A My fear was that if they chose not to move forward with the business, it would ultimately -- or to move forward with the sales, we would be facing a potential conversion to a Chapter 7, a liquidation of the business, and, you know, negative impacted outcomes for all the different constituents: the vendors, the customers, the patient care, and the employees, as well.

Q How, if at all, does the immediate paydown of a portion of the DIP claims affect the Debtors' ability to negotiate and confirm a Chapter 11 plan?

A I don't believe it does.

Q And how, if at all, do the recoveries to unsecured creditors change based on the paydown of the DIP claims in connection with the sale?

A Unfortunately, at the levels that we achieved for the sales, I don't believe it impacts their recovery at all.

Q And why is that?

THE COURT: Why is that?

THE WITNESS: Because the recovery value does not even -- was not sufficient to fully repay the first lien debt for the DIP lenders.

THE COURT: I understand. I think that the next question would be: Do you have an expectation of -- I mean, the results of the sale are what they are. The parties need a wind-down budget; there's no dispute about that. The parties, the mechanics of the process need to play out. We are engaged in a discussion about the amounts and a process that we've used to get to today.

Is it your expectation that there would be any distribution to any unsecured creditors in this case?

THE WITNESS: Not at this time.

THE COURT: Okay. I understand.

You may proceed.

MS. DE PAULO: Thank you, Your Honor.

//

BY MS. DE PAULO:

Q I want to move on to our last topic today, which is some responses to a few issues that the Committee raised. We've already talked about some of them.

Did you review the limited objection that the Committee filed yesterday?

A I did.

Q They raised an issue of cure costs, so I have a few questions for you on that point.

What does the ZOLL APA provide with respect to cure obligations?

A These were heavily negotiated points; I just want to draw attention to that.

And what the ZOLL bid provides is that they will assume and pay cure costs for assumed contracts up to a capped amount of $5 million.

Q What process do the Debtors expect to occur between now and the closing of the sales, as it relates to executory contracts?

A Once the sales are approved, we would expect that the buyers would begin to further refine their assumptions around or their analysis of the contracts and determine which they'd like to assume or, in many instances, we would expect that we would facilitate discussions between vendor parties and the buyers to, (A), understand the working relationship they desire going forward, and, (B), you know if there are -- is a desire to modify or negotiate a different agreement, that we'd help facilitate that.

Q What the Debtors' expectation with respect --

THE COURT: Actually, can I ask a question about the mechanics of the ZOLL -- we're talking about the ZOLL contract assumption, which has a component built in of $5 million of cures?

THE WITNESS: That's correct.

THE COURT: I think I know the answer to this, but I'm going to ask it.

If ZOLL decides that they want to assume contracts that have a total amount of cures of $7 million, is the debtor obliged to pay that $2 million of cures under the contract?

THE WITNESS: Under the contract it is.

THE COURT: It is?

THE WITNESS: Yes.

THE COURT: Okay.

You may proceed.

BY MS. DE PAULO:

Q So in the event there is a circumstance like Your Honor just asked you about, where the cure costs exceed the $5 million cap, what options do the Debtors have in that event?

A So the Debtors have a couple of different options.

First of all, we're not obligated to assume the contract; the contract could be rejected and the buyer and vendor could negotiate their own commercial agreement and avoid the cure component altogether.

There are alternatives. I think we would help facilitate the, as I mentioned, the conversation between the buyer and the vendor. Often times in my experience, those are active negotiations that go on once a sale has been approved and, often times, the buyer has ideas around whether or not they view the commercial terms of the contract as currently written, whether they're in their best interests or not.

And so, we would help facilitate to see if those amounts would be reduced or negotiated down as part of an agreement between the buyer and the vendor with us helping facilitate those conversations.

Last, but not least, we could always ask the buyer if they exceeded it, to see if they would be willing to contribute more value to address any excess to the current cap.

Q And in the event that none of those options work out and you're near closing, what might happen with the sale?

A It's possible that we would be unable to execute the sale and would have to be unable to get to closing. That brings with it a number of negative outcomes, but if it was financially unable to be concluded, then we would have to withdraw from the sale.

Q So that was the issue of cure costs.

The Committee has also suggested that the holdback reserves and the lower DIP budget might not be sufficient for the rest of these cases. So, I guess, first, are there any guarantees that the Debtors will achieve their forecasts and stay within their wind-down budget?

A There is not a guaranty of that at all.

Q But how have the Debtors endeavored to ensure that that does not happen?

A We've used our reasonable business judgment and my considerable experience in this area to evaluate a timeline, what are the necessary costs that we are likely to incur, what are the obligations that we need to pay, and estimate to the best of our ability, you know, what a reserve for those amounts would be and we're comfortable with the $25.1 million.

Q You just mentioned the timeline.

The Committee's objection suggests that the Debtors expect that regulatory approvals will delay this closing of the sales. What's your understanding of that issue?

A We've worked with counsel and the company's experts, regulatory experts to estimate the time period required to conclude the -- to gain the necessary regulatory approvals -- this is particularly around the RDx business, which has an international requirement -- and we estimated the timeline from the point of the contract being -- the purchase agreement being agreed upon and estimated October 18th as a reasonable close timeline.

Go ahead. Sorry.

Q What if the Debtors' estimates of their wind-down costs end up being higher? The Debtors actually need a higher amount or the timeline ends up being longer, what happens then?

A So the $25.1 million is a reserve out of the sale proceeds, as we've noted, and any cash on hand at the conclusion of a sale. There are other assets that the company will have behind that it would be part of the obligations of the wind-down estate to seek to monetize those assets and it would provide the opportunity for some self-funding if the amount of funding needs for the wind-down, you know, exceed the $25.1 million reserved.

Q Okay. Looking at the slide that has just been pulled up on your screen, can you just describe what this shows with respect to monetization of some of the remaining assets?

A Yes. The first two line items are an outcrop of the ZOLL transaction, whereby, there are certain pools of accounts receivable and inventory that are not transferring with the sale. So we would seek to recover any amounts, or AR balances, collect those in the normal course.

We have, for prudence, you know, adjusted the recovery estimate just in case there are amounts that are unrecoverable, ultimately, to, you know, two to $2.5 million.

Similarly, with the inventory, we've estimated the value, the book value of $7.8 million; it's unclear whether that will have value or not and how to best monetize that to (indiscernible) recovery estimate there.

There's a tax credit with the State of California for research and development work that the company has done that is due, that is not transferring with the sale, and that we're expecting to collect in the next couple of months.

There is a -- the reference to the Cotia sale; this is our Brazil operations. The Brazil operations are not a party to the ZOLL agreement. And there is active work around seeking how to best monetize that production facility and real estate that's owned in country and recover value back to the estate, either as a going-concern sale or as a real estate and asset sale.

And then there is a handful of select litigation matters where Vyaire, or one of its affiliates, is a Plaintiff and where there is a believed, you know, pathway to recovery and, ultimately, be awarded a recovery in those cases. So we've estimated values at, you know, the full freight of what the -- if the case were able to be won outright or estimates of settlement discussions that had been taking place prior to our involvement on the low end.

Q How might the Debtors use these assets in the event that there's a shortfall in the wind-down budget?

A So these values would accrue back to the estate. We would seek to, you know, achieve highest and best value of that path forward for all of these items. Ultimately, this value would accrue back to the estate and be distributed as part of a plan, but, ultimately, it does provide, you know, incremental opportunity to self-fund if there are shortfalls.

Q The Committee contends that the Debtors have kind of kept them out of the loop on this process and failed to consult with them throughout.

Do you agree with that characterization?

A I disagree with that.

MS. DE PAULO: And if we could go to the next slide? Yeah, the last slide.

BY MS. DE PAULO:

Q Can you describe, generally, what this timeline that you helped prepare shows?

A Yeah, we wanted to show the active dialogue that we were having with the Committee advisors. What's noted here is weekly and periodic calls that PJT was conducting with -- to bring -- keep them apprised of the sale process and the evolution of that process.

In addition, AlixPartners, personally, had lengthy calls when the Committee was first appointed and the advisors were brought on to bring them up to speed on the cases, let them know the anticipated path forward, and get them fully informed on the process so they could serve their clients.

Since then, we've had weekly calls and have provided regular reporting throughout the process to keep them apprised of how cash flows are performing, how the sale process is moving along, and during the sale process, understand how values were moving.

Q I think we hit on this earlier, but when, specifically, was the first time that the Debtors communicated a potential breakdown for a wind-down reserve?

A The first time was as part of a July 2nd presentation, which anticipated costs to wind-down the business.

Obviously, this process and these estimates have evolved over time, as the picture became clearer through the sale process what was going to be needed. So it's been an evolution and it wasn't until very recently that we had, you know, a final number, if you will, but it was an active dialogue and they were brought along throughout the process.

Q Your Honor asked a question to you earlier about when the reduction of the DIP -- the contemplated reduction of the DIP amount was communicated to the Committee.

Do you recall that?
A I do, yes.
Q And what was that date?
A It was August 11th -- no, August -- was it 9th?
Q The 20th?
A Oh, the first communicated? Got it.
Q Yes, the first communicated.
A Yeah, I'm sorry.
Yeah, August the 20th.
Q When did the Debtors expect that that change would actually go into effect? How would that change be implemented?
A It would have to -- well, it was subject to Court approval, of course, so it was going to be once we had the sale order approved.
Q Okay.

MS. DE PAULO: You can take this down, Mr. Raphael. Thank you.

BY MS. DE PAULO:
Q Just a couple questions here to wrap up, Mr. Braley.
How would you describe the Debtors' marketing and sale efforts and, in particular, their engagement with various constituencies throughout the process?
A Very active and in good faith and extremely active.
Q Why are the Debtors requesting approval of the ZOLL and

Trudell sales today?
A Because in our reasonable business judgment, they represent the highest and best value for the estate and provide the best possible outcome for the constituents.
Q Based on your participation in the sales and the negotiations since, what are your views on whether reduction of the DIP amount and the estimated holdback here are necessary?
A I believe they're necessary because I wouldn't want to jeopardize moving forward with these transactions and they're necessary to gain the consent of the Debtors. They're also adequate for their intended purposes and we're comfortable with that.
Q Okay. And I think you just hit on it, but what are your views on whether the DIP and holdback amounts are sufficient to complete these cases and wind-down the estates?
A While tight, they are sufficient for their intended purposes.

MS. DE PAULO: Thank you, Your Honor.

I will pass the witness now.

THE COURT: All right. Why don't we do this, we'll take just a five-minute break.

Mr. Braley, you're not to discuss your testimony with anyone during the break and we'll return for cross-examination, okay?

Stand in recess. Five minutes. Thank you.

(Recess taken at 11:28 a.m.)

(Proceedings resumed at 11:45 a.m.)

THE CLERK: All rise.

THE COURT: Please be seated.

Mr. Braley, I would remind you, sir, you remain under oath.

THE WITNESS: Yes.

THE COURT: Counsel?

MR. REGAN: Good morning, Your Honor. Kevin Regan of McDermott Will & Emery --

THE COURT: Welcome.

MR. REGAN: -- counsel for the Official Committee of Unsecured Creditors.

With your permission, Your Honor, I have several sets of exhibits, or potential exhibits --

THE COURT: Okay.

MR. REGAN: -- that I've exchanged with Debtors' counsel. With your permission, I'd like to approach and give you a copy.

THE COURT: Very good.

MR. REGAN: I also have a copy for the witness, Your Honor.

THE COURT: Very good.

THE WITNESS: Thank you.

(Pause)

CROSS-EXAMINATION

BY MR. REGAN:

Q Good morning, Mr. Braley.

A Good morning.

Q If I may, I'd like to start with a demonstrative that your counsel shared with you while you were on direct examination.

Do you have a copy of that in front of you?

A Which one?

Q This would be -- it's the one that if you look to Slide 7, it has the timeline.

A I apologize, I don't have a copy of that.

Thank you.

THE COURT: Which PowerPoint is this? Is this the first one or the second one?

MR. REGAN: This is, I think, the second PowerPoint that I handed up.

THE COURT: Yep.

MR. REGAN: It's on the screen now.

BY MR. REGAN:

Q So, Mr. Braley, if you could turn to Slide 7.

A Yes.

Q This PowerPoint is a timeline, and you discussed this timeline with your counsel.

I want to draw your attention, there's a note on the bottom, right-hand corner of this slide and it says:

"The Committee was appointed on June 26th, 2024."

Do I have that correct?

A Yes.

Q And that refers to the Committee of Unsecured Creditors, right?

A That's correct.

Q Okay. And if you look at the timeline, do you see where on July 30, it references:

"Weekly recurring call with the Committee advisors to discuss sale process and DIP lender status."

Do you see that?

A Yes, I do.

Q And it defines that as a weekly status call?

A I see that.

Q And is it correct that the first such weekly status call occurred on July 30th?

A With PJT Partners, I believe that's what's reflected here, yes.

Q Okay. And there were no prior weekly status calls with the Committee advisors prior to this?

A AlixPartners was conducting weekly calls with the Committee advisors prior to that. This -- the amounts or the items in purple are the -- for the PJT Partners' weekly status calls.

Q That's PJT Partners' status calls with BRG?

A Yes.

Q And so there were earlier status calls with -- between AlixPartners and BRG?

A Yes, that's correct.

Q Do you know how many of those were?

A The items we've shown in red here are the various calls. Not every one of these was like a standing status call; some of these were requests for just diligence items or calls to discuss specific details of the case.

But the items noted between July 1 and, essentially, July 29, were the onboarding process, as we would call it, with AlixPartners, speaking with the Committee advisors to bring them up to speed on the cases and then that eventually turned into a weekly call with AlixPartners and then further supplemented bi-weekly calls with PJT Partners.

Q Are weekly status calls with counsel for the Committee reflected on this timeline?

A No, they're not.

Q Okay. Thank you for helping me with that.

A No problem.

Q So, Mr. Braley, you and your firm AlixPartners were engaged by Debtors to serve as their restructuring advisor in March of 2024; is that right?

A That's correct.
Q Okay. And you have assisted the debtor in preparing financial forecasts in connection with this bankruptcy proceeding; is that right?
A That's correct.
Q And you, personally, were involved with preparing forecasts?
A Yes, I have -- I was or I am.
Q And, for example, you assisted with the involvement of Debtors' 13-week cash flow forecasts; is that right?
A That's right.
Q And there've been subsequent forecasts, I assume, since the original 13-week?
A There have been revised projections. The DIP budget has not changed, but there have been -- we're regularly updating projections.
Q Okay. And the document that your counsel discussed with you is Exhibit 5.
Do you have that available?
A I do, yes.
THE COURT: I'm sorry, is this your Exhibit 5?
MR. REGAN: This is Debtors' Exhibit 5.
THE COURT: Okay.
BY MR. REGAN:
Q Mr. Braley, this is the document that reflects

forecasts through what is identified as week 9; is that right?
A That's correct.
Q And that week 9 is through October 18th; is that right?
A That's right.
Q What is the significance of October 18th?
A That's the anticipated close date for the RDx transaction with Trudell.
Q And you would agree with me forecasting is not an exact science, right?
A I would agree.
Q It's not perfectly predicted?
A I would agree.
Q And, in fact, the forecasts that were done in connection with this bankruptcy have not been 100 percent accurate; is that right?
A They have not.
Q And there have been various variances reports that have been shared with counsel for the Committee and Debtors' counsel and I assume other parties, as well?
A Yeah, there are weekly variance reports that are provided, prepared and provided, yes.
Q Okay. And these variance reports have been provided each week over the last 10 weeks; is that right?
A I believe that's right. I don't know the exact number

of weeks, but it's a reporting requirement that was coincided with the approval of the DIP budget, so that sounds about right.

Q Understood.

And do you recall preparing a variance report dated August 16th, 2024?

A Yes.

Q Okay. And if you could turn to Tab 11 in the binder that I handed up to you --

A Uh-huh.

Q -- and you see that this document is dated August 21st, 2024?

A Yep.

Q And it's titled "Draft August 16th cash variances."

Do you see that?

A I do see that.

Q Do you recognize this document?

A I do.

Q Are you familiar with its contents?

A I am.

MR. REGAN: Your Honor, I'd like to move, it's Document Tab 11 into evidence, please.

MS. DE PAULO: No objection.

THE COURT: Very well, it's admitted.

(Committee's Exhibit Tab 11 received into evidence)

BY MR. REGAN:

Q Mr. Braley, if you could turn to page 3 of this document.

A Okay.

Q And do you see where there's a series of columns here, but the furthest-right column before the notes, it shows 10-week variances?

A Yes, I see that.

Q There's an amount on the left and a percentage on the right?

A That's correct.

Q And if we go down to the bottom, before the thick, black bar there, you'll see there's a series of figures there for total restructuring receipts?

A Yes.

Q And so based on this document, is it correct that as of August 16th, 2024, restructuring receipts were $10.6 million or 64 percent lower than forecasts?

A No, that's not exactly what's conveyed here.

What's conveyed here is that there was a -- we had drawn approximately $6 million fewer on the DIP at that point in time, and so we viewed that as a negative variance, because we weren't -- you know, we weren't using as many funds at that point in time. In addition, there are some negative variance for -- variances for professional fees of about $3.9 million, totaling -- so a combination of those two, plus some other smaller items totals the negative $10 million variance, but driven largely by the use of less-than-forecasted DIP or having lower-than-forecasted DIP draws at that point.

Q Understood.

So, fair to say that professional fees were higher than forecast?

A Through that period of time they were, yes.

Q Through that period?

A Yes.

Q And that DIP lending draws were lower than forecasted?

A That's correct.

Q Do you have an understanding as to why DIP draws were lower than forecasts?

A If you look at the items up above in similar columns, we were trending positive on overall operations, so our variances were very small in cash receipts, but our vendor payments and payroll had been lighter than forecasts through that period of time, and so that it was providing an $8.9 million positive variance from what we term our "operating cash receipts" and, you know, offset by the lower section that we just talked about.

Q Okay. Did the lenders need to approve the draws before they could be taken by the debtor?

A They did.

We submitted draw requests and they were -- ultimately, needed to be approved in order to fund.

Q Did the lenders negotiate the amounts of those draw requests?

A We negotiated the increments and part of the DIP and so as long as we were complying with the increment components that we previously negotiated, I don't think there was a further negotiation on a specific amount.

Q Now, is it fair to say that professional fees will continue to be incurred between the closing date of any sale and the date of an eventual plan confirmation?

A That's right.

Q Okay. And you don't know for certain how long that period of time will be, between closing of sales and plan confirmation?

A We don't, no. We would expect it to be, you know, shortly after the Trudell sale closes, but that's our expectation at this point in time.

Q The Trudell sell is expected to close in October?

A 18th. Yeah, that's right.

Q Okay. And the ZOLL sale is scheduled to close on October 4th?

A That's correct.

Q That's roughly five weeks from now?

A Uh-huh.

Q So once the sales closes, the Debtors have to wind-down their estates, correct?

A That's right.

Q So the Debtors presumably intend to file a plan of liquidation and have it confirmed by or shortly after October 18th?

A That's right.

Q Has the debtor proposed a plan of liquidation yet?

A We don't have that plan finalized and it hasn't been submitted yet.

Q I want to circle back to the DIP draws question.

Have the lenders granted every DIP draw request in full?

A They have not.

Q They have not?

So they have rejected certain DIP draw requests; is that right?

A They've asked for supplemental information as part of approving the DIP draw to understand where the proceeds were ultimately going to be used for and we accommodated those requests in order to ensure that we got the money that we were requesting.

Q Understood.

As a result of exchanging that information with them,

have they come back to you with a request for, or an insistence upon a lower-than-originally-asked-for DIP draw amount?
A They have.
Q Okay. I'd like to talk to you about the ZOLL sale.
Has the buyer agreed to a sale closing by October 4th?
A They are actually seeking a sooner -- to close sooner than that. So, actually, the October 4th date is well within their closing timeline and they would seek to do it sooner, if possible. That's what they've communicated to us.
Q Okay. But the closing date has not been set in stone at this point?
A Not set in stone, no.
Q ZOLL will assume certain contracts in connection with the sale; is that right?
A We believe so.
Q And if you turn to Tab 9 from the binder I provided, this is the first supplemental notice to contract parties of potentially assumed and assigned executory contracts and unexpired leases.
MR. REGAN: And this is a document, Your Honor, that was already filed and is in the record as Doc. 462.
THE COURT: Okay.
BY MR. REGAN:
Q And, Mr. Braley, if you turn to what is noted as

page 710?

A Yes, I see it.

Q And this appears to be a list of potentially assumed and assigned contracts; is that right?

A That's correct.

Q And does this list all the contracts that ZOLL has asked to assume as a result of the sale?

A I wouldn't characterize it like that.

I would characterize -- this isn't -- this is a list of contracts, executory contracts and cure amounts for contracts that are -- could be assumed, but I wouldn't -- this list is not a list of assumed contracts; it's potentially assumed contracts.

Q Potentially assumed contracts.

You don't know how many of these contracts ZOLL is interested in assuming?

A We don't.

And the buyer has further time, once the sale is approved, it can conduct further diligence, and, ultimately, they're required to provide a final list prior to close.

Q Understood.

Now, if we take this list and we total up all of these different contract figures that we see in this list, we get to approximately $9.1 million.

Does that sound right?

A Yeah, I believe that's correct.

Q Okay. But ZOLL has agreed only to cover $5 million of total cure costs; is that right?

A That's right.

Q Which would leave the Debtors to cover the additional $4.1 million; is that right?

A It's -- that's the way the APA is written, that we're obligated to pay any overage above and beyond the cap.

Q Now, you prepared an estimated holdback schedule; is that right?

A Yes.

Q Does that holdback schedule account for a payment of $4.1 million in cure costs?

A It does not.

Q Okay. And if the cure costs are not paid, these contracts cannot be assigned to ZOLL; is that right?

A Well, it may be said a different way.

If the contract is assumed and assigned, a cure amount would be due if it hasn't been negotiated, further negotiated.

Q And what happens if that cure amount is not paid?

A It wouldn't be able to be assigned.

Q Can ZOLL refuse to close if it doesn't get all the contracts it wants to have assigned to it?

A I'm not certain.

Q Do you know if it would be a breach of the APA if they don't get the contracts they want to have assigned to them?
A I don't recall at the moment.
Q Pursuant to the ZOLL APA, ZOLL is acquiring the equity of certain international nondebtors; is that right?
A That's correct.
Q And these nondebtors have accounts payable balances; is that right?
A They do.
Q Were you able to verify these accounts payable balances?
A We are using the company's books and records as an estimate of the value of those obligations.
Q And when you say, "the company's books and records," you're referring to the books and records of the debtor or of the nondebtor entities?
A Of all the -- I mean, it's a consolidated business and each of the entities has their own balance sheet, if you will, so we're using the company's monthly financial records as -- to determine the amount of liabilities at any of those entities.
Q Is that a challenging exercise to determine the amount of accounts payable?
A Well, in so much as we just wanted to validate what, you know, that the amounts were reasonably accurate in our

business judgment and, ultimately -- but, no, the company prepares monthly financial statements, in accordance with GAAP, so...

Q These are nondebtor companies, right?

A That's correct.

Q So you don't have the same level of access and insight into these nondebtor entities as you do into the Debtors, do you?

A I don't know of any financial records we've been unable to obtain. Some of the accounting personnel don't reside in the U.S., but it's a fully functioning finance organization, so we have access to anything we seek.

Q And these creditors -- there are creditors of these nondebtors, correct?

A They are.

Q And these creditors and nondebtors will be paid on accounts payable while unsecured creditors in the U.S. will receive no recovery on their claims; is that right?

A To the extent that amounts, the prepetition amounts are part of a cure payment, they're -- that -- yes, there is going to be an unsecured pool that is likely to get no recovery on their claim.

THE COURT: Hang on, I'm not sure I followed that answer.

THE WITNESS: Okay.

THE COURT: Can you ask the question again?

This was about the foreign entities, nondebtor affiliates and unsecured claims against those, not cures, right?

MR. REGAN: That's right. In contrast to the cures.

Let me -- I'll ask the question again and see if we can get to the bottom of that.

BY MR. REGAN:

Q So these creditors of nondebtors will be paid on accounts payable; is that right?

A To the extent that they are -- that their entity is being acquired through a stock transaction or to the extent that they are -- that there's a nondebtor that needs to convey an asset as part of a sale process, the amounts or the liabilities of those entities are projected to be satisfied.

Q And those accounts payable don't need to be cured in order for this transaction to close?

A They don't, no.

Q Okay. Meanwhile, for U.S. unsecured creditors with contracts that are not cured, they would, presumably, be left with nothing?

A To the extent they're not cured or if they don't have a contract, yeah, there's a mechanism for that, that's correct.

Q Okay.

A For prepetition amounts, not for post-petition amounts.
Q Okay. Turning to the Trudell sale closing.
I think we established that the Trudell sale is expected to close by October 18th; is that right?
A That's correct.
Q But that date isn't set in stone either, right?
A It is not.
Q And that closing date is contingent on certain factors?
A It is, yeah.
Q Including, for example, that the sale requires regulatory approval in Germany?
A That's right.
Q And you testified, I believe, on direct that you estimated the regulatory approval would be achieved by October 18th; is that right?
A That's right.
Q What is that estimate based on?
A It's estimated based on an expectation that anywhere from eight to ten weeks could be required for that. We picked a nine-week period from the point at which the contract was signed as a reasonable estimate, you know, not landing on eight, not being overly optimistic or overly detrimental.
Q The debtor isn't in control of that timeline from a regulatory --

A Not entirely, no. We, obviously, have -- we are actually -- we are working with the buyer to seek and gain the approvals, but, no, it's not entirely within our control.
Q So, it is entirely possible that it could go past October 18th.
A It's possible.
Q So, I want to turn to the holdback schedule. This is Tab 10. This, again, is a document that has been filed with the Court, Document 470. You can see its page 58 of 111.
This is the estimated holdback schedule, is that right?
A That’s right.
Q Do you recognize this document?
A I do.
Q And you assisted in preparing this?
A I did.
Q Were you primarily responsible for preparing this document?
A I was.
Q Now, this estimated holdback schedule, this assumes an October 18th closing date. Is that right?
A To some degree this is agnostic to the close date. This is really to fund the winddown efforts of the business and satisfy liabilities that would exist post-close. So, while its presumed to begin immediately after October 18th, it's not dependent upon an October 18th close.

Q There is some presumed time period over which this estimated holdback schedule is assumed to be operative.
A Yes. That is correct.
Q Beginning approximately October 18th.
A Beginning approximately October 18th.
Q And ending at some indeterminant time in the future.
A We estimate work streams that will last up to 15 months, but with the majority of that work being conducted in the first two to three months and then very little activity, you know, thereafter, but a majority of the work would fall in the first two to three months, less so in the next four to six and limited thereafter.
Q Would that 15-month estimated timeframe be effected by the date on which a plan confirmation occurs, plan approval?
A I don’t believe so. I think much of the work that is going to be done here would begin, you know, prior to a plan approval as there will be work that needs to be done to address employees or legal entities that are not going to be conveyed to begin the winddown process final to the final plan.
Q There are professionals fees that will presumably be incurred in connection with that plan approval process, is that right?
A With the plan approval?
Q Right.

A Yes.

Q And if that plan approval process goes longer than anticipated for any reason you would expect that those professional fees would increase with time, correct?

A Yeah. We, in fact, projected that the cash flow forecast that you referred to earlier was done on a per professional basis and it was with the expectation that a plan may be able to be achieved by October 18th so the workstreams that are necessary to get to a plan, solicit a plan, to get approval, to negotiate any outcomes are all accounted for. The timeline could slip, but we believe that the professional fees budget reflected in the budget is agnostic a bit to timeline because it's the same set of workstreams; although, it could happen over a longer period of time.

Q I think you said that you made estimates with an assumption of a plan confirmation in the neighborhood of the October 18th date, is that right?

A Well, I think that was more for simplicity sake if we believe that there is an October 18th close to complete the weekly look at that point in time and I guess what I was referring to is that so what is reflected here is the professional fees needed to get to a plan confirmation.

This forecast, essentially, concludes on the week of October 18th but if a plan is unable to be, you know, solicited, approved and completed by then, which the timeline is, obviously, moving on us, then it would need to be extended out for a couple of weeks. Again, just to reiterate my point, we believe that the professional fees forecasted here are adequate to the timeline if it extends beyond the 18th.

Q When you say it would need to be extended out a couple of weeks you mean the forecast would need to be extended out a couple of weeks?

A The -- yes, the forecast would need to be extended out a couple of weeks.

Q So, the holdback schedule does not necessarily account for a period in time between the end of your current forecasting and whenever closing might occur?

A Well, I'd say it actually does because what we are assuming here is that once the company -- once the sale transactions are closed there is no operations. There is no employee payroll that has not been accounted for in the winddown budget, there is no receipts that aren't accounted for in the assets identified here, there is no other operating expense of the business.

The business has, effectively, been shut down. It would just be the tail of the process to get to the plan confirmation that might extend beyond this but at that point in time you are, effectively, into the winddown of that. So, if that overlaps a little bit with when the plan is ultimately confirmed we don’t see that that requires more funding. We just see that the activities -- there might be some activities that could extend beyond the 18th.

In this case that you are putting forward, if there is a plan confirmation that is two weeks to that then a professional fee budget would likely go out an extra couple of weeks, but the same aggregate amount would be expected to fund all the way to a plan confirmation.

Q Just to be clear, you don’t know exactly how much professional fees will be incurred during a period between close and plan confirmation. You have no way of knowing that.

A That is true. I mean we have provided -- we prepared a budget or professional fee forecast based on the work streams that are required by the individual professional groups and with an expectation of what's it going to take to get to plan confirmation. We then put that into a weekly look. So, to the extent that the weeks change, that the aggregate amount is not changing. It would be -- you know, we would anticipate that you would see variances in the individual weeks, but the aggregate amount is still expected to remain the same.

Q The prior forecast for professional fees have come in low, right, or the forecast had been low. The actual professional fees have come in high.

A That’s correct. That is why it was important that we do a reforecast to get comfortable with the lower funding amount. So, we refreshed this professional fee forecast in earnest on a per professional basis. Its critical to make sure we are not short here and we did our best to update this forecast with the best available information we have acknowledging the negative -- the variances that we had realized to this point.
Q Understood. What is at stake if the debtor comes up short on professional fees?
A Well, I don’t see why we would. If we were short, it would impact our cash balance, our net cash balance, but, again, I am not expecting that we are going to be short there. To the extent needed, I guess we would seek to self-fund through the realization of any of the asset values or have to reallocate within buckets in the winddown budget and seek to utilize some of that funding if it was absolutely required.
Q I want to talk about the DIP funding briefly. So, the DIP lenders originally committed $45 million in new money to the debtors for these cases, is that right?
A That is right.
Q And the DIP budget included $5 million of such commitments for winddown activities, is that right?
A That’s right.

Q And the debtors and the DIP lenders agreed to reduce the total DIP commitments from $40 million to $45 million, is that right?

THE COURT: Vice versa, from $45 to $40.

MR. REGAN: From $45 to $40. Thank you, Your Honor.

THE WITNESS: That’s correct.

BY MR. REGAN:

Q And when did that occur?

A there was a conversation around it prior to the auction. So, I think it was around about August 9th. Then in the subsequent week it was further refined as we got into the auction.

Q That was a conversation with who or between whom?

A Between the DIP lenders and the company and its advisors.

Q When was the committee made aware of that agreement? Do you know?

A The committee was made aware of it, I believe, on August 20th.

Q Do you know how they were made aware of it?

A It was included in the motion for the sale.

Q It was included in the sale order?

A Yes. In the sale order draft.

Q Do you know if it was directly communicated to the committee or its counsel that that agreement had been reached?

A I don't know about counsel. It had been discussed that there was a potential reduction in the DIP funding with the financial advisors, but I don't know if counsel was made aware.

Q Turning back to tab 10, which is the holdback schedule, I think you mentioned on direct that there was an original holdback schedule prepared in July, is that right?

A That's right.

Q But that was not a final holdback schedule.

A No.

Q Did that even have numbers on it?

A It did.

Q Those numbers, I assume, changed over time.

A They have.

Q Do you know what the original total for the estimated holdback in July was?

A I don't recall the one on July 2nd. It contemplated a different outcome. So, it was -- the scenario that it was forecasting was vastly different. I don't recall at the moment.

Q The final holdback schedule was the product of negotiations with lenders, right?

A That's correct.

Q And there was a give and take on that?
A Yes.
Q Did debtors originally propose a higher number?
A We did originally, yes.
Q Do you know what that number was?
A That was $29.7 million.
Q Why was that number changed to $25.1?
A That number was changed in order to, you know, facilitate a negotiated negotiation to gain the lenders support for the sales. It was adjusted to a level that we felt we would, obviously, try and account for potential variances when we are setting reserve levels. So, we refined our estimates and were able to get comfortable with $25.1. It was heavily negotiated and ultimately that is where we landed.
Q Understood. To be clear, that $25.1 was not changed from $29 to $25 as a result of updated forecasting, is that right?
A We had to update the forecast in order to see if we were comfortable with $25.1.
Q After the $25.1 number was suggested, I assume?
A No. There was a lot of back and forth. Frankly, this number is higher, much higher, I think, then the lenders, DIP lenders, would have preferred, but we had hit a point where we weren't comfortable in making any further reductions and

we were able to, you know, understand where we had potential ability to either do something more efficiently, do it at a lower cost, or avoid certain liabilities was the reason we were comfortable in moving down from $29.7 to $25.1.

Q So, there are four categories reflected in the holdback schedule. There is estimated employer related costs, estimated post-petition AP, and 503(b)(9) claims, estimated tax, and estimated winddown and other expenses. Is that right?

A That is correct.

Q Okay. Does this account for accounts payable?

A It accounts for accounts payable that are not being assumed by either of the buyers. There is a bucket that has been negotiated in both of the sale agreements for the assumption of post-petition accounts payable or administrative claims, if you will. That bucket for Zoll is $8 million and there is a similar bucket of approximately $3.3 or $3.4 million for Trudell.

Q Okay. So, the bucket, as accounted for in the holdback schedule, is the estimate post-petition AP and 503(b)(9) claims?

A Mm-hmm.

Q And there is $1.3 million allocated for that?

A That’s right.

Q Now is it true the debtors accounts payable systems are

complex? Would you characterize them as complex?
A Yes. That’s a fair characterization.
Q Using these systems, are the debtors able to determine their accounts payable balance at any one moment in time?
A With a little work we are able to estimate the accounts payable balances, but it's not a push button exercise.
Q Is there a lag in recognizing payables due to these complex systems?
A Yeah, but that is common for any system in so much as until an invoice has actually been processed. It's not technically an accounts payable, it's an accrued liability. So, when we estimate what the total liabilities are we are considering what is currently processed in our accounts payable system as well as estimating what amounts -- what is the accrual balance that hasn't made its way into a formal accounts payable yet.
Q The holdback schedule accounts for ongoing administrative costs, is that right?
A That’s correct.
Q Where is that accounted for in the holdback schedule?
A That in estimated winddown and other expenses.
Q And there is a total of $9.1 million allocated for that?
A That is right.
Q When is the administrative and governmental bar date,

do you know?

A Well, the administrative bar date hasn't been set yet. The governmental bar date is December 9th, I believe.

Q So, is it fair to say, given that those dates haven't passed yet, that the debtors do not know the universe of administrative or governmental claims because the dates haven't passed yet?

A We don’t know the official numbers. We have made reasonable best efforts to estimate these amounts based on our experience with the business and based on our professional experience prior to this point.

Q And does this holdback schedule account for all accounts payable accrued and accruing from and after the petition date?

A Does this holdback schedule?

Q Yeah.

A No. As I described, there was a heavily negotiated component with both buyers that they assume any accounts payable or accrued liabilities, post-petition liabilities, if you will, for any vendor that services that business. So, that is approximately -- between the two that is a value of $11.3 million that would be to satisfy any amounts due to vendors that support those businesses post-petition.

Q Right. And because of the cap, though, on cure payments there is about $4.1 million that is not being covered by Zoll. Is that right?

A We're speaking about cures again? I want to be clear, I was talking about post-petition liabilities there.

Q Post-petition liabilities, they are not accounted for in this holdback statement.

A They are not. They are accounted for in the APA's and with the buckets that have been established for buyers to assume the liabilities for post-petition liabilities.

Q And buyers are going to assume 100 percent of the post-petition --

A Up to their respective caps.

Q What are those caps?

A I think it's -- well, it's more complex on Trudell because it's part of their holdback, but estimated at approximately $3.3 million for Trudell and there is an $8 million bucket for Zoll for the ventilation business.

Q Are those caps going to be sufficient to cover the total amount of accounts payable?

A We believe so. We believe they may be more than sufficient, yes.

Q One more question, Mr. Braley.

A Sure.

Q Is the debtor paying post-petition liabilities as they come due?

A There was a period of time when our funding was not coming forth. I think our AP payments were disrupted for a period of about a week and a half. Since then, we have been making payments. You know, there is a payment review process each week to pay amounts as they are due and payable as part of the normal accounts payable process.

Q Did the debtor need to rely on credit for that period in time when it was unable to make payments as they came due?

A When it was unable to make payments as they came due, I think we had to reduce the amount of payments. It's not that no payments went out, it was reduce the amounts to make sure we were paying, you know, anybody who would become past due or if it was a critical -- you know, had a critical nature to it. So, for those two weeks, that week and a half, I would say, we moderated the -- no, two weeks we moderated out payments process and then resumed normal function once our funding resumed.

MR. REGAN: Thank you. No further questions at this time.

THE COURT: Redirect.

MS. DE PAULO: Yes, Your Honor.

THE COURT: Mr. Braley, you doing all right or do you want a break?

THE WITNESS: I'm fine. Thank you though.

MS. DE PAULO: Thank you, Your Honor. Tabitha De Paulo from Kirkland & Ellis again on behalf of the debtors.

REDIRECT EXAMINATION

BY MS. DE PAULO:

Q Just a few questions to wrap up here. Counsel for the committee started out discussing this timeline with you. Can you just clarify, was this timeline intended to show all communications between the committee and the debtors?

A No, it was not.

Q Were there other communications that you are aware of that were not included on this timeline?

A Absolutely, yeah. There were multiple ad hoc requests that were addressed or requests for a phone call or things that were not official organized or even text communications at times. So, yes, there was a dialog outside of these items.

Q Okay. You looked with counsel for the committee about a variance report from August 16th. Were there other variance reports that you have provided?

A Each week we have provided a variance report and provided that to both the DIP lenders as well as the committee and it's been a reporting obligation we have under the DIP.

Q Can you give us an understanding of how those variance reports have shaken out over the course of these cases, how they are looking?

A Yeah, I think -- and I tried to describe this before, but I think it's important to note two different components. One is kind of operating performance and our operating performance has -- we have had a small positive variance in our collections and our accounts receivable. We have had a positive variance on payroll and trade AP payments netting to a positive operating variance of over $8 million. So, $8 million either more received or less spent over that period of time. Then there was a negative variance on professional fees about $3.9 million.

Q Counsel asked you a few questions about the guarantees that regulatory approval for the sales would come through on that timeline. I think we talked about this in direct, but how did the debtors determine that the August -- October 18th, sorry, date was a reasonable date to include for that timeframe.

A We spoke to the regulatory personnel at the company who know this process best, because they have been through it before, to get a reasonable estimate of how long they expected it would take for the German authorities to grant the relief they are looking for, the approvals they are looking for. Again, that was estimated at eight to ten weeks.

Q Let's look again at the holdback schedule which, Mr. Raphael, this was slide 4, if you could pull that up for us.

Counsel for the committee asked you a few questions about the $12.1 million here and payment of those costs as compared to payments to general unsecured creditors. I just want to be clear here, have the debtors made any commitments to pay this $12.1 million for international liabilities?

A No. These are estimates, but there is no commitment to pay. Ultimately, a plan administrator will likely be appointed and that person will ultimately need to determine what amounts ultimately get paid, but these were used to establish a reserve level.

Q And we -- you have a few categories in this holdback schedule. In the event of a shortfall in one category, how might those amounts be made up?

A We are a little bit agnostic to the categories, but if there was a shortfall in a particular category more than likely we would reallocate from other categories.

Q And just to reiterate here, what are the debtors views on whether the amounts that you are forecasting and have provided for in the holdback schedule are reasonable here?

A What is my opinion on that?

Q Yes.

A My opinion is in my professional judgment both the $40 million DIP funding is adequate to get the company -- to fund the company through the closing of both sales and the $25.1 million reserve is adequate to the winddown efforts that are currently imagined or expected.

MS. DE PAULO: Your Honor, if I could just confer with counsel briefly and then we will try to wrap up.

THE COURT: Sure.

(Pause)

MS. DE PAULO: Thank you, Your Honor. That is all the questions I have at this time.

THE COURT: Any recross for the witness?

MR. REGAN: No, Your Honor.

THE COURT: Mr. Braley, thank you. You may step down.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: Mr. Winters, does the debtor have any other evidence? We have admitted the declarations. We have received the testimony of Mr. Braley. I think we have admitted a number of the exhibits that were addressed. None of them were the subject of controversy or objection in the examination. So, any items that were addressed by the witness I would be prepared to admit unless there's an objection.

UNIDENTIFIED SPEAKER: No objection.

MS. DE PAULO: Your Hoor, just as a housekeeping matter we used the holdback schedule that is Exhibit 4 in the debtors set of exhibits. If we could just move to admit that at this time.

THE COURT: I think both sides look at that. Sure, that is admitted then.

(Debtors' Exhibit 4 received into evidence)

MS. DE PAULO: That should conclude our evidentiary presentation for the debtors case in chief then.

THE COURT: Very good. Let me ask, does the committee have any witnesses or testimony to adduce or are we turning to argument?

MS. KANDESTIN: Argument.

THE COURT: Okay. So, why don’t we do this, let's just take a ten-minute break. We will reconvene at 12:45 and the Court will take argument from the parties with respect to the narrow issues.

Mr. DeBaecke, did you wish to be heard?

(No verbal response)

THE COURT: Oh, okay, you're just jumping the gun.

(Laughter)

THE COURT: I've sat in those benches; they are not that comfortable. I would stand if I were you as well.

All right. We will take ten minutes. Stand in recess. Thank you.

(Recess taken at 12:35 p.m.)

(Proceedings resumed at 12:48 p.m.)

MR. WINTERS: Your Honor, its Mr. Winters. I can't hear you. I don’t know if you can hear me. Now I can.

THE COURT: Are you able to hear me now?

MR. WINTERS: Yes. I am, Judge.

THE COURT: Okay. I assume that you would go first if you're doing the argument. It is your motion.

MR. WINTERS: Yes, Your Honor. I am going to dispense with the slide since they were more designed for an opening and you have already seen a bunch of slides today. I will also plan to be relatively brief since you have heard a lot from us. We filed our brief overnight and it’s the Friday before a holiday weekend.

I think two of the most important numbers that you heard about today in the testimony are $90.5 million which is the total proceeds from a sale of substantially all of this business after a robust marketing process that nobody is disputing. The other is the total amount of the DIP including the rollup which there is some back and forth about fees, whether the rollup applies to the $45 or the $40. I think it's just the $40. It doesn’t really matter because none of that is ever going to get paid.

The minimum amount of that DIP is $160 million. That is an allowed secured priming lien on all the assets of the estate and a superpriority administrative claim that needs to be paid before any other, even admin claims are paid or priority claims are paid or secured claims are paid, let alone general unsecured claims.

In a case where recoveries barely clear the funded amount of the DIP and don’t get anywhere close to clearing the agreed rollup amount of the DIP, general unsecured creditors aren't going to get a recovery. So, this isn't changing that. The challenge period has expired. So, these claims are not subject to any contest.

So, where we find ourselves is absent DIP lender consent these 160 million plus of claims need to be paid in full in cash prior to any of those categories I mentioned; that’s true for a Chapter 11 plan or any other context. So, in short, in all cases these claims are entitled to full cash payment, first in line, absent DIP lender consent. The good news is that the debtor obtained DIP lender consent to pay a host of claims in front of the DIP lenders, 25 million of them. This holdback will be used to pay admin, priority, and international claims necessary to implement the sales and to implement a Chapter 11 plan.

To obtain the DIP lenders consent as holdback, the debtors agreed to reduce the DIP commitment from $45 to $40 as we heard many times today. This concession is subject to Court approval. We are asking for that approval today. This concession was very important to the DIP lenders because they want to fund as little as possible in cash between now and closing, for understandable reasons under the circumstances given how distressed the situation is.

The concession was acceptable to the debtors because, as the testimony showed, we're confident there is enough money to get us to closing. In return for this concession, the debtors received, essentially, another $25 million of funding for the cases.

I would like to talk a little bit, Your Honor, now about the surprise narrative that showed up in the committee's objection filed yesterday afternoon. The narrative is false and the evidence showed that. When it comes to be consulted on the bids, the bidders, the marketing process, the evidence will show that the committee's advisors were consulted on a near daily basis, and the evidence did show, Your Honor (indiscernible) marketing process. It is simply false that they were not consulted. It's also false that they were not consulted on the holdback, the winddown and the DIP reduction.

The paydown at the closing of a sale transaction, subject to a holdback, is in the bidding procedures order. It was in the order that was filed on the first day and it was in the order that was entered. The committee --

THE COURT: The amount was not.

MR. WINTERS: That’s right, Your Honor. I agree, but the concept that the proceeds would be used to pay down the DIP, subject to an agreed holdback has been out there since the beginning of the cases and has been agreed. So, the committee really should not be able to come now and say they are objecting to the concept of the paydown, Judge, especially without providing any alternative approach to obtain the secured lenders consent to the sales.

In its objection the committee attempts to put forward a narrative that there was some backroom deal around the DIP reduction and the holdback. This is also false. Going into the auction the funded new money amount of the DIP was impaired based on the starting bid. The lenders did not want the auction to even go forward for that reason. On august 11th, the Sunday before the auction, we agreed over email with DIP lenders counsel to propose a $40 million DIP reduction that was going to be proposed in the sale orders. We expected those sale orders to be filed as soon as the next day.

The auction was scheduled for the 12th, we expected to file those sale orders coming out of that auction. The auction went on for three days and when we were done with that we still weren't done with the RDx bidder who took the following weekend to get done. We then filed the proposed orders which had the reduction in them. There was no intention to hide this from the committee in any way.

I, frankly, personally had no idea that this was going to be so controversial and didn’t until we walked into

Court on Monday. After that, we agreed -- on Monday we agreed to the committee's adjournment to Friday and sat down and walked them through all this. That was the adjournment that they requested. They have all the information now. They have what we are proposing to get this deal done.

Same with the committee's objection that they (indiscernible) consulted on the holdback reserve. Its false. The committees advisor, BRG, first saw a version of the buildup to the holdback reserve on July 12th. That reserve has been under continued negotiation until Monday of this week when it was finally agreed with the lenders. We immediately walked the UCC advisors through it on Monday after we were here in Court. They asked for an adjournment to Friday to keep reviewing those numbers. We granted the adjournment.

On Tuesday, we filed proposed orders with all the numbers filled in and the holdback schedule laid out and we are now here asking for Court approval of those numbers. There was no surprise. Is it a tight timeline, yes, but that is by virtue of how distressed the situation is, how tight we are on cash.

In short, this really comes down to whether the $40 million DIP and the $25 million holdback are enough to fund these Chapter 11 cases. To be clear, that's $65 million of funding for a business with a market value of

$90.5 million. So, that is a lot of funding.

Reduction of the DIP commitment, and here's what Mr. Braley's testimony shows, reduction of the DIP commitment and the DIP paydown were necessary to get the lenders to consent to the sales. As mentioned, the sales were $50 million below the $140 million minimum bid imposed by the lenders. As it stands, after holding back the $25 million winddown reserve, the proceeds that cleared the funded amount of the new money portion of the DIP, and Mr. Braley testified to this, the proceeds are clear that the funded amount are $13.4 million. That is against over half a billion dollars of secured debt that was lent to these debtors. That is their recovery. And yet the DIP lenders still, from today forward, need to fund another $9 million under the DIP to get us to closing of these sales. That is a tough pill to swallow.

So, we gave two concessions: a reduction in a DIP commitment from $45 to $40, subject to Court approval, and a slightly smaller winddown budget which is still a very, very large number for a case of this size of $25 million; both subject to Court approval. That is what we are here today asking for.

The committee wants the Court to call the lender's bluff on this. My concern is that that could lead to a disastrous outcome. We are here trying to save these two businesses and as you heard, there is no chance of a recovery to general unsecured creditors, but there is a chance of a going concern outcome that satisfies admin claims and priority claims in full, that it continues a bunch of contracts, that keeps a bunch of employees employed and that transfers a bunch of critical product lines to reputable medical companies.

So, that is the outcome we are trying to facilitate today. We don’t love the reduction from $45 to $40. We don’t love having to agree to the skinniest winddown we could. We did it because we believe that its necessary to save the business. That is why we are here today.

Mr. Braley's testimony also showed that the $40 million is a reasonable amount of DIP funding to get us from here to closing. Again, the critical issue from the perspective of the lenders is to limit the amount that they need to fund into a very risky situation with a very low likelihood of any major recovery.

The testimony also showed that the $25 million is a reasonable holdback amount to fund a plan. The committee focuses on the fact that the vents buyer is only agreeing to pay up to $5 million of cures when there are potentially $9 million of cures. We have told that buyer we can't close unless they can fit those cures within the $5 million and we have a fiduciary out that runs through closing.

So, they are going to need to talk to those vendors and get that inside that budget and I think they will. If they don’t we are going to ask them to increase it or we are going to find the money somewhere else either in the $25 or we're going to be back with our hand out again. That is a reasonable deal to make under the circumstances of a case that is as distressed as this one.

Similar is the story about closing the deal on October 18th. The winddown is going to start when the second sale closes. The debtors aren't going to have any business anymore after that. So, most of the DIP budget is not needed at that point. It's true that at this point plan confirmation will likely lag by a matter of weeks. We plan to get a plan on file imminently. That shouldn’t materially change the $65 million of funding that we have for this and it can be any issue with professional fee overrun and it can be remedied by the group of folks in the courtroom today getting in a room after this and getting this thing settled.

Your Honor, in sum, the evidence showed that reducing the DIP commitment to $40 million and agreeing to a $25 million holdback reserve are a sound exercise of the debtors' business judgment. We would accordingly respectfully request that the Court approve the sale orders as submitted by the debtors on Tuesday.

Unless the Court has any questions, I will yield the podium.

THE COURT: I don’t have questions at this point, Mr. Winters.

I would ask if the committee wishes to be heard -- I'm sorry, before I hear from the committee I meant the lender. Does the lender wish to be heard before we hear from the committee? Good afternoon, counsel.

MR. BRODY: Good afternoon, Your Honor. Josh Brody, Gibson Dunn, on behalf of the lenders.

THE COURT: Welcome.

MR. BRODY: Candidly, I was not going to stand up and say anything.

THE COURT: That is why I asked.

MR. BRODY: I appreciate Your Honor doing that. Look, I think the only thing I could add to what Mr. Winters said is perhaps a little bit of perspective. I think it's often the case that from Your Honor's point of view in situations like this where the value just isn't there that there is a certain perspective that Your Honor would have to make sure the lenders aren't doing anything taking advantage of anyone.

Sometimes, you know, I think Your Honor could look at things and wonder this one, candidly, I would submit appreciated what I am about to say may be a self-serving statement, it's not a close call. The lenders are -- my clients are taking it on the chin. At various points in time in this case Your Honor may recall we moved and agreed to move a number of the bid deadlines because of the fact that at certain points it was unclear whether or not the funded amount of the DIP the new money was going to be covered.

We worked with the debtors and the debtors advisors multiple times throughout the course of this case to make sure that we gave the debtors the best opportunity to maximize value and keep these businesses running. Think at the beginning of the case, even before the company filed, the indications of interest that we lent and put the new money into and agreed to go forward on I think was $130 something million dollars potential bid value and we are clearly not anywhere near that. I honestly don’t know and I can't remember the last time this happened to me in my career, I don’t know right now that my clients are better off with this outcome then had they not lent anything into the DIP and had liquidated this under Chapter 7 from day one.

So, I think from our perspective we have been extremely reasonable to come to the best outcome we could and I think that what the debtors are asking for I think really is the best outcome for these estates.

THE COURT: Thank you for your comments.

MR. BRODY: Thank you, Your Honor.

THE COURT: Does the United States Trustee have any position with respect to -- there's a narrow issue today before us and I would just ask if your office has any position at which point the committee then could respond to pretty much everybody.

Mr. Hackman, good morning. Good to see you as always, or good afternoon.

MR. HACKMAN: Good afternoon, Your Honor. May I please the Court, Ben Hackman for the U.S. Trustee.

We take no position on the present dispute. We had provided informal comments about the forms of sale order and those have been revised.

THE COURT: I believe those have been built in satisfactorily.

MR. HACKMAN: I thank counsel for working with us on our comments.

THE COURT: Very good. Thank you, Mr. Hackman.

MR. HACKMAN: Thank you.

THE COURT: Okay. I will hear from the committee. Ms. Kandestin, good to see you.

MS. KANDESTIN: You too, Your Honor. I wish it was under better circumstances.

Your Honor, we support the sale. I think that has been very clear. Up until Monday we thought everyone was working towards the same goal of a going concern sale of these assets and getting to a consensual plan that hopefully would include recoveries to unsecured creditors. It became readily apparent, after Monday's hearing, that these goals were not shared with the lenders and the debtors.

It was only after Monday's hearing that we learned of this allocation agreement, as we call it in our papers, that the debtors and lenders entered into on August 11th. The fact that they slipped it into a sale order that was filed on August 20th, to me, is not a proper discussion to have with the committee. At no point during the auction or following the auction or at any point leading up to Monday where we told, specifically addressed, that this entire agreement existed or that the DIP was going to be reduced by $5 million which is a material modification of the DIP and there is nothing in these orders that puts that on notice. There is no motion. This is, basically, a 9019. There is no notice of that. There is absolutely no due process related to what they have slipped into these orders.

Just to be clear about what this agreement, it had four points, was. These are case dispositive terms in my mind.

First, giving up the $5 million despite paying the fees and getting the rolled up amounts on that.

Second, the agreement on the allocation of the sale proceeds. Of course, nothing was put aside for unsecured creditors.

Third, the debtors stipulated that after the DIP paydown amount was made that the lenders would retain all of their secured claims and everything that comes into the estate after that would be paid directly to them under a plan.

And, fourth, the lenders were to come to an agreement on a winddown budget. This winddown budget we saw drafted on Sunday. I am today years old when I got the one that is Exhibit 5. I didn’t see that until today. So, we have not had a chance to evaluate that. We could cobble something together on our own. It was put up on a screen after the hearing on Monday, but I didn’t have my phone out to screenshot it, so I couldn’t see it. And it's not filed on the docket.

As outlined in our papers, we have concerns just even based on the old version. One is no allocation for the $4.1 million of cure costs. I still have not heard a good explanation from the debtors as to how that is going to be addressed. Even if they waddle it down a lot it's not going to be zero and the fact of the matter is Zoll has until three days before closing to decide what to take and what not to take. The debtors say it could be less, but that applies on the flip side, it could also be more. They also -- the notice of the contract says that they can assume contracts or reject them post-closing.

So, this is just a completely unknown variable which is not addressed in this winddown budget. We heard testimony today that the debtors are responsible for these payments. There is nothing in this APA that says that they are not. The statement that Mr. Winters made, and it's in their papers too, that they made it clear to the buyer that they can't pay -- they basically can't live up to their obligation under the APA to satisfy cures above the cure cap. That is not in the agreement. That is nowhere in the agreement.

If they don’t -- they can't say like, oh no, we are going to reject these contracts that Zoll wants. That is not an option, that is a breach of the agreement. There are so many different ways that they are going to breach this agreement before closing potentially. Then the estate is going to be responsible for the damages.

Then, you know, one of our other concerns is this situation with the DIP. We had testimony today that the lenders have been trickling out the DIP. You know, there have been some adjustments have had to make. The positive variance, I think, Mr. Braley mentioned was because they have not been spending the critical vendor dollars, meaning unsecured creditors are not getting paid. They have reallocated that to cover the lack of DIP funding.

Based on the interim DIP budget, which Mr. Braley said has not changed, filed at Docket No. 12, the debtors are supposed to have had access to $36.655 million. We are 81 days into this case and they basically have had $10 million. So, my concern, especially after hearing from creditors, including ones on my own committee, that they are not getting paid on their post-petition claims is that there is more out there that we don’t know about. I am also very concerned that the debtors may be pushing off these admins that they think are going to be assumed as liabilities by purchasers.

I have no confidence in this admin claim in the amount that they have done because there are too many variables, we haven't had time to vet this. We have no input on this or the settlement, the reduction of the DIP, nothing. One of my committee members is owed almost $900,000 on a post-petition basis. That is, you know, not even talking about the prepetition stuff.

A lot of why this going concern sale worked was because creditors who were owed on their prepetition claims continue to do business to get to this place. The reward they get is potentially not having their admins paid and being completely cut out of any process or to be involved in a plan. No disclosure was provided. I am sure most people involved in this case, creditors have no idea that the plan is, basically, already set if this is approved.

I am not confident that we are going to have enough to get to a plan. Even if they filed the plan tomorrow, it's still another 66 days, at least, of funding well beyond, I think, October 18th. I don’t see any -- I think I did the math and even if you took the least amount of time under the local rules under the combined disclosure statement they would have had to file their plan on the 13th of August. So, there is just no real planning here, it's like, oh, we have a pot of money and we will just shift it around and move it around, but I am not confident that they are not going to run out of that money before admins get paid or priority claims.

The debtors, in their reply, make a lot of hay out of the fact that the bid procedures said that all proceeds go to the lenders. You know, we are aware of that language. We tried to negotiate that out, but at that point what wasn't settled was the amount of the winddown and there was still time to negotiate. When they entered into this allocation agreement they took away all of those possibilities for the committee and decided that everything was going to the lenders.

I understand the priority scheme under the bankruptcy code more than anyone. I am usually on that side of the table, but, you know, to me you don’t set that without committee involvement. The committee being out of the money is not an excuse or justification for excluding the committee, it's really just arrogant in my mind.

So, again, slipping this into the sale orders I just think is inappropriate at this time. There is no reason this has to be done now. It is depriving creditors of the opportunity to fully vet this process and be involved and establish anything, not to mention we are in the middle of investigating prepetition claims. So, how are we going to continue to do that.

THE COURT: I thought the challenge period is expired.

MS. KANDESTIN: No, not the liens. Like prepetition claims against other third parties.

THE COURT: Oh, okay.

MS. KANDESTIN: I don't know if there is going to be money for us to continue that. Those claims are just going to go poof. In our mind what they are trying to do here is a sub rosa plan. And they even have a finding that this isn't a sub rosa plan in their sale orders. So, clearly it's on their minds.

At bottom, Your Honor, these cases have been solely for the benefit of the lenders. They could have had pulled the plug on this at any time. They didn't. Now they have cut this backroom deal excluding the committee and there is -- you know, we're just stuck. They have not given me a good reason why or the Court why this has to be done today, why the sale orders have to provide this. I mean it's unusual to have this in the sale orders. And they certainly didn’t provide any explanation as to why there was no engagement with the committee on these settlement terms.

So, with that, Your Honor, we would respectfully request that the sale orders be entered, but without all of these extraneous terms.

THE COURT: Very good. Mr. Winters, very briefly.

MR. WINTERS: Very briefly, Your Honor. We do share the goal to get a recovery to general unsecured creditors. I just haven't heard a single word from the committee as to how that would be possible because it's not. It's not true that there has been no due process, the concept of the paydown and the reserve have been pleaded from the outset of the case. The evidence showed that the committee's advisors have been consulted nearly constantly throughout the course of the cases. What we heard from committee counsel just now was a lot of things that are not in evidence about consultation.

The last point I will make, Judge, is the idea that there has been no real planning here is simply not true. The debtors have been fighting every day to save the business. It does provide major benefits to people other than the secured lenders including admin creditors, priority creditors, contract counterparties, members of committee counsel's committee. Our goal is to get that consummated today.

Ms. Kandestin said that there is no reason why this needs to be done today, but the reason is that I have no confidence that the DIP lenders will consent to this sale if these terms are not approved. So, I think without this we are in limbo.

With that, Your Honor, we request that the Court enter the proposed order. Thank you.

THE COURT: Very good. Thank you.

Here is what we are going to, I have before me the request of the debtor to approve two separate sales. I will approve those sales. I have a limited objection from the official committee of unsecured creditors not to the sales themselves, but to the treatment of proceeds arising from those sales. I will overrule that limited objection and I will give you my reasons.

Before I turn to that, I would note that the record with respect to the debtors request for an order approving, under Section 363 of the Code, the sale to Zoll and the sale to Trudell are functionally uncontested.

The Court has admitted the declarations of Ms. Frejka, Mr. Schlappig. We've admitted the declaration of Mr. Braley and we've also obtained the benefit of his live testimony and cross-examination, with respect to the sale and the sale process, and the Debtors' thought process in going through the marketing and sale of the asset and the Debtors' decision-making process in choosing a winning bid out of the auction and sale process that the Court had set by the bidding procedures.

So I'm not going to burden the record with extensive findings. With respect to the Debtors' burden under Bankruptcy Code Section 363 and Bankruptcy Rule 6003 for purposes of approval and consideration of asset sales.

I would note, specifically, that in this jurisdiction, under the Abbotts Dairies case and its progeny, a debtor is obliged to demonstrate that a proposed sale transaction represents the exercise of the Debtors' best business judgment and proceeds in good faith.

For the reasons that I've stated a moment ago, I'm satisfied that the declarations that have been submitted, as well as the evidence and the record developed today, certainly satisfy that the debtor has carried its burden as to reasonable business judgment.

The proposed sale represents the Debtors' best business judgment. It is undisputed that this debtor lacks the liquidity and resources to continue to operate these bias and the Court is cognizant of an overlay of the nature of these particular Debtors' businesses.

We deal with all kinds of businesses and every debtor that operates and has employees in front of this Court is important. This debtor serves a particularly vulnerable client base and, ultimately, customer base in the medical care field. And the debtor has, from the very beginning of the case through today, advised that one of its priorities is to try to ensure that the employees continue to be employed and that this business continues to service the customers and the hospitals and the medical providers that continue to do so.

But more importantly for bankruptcy terms, this debtor does not have an operating alternative to the sale that's before us. It lacks the resources and liquidity. It is miles underwater by any estimation in terms of its secured debt obligations and, therefore, it has no meaningful alternative to the sale, other than, presumably, to liquidate the Debtors' business operations, so the business judgment is satisfied.

Likewise, based upon the record before me and the declarations that have been submitted, the debtor has scrupulously complied with the bid procedures order that required the debtor to go out to market to solicit its assets, to evaluate bids, to conduct an auction, and, ultimately, to identify the highest and best bids for its assets.

Those purchasers are, respectively, ZOLL and Trudell, and, again, the record before the Court certainly describes with specificity the process by which those bids were ultimately negotiated and received and accepted by the debtor. So I'm satisfied that both, ZOLL and Trudell, are good faith purchasers within the meaning of Bankruptcy Code Section 363(m) and they're entitled to all of the protections associated therewith.

That brings us, then, to -- so, I'm satisfied that the debtor has carried its burden under Abbotts Dairies for purposes of obtaining the relief that it seeks today.

That brings us, then, to the subject of the Committee's objection. Again, I am certainly solicitous and concerned about the issues that have been raised by the Committee: the lack of a meaningful recovery here and concerns with respect to the mechanics by which we have gotten to today's hearing. But I'm satisfied, again, that the record is sufficient and adequate to allow the Court to permit the matter to move forward.

I start first with Mr. Winters' comments from the podium on Monday, where he observed that the sale process was compliant with the bidding procedures and was successful in all respects, other than the purchase price, which leads to the old, "Other than that, Mrs. Lincoln, how was the play?"

But the fact is that's where we are. And this

Court does a lot of sales. Bankruptcy courts do, generally, and we are significantly committed to the process.

The Court notes that there was a reserve price for a minimum bid that was not achieved here and I ascribe significance to that. The DIP lender enjoys liens and the lender's prepetition lender enjoys liens in the Debtors' business. That makes the business their collateral. They identified that they would not be prepared to accept a bid below $140 million.

The bids came in, collectively, at just over $90 million. It is not lost upon me, the fact that the economic result of this case is less than I deal for all stakeholders, and, certainly, for the lenders, as well. And I appreciate bank counsel's comments.

Experience teaches that the bank probably considered, with cold and clear eyes, its alternatives, which included liquidating this case with the consequences for the stakeholders that I addressed earlier. And they elected, I assume, for their own rationale business reasons not to do so and to continue to support this process.

I am concerned, but I'm not -- again, I don't believe it's dispositive that, perhaps, agreements were reached with respect to the economics and, particularly, to the adjustment of the DIP financing that were not, perhaps, immediately communicated to the Committee. But I don't believe, again, that if that did occur, that it would be fatal to where we are today.

Again, the economics of the case reflect some pretty stark realities and the record reflects that there was a negotiated reduction in the DIP to be funded and that would be reflected in a proposed sale order, because the reduction would be in response to, or as a result of, analysis of the bids and, presumably, the result of the auction and the figuring out the economics and the budgeting for the case going forward to get to a confirmed plan.

So that brings us, then, to whether or not the Court should approve the DIP financing orders that include the mechanics that have been identified to get us to that, and I'm prepared to approve those provisions.

I share, or I understand the Committee's issue, with respect to a *sub rosa* plan. I'm not satisfied that this meets that requirement; that is, there are commonly features in sale orders that courts approve in situation such as this in terms of dealing with the DIP lender and providing mechanics for a post-sale wind-down process, either to a plan or to a liquidation or a conversion or a dismissal.

In this case, Mr. Braley testified at length and was cross-examined with respect to his assessment and judgment of the economics of the case, where the cash flows would be. It is true that he testified candidly that there are no guarantees that the debtor will achieve the results that it wants and be able to pay all the obligations that it has.

He also testified, as I would have expected and predicted, given his long experience, that if the debtor were in a position where there were shortfalls in one area, I think his phrase was, We're agnostic as to where the money comes from, in terms of the budget.

In addition, Mr. Braley testified that there are certain other material assets that remain and will remain in the estate post-closing, for purposes of being liquidated and presumably and hopefully, they will be available, to the extent that there are issues.

But, again, under the circumstances of this case, I am satisfied that the Debtors have carried their burden and that the mechanics that they've described to get promptly to a plan here and to a wind-down process are appropriate and warranted and supported by competent evidence.

I'd note further that in Monday's hearing, Mr. Winters described, at length, the process leading up to closing and post-closing, and specifically, that I believe both of these transactions require and anticipate a TSA, a transition services agreement. And, again, given the nature of the company's business, the fact that these are being transitioned to strategic purchasers as an operating business, a going-concern sale, the Court is not priced that there is a need for a TSA and I believe that interests will be aligned to ensure that the debtor has the adequate resources to continue to operate and to perform under the TSA and to get to a plan.

Finally, with respect to the plan, I make no comment on the contents or the specifics of a plan. But I have made no secret over the years that I am a big fan of combined plans and disclosure statements, particularly in sales that result in the receipt of funds and the transfer of assets to purchasers, leaving the estate with a relatively limited collection of assets to either liquidate or monetize.

And what I said before, I will repeat to the parties today: You can expect that the Court will be a willing partner with all stakeholders in terms of getting a plan process underway and getting to plan confirmation.

The Committee's significant, and I think well-founded concerns are: Is there enough money in this estate? Will there be enough to allow us to get across that finish line?

And to me, the most significant controllable, or the most easily controlled aspect of that is the speed with which a pretty vanilla liquidating plan and disclosure statement are prepared, filed, and prosecuted diligently. So I would expect that some poor associate is going to have a

Labor Day assignment that will move this process forward.

Because, again, the -- I have expressed before probably one of the biggest frustrations I have are cases that fail to get through to a confirmation because the administrative expenses -- the burn -- and, particularly, the professional burn of getting to plan confirmation are too burdensome and we just -- it just dies of its own accord.

This can be done simply and done quickly and I would admonish and encourage the parties to do so.

But for the reasons that I've shared, I will overrule the limited objection of the Official Committee and I would be prepared to enter orders approving the sales to ZOLL and Trudell.

Are there any questions?

(No verbal response)

THE COURT: One final comment. I believe given Mr. Braley's testimony, the debtor is not expecting to close either of these transactions within 14 days, so I don't believe there's a need for a waiver of the Rule 6004 stay and I just wanted to confirm that.

Mr. Winters, do I have that right?

MR. WINTERS: You have that right, Your Honor.

THE COURT: Very well.

All right. Are there any questions?

(No verbal response)

THE COURT: Very good.

Mr. Winters, do we have anything further today?

MR. WINTERS: Nothing further, Your Honor.

THE COURT: All right. I very much appreciate everyone's time. I appreciate the parties' coordination in the adjourned time from Monday to today, and, again, parties providing their time and attention on a Friday before the long weekend.

With that, we are adjourned. Be well. Enjoy your weekend.

Stand in recess.

MR. WINTERS: Thank you, Your Honor.

(Proceedings concluded at 1:26 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 August 31, 2024

William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Mary Zajaczkowski August 31, 2024

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