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COUNSEL TO THE DEBTORS

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: § Chapter 11
§
ROCKIES REGION 2006 LIMITED § Case No. 18-33513-sgj-11
PARTNERSHIP and ROCKIES REGION §
2007 LIMITED PARTNERSHIP,¹ § (Jointly Administered)
§
Debtors. §

**DEBTORS’ OBJECTION TO MOTION TO COMPEL
FURTHER TESTIMONY OF DARWIN STUMP AND KAREN NICOLAOU**

Rockies Region 2006 Limited Partnership and Rockies Region 2007 Limited Partnership
(collectively, the “Debtors”), for their Objection (the “Objection”) to the *Motion to Compel*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Rockies Region 2006 Limited Partnership (9573) and Rockies Region 2007 Limited Partnership (8835).

Further Testimony of Darwin Stump and Karen Nicolaou [Docket No. 175] (the “Motion to Compel”)² filed by the LP Plaintiffs,³ respectfully represent:

PRELIMINARY STATEMENT

1. On May 7, 2019, the LP Plaintiffs had the opportunity to depose Karen Nicolaou, the Debtors’ Responsible Party, for over 6 hours regarding her role in these chapter 11 cases and her decision to file bankruptcy for the Debtors. Ms. Nicolaou was presented for deposition by Jim Ormiston, a partner with Gray Reed & McGraw LLP (“Gray Reed”), counsel to the Debtors. As evidenced by the deposition transcript, Mr. Ormiston was very thoughtful on where to draw the line regarding what questions were covered by the attorney-client privilege. As a result, Ms. Nicolaou provided thorough testimony regarding what she did, what documents she reviewed, and with whom she consulted in arriving at her decision to file these chapter 11 cases. *See* Dep. of K. Nicolaou at 11:9-17:25; 25:6-34:17; 44:7-25; 49:8-51:25; 63:13-67:5; 69:6-20; 71:8-72:25; 80:17-81:22; 117:2-119:19; 128:6-130:10; 142:3-144:15; 146:25-149:25; 152:18-155:24; 173:4-176:15; 181:22-183:22; 186:7-191:11; 193:2-198:25; 200:2-14; 205:16-208:7).⁴ Mr. Ormiston only instructed Ms. Nicolaou not to answer when counsel to the LP Plaintiffs asked her specifically about the substance of confidential communications with counsel. *See id.* at 28:13-25 (asking for the “conclusion” of Gray Reed); 110:7-111:20 (asking about the specific services provided by Gray Reed); 122:2-124:6 (asking about the basis for Gray Reed’s determination); 138:24-139:4 (asking if she relied on Gray Reed’s advice to reach a conclusion).

² The Debtors are only responding to the Motion to Compel with respect to the questions relating to Ms. Nicolaou and understand that PDC will be responding separately with respect to questions relating to Mr. Stump.

³ The LP Plaintiffs are (i) Robert R. Dufresne, as Trustee of the Dufresne Family Trust; (ii) Michael A. Gaffey, as Trustee of the Michael A. Gaffey and JoAnne M. Gaffey Living Trust dated March 2000; (iii) Ronald Glickman, as Trustee of the Glickman Family Trust established August 29, 1994; (iv) Jeffrey R. Schulein, as Trustee of the Schulein Family Trust established March 29, 1989; and (v) William J. McDonald as Trustee of the William J. McDonald and Judith A. McDonald Living Trust dated April 16, 1991.

⁴ The relevant portions of Ms. Nicolaou’s deposition transcript are attached as **Exhibit A**.

2. The LP Plaintiffs filed the Motion to Compel in tandem with their other efforts to force disclosure of the Debtors' attorney-client communications. This too must fail. All of the questions for which the LP Plaintiffs seek further testimony from Ms. Nicolaou are subject to the attorney-client privilege. The Debtors have never waived attorney-client privilege, nor are they attempting to hide behind the privilege by asserting reliance on advice of counsel as a *defense* in connection with the Pending Matters. Although the LP Plaintiffs claim they "are simply trying to determine if Nicolaou conducted a proper investigation of the Debtors' claims and the value of the Debtors['] assets," their scorched-earth litigation tactics reveal that they are after nothing less than disclosure of all of Debtors' confidential and privileged communications.

3. For the reasons stated above and as discussed further herein, the Debtors respectfully request that the Court deny the Motion to Compel.

BACKGROUND

4. On October 30, 2018 (the "Petition Date"), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors are continuing to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee has been appointed.

6. The Debtors are West Virginia limited partnerships that own undivided working interests in oil and natural gas wells. PDC Energy, Inc. (f/k/a Petroleum Development Corp.) ("PDC") is the managing general partner of each of the Debtors and owns approximately 39% of the Debtors' equity interests. In the aggregate, the Debtors have over 3,700 limited partnership unit holders (the "Investor Partners"). Additional background information may be found in the *Declaration of Karen Nicolaou in Support of Chapter 11 Petitions* [Docket No. 10] (the "Nicolaou Declaration").

7. Presently before the Court are the LP Plaintiffs' *Amended Motion for Dismissal of Chapter 11 Case* [Docket No. 140] (the "Motion to Dismiss") and the *Application for Order (i) Authorizing the Retention of Harney Management Partners to Provide the Debtors a Responsible Party and Certain Additional Personnel, (ii) Designating Karen Nicolaou as Responsible Party for the Debtors Effective as of the Petition Date, and (iii) Granting Related Relief* [Docket No. 12] (the "Harney Application" and together with the Motion to Dismiss, the "Pending Matters"), which have been set for hearing on June 20 and 21, 2019.

8. In connection with the Pending Matters, the LP Plaintiffs have also (i) filed their *Motion to Compel Production of Documents* [Docket No. 171] (the "Motion to Compel Documents") and (ii) served a deposition subpoena on Jason S. Brookner, lead counsel to the Debtors (the "Brookner Subpoena"), which the Debtors have sought to quash, *see* Docket No. 172. Both the Motion to Compel Documents and the Brookner Subpoena seek disclosure of documents and information covered by the attorney-client privilege and the work product doctrine.

OBJECTION

A. Standards for Compelling Discovery

9. The Court may impose limits on discovery, including "forbidding" requested discovery to prevent duplicative, unnecessary, or inefficient requests, and "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." FED. R. CIV. P. 26(c)(1). The Court may "exercise its sound discretion to restrict what materials are obtainable, how they can be obtained, and what use can be made of them once obtained" in discovery. *Harris v. Amoco Prod. Co.*, 768 F.2d 669, 684 (5th Cir. 1985); *see also Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 28 F.3d 1388, 1394 (5th Cir. 1994) (affirming district court's grant of protective order concerning overly broad requests that would subject defendant to "undue burden, expense, and annoyance"); *Landry v. Air Line Pilots Ass'n Int'l AFL-CIO*, 901

F.2d 404, 436 (5th Cir. 1990) (“[D]iscovery is not justified when cost and inconvenience will be the sole result.”).

10. Furthermore, under Rule 26, made applicable to bankruptcy cases by Federal Rule of Bankruptcy Procedure 7026, a court *must*:

limit proposed discovery that it determines is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit—and the court must do so even in the absence of a motion.

Orchestratehr, Inc. v. Trombetta, 178 F.Supp.3d 476, 505 (N.D. Tex. 2016); *see* FED. R. CIV. P. 26.

B. The Debtors’ Objections to the Questions at Issue Should Be Sustained as those Questions Seek Information Subject to the Attorney-Client Privilege

11. The LP Plaintiffs contend that the attorney-client privilege is not applicable to the eight questions for which they seek to compel further deposition testimony from Ms. Nicolaou. However, the LP Plaintiffs’ efforts to get behind the attorney-client privilege are improper, and the Motion to Compel, along with the Motion to Compel Documents and the Brookner Subpoena, is a just another attempt to eviscerate the attorney-client privilege. The assertions of privilege were proper, and the Debtors stand behind them.

12. The attorney-client privilege exists to “encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.” *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). This privilege “rests on the need for the advocate and counselor to know all that relates to the client’s reasons for seeking representation if the professional mission is to be carried out.” *Id.* (quoting *Trammel v. United States*, 445 U.S. 40, 51 (1980)). “The party asserting that

communication is protected by the privilege must prove: (1) that he made a confidential communication; (2) to a lawyer or his subordinate; (3) for the primary purpose of securing a legal opinion or legal services, or assistance in some legal proceeding.” *United States v. Robinson*, 121 F.3d 971, 974 (5th Cir. 1997). The attorney-client privilege applies to shield Ms. Nicolaou from responding to each of the eight questions set forth in the Motion to Compel

13. **Question 1**: “Specifically, what did you ask Gray Reed to do? Did you ask Gray Reed to provide specific services in connection with your representation?”

14. While the LP Plaintiffs attempt to cast these questions as an inquiry into the “general nature of the services for which the firm was engaged,” the questions directly ask about confidential attorney-client privileged communications. The first question expressly asks Ms. Nicolaou to testify about what she communicated to Gray Reed in connection with Gray Reed’s performance of legal services to the Debtors. The second question seeks disclosure of specific instructions conveyed by Ms. Nicolaou to Gray Reed about the scope of legal services in these cases. These questions undoubtedly seek disclosure of confidential and privileged attorney-client communications, and the objection should be sustained.

15. **Question 2**: “Did someone [at Gray Reed] explain the basis for making the determination that all claims were derivative?”

16. The above question was posed during cross-examination of Ms. Nicolaou regarding her determination that the claims asserted in the Colorado Action are derivative and, therefore, belong to the Debtors’ estates. Dep. of K. Nicolaou at 121:13-124:7; *see also Motion Pursuant to Section 541(a) of the Bankruptcy Code for Determination that Certain Claims and Causes of Action are Property of the Estate* [Docket No. 137] (the “Determination Motion”). The Debtors submit that such a determination is ultimately a legal question. *See* authorities cited in

Determination Motion at footnote 6. In any event, when read in context, this question seeks information regarding Gray Reed's legal advice to Ms. Nicolaou regarding the derivative nature of the claims in the Colorado Action, the answer to which may open the door for further cross-examination regarding the underlying privileged communications. The LP Plaintiffs are not entitled to know whether Gray Reed provided Ms. Nicolaou with a legal explanation for why the claims in the Colorado Action are derivative, nor are they entitled to know the "basis" for any such legal explanation. In this instance, merely answering the question with a "yes" or "no" would invade the attorney-client privilege because either answer would disclose whether Gray Reed had performed a legal analysis of the derivative nature of the claims, whether Gray Reed conveyed that analysis to Ms. Nicolaou, and whether Ms. Nicolaou acted on any such legal advice by determining the claims are derivative and filing the Determination Motion. Under the circumstances, the objection was proper and should be sustained.

17. **Question 3**: "Did you rely on the advice they [Gray Reed] gave you [as to your conclusion that the claims in the Colorado Action are derivative claims]?"

18. The same analysis that applies to Question 2 applies to this question. By asking Ms. Nicolaou whether she relied "on advice of counsel" when she decided the claims in the Colorado Action are derivative and belong to the Debtors' estates, the LP Plaintiffs sought to pry behind the confidential communications she had with Debtors' counsel regarding their legal analysis of a key issue in these chapter 11 cases. If Ms. Nicolaou answered in the affirmative, then the LP Plaintiffs would know what Gray Reed's advice was because obviously the Debtors have filed a motion in this Court seeking a determination that the claims in the Colorado Action are part of the Debtors' estates. As discussed herein, answering a deposition question that implicates the attorney-client privilege has the potential to allow an opposing party to argue the privilege has

been waived as to the subject matter of the question at issue – the result that the LP Plaintiffs are clearly after here.

19. **Question 4**: “Did you rely on the advice of counsel [as to your determination that the partnership agreements do not provide a mechanism to make capital calls]?”

20. The same analysis that applies to Questions 2 and 3 also applies to this question. Ms. Nicolaou testified that she believed (as a layperson) the partnership agreements prohibited the Debtors from making capital calls on the limited partners. Dep. of K. Nicolaou at 138:5-23. Thus, by answering this question, Ms. Nicolaou risked divulging any legal analysis and advice she had received from Gray Reed in reaching her lay opinion regarding the terms of the partnership agreements. Like Questions 2 and 3, this question seeks information protected from discovery by the attorney-client privilege.

21. **Question 5**: “Did you rely on the advice of counsel as to any of the comments you made in your declaration concerning the litigation?”

22. In addition to being overly broad—the Nicolaou Declaration is detailed and lengthy—this question has the same attorney-client privilege implications as discussed above with respect to Questions 2 – 4. Had Ms. Nicolaou answered, she would have disclosed the substance and extent to which she asked for and received legal advice on the numerous issues addressed in the Nicolaou Declaration, which would have almost certainly led to multiple follow-up questions about the details of that legal advice and her reliance, or not, thereon.

23. **Question 6**: “What was [Jason Brookner’s and Lydia Webb’s] conclusion concerning your determination that the Partnerships were authorized to retain you as Responsible Party?”

24. This question directly, and improperly, asks what was said by two lawyers to the representative of their clients, the Debtors. The LP Plaintiffs contend this question does not invade the attorney-client privilege because “Gray Reed did not represent Ms. Nicolaou” personally. *See* Motion to Compel ¶ 57. However, this is a distinction without a difference. Prior to the Petition Date, PDC appointed Ms. Nicolaou as Responsible Party to the Debtors. As entities, the Debtors can only act through their authorized representatives, and Ms. Nicolaou has served in that capacity since her appointment. Communications with an attorney that predate formal retention may be privileged if “the party divulging [the] confidences and secrets to [the] attorney believes that he is approaching the attorney in a professional capacity with the intent to secure legal advice.” *Bennett Silvershein Assoc. v. Furman*, 776 F. Supp. 800, 803 (S.D.N.Y. 1991) (internal quotation marks and citation omitted); *see also Westinghouse Elec. Corp. v. Kerr-McGee Corp.*, 580 F.2d 1311, 1319 (7th Cir.1978) (“The fiduciary relationship existing between lawyer and client extends to preliminary consultation by a prospective client with a view to retention of the lawyer”). Here, the LP Plaintiffs are clearly inquiring into communications intended to be confidential and for the purposes of rendering legal services to the Debtors—*i.e.*, whether the Debtors were authorized to retain Ms. Nicolaou as Responsible Party. To state the obvious, any confidential communications between Debtors’ counsel and an authorized representative of the Debtors made to facilitate the rendition of legal services are covered by the attorney-client privilege.

25. **Question 7:** “Was Gray Reed’s conclusion the same as yours as it relates to your determination that the Partnerships had authorization to retain you as Responsible Party?”

26. Again, this question directly, and improperly, inquires about confidential communications between Debtors and their lawyers in this case. To be clear, communications with Ms. Nicolaou, as Responsible Party for the Debtors, are communications with the Debtors.

For the reasons set forth above, this question invades the attorney-client privilege and Debtors' objection should be sustained.

27. **Question 8:** "Do you know what Gray Reed did to make the determination that the claims were derivative?"

28. The only way Ms. Nicolaou could know what Gray Reed did to determine the claims in the Colorado Action are derivative is by Gray Reed communicating that information to Ms. Nicolaou. In other words, this question seeks disclosure of confidential and privileged communications between Debtors and their counsel. For the same reasons discussed with respect to Question 2, this questions improperly seeks the disclosure of information protected from discovery by the attorney-client privilege.

C. The Debtors Have Not Waived the Attorney-Client Privilege

29. The LP Plaintiffs contend that Ms. Nicolaou, acting on behalf of the Debtors, has caused the Debtors to waive the attorney-client privilege with respect to six of the eight questions identified in the Motion to Compel and discussed above. Specifically, the LP Plaintiffs assert that Ms. Nicolaou waived the privilege held by the Debtors by: (i) producing Gray Reed's engagement letter (Question 1), (ii) filing the Determination Motion (Question 2); (iii) asserting Debtors' reliance on advice of counsel (Questions 2, 3, and 4); (iv) statements made in the Nicolaou Declaration (Question 5); and (v) "pleadings and other papers filed by Debtors in these cases" (Question 8). However, none of these alleged actions operate as a waiver of the attorney-client privilege, which remains intact.

30. **Production of the Gray Reed Engagement Letter.** The LP Plaintiffs contend that by producing Gray Reed's engagement letter with the Debtors (the "Engagement Letter"), the Debtors have waived the attorney-client privilege with respect to Question 1, which inquires into the specific services Ms. Nicolaou asked Gray Reed to perform on behalf of the Debtors. *See*

Motion to Compel ¶ 47. While the Engagement Letter is the basis for Gray Reed’s representation of the Debtors, it does not contain a description of the specific services to be provided. Because the Engagement Letter does not go beyond the general description of “evaluating strategic alternatives, a potential wind-down and a potential chapter 11 filing,” its production to the LP Plaintiffs does not waive the attorney-client privilege as to the specific services Ms. Nicolaou asked Gray Reed to perform.

31. However, to the extent the Engagement Letter sets forth Gray Reed’s general understanding of the Debtors’ motive in seeking representation, that disclosure does not constitute a broad waiver of all of the privileged information regarding the services provided by Gray Reed to the Debtors because the Engagement Letter does not support an element of a legal claim or defense. Therefore, the privilege has not been waived. *See, e.g., Chimney Rock Pub. Power Dist. v. Tri-State Generation & Transmission Ass’n, Inc.*, 10-CV-02349-WJM-KMT, 2013 WL 1969264, at *4–5 (D. Colo. May 13, 2013) (discussing potential waiver of attorney-client privilege under Colorado law in connection with production of engagement letter). Further, engagement letters are often produced in discovery by parties seeking to recover attorney’s fees, and the production of engagement agreements is not generally considered a waiver of the attorney-client privilege. *See, e.g., Riddell Sports, Inc. v. Brooks*, 158 F.R.D. 555, 560 (S.D.N.Y.1994) (“Under federal common law, attorney fee arrangements, including the general purpose of the work performed, are not generally protected from disclosure by the attorney-client privilege”).

32. **Filing the Determination Motion.** On March 22, 2019, the Debtors filed their Determination Motion. The Determination Motion seeks a declaration that the claims asserted in the Colorado Action are derivative claims, and thus, property of the estate.

33. The LP Plaintiffs contend that by filing the Determination Motion, the Debtors waived the attorney-client privilege as to Question 2: “Did someone [at Gray Reed] explain the basis for making the determination that all claims were derivative?” *See* Motion to Compel ¶¶ 48-49. The question posed to Ms. Nicolaou goes to the core of attorney-client communications, as it asks her to divulge conversations she had with Debtors’ counsel regarding their legal analysis of a key issue in these cases. Ms. Nicolaou has not revealed the contents of those privileged communications with the LP Plaintiffs or any other third party. The fact that the Determination Motion was ultimately filed does not waive the attorney-client privilege for any underlying confidential communications between Debtors and their lawyers, and for this additional reason, the Debtors’ objection to Question 2 should be sustained.

34. **Reliance on Advice of Counsel.** “[A] client waives the privilege by affirmatively relying on attorney-client communications to support an element of a legal claim or defense—thereby putting those communications ‘at issue’ in the case.” *In re Itron, Inc.*, 883 F.3d 553, 558 (5th Cir. 2018); *see also In re McDowell*, 483 B.R. 471, 491 (Bankr. S.D. Tex. 2012) (“In the bankruptcy context, voluntary waiver has been found where a debtor relies on advice of counsel as a defense or where the debtor has expressly disclosed what his counsel communicated to him”); *In re Myers*, 382 B.R. 304, 307 (Bankr. S.D. Miss. 2008) (holding that the debtor waived the attorney-client privilege when the debtor pled reliance on his attorney’s advice during a deposition).

35. Here, the questions as to which the LP Plaintiffs argue the Debtors have waived the privilege based on reliance on advice of counsel relate to whether: (i) the claims asserted in the Colorado Action are derivative (Questions 2 and 3), and (ii) the partnership agreements provide a mechanism to make capital calls (Question 4). Neither of these issues are “an element of a legal

claim or defense.” *Itron*, 883 F.3d at 558. Indeed, there are no statements (and the LP Plaintiffs did not cite to a single line) in the Response to the Motion to Dismiss indicating that the Debtors, acting through Ms. Nicolaou, relied solely upon Gray Reed’s advice to establish any element of a defense to any argument in the Motion to Dismiss or to support any element of a claim, as would be required to implicate the sword and shield doctrine of waiver. *See In re Itron, Inc.*, 883 F.3d at 558.

36. Moreover, these questions relate to legal advice on pure legal questions, and it is ultimately up to the Court to decide whether the claims asserted in the Colorado Action are derivative and to interpret the provisions of the partnership agreements.

37. While Ms. Nicolaou certainly consulted with Gray Reed regarding legal matters related to her activities as the Debtors’ Responsible Party, she never relied upon Gray Reed’s legal advice to supplant her own her business judgment. *See In re Residential Capital, LLC*, 491 B.R. 63, 70-72 (Bankr. S.D.N.Y. 2013) (“The attorney-client privilege is not waived if the Debtors argued that they sought the advice of counsel, *among other actions*, in an effort to reasonably educate themselves as to the merits of the settlement.”). Rather than indicating that Ms. Nicolaou blindly followed Gray Reed’s lead when making each of the decisions outlined above, Ms. Nicolaou’s testimony and the matters addressed in the Response to the Motion to Dismiss illustrate that she and Gray Reed acted entirely within the appropriate bounds of their respective roles. Gray Reed provided bankruptcy legal advice to the Debtors, and Ms. Nicolaou used that guidance to aid her in determining the best course of action to maximize the Debtors’ estates, which in no way waives the attorney-client privilege. *See Residential Capital*, 491 B.R. at 70-72.

38. **Statements Made in the Nicolaou Declaration.** The LP Plaintiffs also contend the Debtors waived the privilege in connection with whether Ms. Nicolaou relied on advice of

counsel “as to any of the comments you made in [the Nicolaou Declaration] concerning the [Colorado Action]” by filing the Nicolaou Declaration. *See* Motion to Compel ¶¶ 54-55. This reasoning is not only circular, but nonsensical. Ms. Nicolaou did not testify that she relied on advice of counsel with respect to anything contained in the Nicolaou Declaration, nor has she done anything to waive the privilege that applies to her communications with Gray Reed regarding Gray Reed’s legal analysis of the derivative nature of the claims asserted in the Colorado Action. Yet the LP Plaintiffs seem to imply that the mere fact that the Nicolaou Declaration was filed indicates her reliance and/or disclosure, and thus, a waiver of the privilege. If that were so, litigants could inquire into privileged communications regarding any subject matter that is ultimately referenced in a pleading, declaration, or other court filing. This cannot be, and the assertion of privilege must stand.

39. **Pleadings and Other Papers Filed by the Debtors.** Finally, the LP Plaintiffs reference unspecified “pleadings and other papers filed by the Debtors” to support their contention that the Debtors waived the privilege as to Question 8: “Do you know what Gray Reed did to make the determination that the claims were derivative?” Motion to Compel ¶¶ 60-61. The LP Plaintiffs cannot submit such a vague and general statement to gain access to privileged information. The Debtors have not waived the privilege applicable to the confidential communications between Ms. Nicolaou and Gray Reed regarding Gray Reed’s legal analysis into the nature of the claims asserted in the Colorado Action. Any argument to the contrary is specious.

CONCLUSION

40. The Court should not allow the LP Plaintiffs to disrupt and delay the hearings on the Pending Matters with their inappropriate attempt to discover privileged communications. The Motion to Compel should be denied.

41. However, if the Court is inclined to require Ms. Nicolaou to answer one or more of the discrete questions set forth in the Motion to Compel, the Debtors request that Ms. Nicolaou be permitted to answer any such questions in writing under oath, provided the answering of such questions shall not constitute a general waiver of the attorney-client privilege as it relates to the topics to which they relate. Allowing Ms. Nicolaou to answer one or more of the questions in this manner, in the alternative to denying the Motion to Compel, will save the Debtors and other parties the expense of reconvening the deposition, which would involve travel by Ms. Nicolaou and counsel.

WHEREFORE, the Debtors respectfully request that this Court deny the relief sought in the Motion to Compel and grant such other and further relief as may be just and proper.

[Intentionally left blank — signature page follows.]

Respectfully submitted this 28th day of May, 2019.

GRAY REED & McGRAW LLP

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COUNSEL TO THE DEBTORS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 28th day of May, 2019, she caused a true and correct copy of the foregoing document to be served on the parties appearing on the Limited Service List maintained in these cases via first class United States mail, postage prepaid and, where possible, via electronic mail.

/s/ Lydia R. Webb

Lydia R. Webb

Exhibit A

Nicolaou Deposition Excerpts

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:)
) CASE NO. 18-33513
ROCKIES REGION 2006) CHAPTER 11
LIMITED PARTNERSHIP and)
ROCKIES REGION 2007)
LIMITED PARTNERSHIP) (Jointly Administered)
)
DEBTORS)

ORAL DEPOSITION OF
KAREN NICOLAOU
MAY 7, 2019

ORAL DEPOSITION OF KAREN NICOLAOU, produced as a witness at the instance of The Dufresne Family Trust, The Schulein Family Trust, The Michael A. Gaffey and Joanne M. Gaffey Living Trust, March 2000, and The Glickman Family Trust dated August 29, 1994, The William J. and Judith A. McDonald Living Trust dated April 16, 1991, and duly sworn, was taken in the above-styled and -numbered cause on May 7, 2019, from 9:07 a.m. to 6:04 p.m., before Mercedes Arellano, CSR in and for the State of Texas, reported by machine shorthand, at the law offices of Gray, Reed & McGraw, LLP, 1601 Elm Street Suite 4600, Dallas, Texas, pursuant to the Federal Rules of Civil Procedure.

1 Q. All right. I'll have this marked as Exhibit 1.

2 (Exhibit 1 marked.)

3 MR. BROOKNER: Do you have copies you can
4 pass around?

5 MR. WEISBART: Here, I got -- I think I got
6 one extra one.

7 MR. ORMISTON: I can just share mine.
8 That's fine.

9 MR. WEISBART: Okay. I got one extra one.

10 Q. (BY MR. WEISBART) Do you recognize that
11 document?

12 A. Yes.

13 Q. Okay. What is it?

14 A. These are my contemporaneous notes from that
15 phone call.

16 Q. Okay. So there was a phone call on January
17 17th, 2008 --

18 A. Yes.

19 Q. -- about your possible employment?

20 And these are your personal notes
21 associated with that call; is that correct?

22 A. Yes.

23 Q. Okay. And who was on the call?

24 A. Myself, Joseph Rivera, Lydia Webb, and Jason
25 Brookner.

1 Q. Okay.

2 A. According to the notes.

3 Q. Now, what was discussed on the call?

4 A. Various aspects. I mean, it's written down
5 these are the notes.

6 Q. Well, various aspects related to?

7 A. Retention, the stats of the partnerships.

8 Q. Retention to do what?

9 A. To analyze the partnerships and ascertain the
10 best way to maximize the value of the assets.

11 Q. Okay. And these notes describe topics that you
12 discussed; is that correct?

13 A. Yes.

14 Q. Okay. Was background information concerning
15 the partnerships discussed from your notes?

16 A. Yes.

17 Q. What was your understanding of the partnerships
18 at the time you were contacted?

19 MR. ORMISTON: Can you give her that
20 question again, please.

21 Q. (BY MR. WEISBART) What was your understanding
22 of what the partnerships -- what business the
23 partnerships were engaged in at the time you were
24 contacted?

25 A. The business that they were operating, oil and

1 gas wells.

2 Q. Operating what?

3 A. Oil and gas wells.

4 Q. Okay. Were they doing anything more than
5 operating them?

6 A. I --

7 Q. Did -- they owned oil and gas wells, right?

8 A. Yes.

9 Q. All right. And what was the reason you were
10 being contacted; was there some problem with the
11 partnerships?

12 A. The assets were at the end of their lives.

13 Q. Okay. The assets being the oil and gas wells?

14 A. Yes.

15 Q. And that was subject -- the subject matter of
16 your discussion on January 17th?

17 A. Yes.

18 Q. Again, refer you to the second page of your
19 notes, high lined pressures. Do you see where I'm
20 referring to, towards the top of page, "Horizontal
21 drilling around wells has increased pressure" -- is that
22 word "destroy," "destroy or kill production"?

23 A. Yes.

24 Q. Was that part of the problem that the
25 partnership wells was having, as you were told?

1 A. The high line pressures, yes.

2 Q. Okay. And down further, it says, "PDC has been
3 plugging verticals 285 during 2017."

4 What does that mean?

5 A. Excuse me. It means they've been plugging
6 wells.

7 Q. Vertical wells?

8 A. Yes.

9 Q. And what's your understanding of the term
10 "horizontal drilling"?

11 A. Horizontal drilling?

12 Q. Uh-huh.

13 A. It goes this way (indicating).

14 Q. Sideways?

15 A. Sideways. Thank you.

16 Q. All right. Was there a conversation about how
17 many wells had been plugged in connection with
18 the -- between these two partnerships, the '06 and the
19 '07 partnerships?

20 A. There's a note here that discusses 15 wells in
21 2017 for the '06 and 53 wells for the '07 plugged in
22 2017. Nothing previous to that -- oh, I'm sorry. 20
23 wells in '17.

24 Q. All right. And on the next page, there's a
25 reference to breach of fiduciary duty lawsuit filed in

1 Colorado. Do you see that?

2 A. Yes.

3 Q. And by the way, these are Bates stamped. These
4 are documents that were produced by Mr. Brookner's
5 office or by you?

6 A. Okay. Uh-huh.

7 Q. And so if I make reference to a Bates stamp
8 number, I'll refer you to the bottom of the page.

9 So what were you told about the breach of
10 fiduciary duty lawsuit on this conference?

11 A. That it was filed. That it existed.

12 Q. Anything else?

13 A. Not that I recall.

14 Q. Okay. There was no discussion about your role
15 in connection with that lawsuit or what your role would
16 be related to that lawsuit?

17 A. No.

18 Q. Below that, it says "discuss settlement." Can
19 you tell me why you wrote that down?

20 A. Discuss settlement. We talked about how -- no,
21 I can't. I don't know what -- I don't have a context
22 for that, other than what's above it.

23 Q. Was there a discussion about whether or not you
24 would be -- would be employed to try to figure out ways
25 to settle the claims involved in that lawsuit?

1 A. No.

2 Q. So why is that term written there, "discuss
3 settlement"; do you know?

4 A. I can't tell from this if it is prior
5 settlement or upcoming settlement, if it's settlement of
6 the breach of fiduciary or something else. It just says
7 "discuss settlement."

8 Q. You don't recall one way or the other at this
9 point in time?

10 A. I do not.

11 Q. Okay. All right. And then on the Page 5919,
12 the next page?

13 A. Uh-huh.

14 Q. There's a statement, "Have distributions been
15 equal to or greater than the initial investment."

16 Was that discussed in the conference call
17 or --

18 A. That's a question to be answered later.

19 Q. All right. Do you know why Mr. Rivera
20 contacted Ms. Webb and Mr. Brookner and not you
21 directly?

22 A. Ms. Webb and Mr. Brookner have -- excuse
23 me -- previously represented me in these cases, in the
24 prior Eastern case.

25 Q. In the related partnership cases?

1 A. Yes.

2 Q. In other partnership cases?

3 A. Yes.

4 Q. All right. Let me hand you what has been
5 marked as Exhibit 2.

6 MR. WEISBART: Is that right?

7 THE COURT REPORTER: Yes.

8 (Exhibit 2 marked.)

9 Q. (BY MR. WEISBART) All right. Let me refer you
10 to your notes real quick, the last Page 5919. The very
11 last entry, "understand differences and partnership
12 agreements." Do you see that?

13 A. I do.

14 Q. Was that a statement that you needed to
15 understand or were going to understand the differences
16 in the '06 and '07 partnership agreements between the
17 other partnership agreements in the other bankruptcy
18 cases, in the Eastern case?

19 A. In between -- as between the Eastern and if any
20 between 2006 and 2007.

21 Q. Is that what that means?

22 A. Yes.

23 Q. Okay. Was there any discussion about the
24 differences in those?

25 A. No.

1 assets.

2 Q. And as it says, "including overseeing all
3 actions in connection with the potential bankruptcy
4 filing or auction sale," correct?

5 A. Yes.

6 Q. Okay. Did you review any documents in
7 connection with whether you had authority to serve as a
8 responsible party for the partnerships?

9 A. I'm sorry?

10 Q. Did you review any documents to determine
11 whether you had authority to serve as responsible party
12 for the partnerships?

13 A. Yes.

14 Q. What documents did you review?

15 A. Partnership agreements.

16 (Exhibits 3 and 4 marked.)

17 Q. (BY MR. WEISBART) Let me hand you Exhibits 3
18 and 4, and ask you to identify those documents if you
19 can, please.

20 A. I'm sorry.

21 Q. Which is -- what is Exhibit 3?

22 A. The Form of Limited Partnership Agreement of
23 Rockies Region 2006 Limited Partnership.

24 Q. And Exhibit 4?

25 A. Is Form of Limited Partnership Agreement of

1 Rockies Region 2007 Limited Partnership.

2 Q. And I'll represent to you these are documents
3 that are Bates stamped that were produced as part of the
4 production.

5 All right. Are these the form of
6 agreements that you reviewed?

7 A. Yes.

8 Q. Now, I notice in the engagement agreement that
9 there are certain representations made by PDC. Do you
10 see that on the second page?

11 A. I do.

12 Q. Okay. And PDC, as managing general partner,
13 the partnership represents that it is authorized to
14 retain you as responsible party and references various
15 provisions of the partnership agreements?

16 A. Yes.

17 Q. Okay. And by the way, to your knowledge, are
18 the partnership agreements generally the same? Is there
19 any deviation between these two partnership agreements,
20 to your knowledge?

21 A. I don't know.

22 Q. Aside from the representation made by PDC and
23 your statement that you reviewed the partnership
24 agreements, did anyone else review documents on your
25 behalf in connection with the determination that you had

1 authority to serve as responsible party?

2 A. Counsel would have.

3 Q. Which counsel?

4 A. Jason Brookner and Lydia Webb.

5 Q. What was your conclusion as to whether or not
6 you had authority?

7 A. As to whether I had the authority?

8 Q. Let me rephrase that.

9 What was your conclusion as to whether or
10 not PDC had authority to retain you on behalf of the
11 partnerships as responsible party?

12 A. That they did.

13 Q. Okay. And what provisions did you rely on?

14 A. "5.01: Managing general partner shall conduct
15 direct and exercise full and exclusive control over the
16 activities of the partnership. Investor partner shall
17 have no power over the conduct of the affairs of the
18 partnership or otherwise commit or bind the partnership
19 in any manner."

20 Give me a second. I'll find the rest of
21 the provisions here.

22 MR. ORMISTON: Just identify the
23 provisions. You don't need to read it.

24 THE WITNESS: I don't need to read them?

25 Okay.

1 MR. ORMISTON: He's just asking you which
2 provisions you relied on.

3 A. 5 and then 6.02. 6.02 M, G, J. And there are
4 referenced here C.

5 Q. (BY MR. WEISBART) Essentially, the same
6 provisions that were identified in the PDC
7 representations on Page 2, the same sections?

8 A. Yes.

9 Q. All right. Did you look at any West Virginia
10 statutes in connection with your determination that PDC
11 had authority to employ you as responsible party?

12 A. No.

13 Q. You said that Mr. Brookner and Lydia
14 Webb -- Ms. Webb, assisted you in analyzing this issue;
15 is that correct?

16 A. I consulted with them, yes.

17 Q. And what was their conclusion?

18 MR. ORMISTON: Objection, calls for
19 disclosure of attorney-client privilege information.

20 Instruct the witness not to answer the
21 question.

22 Q. (BY MR. WEISBART) Are you refusing to answer?

23 A. I'm following -- I'm sorry.

24 Q. You did not waive the privilege at this time?

25 A. May I be excused for one minute?

1 Q. Yes.

2 MR. WEISBART: Off the record.

3 (Break taken from 9:41 a.m. to 9:43 a.m.)

4 THE COURT REPORTER: Back on the record.

5 Q. (BY MR. WEISBART) I think where we left off is
6 that you were -- your client -- or excuse me -- your
7 counsel had asserted the attorney-client privilege.

8 Do you adopt his privilege --

9 A. I do.

10 Q. -- you're not waiving it?

11 MR. WEISBART: Would you certify the
12 question, please.

13 Q. (BY MR. WEISBART) Was -- when did Gray Reed,
14 Jason Brookner, and Lydia Webb provide you their advice
15 concerning your authority to serve as responsible party?

16 A. Over the period of time, we were -- you know,
17 this document was being circulated, which circulated for
18 a while, April to May.

19 Q. All right. So was it before the document
20 was -- the final document was executed?

21 A. Yes.

22 Q. Were they representing you at that time? Were
23 they representing Bridgestone Consulting at that time?

24 MR. ORMISTON: Objection, form. There's
25 two questions in there.

1 Q. (BY MR. WEISBART) All right. Well, fair
2 enough. Were they representing you personally during
3 this time period?

4 A. They don't represent me personally.

5 Q. Okay. Were they representing Bridgepoint
6 Consulting during this time period?

7 A. I don't know.

8 Q. Okay. So I'm -- but from the period of time
9 from January through April, they gave you this advice or
10 they looked into this issue?

11 A. Yes.

12 Q. So what is the basis of asserting the
13 attorney-client privilege if they weren't representing
14 you?

15 MR. ORMISTON: Because she has been named
16 the responsible party, appointed as a responsible party
17 for the debtors. We represent the debtors, so she is an
18 agent of the debtors.

19 Q. (BY MR. WEISBART) At the time leading up to
20 the employment of this -- or the execution of this
21 agreement, you were not employed as responsible party;
22 is that correct?

23 A. That's correct.

24 Q. Did they tell you the basis of their
25 conclusion -- did Gray Reed tell you the basis of their

1 conclusion?

2 A. Could you repeat.

3 Q. That you had authority to service responsible
4 party?

5 A. They're --

6 MR. ORMISTON: He's just asking you yes or
7 no, did the lawyers at Gray Reed inform you of the basis
8 of their conclusion?

9 A. Yes.

10 Q. (BY MR. WEISBART) And was their conclusion the
11 same as yours?

12 MR. ORMISTON: Objection, calls for the
13 disclosure of attorney-client privilege information.
14 Instruct the witness not to answer the question.

15 Q. (BY MR. WEISBART) Did you rely on the advice
16 of Gray Reed in connection with your engagement?

17 A. I listened to what they had to say and made my
18 own decision.

19 Q. Did you obtain a legal opinion concerning your
20 ability to be employed as responsible party?

21 A. No.

22 Q. Did you have any conversations with anyone at
23 PDC concerning your role as responsible party?

24 A. No.

25 Q. Did you express any concerns to PDC or anyone

1 at PDC related to your authority to serve as responsible
2 party?

3 A. No.

4 Q. Did you have any conversations -- I'm sorry.

5 Did you have any conversations with
6 anyone -- with PD -- with anyone at any firm
7 representing PDC concerning the engagement agreement?

8 A. I'm sorry. Would you repeat that.

9 Q. All right. Did you understand that PDC was
10 being represented by counsel at the time -- around the
11 time that you were being employed as a responsible
12 party?

13 A. Hunton AK, yes.

14 Q. Did you have any conversations with anyone at
15 Hunton AK concerning the engagement agreement?

16 A. No.

17 Q. And AK refers to Andrews Kurth?

18 A. Yes.

19 Q. Did you run into any issues regarding the terms
20 of the engagement agreement during the time frame that
21 you've been serving as responsible party?

22 MR. ORMISTON: I'm sorry. Can we have that
23 again?

24 Q. (BY MR. ORMISTON) Did you run into any issues
25 regarding the terms of your engagement as responsible

1 party?

2 A. Again, these are standard terms. I'm not a
3 partner at the firm. The answer is no, as to me.

4 Q. All right. Again, you -- I believe you
5 testified that you considered the main thrust of your
6 engagement was to maximize the value or the assets for
7 the partnerships; is that a correct statement?

8 A. Yes.

9 Q. All right. Are you aware of any conversations
10 between Mr. Patterson and PDC or their counsel related
11 to the terms of this engagement?

12 A. Mister?

13 Q. Patterson, the person who signed the
14 engagement?

15 A. Oh, I'm sorry.

16 No.

17 Q. Okay. All right. Part of your duties was to
18 explore options for divesting of assets of the
19 partnerships and entering into and executing definitive
20 documents to effect such sale.

21 Do you see that?

22 A. Which page?

23 Q. First page.

24 A. Okay.

25 Q. Is that part of the services you've been

1 performing as responsible party?

2 A. Yes.

3 Q. All right. And it also says, "Analyzing the
4 books and records of the partnerships and resolving
5 issues related to claims against an interest in the
6 partnerships."

7 Do you see that?

8 A. Yes.

9 Q. What -- are those services you've been
10 performing?

11 A. The first part of it, yes.

12 Q. What first part?

13 A. Analyzing the books and records of the
14 partnerships, yes.

15 Q. Okay. And the second part, you haven't; is
16 that correct?

17 A. We have not resolved any, no.

18 Q. All right. What resolution is
19 required -- associated with interest in the
20 partnerships?

21 A. I haven't analyzed it.

22 Q. All right. In connection with the advice you
23 received from Gray Reed in connection with this
24 engagement letter, did Gray Reed bill you for their
25 services relating --

1 have one.

2 A. I'm not a lawyer.

3 Q. (BY MR. WEISBART) Do you have an answer for
4 the question, ma'am?

5 A. I think I answered it when I said the duties
6 are spelled out.

7 Q. As responsible party, do you consider yourself
8 to be a fiduciary?

9 A. Yes.

10 Q. Do you understand your duties as a fiduciary to
11 the partnerships?

12 A. Yes.

13 Q. What are those duties?

14 A. To act in the partnership's best interest.

15 Q. Anything else?

16 A. To preserve the assets, to follow the
17 partnership agreement.

18 Q. Who, if anyone, did you consult with as to
19 whether or not you are required, as responsible party,
20 to comply with the terms of the partnership agreements?

21 A. No one.

22 Q. You did not consult with any attorneys?

23 A. No.

24 Q. Did you discuss either orally or in writing
25 with anyone affiliated with PDC as to whether PDC's

1 majority of the limited partners?

2 MR. ORMISTON: Objection, form. Among
3 other things, it calls for a legal conclusion.

4 Q. (BY MR. WEISBART) As a layperson?

5 MR. ORMISTON: Same objection.

6 A. That -- would you please repeat the question.

7 Q. (BY MR. WEISBART) Sure.

8 Is it your position you had authority under
9 the partnership agreements to put the partnerships in
10 bankruptcy?

11 A. Yes.

12 Q. Have you attempted to make decisions in
13 compliance with the terms of the partnership agreements?

14 A. Yes.

15 Q. Based on your review of the financial condition
16 of the 2006 partnership, did you decide that it was in
17 the best interest of the 2006 partnership to wind down
18 its business operations?

19 A. I put it into bankruptcy. It's not winding
20 down. It's operating in the ordinary course.

21 Q. All right. So did you decide that it was in
22 the best interest to wind down its business operations?

23 MR. ORMISTON: Objection, asked and
24 answered.

25 Give him the same answer.

1 A. It's not winding down.

2 Q. (BY MR. WEISBART) Did you decide it was in the
3 best interest to dissolve the limited partnership?

4 A. Not dissolving the limited partnership.

5 Q. As responsible party of the limited
6 partnerships, do you have authority to call a meeting of
7 the limited partnerships?

8 MR. ORMISTON: Objection to the extent it
9 calls if a legal conclusion.

10 You can give him your understanding if you
11 have one.

12 A. I have no understanding.

13 Q. (BY MR. WEISBART) Did you make any effort to
14 determine whether you had this authority?

15 A. No.

16 Q. What, if any, investigation did you make to
17 determine what rights the limited partners of the
18 limited partnership had under the West Virginia Business
19 Corporation Act to approve or disapprove a sale of all
20 or substantially all of the limited partnership oil and
21 gas assets to PDC?

22 MR. ORMISTON: Objection, calls for a legal
23 conclusion.

24 Q. (BY MR. WEISBART) I asked what you did, what
25 investigation you made.

1 MR. ORMISTON: Same objection.

2 Q. (BY MR. WEISBART) Are you refusing to answer
3 the question?

4 A. I...

5 Q. Let me repeat the question.

6 A. Okay. Please.

7 Q. What, if any, investigation did you make to
8 determine what rights the limited partners of the
9 partnerships had under West Virginia -- under the West
10 Virginia Business Corporation Act to approve or
11 disapprove a sale of all or substantially all of the
12 limited partnership oil and gas assets to PDC?

13 A. None.

14 MR. ORMISTON: Object to the extent it
15 calls for a legal conclusion.

16 You can give him your understanding if you
17 one.

18 Q. (BY MR. WEISBART) The answer was none?

19 A. (Moving head up and down.)

20 Q. Okay. And I meant the West Virginia Limited
21 Partnership Act as opposed to corporation.

22 MR. ORMISTON: Same objection.

23 Q. (BY MR. WEISBART) Same answer?

24 A. Same answer.

25 Q. Okay. Thank you.

1 Q. And then on the next page, the very last entry,
2 "Refracking will be on Wellview" -- am I reading that
3 right, "Wellview report, 6 to 8 weeks refracked"?

4 Do you see that?

5 MR. ORMISTON: Objection, form.

6 You read it wrong.

7 Q. (BY MR. WEISBART) Can you read it for me
8 because I --

9 A. "Refracking will be on" -- looks like --
10 "Wellview report, 6 to 8 wells refracted."

11 Q. What is the Wellview report; do you know?

12 A. No.

13 Q. All right. A meeting occurred on May 22nd, I
14 believe, in Denver; is that correct?

15 A. Yes.

16 Q. And who -- who was the meeting between?

17 A. Darwin Stump, myself, and other individuals. I
18 think perhaps Eric Roach and Jason Brookner.

19 Q. Anyone else you can recall at the meeting?

20 A. Joseph Rivera may have been there, but I don't
21 recall.

22 Q. Okay. And what was the purpose of the meeting?

23 A. To exchange information.

24 Q. Where was the meeting at?

25 A. At PDC's offices.

1 Q. Okay. What was discussed at the meeting?

2 A. Status of the wells, as reflected in the notes.

3 Q. Okay. And the notes you're referring to begin
4 with Bates stamp 5924; is that correct?

5 A. Yes.

6 Q. And where do they end by Bates stamp?

7 A. I believe 5928.

8 Q. Were any decisions made at this meeting?

9 A. No.

10 Q. Was any information exchanged at the meeting?

11 A. Yes.

12 Q. Any documentation?

13 A. I believe we reviewed documentation that was
14 subsequently uploaded.

15 Q. Okay. Do you recall what documents were
16 reviewed?

17 A. No.

18 Q. How long did the meeting last?

19 A. The office portion?

20 Q. Yeah.

21 A. A day.

22 Q. All right. Was the Denver litigation
23 discussed?

24 A. I'm unable to recall.

25 Q. Okay. And when I say "Denver litigation," I'm

1 referring to the lawsuit filed by my clients in Federal
2 District Court in Denver. Do you understand that?

3 A. Yes.

4 Q. Okay. The notes that you identified as 5924
5 through 5928, for the most part, is that information
6 being conveyed to you or is it conclusions that you're
7 reaching?

8 A. Information being conveyed to me.

9 Q. There's a reference on the first page, "Use SCC
10 pricing mandate." Do you recall what that means?

11 A. It is referring to the un- -- to the discounted
12 cash flows, I believe.

13 Q. Is it referring to a report -- a reserve
14 report; do you know?

15 A. It would be the Ryder Scott.

16 Q. Okay. So the Ryder Scott report was discussed
17 at the meeting?

18 A. This is all I know about what was discussed.

19 Q. Okay. There's a reference to the -- down at
20 the bottom of the page or towards the bottom of the
21 page, "spider web."

22 Am I reading that word that correctly?

23 A. I'm sorry. Which page?

24 Q. The front Page 5924.

25 A. Yes.

1 Q. Recall what the term "spider web" is?

2 A. It refers to the way that DCP gathers gas or
3 gathers the...

4 Q. On the next Page 5925, about three quarters of
5 the way down, there's a statement, "Oldest horizontals
6 in the field are nobles at '06."

7 Do you see that?

8 A. I do.

9 Q. What -- do you recall what was meant by that?

10 A. I do not.

11 Q. And then there's a statement below that, "New
12 plant will not precipitate much improvement in the '06
13 wells based on distance and the vertical wells in
14 between '06 oil field implant."

15 Do you see that?

16 A. Yes.

17 Q. Do you recall -- what is meant by that?

18 A. It's referring to the inability to get the
19 product out of the ground and across the pipe to the
20 gathering station because of the high line pressure.

21 Q. Okay. There's a statement on the last
22 Page 5927, I believe, that towards the top says, "EPA
23 consent agree."

24 Do you see that?

25 A. I do.

1 Q. Do you know what is meant by that?

2 A. It refers to certain of the wells, and an
3 agreement that was entered into between the partnerships
4 and the EPA for environmental purposes.

5 Q. So it refers to an agreement between the
6 partnerships. Do you know what the terms of that
7 agreement are or were?

8 A. I do not.

9 Q. And then on the -- I'm sorry. I said that was
10 the last page, but actually the next page -- there's a
11 reference "WBI." Do you see that under the category
12 "Cook wells"?

13 A. Uh-huh.

14 Q. Do you know what WBI stands for?

15 A. No.

16 Q. Okay. And then the following Page, "45 days to
17 file a response to amend a complaint."

18 Do you see that?

19 A. I do.

20 Q. So it appears the Denver litigation was
21 discussed at some capacity; is that correct?

22 A. If that's what that refers to.

23 Q. What else would it refer to?

24 A. I don't know.

25 Q. You don't recall any discussions about the

1 Q. You might not get lunch.

2 Did you direct those professionals?

3 A. Yes.

4 Q. There was a trip after the May 21st meeting to
5 the wells. What was the point of the trip?

6 A. I'm sorry?

7 Q. You had -- you took a trip the next day after
8 your May 21st meeting to visit some of the wells; is
9 that correct?

10 A. Yes.

11 Q. What was the purpose of the trip?

12 A. To see the wells.

13 Q. To see them?

14 A. Yes, to...

15 Q. Anything else?

16 A. (Moving head from side to side.)

17 Q. All right. As part of your evaluation of the
18 partnerships, did you have any discussions with
19 officers, employees, or representatives of PDC?

20 A. Could you repeat the first half of that
21 question, please.

22 Q. As part of your evaluation of the partnerships,
23 did you have any discussions with officers, employees,
24 or representatives of PDC?

25 A. I had discussions with...

1 your duties as responsible party, the partnership
2 agreement.

3 Are there -- having seen the list of
4 documents that have been provided to you, are there
5 other documents besides the partnership agreements that
6 you reviewed?

7 A. I'm sorry?

8 Q. What documents did you review in -- as
9 responsible party, in connection with the evaluation of
10 the partnerships?

11 A. The SCC filings, the financial statements, the
12 partnership agreement, the Ryder Scott reports, an
13 analysis performed by Graves & Company.

14 Q. Anything else you can think of?

15 A. As I sit here today, no.

16 Q. Was Robert Tiddens, T-I-D-D-E-N-S --

17 A. Tiddens? I'm sorry?

18 Q. Robert Tiddens.

19 If you look at -- on your notes, docket
20 number -- excuse me -- 5931, a call with Robert Tiddens,
21 Jason Brookner?

22 A. Yes.

23 Q. Do you recall the conversation with
24 Mr. Tiddens?

25 A. Yes.

1 Q. Can you explain what was discussed and --

2 A. Potential engagement.

3 Q. Who is he?

4 A. He is a gentleman who does a significant amount
5 of work in the Colorado area, is my understanding.

6 Q. For what purpose would he be engaged?

7 A. To assist in the analysis of the alternatives
8 for the partnerships.

9 Q. What is his profession?

10 A. I do not recall.

11 Q. Well, why -- would he -- why were you talking
12 to him for this purpose?

13 A. To assist.

14 Q. Did he have any special expertise? Let me ask
15 the question that way.

16 A. As I understood it, he had expertise in
17 advanced aged wells, et cetera, in the Wattenberg, and
18 transactions in the area.

19 Q. So is he an oil and gas person, so to speak?

20 A. I don't remember his background.

21 Q. Did you employ him?

22 A. I did not.

23 Q. Did he provide any advice associated with your
24 role as responsible party?

25 A. No.

1 Is that what he was hired to do?

2 A. Yes.

3 Q. And those would be the wells owned by the '06
4 and '07 partnerships; is that correct?

5 A. Yes.

6 Q. Did you instruct him in connection with his
7 valuation? Did you give him the parameters associated
8 with his valuation?

9 MR. ORMISTON: Objection, form.

10 A. I asked him to value the wells.

11 Q. (BY MR. WEISBART) Okay. Did you ask him to do
12 anything else?

13 A. No.

14 Q. Do you know what assumptions he made when he
15 valued the wells?

16 A. They were stated -- no. As I sit here, no.

17 Q. Do you know if certain -- any assumptions were
18 given that if he made any assumptions associated with
19 the valuation of those wells?

20 A. No.

21 Q. Do you know if PDC gave him any instructions in
22 connection with the valuation?

23 A. No.

24 Q. You don't know or...

25 A. I don't know.

1 Q. Okay. Do you know what assumptions he did make
2 in connection with valuing the wells?

3 A. I do not.

4 Q. And again, you did not tell him to make any
5 assumptions; is that correct?

6 A. I did not.

7 Q. Okay. Did representatives of PDC give him
8 assumptions to make in connection with his valuation of
9 the wells?

10 A. No, not to my knowledge.

11 THE WITNESS: Can we take a quick break?

12 MR. WEISBART: Sure.

13 (Break taken from 11:20 a.m. to 11:26 a.m.)

14 (Exhibit 12 marked.)

15 Q. (BY MR. WEISBART) Let me hand you Exhibit 12.

16 I've handed you what has been marked as
17 Exhibit 12. It's the report prepared by Graves &
18 Company Consulting, LLC, is it not?

19 A. Yes.

20 Q. Is this the report that Mr. Graves prepared on
21 behalf -- on your behalf?

22 A. Yes.

23 Q. Well, let's back that up.

24 A. Kent Lina signed it.

25 Q. I should say his firm, Graves & Company

1 consultations?

2 A. Potentially.

3 Q. Potentially?

4 A. Well, probably.

5 Q. Do you recall?

6 A. Specific conversations? No, sir.

7 Q. All right. As -- in your capacity as a
8 responsible party, who at Gray Reed provided services
9 for you since your employment?

10 MR. ORMISTON: Objection, form.

11 A. The attorneys?

12 Q. (BY MR. WEISBART) Yes, the names.

13 A. Jason Brookner, Amber Carson, Lydia Webb, Jim
14 Ormiston -- James. Sorry. Beyond that, I don't know.

15 Q. Okay. What did you ask them to do?

16 A. Provide legal counsel and interpretation.

17 Q. Specifically?

18 MR. ORMISTON: Object. Calls for
19 attorney-client privilege. Instruct the witness not to
20 answer.

21 Q. (BY MR. WEISBART) Are you refusing to answer
22 the question as to what type of services they performed
23 for you in your capacity as responsible party?

24 MR. ORMISTON: No. She answered that
25 question. Then you asked her specifically, and I

1 objected on the basis of the privilege.

2 Q. (BY MR. WEISBART) Are you refusing to answer
3 the question as to the specific services Gray Reed
4 provided you?

5 A. I am.

6 Q. You will not waive the attorney-client
7 privilege?

8 A. I will not.

9 MR. WEISBART: Will you please certify the
10 question.

11 Q. (BY MR. WEISBART) Did you ask Gray Reed to
12 provide specific services in connection with your
13 representation?

14 MR. ORMISTON: Objection, calls for the
15 disclosure of attorney-client privilege communications,
16 and instruct the witness not to answer.

17 Q. (BY MR. WEISBART) Are you -- will you agree to
18 waive the yes or no answer to that question?

19 A. I will not waive -- I will not waive
20 attorney-client privilege.

21 MR. WEISBART: Will you please certify the
22 question.

23 Q. (BY MR. WEISBART) Did Gray Reed have the
24 leeway to perform services as they deemed appropriate or
25 did they have to get instruction from you?

1 A. (Moving head up and down.)

2 Q. Okay. Do you understand that there were
3 derivative claims asserted against the defendant, PDC,
4 in the lawsuit?

5 A. I do.

6 Q. Okay. And what is your understanding of the
7 term "derivative claims"?

8 MR. ORMISTON: Objection to the extent it
9 calls to a legal conclusion.

10 Q. (BY MR. WEISBART) As a layperson.

11 MR. ORMISTON: You can give him your
12 understanding.

13 A. A derivative claim is not directly related to a
14 person or a thing. It derives from a circumstance
15 that -- for the entire group or company, and in this
16 case, the company.

17 Q. (BY MR. WEISBART) You mean the partnership?

18 A. Right, the partnerships.

19 Q. The partnerships. All right.

20 And you understand that there were
21 individual claims asserted in the lawsuit?

22 MR. ORMISTON: Objection, to the extent it
23 calls for a legal conclusion.

24 You can give him your understanding if you
25 have one.

1 A. My understanding is these are derivative. The
2 claims asserted are derivative.

3 Q. (BY MR. WEISBART) That all the claims are
4 derivative?

5 A. Yes.

6 Q. What is your understanding of the facts
7 supporting the derivative claims?

8 MR. ORMISTON: Objection, to the extent it
9 calls for a legal conclusion and for marshaling all of
10 the evidence in a very complicated case.

11 Q. (BY MR. WEISBART) From reading the lawsuit.

12 A. I'm sorry. Could you --

13 Q. From reading the lawsuit --

14 A. Could you please repeat the question.

15 Q. I will.

16 From reading the lawsuit, what is your
17 understanding of the facts supporting the derivative
18 claims?

19 MR. ORMISTON: Objection, form.

20 A. The individuals assert that they didn't get
21 certain things that -- the partnerships didn't get
22 certain things that they should have or that they were
23 promised.

24 Q. (BY MR. WEISBART) What are those things?

25 A. Refracking, participation in horizontal wells,

1 and the spacing units, generally.

2 Q. Aside from reading the lawsuits -- the lawsuit,
3 did you review any other documents in connection with
4 the -- in connection with the suits, did you -- prior to
5 the filing of the bankruptcy case?

6 MR. ORMISTON: Objection, form.

7 A. No.

8 Q. (BY MR. WEISBART) Did you personally go behind
9 the complaint to evaluate the claims?

10 A. No.

11 Q. Did you employ Gray Reed to evaluate the
12 lawsuit?

13 A. I'm sorry. Please say that again.

14 Q. Did you -- was one of the reasons for the
15 employment of Gray Reed as your attorney to evaluate the
16 lawsuit?

17 A. Gray Reed's my attorney for all things related
18 to these partnerships. So yes, they evaluated the
19 lawsuit.

20 Q. To your knowledge, does Gray Reed have any
21 special expertise as it relates to class-action
22 lawsuits?

23 A. I don't know.

24 MR. ORMISTON: Yes, is the answer.

25 THE WITNESS: Okay.

1 attorneys who have experience in -- extensive experience
2 involving oil and gas properties in Colorado?

3 A. I didn't hear the first part of that.

4 Q. Do you know if they consulted with any
5 attorneys who have extensive experience involving oil
6 and gas properties in Colorado?

7 A. I do not.

8 Q. Do you know if they consulted with any West
9 Virginia attorneys or attorneys that have familiarity
10 with West Virginia partnership law in connection with
11 the lawsuit?

12 A. I do not.

13 Q. Okay. As you stated, you -- at the time the
14 bankruptcy cases were filed, you determined that all the
15 claims were derivative claims, correct?

16 A. Please -- please ask me that again.

17 Q. Okay. At the time the bankruptcy cases were
18 filed, you made the determination that all of the claims
19 asserted in the lawsuit were derivative claims; is that
20 correct?

21 A. It was my understanding at that time, yes.

22 Q. Who made that determination?

23 A. Made that determination in consultation with my
24 attorneys.

25 Q. Okay.

1 A. Not a lawyer.

2 Q. So Gray Reed assisted in that determination; is
3 that correct?

4 A. Yes.

5 Q. And in fact, they would have made the
6 determination, correct?

7 MR. ORMISTON: Objection, form.

8 A. Yes.

9 Q. (BY MR. WEISBART) Do you know what Gray Reed
10 did to make that determination?

11 A. I do not.

12 Q. Did they provide you a written analysis?

13 A. No.

14 Q. Did someone explain the basis for making the
15 determination?

16 MR. ORMISTON: You're talking about
17 separate and apart from the motion that's been filed in
18 this case?

19 MR. WEISBART: Yes.

20 A. I'm sorry?

21 MR. BROOKNER: I'm going to object in lieu
22 of Jim. That's subject to attorney-client privilege.

23 And I'm going to direct you not to answer
24 anything that you talked about with your lawyers is not
25 fair game.

1 MR. ORMISTON: Well, and that's really not
2 the question. But there is a pending motion in this
3 proceeding to have those claims determined to be
4 derivative and therefore, owned by the estate. And so
5 Ms. Nicolaou obviously has knowledge of that motion, and
6 that's going to be determined by the Judge at some
7 point.

8 Q. (BY MR. WEISBART) Okay. My question is: Did
9 someone explain the basis for making the determination
10 that all the claims are assertedly derivative claims to
11 you?

12 MR. ORMISTON: And I'm going to object to
13 the extent it calls for the disclosure of
14 attorney-client communications.

15 You can ask her if she's read the motion
16 that's on file, but I'm going to object to any
17 communications with her and her lawyers explaining to
18 her anything.

19 Q. (BY MR. WEISBART) My question is very simple.
20 I'll ask it again for the third time.

21 Did someone at Gray Reed explain the basis
22 for making a determination that all of the claims are
23 derivative claims?

24 MR. ORMISTON: I'm going to object to that
25 question as calling for attorney-client communications

1 and instruct the witness not to answer.

2 Q. (BY MR. WEISBART) Are you refusing to answer
3 the question?

4 A. Yes.

5 Q. Will you waive the attorney-client privilege?

6 A. I will not.

7 MR. WEISBART: Please certify the question.

8 Q. (BY MR. WEISBART) When were you advised that
9 all of the claims were derivative claims?

10 MR. ORMISTON: Objection, form.

11 MR. BROOKNER: Object.

12 MR. ORMISTON: It just mischaracterizes her
13 testimony. She wasn't advised. She made a
14 determination herself. She's already established that.

15 MR. BROOKNER: To the extent she was
16 advised, when she was advised is subject to the
17 attorney-client privilege.

18 Q. (BY MR. WEISBART) Maybe I misunderstood. Let
19 me go back.

20 MR. FOLEY: Before you do, I take it
21 there's a rule in Texas that two attorneys --

22 MR. ORMISTON: No.

23 MR. FOLEY: -- representing the same client
24 can make objections and direct witnesses, and that's the
25 way we're going to conduct ourself in this proceeding?

1 A. I'm sorry?

2 Q. You understand that one of the issues in the
3 Denver litigation is whether the partnerships were
4 entitled to assignments of spacing units or prospects
5 surrounding the wellbores drilled by the partnerships?

6 A. That's one of the assertions, yes.

7 Q. At the time the bankruptcy case was filed, did
8 you have an opinion related to that issue?

9 A. No.

10 Q. Do you have an opinion now?

11 A. No.

12 Q. Did you personally evaluate this issue?

13 A. No.

14 Q. Have you consulted -- without telling me the
15 substance of your consultation, but did you consult with
16 Gray Reed concerning this issue?

17 A. Yes.

18 Q. Again, without telling me the substance of any
19 work they did, do you know if Gray Reed evaluated the
20 decision?

21 A. Yes.

22 Q. Do you know what they did?

23 A. No.

24 Q. How do you know they evaluated the issue?

25 MR. ORMISTON: Don't talk about what we

1 told you.

2 Let me do it this way: Object to the form
3 of the question to the extent it calls for the
4 disclosure of attorney-client communications.

5 If you can answer the question without
6 disclosing attorney-client communications, you may do
7 so.

8 A. We discussed the question.

9 Q. (BY MR. WEISBART) When, before the bankruptcy
10 was filed?

11 A. No.

12 Q. After the bankruptcy was filed?

13 A. Yes.

14 Q. All right. In the debtor's response to the
15 motion to dismiss Mr. Brookner's, in his pleading,
16 states that the governing documents are ambiguous as to
17 whether PDC was required to assign wellbores in
18 corresponding spacing units.

19 Do you agree with that statement?

20 A. Please repeat it.

21 Q. Okay. In the response to the motion to dismiss
22 debtor's counsel -- I assume it's Mr. Brookner -- states
23 that the governing documents are ambiguous as to whether
24 PDC was required to assign wellbores and corresponding
25 spacing units. Do you agree with that?

1 A. Yes.

2 Q. Do you know what governing documents he is
3 talking about?

4 A. I believe the partnership agreement.

5 Q. Is there a particular provision you would look
6 to in the partnership agreement to make that
7 determination?

8 A. Yes.

9 Q. Do you know what that provision is?

10 A. I can find it.

11 Q. Did you determine if the partnerships or
12 limited partners individually have a claim against PDC
13 for breach of contract arising out of the failure to
14 assign spacing units?

15 A. I'm sorry?

16 Q. I'll repeat it.

17 Did you determine if the partnerships or
18 limited partners individually have a claim against PDC
19 for breach of contract arising out of the failure to
20 assign spacing units?

21 MR. ORMISTON: Object to the form of the
22 question to the extent it calls for a legal conclusion.

23 A. No.

24 Q. (BY MR. WEISBART) You understand that there
25 was a motion to dismiss the Denver litigation filed by

1 agreement on the partnerships drilling additional wells?

2 MR. ORMISTON: Same objection.

3 A. As I sit here, I can't point to it.

4 (Discussion off the record.)

5 Q. (BY MR. WEISBART) All right. You go on to
6 say, "The limited partnership agreements do not provide
7 a mechanism for PDC to make capital calls to drill
8 additional wells, which could reach into the millions of
9 the dollars -- into millions of dollars."

10 Do you see that?

11 A. I'm sorry. Which paragraph?

12 Q. It's the same paragraph, 21, last sentence.
13 "In addition, limited partnership agreements do not
14 provide a mechanism for PDC to make capital calls to
15 fund the drilling of additional wells, which could reach
16 into the millions of dollars."

17 A. Yes.

18 Q. Is that a conclusion that you reached?

19 A. Yes.

20 Q. And how did you reach that decision?

21 A. Reading the partnership agreement, the private
22 placement memorandum, and consultation with my
23 attorneys.

24 Q. And did you rely on the advice of counsel?

25 MR. ORMISTON: Object to the extent it

1 calls for attorney-client privilege communications, and
2 instruct the witness not to answer.

3 Q. (BY MR. WEISBART) Do you waive the privilege?

4 A. No, sir.

5 MR. WEISBART: Would you please certify the
6 question.

7 Q. (BY MR. WEISBART) Did you rely on the advice
8 of counsel in connection with any of the comments you
9 made in your declaration concerning the litigation?

10 MR. ORMISTON: Object to the form as being
11 way overly broad, and also object to the extent it calls
12 for attorney-client privilege communications.

13 Instruct the witness not to answer.

14 Q. (BY MR. WEISBART) Do you refuse to answer?

15 A. I do.

16 MR. WEISBART: Please certify the question.

17 Q. (BY MR. WEISBART) Did you ever consider hiring
18 special counsel to prosecute the lawsuit?

19 A. Yes.

20 Q. And what did you do in connection with
21 considering making this consideration?

22 A. Haven't done anything yet.

23 Q. Did you consider hiring special counsel before
24 the bankruptcy case was filed?

25 A. No.

1 MR. ORMISTON: Just yes or no.

2 A. Please restate.

3 Q. (BY MR. WEISBART) Did you interface with Gray
4 Reed in conjunction with their evaluation of the Denver
5 lawsuit?

6 A. Yes.

7 Q. When did you -- when did you do that?

8 A. Periodically.

9 Q. Prior to the bankruptcy filing?

10 A. Please ask the question again, the first
11 question.

12 Q. Did you have discussions or did you engage with
13 Gray Reed in conjunction with their evaluation of the
14 lawsuit prior to the bankruptcy case being filed?

15 A. We had conversations about the case.

16 Q. Were you present when they performed services
17 in connection with their evaluation of the lawsuit?

18 MR. ORMISTON: Objection, form.

19 I don't understand the question, do you?

20 A. I --

21 Q. (BY MR. WEISBART) Were you present at Gray
22 Reed's offices when they did the work associated with
23 evaluating the lawsuit?

24 A. I don't know. I don't know.

25 Q. So you don't know what work they did

1 personally?

2 A. I don't know when it was done.

3 Q. Okay. But not only when it was done, but what
4 specifically they did?

5 MR. ORMISTON: Objection, to the extent it
6 would call for you to divulge attorney-client
7 communications.

8 If you can answer that question about what
9 your lawyers did without divulging that information, you
10 may do so.

11 A. I don't think I can do that.

12 MR. ORMISTON: Okay.

13 Q. (BY MR. WEISBART) Are you refusing to answer
14 the question based on attorney-client privilege?

15 A. I am.

16 MR. WEISBART: Would you please certify the
17 question.

18 Q. (BY MR. WEISBART) Did you participate in any
19 face-to-face meetings with Gray Reed attorneys involving
20 an evaluation of the lawsuit before the bankruptcy cases
21 were filed?

22 MR. ORMISTON: Face to -- I'm sorry. Say
23 that again, please.

24 Q. (BY MR. WEISBART) Did you participate in any
25 face-to-face meetings with Gray Reed attorneys involving

1 an evaluation of the Denver lawsuit before the
2 bankruptcy cases were filed?

3 MR. ORMISTON: Just yes or no.

4 A. Did I participate -- it's running back. Please
5 re- --

6 Q. (BY MR. WEISBART) Okay. Did you participate
7 in any face-to-face meetings involving an evaluation of
8 the lawsuit -- and again, the Denver lawsuit, before the
9 bankruptcy cases were filed?

10 MR. ORMISTON: Objection, asked and
11 answered.

12 Didn't you just answer that question?

13 THE WITNESS: I didn't answer it, no.

14 MR. ORMISTON: Okay.

15 A. We had many face-to-face meetings.

16 Q. (BY MR. WEISBART) Okay. Would those meetings
17 be reflected, then, on your billing statements?

18 A. I don't -- I'm a very bad biller.

19 MR. ORMISTON: Objection.

20 A. Sorry.

21 Q. (BY MR. WEISBART) I take that to mean not
22 every meeting or every service you perform is put on
23 your billing statements?

24 A. That would be correct.

25 MR. ORMISTON: Let's take a break.

1 things like that?

2 A. I do not know.

3 Q. All right. And the one -- the gross figure,
4 for example, 1,879,000 for the 2007 partnerships, does
5 that -- that's just the total cost, right, of the
6 50,000, as you said, times the number of wells left in
7 the partnership?

8 A. Yes.

9 Q. But it doesn't account for any revenues that
10 might be generated by producing wells to offset that
11 cost, does it?

12 A. I...

13 MR. ORMISTON: Revenues above operating
14 expenses or just straight revenues?

15 MR. WEISBART: Revenues above operating
16 expenses.

17 MR. ORMISTON: Net revenues above operating
18 expenses?

19 MR. WEISBART: Correct.

20 A. As of December 31st, 2017, the partnerships are
21 not generating liquidity.

22 Q. (BY MR. WEISBART) So as of --

23 A. So this -- so by that, there wouldn't be any
24 net.

25 Q. So you determined as of the time the bankruptcy

1 was filed, that the 2007 partnership, the proved
2 producing wells were not generating any net revenues
3 above operating expenses?

4 A. At 2017 -- December 31st, 2017, the
5 partnerships were not generating, just net operating
6 income, they weren't making distributions.

7 Q. I'm talking about as of the bankruptcy filing
8 and not October 30th, 2018. Was there positive cash
9 flow being generated by 2007?

10 A. Perhaps a little.

11 Q. In fact, there were some distributions out of
12 the partnership accounts to cover some costs; is that
13 correct?

14 A. Correct.

15 Q. Is there any -- as we speak today, has the 2011
16 partnership generated positive cash flow?

17 A. I don't know.

18 Q. Who would know?

19 A. Would be reflected in the monthly operating
20 report.

21 Q. Which you signed, right?

22 A. Yes.

23 Q. Okay. But does that information come from PDC?
24 I assume it does.

25 A. Yes.

1 Q. Okay. Did you determine if the plugging
2 liability -- whether a plugging liability is a tangible
3 drilling cost or an intangible drilling cost?

4 A. No.

5 Q. Do you know as an accountant whether -- how
6 plugging costs are booked?

7 A. No.

8 Q. Who would you consult to figure that out?

9 A. Mr. Stump.

10 Q. Okay. And the plugging costs are controlled by
11 PDC; is that correct?

12 MR. ORMISTON: Objection, form.

13 Q. (BY MR. WEISBART) PDC is the operator of the
14 wells; is that correct?

15 A. Yes.

16 Q. So they control which wells are plugged and
17 when they're plugged; is that correct?

18 A. They make the suggestion.

19 Q. As to which wells are plugged, and then you
20 approve it, right, or disapprove it?

21 A. Yes.

22 Q. Did you have any consultation with anyone at
23 Gray Reed relating to the cost or obligation of the
24 partnerships to pay plugging costs without disclosing
25 attorney-client privilege?

1 A. Could you repeat that, please.

2 Q. Yeah.

3 Did you have any conversations at Gray Reed
4 related to the cost or obligation of the partnerships to
5 pay plugging costs?

6 A. Yes.

7 Q. The plugging liabilities -- the future
8 liabilities was one of the principal reasons for filing
9 the bankruptcy case, was it not?

10 A. Yes.

11 Q. And did you determine that these costs are
12 obligations of the partnerships?

13 A. Yes.

14 Q. And how did you go about making that
15 determination?

16 A. I'm sorry?

17 Q. How did you go about making that determination?

18 A. In consultation with Darwin Stump at PDC and my
19 attorneys, and just review of -- I don't want to
20 put -- what's available on the web in terms of
21 regulations, et cetera.

22 Q. Uh-huh. Would you refer back to the
23 partnership agreement, maybe the 2007 one?

24 A. 2007, Exhibit 4?

25 Q. I think that's right.

1 Q. All right. I'll read it again. "Drilling and
2 completion costs shall mean all costs excluding
3 operating costs of drilling, completing, testing,
4 equipping, and bringing a well into production or
5 plugging and abandoning it."

6 And it goes on. And I won't read the whole
7 paragraph, but do you see that?

8 A. I see that.

9 Q. Okay.

10 MR. ORMISTON: Are you saying that --
11 well --

12 MR. WEISBART: I'm asking questions, sir.

13 MR. ORMISTON: All you're asking her is if
14 she sees it.

15 MR. WEISBART: Okay. I have another
16 question.

17 MR. ORMISTON: Okay.

18 Q. (BY MR. WEISBART) Based on these two sections,
19 would it be your opinion that PDC, as managing general
20 partner, had to pay the cost to plug and abandon the
21 partnership wells?

22 MR. ORMISTON: Objection, form, to the
23 extent it calls for a legal conclusion.

24 You can give him your understanding if you
25 have one.

1 A. Can I finish reading it?

2 Q. (BY MR. WEISBART) Sure.

3 MR. FOLEY: State on the record that the
4 witness is consulting with her counsel.

5 MR. MORFEY: Hold on one moment.

6 Madame court reporter, can you read back
7 the pending question, please.

8 (Requested portion was read.)

9 MR. MORFEY: I'm going to object to that
10 question as misleading, based on the fact that the
11 definition that the witness has been pointed to, that
12 term is not included in the other section of the
13 agreement.

14 MR. ORMISTON: And I join that objection,
15 which is more to the point than my prior objection.

16 MR. WEISBART: I don't think she's answered
17 the question yet.

18 A. Could somebody read --

19 Q. (BY MR. WEISBART) Go ahead and read back the
20 question.

21 (Requested portion was read.)

22 MR. MORFEY: Same objection.

23 MR. ORMISTON: Same objection.

24 A. No.

25 Q. (BY MR. WEISBART) Did you make -- "no" is your

1 opinion?

2 A. No is my opinion.

3 Q. And why is your opinion no?

4 A. Well, paragraph -- well, first of all, looking
5 alphabetically, okay, there is no drilling cost
6 definition. So paragraph -- Article 2, Paragraph B
7 relates to intangible drilling costs which is
8 capitalized, which makes me think that it should be
9 defined. But I don't see that here either.

10 The end refers to drilling and completion
11 costs, which is not here. And so from my perspective,
12 as I'm trying to just be a layperson, it's very -- I
13 can't adjudicate this. I wouldn't know -- I
14 can't -- it's not clear to me that the plugging and
15 abandonment liability is theirs alone.

16 Q. Would you say it's ambiguous?

17 MR. ORMISTON: Objection, to the extent it
18 calls for a legal conclusion.

19 You can give your understanding if you have
20 one.

21 A. It is not clear.

22 Q. (BY MR. WEISBART) Okay. Did you conduct an
23 analysis prior to the filing of the bankruptcy
24 case -- and when I say "you," I mean you or your
25 professionals, as to whether or not the

1 partnerships -- excuse me. Let me strike that and do it
2 again. Strike that question.

3 Did you conduct an analysis prior to the
4 filing of the bankruptcy cases as to whether the
5 managing general partner is obligated to pay partnership
6 of the plugging and abandonment costs?

7 A. My understanding, it's the partnership
8 liability.

9 Q. My question is: Did you conduct an analysis?

10 A. Either me or my professionals?

11 Q. Yes.

12 A. Yes.

13 Q. It's true, is it not, that PDC, as general
14 partner, has joint several liability for the debts and
15 obligations of the partnerships, correct?

16 MR. ORMISTON: Objection, to the extent it
17 calls for a legal conclusion.

18 You can give your understanding if you have
19 one.

20 MR. MORFEY: Same objection.

21 A. My understanding is general partners have
22 liability for the third party debts of a partnership in
23 general.

24 Q. (BY MR. WEISBART) And would that include
25 plugging and abandonment costs?

1 Q. All right. But this -- these figures were
2 based on -- strike that.

3 These amounts were in exchange for a
4 release; is that correct?

5 A. Yes.

6 Q. Okay. Do they reflect the value of the release
7 in your opinion?

8 A. They reflect a reasonable estimate of the value
9 of the release, yes.

10 Q. Okay. But you've told me the settlement
11 payment equates to \$2,500 per acre?

12 A. Yes.

13 Q. And I'm assuming an acre refers to acres
14 associated with the partnership wells?

15 MR. ORMISTON: Objection, form.

16 A. Acres in the partnership wells are hotly
17 disputed.

18 Q. (BY MR. WEISBART) Okay. But it's based on an
19 acreage figure, correct?

20 A. It is based on some number of acres over some
21 wells at 2,500.

22 Q. Okay. How does that jive with the value of a
23 litigation release?

24 A. I don't understand the question.

25 Q. How does a number based on acreage equate to

1 the value of a release of claims?

2 MR. ORMISTON: Objection, form.

3 A. It's just a way to -- it's a way to negotiate.
4 It's a way to value it. It's the way PDC looks at it.

5 Q. (BY MR. WEISBART) All right. I'll take one
6 more stab at it. The amount of 2,950,000 per limited
7 partners in RR06, that's the amount they're going to get
8 in exchange for a release of all claims against the
9 buyer; is that correct?

10 A. Correct.

11 Q. And so the release is a -- I refer to it as a
12 litigation release. But it's a release of claims or
13 causes of action that could have been asserted against
14 that.

15 And my question is: Did you do a valuation
16 of the claims and causes of action that are being
17 released by virtue of this payment?

18 A. Yes.

19 Q. What did you conclude the value of those claims
20 were?

21 A. That -- what I concluded as part of this
22 analysis was that this was fair in the circumstances.

23 Q. So you concluded that 2,950 -- excuse me,
24 \$2,950,000 is the value of the litigation of all claims
25 that could have been asserted or are being asserted

1 against buyer; is that correct?

2 A. Yes.

3 Q. So you did do a damage analysis, then?

4 MR. ORMISTON: Objection, form.

5 A. To the ex- -- we analyzed the claims. Damage
6 analysis is -- yes, to the extent that we were able to
7 determine that this is a reasonable settlement, yes, we
8 did an analysis.

9 Q. (BY MR. WEISBART) Who's "we"?

10 A. We, in conjunction with Mr. Graves -- Graves
11 Consulting, myself, my attorneys -- myself and my
12 professionals.

13 Q. Was the analysis in writing?

14 A. No.

15 Q. What was the analysis?

16 A. Beg your pardon?

17 Q. What is the analysis?

18 MR. ORMISTON: Objection, form. Analysis
19 of what, litigation damages or a fair settlement?

20 Q. (BY MR. WEISBART) Well, let's do both.
21 Analysis of litigation damages, what was your analysis?

22 MR. ORMISTON: Didn't do that. She hadn't
23 testified she did that.

24 Q. (BY MR. WEISBART) Did you do an analysis of
25 litigation damages?

1 A. I did not.

2 Q. Analysis to fair settlement, what was your
3 analysis there?

4 A. We looked at the financial situation of the
5 partnerships as they've stood. At this point in time,
6 we looked at previous settlements for similarly situated
7 properties, and a -- previously negotiated settlements
8 with PDC.

9 Q. And how does previously negotiated settlements
10 with PDC impact your settlement here?

11 A. It's just a data point. You asked me what I
12 analyzed. We looked at the condition of the assets, the
13 condition of the partnerships, the previous settlements
14 of property similarly situated, value of acreage in the
15 Wattenberg.

16 Q. Since you're releasing claims and causes of
17 action, wouldn't you consider a litigation analysis to
18 be critical as part of your settlement?

19 MR. ORMISTON: Objection, form.

20 A. Please repeat the question.

21 Q. (BY MR. WEISBART) Wouldn't you consider a
22 litigation analysis to be critical factor for you to
23 consider in connection with your settlement proposal to
24 PDC?

25 MR. ORMISTON: Same objection.

1 to prepare the bankruptcy filing at that time; is that
2 correct?

3 A. Yes.

4 Q. Okay. And you asked Mr. Stump to provide
5 certain -- certain information that you would use to
6 file the case?

7 A. I did.

8 (Exhibit 25 marked.)

9 Q. (BY MR. WEISBART) Let me hand you what's been
10 marked as Exhibit 25. This is an e-mail from Mr. Stump
11 to you in response to an e-mail from you to him in
12 connection with getting information together; is that
13 correct?

14 A. Yes.

15 Q. And that would be in connection with the
16 bankruptcy filing?

17 A. Yes.

18 Q. And you're asking him on the second page
19 or -- nine categories of information or nine pieces of
20 information?

21 A. Yes.

22 Q. Okay. And on Number 3, you put "Location of
23 principal address (the address of the bank where the
24 accounts are held)"?

25 MR. ORMISTON: Objection, form.

1 Q. (BY MR. WEISBART) Is that what it says?

2 MR. ORMISTON: Assets, not address.

3 Q. (BY MR. WEISBART) Okay. I'll read -- you want
4 to read Paragraph 3, because I tend to -- I guess I
5 misread it.

6 A. "Location of principal assets, (the
7 address -- the address of the bank where the accounts
8 are held.)"

9 Q. Okay. So were you asking him for the address
10 of the bank, that being the principal asset of the
11 partnerships?

12 A. That's in addition to the address, the location
13 of the principal assets.

14 Q. Oh, okay. So you didn't think the bank
15 accounts were the principal assets?

16 A. They're the -- they were the most valuable
17 assets at that point in time.

18 Q. Really? Is that your opinion?

19 A. The claims are -- at that point -- at this
20 point in time, claims were subject to litigation risk,
21 timing risk, other, you know, aspects. There were
22 aspects of the partnership agreements, as we've covered
23 here, that weren't -- that aren't clear -- weren't clear
24 to me at the time. So with respect to assets that were
25 not contingent, not disputed and not unliquidated, the

1 bank accounts were the biggest positives.

2 Q. Okay. You've said on several occasions already
3 today that you did not conduct a detailed litigation
4 analysis; is that correct?

5 MR. ORMISTON: Objection, form.

6 A. I looked at -- I've looked at the claims from a
7 litigation perspective. I have consulted with my
8 attorneys.

9 Q. (BY MR. WEISBART) Are you changing your
10 testimony?

11 MR. ORMISTON: Objection, form.

12 A. No.

13 Q. (BY MR. WEISBART) Okay. I'll just ask it one
14 more time, and we'll put it to bed.

15 Did you or did you not prepare a detailed
16 litigation analysis in connection with the Denver
17 litigation?

18 A. I did not.

19 Q. All right. Did your lawyers prepare a detailed
20 litigation analysis in connection with the Denver
21 litigation?

22 A. No.

23 Q. Thank you.

24 Let me hand you what has been marked as
25 Exhibit 26.

1 Q. Again, negotiations went through your
2 attorneys?

3 A. They did.

4 Q. And this is based on 2000 per acre?

5 A. According to the footnote.

6 Q. Okay. And was this acceptable to you?

7 A. At the time, given the situation and the
8 totality of things we looked at, yes, it is acceptable
9 and reasonable.

10 Q. Based on the same factors that you previously
11 mentioned in your testimony?

12 A. Yes.

13 Q. Whether any additional factors you considered,
14 that you haven't already mentioned today, associated
15 with your agreement to accept the drop in per acre
16 pricing?

17 A. I don't understand your question.

18 Q. The settlement is based on \$2,000 per acre.

19 A. Yes.

20 Q. You had proposed \$2,500 per acre.

21 A. Yes.

22 Q. Was there some new factor that came up in the
23 few days between your proposal and their counterproposal
24 which caused you to agree to the 2,000 per acre
25 proposal?

1 A. No.

2 Q. Okay. And, in fact, on your declaration, this
3 is the -- well, strike that.

4 In addition, there's a detailed analysis
5 prepared related to projective administrative reserves.
6 It's attached on the back of the document.

7 A. Do you have a Bates number?

8 Q. Yes, 2051, 2052, 2053.

9 A. Okay.

10 Q. Did your lawyers prepare this analysis?

11 A. We worked on it together.

12 Q. Okay. And this essentially -- this is the
13 analysis that led to the \$3 million administrative
14 reserve?

15 A. Yes.

16 Q. Okay. Would you agree with me, it's an
17 extremely detailed analysis?

18 A. Yes.

19 Q. All right. And your attorneys, in particular
20 Mr. Brookner and Ms. Webb, have a great deal experience
21 in bankruptcy cases, don't they?

22 A. They do.

23 Q. Okay. What authority did you have to enter
24 into a settlement that settles the claims of individuals
25 against PDC?

1 MR. ORMISTON: Objection, form, to the
2 extent it calls for a legal conclusion.

3 You can give him your understanding if you
4 have one.

5 A. Please repeat the question.

6 Q. (BY MR. WEISBART) What authority do you have
7 to enter into a settlement which settles the claims of
8 individuals against PDC?

9 MR. ORMISTON: Same objection. It's also
10 argumentative because she's not recording the settlement
11 of individual claims.

12 Q. (BY MR. WEISBART) Do you understand the
13 question?

14 A. I do.

15 Q. Okay.

16 A. I represent the partnerships, not the
17 individuals.

18 Q. But your settlement includes a release of the
19 individuals against PDC, the individual limited partners
20 of any claims they have, does it not?

21 A. My settlement releases PDC from partnership
22 claims, as I understand it.

23 Q. So you don't understand that the -- the term
24 sheet -- and feel free to look at it. It's attached to
25 your declaration -- includes claims and causes of

1 action, which any limited partner may have directly
2 against the partnerships?

3 It's the same provision that we've been
4 talking about. It says "Releases."

5 A. Please repeat the question.

6 Q. What authority do you have as the responsible
7 party for the partnerships to sign a term sheet that
8 releases the individual claims of limited partners
9 against PDC?

10 MR. ORMISTON: Same objections.

11 A. These -- the limited partners' claims are
12 released if, and only if the limited partner doesn't opt
13 out of the release. Opting out of the release will
14 result in a limited partner's prorated share of the
15 settlement being redistributed to partners who have not
16 opted out of the releases.

17 Q. (BY MR. WEISBART) You're proposing a
18 settlement that releases the individual claims; is that
19 correct?

20 MR. ORMISTON: Objection, form. There are
21 no individual claims.

22 Q. (BY MR. WEISBART) You understand my question?

23 A. I understand your question.

24 Q. Okay. What's your answer?

25 MR. ORMISTON: Same objection.

1 A. The answer is these are derivative claims.
2 They belong to the estate. They're estate claims.

3 Q. (BY MR. WEISBART) Which claims are derivative
4 claims, the claims in the Denver litigation?

5 A. All of the claims.

6 Q. If that's the case, why is there an opt
7 out -- an opt in provision?

8 MR. ORMISTON: Object, to the extent it
9 calls for a legal conclusion.

10 You can give him your understanding if you
11 have one.

12 A. I don't have an understanding of that.

13 Q. (BY MR. WEISBART) Did you conduct an
14 investigation to determine if there were any other
15 claims or causes of action against PDC, it's affiliates,
16 or related parties, which could be pursued by the
17 partnerships outside of the Denver litigation?

18 MR. ORMISTON: Can I have that question
19 again, please.

20 Q. (BY MR. WEISBART) Did you conduct an
21 investigation to determine if there were any other
22 claims or causes of action against PDC, its affiliates
23 or related parties, which could be pursued by the
24 partnerships outside of the Denver litigation?

25 A. No.

1 Q. Did you make inquiry with any lawyers or
2 professionals to determine if there were any such
3 claims?

4 A. No.

5 Q. Did you contact any of the law firms that
6 represented the partnerships over the past eight years
7 to determine if such claims exist?

8 A. No.

9 (Mr. Foley exits deposition at 4:11 p.m.)

10 MR. ORMISTON: Hold on. Representative
11 partnerships?

12 MR. WEISBART: Yes.

13 MR. ELDER: Could you just --

14 MR. WEISBART: I'll repeat the question.

15 Q. (BY MR. WEISBART) Did you contact any of the
16 law firms that represented the partnerships over the
17 past eight years to determine if such claims exist?

18 MR. ORMISTON: Which partnerships, these
19 two?

20 MR. WEISBART: The '07 and '08
21 partnerships -- or '06 and '07.

22 MR. ORMISTON: Okay.

23 A. No.

24 Q. (BY MR. WEISBART) Did you contact any
25 accounting firms that performed services for these

1 A. Yes.

2 Q. (BY MR. WEISBART) What other options did you
3 consider?

4 A. We considered -- we auctioned. We considered
5 auctioning properties through the clearinghouse, and
6 there were other individuals who contacted us making
7 inquiries about the properties themselves.

8 Q. Auctioning the properties outside of
9 bankruptcy?

10 A. Inside of bankruptcy. We did it through the
11 bankruptcy process.

12 Q. Okay.

13 A. I'm sorry. Did I miss --

14 Q. The -- aside from the proposed agreement with
15 PDC that we saw on the term sheet, which -- and filing
16 the bankruptcy case to seek approval of that settlement,
17 did you consider any other options to maximize the value
18 of the partnership's assets?

19 MR. ORMISTON: Objection, form.

20 A. We put all of the interest up for sale in
21 public auction.

22 Q. (BY MR. WEISBART) Well, did you have any
23 conversations with anyone about alternatives to filing
24 bankruptcy?

25 A. We -- no.

1 Q. One option would be not to file bankruptcy and
2 not to do the settlement, and to simply allow the
3 partnerships to continue to operate and plug and abandon
4 the wells and ultimately wind them down. Is that an
5 option you considered?

6 A. It's an option, but it's not a practical
7 option.

8 Q. My question is: Did you consider it?

9 A. Yes.

10 Q. You did? Okay.

11 Any other options that you can think of,
12 aside the one I just laid out there?

13 A. We -- we looked at the condition of the
14 properties. We looked at what we could do potentially
15 as you said, let them play out. We looked at
16 bankruptcy.

17 Q. Okay. Well, let's discuss the
18 let-them-play-out option. And I believe you said that
19 wasn't practical?

20 A. Correct.

21 Q. Can you explain what you mean by that in a
22 little more detail?

23 A. The partnerships, at the point in time we were
24 making the determination, were not flowing sufficient
25 cash to support their activities. And PDC was -- and

1 when I say "activities," I am including SCC reporting
2 requirements, auditing, analyses by Ryder Scott, you
3 know, the activities surrounding -- you know, and
4 reimbursement for employees, well services, all of those
5 kinds of things.

6 The partnerships were not producing enough
7 cash to cover their expenses as they came due, which
8 requires the general partner to continue to fund until
9 the end of time, if you will, until the last well is
10 plugged and abandoned. PDC has fiduciary obligations
11 beyond its fiduciary obligations to the partnerships to
12 its board.

13 Its board has obligations to its investors
14 to continue -- to ask PDC to continue -- or any general
15 partner to continue to fund losses with no reasonable
16 expectation, you know, of a payback is not a practical
17 solution.

18 MR. WEISBART: Can you read back that
19 answer please.

20 (Requested portion was read.)

21 Q. (BY MR. WEISBART) And you mentioned, I think,
22 reimburse employees. Is that a term?

23 A. Accounting expenses.

24 Q. Accounting expenses?

25 A. (Moving head up and down.)

1 Q. To outside accountants?

2 A. Outside accountants, and any direct accounting
3 services provided by the general partner.

4 Q. Okay. Did you run any projections on what
5 these costs would total outside of bankruptcy
6 time -- outside of bankruptcy up to the point of winding
7 up the partnerships?

8 A. I have a back of the napkin -- we did a back of
9 the napkin estimate. I don't have anything in writing
10 to corroborate it.

11 Q. I thought I was going to get a napkin. You
12 don't have a napkin? You have nothing in writing?

13 A. No. You have \$3 million or so in plugging and
14 abandonment liability; you have continuing SCC reporting
15 quarterly and annually; couple hundred thousand dollars
16 a year. So you know, it's \$5- or \$6 million over time.

17 Q. Well, how much time would it take to -- what
18 did you project the time it would take to wind up the
19 partnerships?

20 MR. ORMISTON: Objection, form.

21 A. We didn't -- the question I answered before was
22 a practical solution and didn't include any legal items
23 for winding down the partnerships themselves.

24 It's -- until the -- I believe I said the
25 last well was plugged and abandoned. I don't know what

1 that time frame is, if it's five years or seven years,
2 depending on which partnership and which well. There
3 would be additional costs associated -- associated with
4 the wind down and shutting down of the legal entity, the
5 partnership, which I don't have an estimate for.

6 Q. (BY MR. WEISBART) Did anyone evaluate those
7 costs for you?

8 A. No.

9 Q. Then how do you know there are costs associated
10 with that?

11 A. I've done it before. History -- my
12 professional history tells me that there are some costs
13 associated with that.

14 Q. You've wound down a public partnership based on
15 West Virginia law before?

16 A. I have wound down publicly traded entities,
17 yes -- I'm sorry. No, I have not wound down a West
18 Virginia partnership.

19 Q. Okay. Did you consult with any West Virginia
20 attorneys about the wind-down process or any attorneys
21 at all, then?

22 A. No.

23 Q. All right. As far as the -- well, let's just
24 talk about the '06 partnership. There were roughly at
25 the time of filing the case, three wells that were

1 producing and the rest were shut-in, is that correct?

2 Three to five, let's say?

3 A. Okay.

4 Q. A small number?

5 A. A small number.

6 Q. Okay. And would you agree that the reason you
7 maintain a proved developed producing well is because
8 it's making money or at least making its
9 operating -- meeting its operating costs?

10 A. Say that again, please.

11 Q. It's a proved developed producing well because
12 it's producing oil and gas, correct?

13 A. Yes.

14 Q. And you -- the reason it's producing is because
15 it's making money for the most part; is that correct?

16 MR. ORMISTON: Objection, form.

17 A. I believe you have to have a producing well to
18 hold a lease.

19 Q. (BY MR. WEISBART) Okay. So the proved
20 developed producing wells were not making sufficient
21 cash to meet their operating expenses in the '06
22 partnership?

23 A. That's correct.

24 Q. And who told you that?

25 A. We looked at the cash flow streams.

1 A. No.

2 Q. Okay. So do you know if they were being
3 operated profitably or not?

4 A. My understanding is they were not being
5 operated profitably.

6 Q. What is your understanding based upon?

7 A. On the cash flows produced, and by Mr. Stump.

8 Q. Okay. And at the time of the -- so those three
9 wells were not being operated profitably. Do you know
10 why they continued to operate those wells?

11 A. No.

12 Q. PDC could shut in those wells at any time,
13 could it not? It's the operator.

14 A. Yes.

15 Q. Okay. PDC could plug those wells any time it
16 wants --

17 MR. ORMISTON: Objection, form.

18 Q. (BY MR. WEISBART) -- correct?

19 MR. ORMISTON: Objection, form, calls for
20 speculation.

21 A. Subject -- PDC, as the operator, is subject to
22 good business practices. So if you're asking me could
23 they at any time if they wanted to, the answer is no.

24 Q. (BY MR. WEISBART) I don't understand your
25 answer. But perhaps you didn't understand my question.

1 from states where they're doing business.

2 Q. As part of the plan -- proposed plan, PDC will
3 purchase all the oil and gas assets of the partnerships;
4 is that correct?

5 A. Purchased assets? "Purchased assets include
6 right, title, and interest in -- and to all their
7 properties. 'Their,' being the partnerships, including,
8 but not limited the oil and gas interest and oil and gas
9 contracts."

10 That's what they're purchasing.

11 Q. All right. So there won't be any oil and gas
12 interest left in the partnerships following
13 confirmation, assuming the proposed claim is confirmed;
14 is that correct?

15 A. Correct.

16 Q. Okay. Is it your position -- again, not as a
17 lawyer, but as a -- as a proponent of the plan, that
18 you, as responsible party, don't have to provide the
19 limited partners with a right to vote on the sale of all
20 or substantially all of the partnership's assets to PDC?

21 MR. ORMISTON: Object, to the extent it
22 calls for a legal conclusion.

23 You can give your understanding.

24 A. Please restate the question.

25 Q. (BY MR. WEISBART) Sure.

1 Is it your position -- again, not as a
2 lawyer, but as the plan proponent, that you, as
3 responsible party, don't have to provide the limited
4 partners with a right to vote on the sale of all or
5 substantially all of the partnership assets to PDC?

6 MR. ORMISTON: Same objection.

7 A. Can we go back to the partnership agreement,
8 please?

9 Q. (BY MR. WEISBART) Sure.

10 A. Give me a minute please.

11 MR. ORMISTON: Are you looking at '06 or
12 '07?

13 THE WITNESS: I'm looking at '06.

14 A. Okay. Beginning on Page -- I'm looking at the
15 2007 limited partnership agreement, Page A-27.

16 "Certain restrictions on managing general
17 partners power and authority 6.03(b)(1).

18 "Without having received -- without first
19 having received prior consent of the holders' majority
20 of then outstanding units entitled to vote, one, the
21 general partner shall not sell" -- and I added general
22 partner -- "sell all or substantially all of the assets
23 of the partnership, except upon liquidation of the
24 partnership pursuant to Article 9 hereof, unless cash
25 funds of the partnership are insufficient to pay the

1 obligations and other liabilities of the partnership."

2 So to answer your question, as the cash is
3 insufficient to pay the liabilities of the partnership
4 its cash funds of the partnership, not PDC, are
5 insufficient, then in this case, the general partner,
6 me, standing as the responsible party, does not have to
7 have a vote of the majority of the outstanding unit
8 holders.

9 Q. The plan does not permit that a limited
10 partners to request distribution of proceeds from the
11 sale in kind; is that correct?

12 A. That is correct.

13 Q. And you would agree, would you not, that
14 as -- and your giving your opinion as a layperson. As
15 responsible party, are you subject to Section 6.03 of
16 the partnership agreements in operating the
17 partnerships?

18 MR. ORMISTON: Objection, calls for a legal
19 conclusion.

20 You can give your understanding if you have
21 one.

22 A. Please repeat the question.

23 Q. (BY MR. WEISBART) Sure.

24 As a lay party and as a responsible
25 party, are you subject to Section 6.03 in operating the

1 partnerships?

2 MR. ORMISTON: Same objection.

3 Q. (BY MR. WEISBART) It's the provision you
4 just -- section you just read.

5 A. Yes, I believe I'm following that section.

6 Q. Okay. Both before and after the bankruptcy
7 filing?

8 A. Yes.

9 Q. All right. Then I'll refer you to Section
10 7.08. I'll let you read that.

11 A. Okay.

12 Q. Have you had a chance to read it?

13 A. Yes.

14 Q. And, again, that's Section 7.08.

15 As a layperson, are you as responsible
16 party comply with Section 7.08?

17 MR. ORMISTON: Object to the form of the
18 question to the extent it calls for a legal conclusion.

19 MR. WEISBART: And I'm not asking for a
20 legal conclusion.

21 MR. ORMISTON: I understand. I'm just
22 protecting the record.

23 You can give whatever non-legal response to
24 that.

25 A. It's an outline of voting rights. I don't know

1 Mr. Mark Weisbart 06 HOURS:08 MINUTES

2

3 That \$ _____ is the deposition officer's
4 charges to the Party for preparing the original
5 deposition transcript and any copies of exhibits;

6 That pursuant to information given to the
7 deposition officer at the time said testimony was taken,
8 the following includes all parties of record:

9

10 Mr. Mark A. Weisbart, Mr. James S. Brouner, and Mr.
11 Thomas G. Foley, Attorneys for The Dufresne Family
12 Trust, The Schulein Family Trust, The Michael A. Gaffey
13 and Joanne M. Gaffey Living Trust, March 2000, and The
14 Glickman Family Trust dated August 29, 1994, The William
15 J. and Judith A. McDonald Living Trust dated April 16,
16 1991

17 Mr. James Ormiston and Mr. Jason Brookner,
18 Attorneys for Debtors

19 Mr. Michael D. Morfey, Ms. Robin Russell, and Mr.
20 Charles E. Elder, Attorneys for PDC Energy

21 That a copy of this certificate was served on all
22 parties shown herein on _____ and filed
23 with the Clerk pursuant to Rule 203.3.

24

25 I further certify that I am neither counsel for,
related to, nor employed by any of the parties or
attorneys in the action in which this proceeding was
taken, and further that I am not financially or
otherwise interested in the outcome of the action.

1 Certified to by me this ___ day of May, 2019.

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