

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

In Re:) **Case No. 22-30659-mvl-11**
NORTHWEST SENIOR HOUSING) Jointly Administered Ch. 11
CORPORATION, et al.,)
Debtors.) Dallas, Texas
February 23, 2023
9:30 a.m. Docket
- AMENDED CHAPTER 11 PLAN
(1241)
- MOTION TO SELL (755)
Continued from 02/22/2023

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MICHELLE V. LARSON,
UNITED STATES BANKRUPTCY JUDGE.

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1 DALLAS, TEXAS - FEBRUARY 23, 2023 - 9:43 A.M.

2 THE CLERK: All rise. The United States Bankruptcy
3 Court for the Northern District of Texas, Dallas Division, is
4 now in session, The Honorable Michelle Larson presiding.

5 THE COURT: Please. Be seated. Good morning,
6 everyone. We're here on our 9:30 docket. I'll go ahead and
7 call Case No. 22-30659, Northwest Senior Housing Corporation.
8 I'll take appearances for the record, and I'll start with
9 those folks in the courtroom.

10 MR. JOHNSON: Good morning, Your Honor. Jeremy
11 Johnson from Polsinelli on behalf of the Debtors. With me is
12 Trinitee Green. Thank you.

13 THE COURT: Good morning.

14 THE COURT: Good morning to both of you.

15 MR. MURPHY: Your Honor, Frasher Murphy with Haynes
16 and Boone for UMB Bank, the Initial Plan Sponsor. I'm joined
17 today with attorneys from the Mintz firm -- sorry -- Dan
18 Bleck, Kaitlin Walsh, and Kate Lombardo. It's starting. I'm
19 getting tired, you know.

20 (Laughter.)

21 MR. BLECK: You've had plenty of practice.

22 THE COURT: All right. Espresso for Mr. Murphy. Ms.
23 Walker?

24 MS. WALKER: I think he expressed it from the house.
25 Good morning, Your Honor. Adrienne Walker, I'm here today

1 with Matthew Davis of Locke Lord, for Bay 9 Holdings.

2 THE COURT: Good morning.

3 MR. HENDRICKS: Good morning again, Your Honor.

4 Chuck Hendricks Steve Donosky.

5 THE COURT: Good morning, Mr. Hendricks.

6 MR. WALKER: Good morning, Your Honor. Eric Walker

7 of Cooley on behalf of Lifespace Communities, Inc.

8 THE COURT: Good morning.

9 MR. MCCARTIN: Good morning, Your Honor. Steve
10 McCartin on behalf of the Official Unsecured Creditors'
11 Committee.

12 THE COURT: Good morning.

13 MS. VANDESTEEG: Good morning, Your Honor. Elizabeth
14 Vandesteeg, Eileen Sethna, and Harold Israel of Levenfeld
15 Pearlstein; together with Ivan Gold of Allen Matkins and
16 Elizabeth Pittman of Jackson Walker; on behalf of Intercity
17 Investment Properties, Inc.

18 THE COURT: Good morning. Just one moment. Okay.
19 In terms of the electronic roll, I have one litigant on the
20 electronic roll, and that is Mr. James Adams of Adams
21 Advisors, Limited, on behalf of Ann Adams.

22 Is there anyone else on WebEx who would like to make an
23 appearance today? And as a reminder, if you're on the phone,
24 you can press *6 to unmute.

25 Okay. Hearing no further takers, before we get started,

1 as one matter of housekeeping, is an apology from the Court.
2 Especially to Mr. Davis, but to all of you: I was a little
3 short with you yesterday, Mr. Davis, and I apologize for that.
4 Upon reflection, I realize that, again, in getting through the
5 objections, I was a little short with you, and I apologize for
6 that. I have lots and lots of vices, but I try for one of
7 them not to be my judicial demeanor. So I apologize.

8 MR. DAVIS: I'm sure I deserved it, Judge. Thank
9 you.

10 THE COURT: Thank you so much.

11 All righty. So, I understand we have a bit of
12 housekeeping in terms of calendaring and things like that. Do
13 you all want to start with that?

14 MR. JOHNSON: I think so, Your Honor, if that'd be
15 all right.

16 THE COURT: Okay. Mr. Johnson?

17 MR. JOHNSON: Jeremy Johnson on behalf of the
18 Debtors, Your Honor.

19 Yes, we did, and we discussed with chambers yesterday to
20 try and find out, obviously, the idea of doing the adequate
21 assurance trial and confirmation hearing this week is looking
22 dimmer and dimmer as things move on. But I think that we've
23 had several discussions with everybody, all of the parties
24 involved on our side. I know that we've asked the Court how
25 your next week looks. I understand it's pretty busy, and then

1 you're not available the following week. So we've asked for a
2 little bit of time there, if we can. In a perfect world, we
3 think we could get -- if we could get a day and a half --

4 THE COURT: Uh-huh.

5 MR. JOHNSON: -- for confirmation, we could probably
6 get it done.

7 Now, the idea would be -- and I believe that everybody's
8 agreed to this in theory -- would be to finish the adequate
9 assurance evidence today, possibly into tomorrow morning, if
10 that's how much it runs, deal with the sale issues tomorrow,
11 which is the declaration of David Fields and his testimony
12 tomorrow, and then the issues related to Donosky and their
13 witnesses tomorrow.

14 THE COURT: Uh-huh.

15 MR. JOHNSON: That would effectively conclude the
16 adequate assurance portion of the -- the evidentiary portion.
17 And everybody has sort of agreed that we would combine the
18 closings for the adequate assurance trial with the closings on
19 confirmation.

20 THE COURT: Okay.

21 MR. JOHNSON: So then we would take a break to next
22 week, to whenever you can hopefully fit us in. We understand
23 that Friday may be available, and we understand you're working
24 some calendar magic to see if there's some additional time.
25 But if there were time there that we could do it.

1 The confirmation hearing, I think, Your Honor, there
2 aren't a lot of major issues related to confirmation that
3 don't relate to feasibility. So, to some extent, the adequate
4 assurance piece I think is a big piece. I don't think we're
5 looking at a multi-day confirmation trial. That's at least
6 our expectation. We think a lot of those issues are being
7 resolved in this multi-day trial.

8 So, but I think that's the proposal that everybody is more
9 or less okay with, assuming we can find some time on your
10 calendar for next week for confirmation.

11 THE COURT: So, you believe you need another day for
12 confirmation, essentially for evidence, and then another day
13 for closings, and that the closings will be both confirmation
14 and adequate assurance, you believe?

15 MR. JOHNSON: I don't know that --

16 THE COURT: Or possible --

17 MR. JOHNSON: -- we'll need a full day for evidence,
18 but --

19 THE COURT: Okay.

20 MR. JOHNSON: -- I mean, I would think there might be
21 some short openings, some evidence, and some closing. But the
22 closings would be combined.

23 THE COURT: Okay.

24 MR. JOHNSON: So there wouldn't be a separate set of
25 closings at the end of the adequate assurance hearing. And I

1 think that's what the primary litigants and interests here
2 have agreed to, at least conceptually.

3 THE COURT: Okay. Thank you, Mr. Johnson.

4 MR. JOHNSON: Thank you.

5 THE COURT: Mr. Hendricks?

6 MR. HENDRICKS: Thank you, Your Honor. I'm trying to
7 follow along from a distance as best I can.

8 I understand the Donosky objection, that would be handled
9 as a discrete, separate issue, with arguments, evidence,
10 whatever on Donosky at one time, and I think they're telling
11 me Friday afternoon. I understand the Court has another
12 matter Friday afternoon, early, so it would start after that.

13 THE COURT: So, in terms of this Friday, as in
14 tomorrow, --

15 MR. HENDRICKS: Tomorrow. Right.

16 THE COURT: -- I have a 1:30 hearing that was
17 originally scheduled to go for 30 minutes, but it's expedited,
18 and of course the objections are just coming in. I still
19 believe that we can probably handle that efficiently and maybe
20 get that done in 30 minutes, because I haven't had an
21 opportunity -- the objections were just filed last night -- I
22 haven't had an opportunity to view them, but they may not be
23 issues for that day. I think they might just be forecasting
24 some issues down the road for me.

25 So I think that we could --

1 MR. HENDRICKS: If we plan on 2:00 --

2 THE COURT: -- anticipate 2:00 o'clock.

3 MR. HENDRICKS: 2:00 o'clock, and I'll have my
4 witnesses available.

5 THE COURT: I do believe that Donosky is discrete,
6 and I do believe that it dovetails somewhere between the sale
7 and the confirmation issues, and so it could be handled
8 separately.

9 Likewise, and I realize it may take more people, but I
10 could probably fit Donosky, just the Donosky issue in on a day
11 next week. But then we're just talking --

12 MR. HENDRICKS: Yeah.

13 THE COURT: I don't want to carry people --

14 MR. HENDRICKS: I apologize. Mr. Donosky is not
15 available next week.

16 THE COURT: Okay. Well, there you go.

17 MR. HENDRICKS: So, if that --

18 THE COURT: So, maybe Friday, then.

19 MR. HENDRICKS: So plan at 2:00 o'clock for -- I've
20 got my two witnesses and we'll be the ready to go.

21 THE COURT: Yes.

22 MR. JOHNSON: And for the record, Your Honor, I think
23 that you had indicated you had maybe an hour of -- hour or so
24 of direct testimony. There's no witnesses for the Plan
25 Proponents.

1 THE COURT: Uh-huh.

2 MR. JOHNSON: So it's our expectation we could handle
3 the evidentiary and the argument tomorrow afternoon, --

4 THE COURT: Okay.

5 MR. JOHNSON: -- in that time period, and get
6 everybody on planes and home to their families at a reasonable
7 hour.

8 THE COURT: And will there be any witnesses or
9 argument from Bay 9 with respect to --

10 MS. WALKER: There'll be argument, Your Honor.

11 THE COURT: Argument?

12 MS. WALKER: Yes.

13 THE COURT: Okay. Ms. Green?

14 MS. GREEN: Just one moment.

15 (Pause.)

16 MR. JOHNSON: Okay. Yeah, we're good, Your Honor.
17 Thank you.

18 THE COURT: Okay. All righty. Thank you.

19 MR. HENDRICKS: All right. May I be excused until
20 2:00 tomorrow afternoon, then?

21 THE COURT: Until 2:00 tomorrow afternoon.

22 MR. HENDRICKS: Thanks, Judge.

23 MR. JOHNSON: Thank you.

24 THE COURT: If anything changes, we will let you
25 know. But recognizing that Mr. Donosky is out next week, I

1 think that means that we need to go with him on Friday. So I
2 appreciate that.

3 MR. HENDRICKS: Thank you, Your Honor.

4 THE COURT: Okay. So, in terms of the calendar for
5 next week, I can give you Friday. But I understand you need a
6 day and a half. So you have to recognize that, to give you
7 guys these consecutive days this week, I pushed everything
8 else to next week, so that's why getting you folks another
9 half a day is going to be problematic.

10 So, the following week, I was scheduled to be out, which
11 is the week that begins March 6th. I'd hate to even call this
12 vacation, because it's just not a vacation at all.

13 I have half a day on Tuesday, in the afternoon, because I
14 had a trial docket call and I had some other things to handle.
15 So, I have half a day. But you couldn't start until 2:00 on
16 Tuesday.

17 The other option is full day on Wednesday, the 8th, and a
18 half a day starting in the morning on the 9th.

19 Now, I speak at a conference on Thursday afternoon, so the
20 afternoon is not available unless someone wants to go and
21 speak at that conference for me, which is an option.

22 MR. JOHNSON: Where is it, Your Honor?

23 THE COURT: It's local. It's local. I think it's
24 Las Colinas.

25 MR. JOHNSON: Okay. Thank you, Your Honor.

1 THE COURT: And you must be prepared to do a Chapter
2 13 confirmation.

3 (Laughter.)

4 THE COURT: In fact, I should have grabbed Mr.
5 Hendricks. He could have done this.

6 So I think, in terms of next week, those are my best
7 options, is Wednesday, half a day Thursday, recognizing that I
8 really do have to leave in the afternoon on Thursday.

9 MR. JOHNSON: Your Honor, just a clarification.
10 We're talking not next week, we're talking two weeks?

11 THE COURT: Yes. I apologize.

12 MR. JOHNSON: Okay. Yes.

13 THE COURT: I have a full day -- yes. Just got a
14 little chat reminder to use actual dates so as not to confuse
15 people. I have March 3rd all day. I have March 7th starting
16 at 2:00. All day March 8th. And the morning of March 9th.
17 That's what I have.

18 MR. JOHNSON: Okay.

19 THE COURT: And then the following week, which I
20 know, based on everything else I know about the case, is
21 starting to push it, is my trial week in March, the week of
22 March 13th, and I have time I could give you there. But I
23 realize that that may be farther than you want to go out.

24 MR. JOHNSON: Thank you, Your Honor. Yeah, I think
25 it's going to be tough for us to get the regulatory approvals.

1 So, Your Honor, I'd suggest we'll -- we appreciate that
2 information. We can move on with the excitement of the day,
3 and we'll all huddle up in the hallways --

4 THE COURT: Sure.

5 MR. JOHNSON: -- and see if we can come up on an
6 agreed time. We appreciate --

7 THE COURT: Right.

8 MR. JOHNSON: Appreciate you making yourselves
9 available again. So, thank you, Your Honor.

10 THE COURT: Yes. And again, I would give you the
11 half a day on March 2nd if I could, but it's my Chapter 13
12 docket. Those are set a year in advance.

13 MR. JOHNSON: Yeah.

14 THE COURT: So those are hard to move to give you any
15 time. Which is, again, March 2nd. It's just very hard to
16 move that.

17 MR. JOHNSON: Appreciate it, Your Honor. Thank you.

18 THE COURT: Sure. Okay. When we broke yesterday, as
19 I recall, the Plan Sponsors and Bay 9 have rested their
20 portion of the evidence, and so we're going to turn to ICI.

21 MR. GOLD: Good morning and Happy Thursday, Your
22 Honor. Ivan Gold of Allen Matkins, co-counsel for the
23 Landlord, ICI.

24 Your Honor, I rise before we put on -- propose the next
25 witness to make a short motion.

1 THE COURT: Uh-huh.

2 MR. GOLD: ICI asks Your Honor to enter an order
3 denying the motion for sale. My motion is made under Federal
4 Rule of Civil Procedure 52(c), made applicable to this
5 contested matter by Federal Rule of Bankruptcy Procedure
6 9014(c).

7 This motion should come as no surprise. It is based on an
8 argument I made in my opening argument. We briefed it in
9 ICI's objection to the stalking horse APA that appears at
10 Docket 1201.

11 The Debtors, as the Movants, have the burden of proving
12 adequate assurance of future performance in order to approve
13 assumption and assignment of the lease by a preponderance of
14 the evidence. The case law is well-settled. In the Fifth
15 Circuit, the case that gets cited a lot is *In re PRK*
16 *Enterprises*. We've cited that in our brief. There's also
17 *F.W. Restaurant Associates* out of Connecticut, also cited in
18 our brief. And the leading case appears to be *Rachels*
19 *Industries* out of the Western District of Tennessee back in
20 1990.

21 *Rachels* says, in a proceeding under 365, the party moving
22 to assume a lease has the ultimate burden of persuasion when
23 the lease is one subject to assumption and that all of the
24 requirements for assumption have been met.

25 Here, the Debtors elected to delegate their burden to Bay

1 9, which has completed its presentation of evidence. There
2 was no evidence that will change the argument I'm about to
3 make.

4 We briefed the fact that the Debtor and Bay 9 have
5 attempted to bifurcate liabilities through their asset
6 purchase agreement. The asset purchase agreement has been
7 identified in this proceeding as Exhibit 17. It was also
8 filed at Docket 1250.

9 That bifurcation is based on the closing -- the
10 anticipated closing date of the transaction. This bifurcation
11 can be found at Sections 2.3 and 2.4 of the asset purchase
12 agreement.

13 2.3 has the definition of "Assumed Liabilities," and they
14 include, in Subpart A, liabilities and obligations under the
15 purchased assets accruing or arising on or after the effective
16 date, with some carve-outs that do not relate here.

17 In B, 2.3(b), the -- a definition of "Assumed Liabilities"
18 includes all liabilities and obligations arising under or
19 related to the assumed contracts from and after closing.

20 Similarly, the definition of "Excluded Liabilities"
21 continues but broadens the concept. And it's 2.4 that is
22 perhaps the most problematic, because 2.4, in -- says, "Except
23 for the Assumed Liabilities," -- capitalized express term --
24 "Purchaser shall not assume or be liable to pay, perform, or
25 discharge any liability, obligation, debt, Claim" -- with a

1 capital C, referring over to the Bankruptcy Code definition --
2 "against or contract of the Seller or any of its affiliates,
3 which in any case pertain to the ownership, operation, or
4 conduct of the business, or the ownership of the purchased
5 assets, prior to the closing date..." But it goes on: "...at
6 any time existing or asserted, whether or not accrued, fixed,
7 contingent, or otherwise, whether known or unknown, and
8 whether or not recorded on the books and records of Seller or
9 any of its affiliates."

10 I've raised several hypotheticals, both in argument and in
11 questioning of witnesses, to illustrate the problem that these
12 provisions create. It doesn't matter for purposes of Section
13 365 which of my hypotheticals you choose. The simplest is the
14 duty -- Debtors' duty to indemnify the Landlord for third-
15 party claims under Section 5.15. Mrs. Hatch testified that
16 any third-party claims asserted post-closing -- the
17 hypothetical slip-and-fall -- based on pre-closing occurrences
18 would not be Bay 9's responsibility.

19 But we heard further from Mrs. Hatch, who, when presented
20 with a series of foreseeable hypotheticals relating to
21 deferred maintenance and the duty to repair and maintain under
22 Section 5.7 and the neighboring provisions of the ground
23 lease, she carefully responded that she would address those
24 conditions as they might arise as a businessperson. She would
25 be looking at the health and safety issues and the needs of

1 the residents. But never once did she say she would do it to
2 address the potential conditions because the ground lease
3 required it.

4 So, Ms. Walker arose to object when I pressed Ms. Hatch,
5 and Ms. Walker asserted that my inquiries called for a legal
6 conclusion. I am taking her up on that offer. That's now
7 what I'm asking Your Honor to address.

8 Paragraph 30 of the proposed sale and confirmation order,
9 which can be found at Docket 1246, seeks to approve the APA
10 unconditionally. Indeed, it even appears to give the APA
11 primacy over your sale order itself.

12 Also important: Paragraph 19 of the proposed sale order
13 grants the Debtor a Section 365(k) release.

14 As a matter of law, however, the Debtor is not entitled to
15 the benefits and protections of Section 365(k) where the
16 Debtor does not assume and assign the lease *cum onere*, with
17 all the benefits and all the burdens. We previously cited the
18 Court *American Flint Glass Workers Union v. Anchor Resolution*
19 *Corp.*, 197 F.3d 76 (3rd Cir. 1999). That case holds in
20 particular where an agreement between the debtor and assignee
21 attempts to limit the obligations assumed by the assignee only
22 to those arising after the closing, there has not been a
23 complete assignment of the lease and the debtor is not
24 entitled to the protections of 365(k). Sounds familiar.

25 It's important to note 365(k) changes the common law rule

1 by effecting what amounts to a novation by operation of law,
2 whether or not the landlord consents. That's part of the
3 package I talked about in my opening under 365.

4 I would refer you to the Fifth Circuit in *Wainer v. A.J.*
5 *Equities*, 984 F.2d 679, a *per curiam* 1993 decision, consistent
6 with the basic concept that a contracts assignment vests the
7 contractual assignee with the entire bundle of rights and
8 obligations under the contract. All the formulations I said:
9 good and bad, benefits and burdens, bag and baggage. Such a
10 forced novation is dependent on a total undertaking by the
11 assignee. That is not what is proposed here.

12 Section 365 requires assumption and assignment *cum onere*
13 and not subject to modifications. Over 50 years ago, the
14 Fifth Circuit, in *Schokbeton Industries*, 466 F.2d 171, held
15 that "A universally recognized rule that a trustee cannot
16 accept the benefits of an executory contract without accepting
17 the burdens as well." Citing *Schokbeton*, the Bankruptcy Court
18 for the Southern District of Texas, in *Pin Oaks Apartments*,
19 another case we've cited the Court, said, "The debtor can
20 assign a lease to a third party who becomes fully liable
21 thereunder."

22 The Sixth Circuit, in *Covington Land*, 71 F.3d 1221,
23 similarly: "When a debtor assumes the lease or contract under
24 365, it must assume the benefits and the burdens. Neither the
25 debtor nor 365 contemplates assumption of liability, not

1 shields against liability."

2 That is exactly what we see here. The principles and
3 language of Section 365 cannot be altered in a conference room
4 or at a scrivener's keyboard.

5 We know that the Debtor and Bay 9, the proposed assignee,
6 know how to amend an APA. They did it on February 6, 2023.
7 That's Exhibit 18.

8 We filed our opposition over a week ago. This issue has
9 been identified to the Debtor. It's been identified to Bay 9.
10 They have not addressed it. They created this problem, not
11 the Landlord. There's no further evidence that you could hear
12 that would change this outcome.

13 Whether there's another form of APA that could be proposed
14 to you that could fix it is not before the Court today. The
15 stalking horse APA, filed with this Court in its entirety at
16 Docket 1250 -- you'll also see the amendment at 1149 -- cannot
17 be approved as a matter of law. As a result, the sale motion
18 must be denied.

19 Thank you, Your Honor.

20 THE COURT: Thank you very much, Mr. Gold.

21 Ms. Walker?

22 MS. WALKER: Your Honor, I think there are -- excuse
23 me. Adrienne Walker for Bay 9 Holdings.

24 Your Honor, there are two -- there's both a procedural and
25 a substantive to this motion.

1 First, as to the matter of procedure, Your Honor, you have
2 not yet had any testimony or evidence on confirmation.
3 Confirmation is a tomorrow issue, and hopefully it's literally
4 a tomorrow issue.

5 And Your Honor, the language in the merits of the plan
6 include an implementation of a sale. The sale is connected
7 intrinsically to the plan confirmation.

8 There's a matter of process. You don't yet have in front
9 of you a 365(k) issue. You only have the argument that was
10 just raised. I don't see how it's timely at this juncture to
11 be addressing the plan-related issues that are intimately
12 entwined.

13 We talked about language in a plan, the proposed order,
14 that, subject to Your Honor's consideration, is going to be an
15 issue that's part of the plan and the relief requested by Plan
16 Sponsors.

17 However, Your Honor, just as a -- so that's process. And
18 I think we're just premature. And I think you need to have
19 all of the information in front of you before you can rule on
20 365(k).

21 But let's take a step back and say this is a, in many,
22 many aspects -- except, you know, we've had many, many days of
23 testimony -- this is a very straightforward sale that you see
24 all the time, whether it be in a 13, 7, or an 11. There is
25 provisions requiring under 365 for assignment and assumption

1 of a lease, and that's what the APA says. The APA says
2 typical. Who deals with a cure? That happens all the time.
3 Here, negotiated, the Debtor and the estate are going to
4 handle the cures. We're going to handle adequate assurance.
5 We have a go forward.

6 Almost every asset purchase agreement I've ever drafted,
7 I'm sure you drafted in practice and you see in front of you,
8 has that. The go forward buyer who is not related to the
9 estate says, I will pick up the go forward. That is primarily
10 why people go into Bankruptcy Court to have a sale approved,
11 so a buyer doesn't get those -- you know, we always talk free
12 and clear of liens, claims, and encumbrances. That's what
13 this buyer negotiated.

14 But the buyer didn't say, Landlord, you're not going to be
15 made whole. No. The APA expressly says who is going to be
16 responsible for those cures.

17 And yes, there is a line in the sand, but it doesn't mean
18 that the Landlord doesn't get the benefit of their bargain.
19 What the Landlord wants is more. The Landlord says, I --
20 maybe I didn't prove up my cure. I want to have a second bite
21 at that apple down the road.

22 Your Honor, you're going to set an order, and you're going
23 to says what's cure, both property conditions as well as
24 pecuniary losses, and you're going to decide what the buyer
25 has to take on for adequate assurance. We all know that.

1 That's why we're here.

2 So to suggest that there is some doughnut hole that was in
3 the pleadings filed by the Landlord is just fiction, because
4 the asset purchase agreement expressly provides for all of
5 those claims.

6 And in particular, Your Honor, it says the estate is going
7 to continue on, there's a Litigation Trust, and they're going
8 to -- and we expressly, as my brother identified, we put in
9 the asset purchase agreement what we understood would be go
10 forward, the litigation expenses, potentially, litigation
11 claims. That's going to be handled by the estate. They're
12 taking that on. And it's expressly in the asset purchase
13 agreement because we understood that would be a go forward
14 that we didn't -- we thought the Landlord would say exactly
15 what they said. There's going to be a hole. Take care of
16 that. So that was the intent.

17 So, right now, you're going to make a decision, I assume
18 at some point when we're done with this trial, of what the
19 Landlord -- what is cure and what is adequate assurance.
20 Those two pieces make the Landlord whole, and that's what the
21 Bankruptcy Code provides.

22 We believe we have put on an abundance of evidence as to
23 the adequate assurance of future performance by the buyer
24 here. You've heard the testimony over two days of the
25 exceptional quality and expertise and investment acumen of Bay

1 9 and its sponsor. You've heard the incredible experiences of
2 Long Hill and how they're going to operate this, the amount of
3 effort they took to put forward a business plan that was sound
4 and based on all the best evidence they had at the time, and
5 their ability to manage this going forward.

6 The Landlord is going to be made whole because the
7 Bankruptcy Code has required that of us. And Your Honor, I
8 think we have already satisfied our burden, but if Your Honor
9 thought there is some unknown, it's because we're not yet
10 there. We still have the confirmation. And that's where, you
11 know, you're going to have a little bit more on whether or not
12 365(k). We think it's plain. That's what the Bankruptcy Code
13 and all sales do provide.

14 Thank you.

15 THE COURT: Thank you, Ms. Walker.

16 Mr. Johnson?

17 MR. JOHNSON: Thank you, Your Honor. Mr. Johnson,
18 Jeremy Johnson, on behalf of the Debtors, Your Honor. Sorry.
19 I'm not used to speaking in court after two days of watching
20 it all on WebEx.

21 Your Honor, obviously, we concur with the statements of
22 Bay 9 with respect to that. I don't want to repeat them. But
23 I think, from our perspective, and while the Debtors aren't
24 incredibly close in the adequate assurance trial in terms of
25 what's been happening here, I would say that this case is

1 unique when it comes to assumption of a lease. I've assumed a
2 lot of leases over my twenty-plus years of representing
3 debtors, and I've never had a three-part trial regarding the
4 property condition defaults, the pecuniary defaults, and
5 adequate assurance.

6 This Landlord has been afforded every opportunity to
7 establish, to get a ruling from this Court that these are
8 defaults that must be cured. They have had inspections.
9 They've had discovery. There have been I don't know how many
10 depositions, but there's been several -- there's been more
11 than ten, perhaps less than twenty depositions.

12 So they've been given a full and fair opportunity, and
13 you've ruled. You've ruled, and we'll -- we will debate and
14 can debate on our side to what extent, you know, there were
15 cure issues that were -- that had to be resolved as part of
16 the property condition. We obviously have a ruling of things
17 that we are taking care of with respect to that. But we would
18 -- we would sort of probably differ on who was successful in
19 terms of that particular -- in terms of that particular trial.

20 There will be a ruling on pecuniary loss. You will be
21 telling us -- you will be telling everybody what the cures
22 were.

23 So the idea that there's a hypothetical issue or an
24 unknown default that is somehow hidden from us, I would say
25 that's the Landlord's opportunity -- the Landlord had the

1 opportunity to assert that along the way. And I think that
2 the fact that they've been given this sort of opportunity
3 means that this type of motion can be denied at this time.
4 The Court is going to rule as to what the defaults are, and
5 they will be cured in advance of the assignment.

6 Thank you, Your Honor.

7 THE COURT: Thank you, Mr. Johnson.

8 Ms. Walsh?

9 MS. WALSH: Thank you, Your Honor. For the record,
10 Kaitlin Walsh on behalf of UMB.

11 UMB joins in the arguments of Bay 9 and the Debtors. This
12 motion is premature. This is a sale plan. And over the past
13 two days, we have attended the adequate assurance trial and we
14 have yet to attend the confirmation hearing. And these issues
15 will all addressed in due time.

16 THE COURT: Thank you, Ms. Walsh.

17 MS. WALSH: Thank you.

18 THE COURT: Mr. Gold?

19 MR. GOLD: Thank you, Your Honor.

20 Candidly, Your Honor, every one of those arguments missed
21 the point. We're not talking about cure. We're not talking
22 about historical defaults. We're talking about future
23 defaults, not necessarily future defaults about things that
24 were adjudicated at the cure hearing. This has nothing to do
25 with the experience, the financial wherewithal of Bay 9. It

1 has nothing to do with any of that. I made that clear when I
2 made the motion. This is all about the APA. This is about
3 they use the APA as a shield to not assume all of the
4 obligations of the ground lease going forward for the next 31-
5 plus years.

6 It's not about anything that we may even know about,
7 because the definition of Excluded Liabilities and Assumed
8 Liabilities makes sure, if you don't know about it, sorry, not
9 on our ticket, not our nickel. There is no carve-out, Your
10 Honor.

11 If you'd like to swear me and Ms. Walker as expert
12 witnesses, I'll take issue with her statement that this
13 happens all the time. We're not selling two forklifts and an
14 F-150 of a liquidating manufacturing company. This is a
15 commercial lease. Yes, I understand Fifth Circuit law, how it
16 characterizes it, but these code sections make no distinction.
17 This is a complex property. This is a long-term lease where
18 the rent is over \$4 million a year.

19 We're talking about the attempt to shield liabilities that
20 may have accrued and just not be known, or liabilities that
21 may accrue that relate to historical conditions. We're
22 talking about the ability to enforce the lease in the future.
23 Not the week after closing, but '24, '25, '26, in the 2030s.

24 This hard wall that the parties sought to erect through
25 the APA cannot be found in 365 and the jurisprudence. The

1 fact that they get away with it in New York doesn't matter.
2 If someone objects, we have the Code. What does the Code say?
3 What do the cases say?

4 365(k) is not found in 1129. It's found in 365. They've
5 combined the process. But what does 1129 tell us? Oh, yes,
6 we can have a lease assumed and assigned. Many of them, in
7 fact, is routine. We drive down to Houston and see that all
8 the time. We can do 200 leases through a plan. But we still
9 have to follow 365.

10 Basically, what I heard was an admission that the plan
11 can't be confirmed because 1129(a)(1) -- I don't even have to
12 make it down to subparts -- 1129(a)(1) is the plan must
13 conform to the law and the Code. Well, here we are. It
14 doesn't. And there's no evidence that you could possibly hear
15 at plan confirmation that modifies the terms of the APA, that
16 changes this fictional wall that they've attempted to erect to
17 create a shield.

18 The plain terms of 2.4 of the APA make it clear. The
19 terms in 2.4 of the APA and the concepts are not found in the
20 Code, and they've never been endorsed by a court in a
21 contested matter that resulted in a published opinion.
22 They've not. The cases are directly to the contrary. In the
23 simplest terms, if you don't take the whole lease, it's not a
24 complete assignment. And that is precisely what's happening
25 here.

1 It has nothing to do with Lapis and their experience. It
2 has nothing to do with the capitalization of Bay 9. It has
3 nothing to do with those issues. It has nothing to do with
4 the cooling tower being repaired under a prior order of the
5 Court. It has to do with future performance. Adequate
6 assurance of future performance. This is not a complete
7 assignment of the lease. They set it up that way.

8 And just from a straight judicial resources, why go
9 through the plan process only to have this issue come up
10 again? The law won't change. The APA won't change. Maybe
11 they need to fix the APA and reboot. But this APA cannot be
12 approved by the Court. The sale motion must be denied.

13 Thank you, Your Honor.

14 THE COURT: Thank you, Mr. Gold.

15 MS. WALKER: May I briefly, Your Honor?

16 THE COURT: Ms. Walker?

17 MS. WALKER: Thank you.

18 Your Honor, Adrienne Walker. I feel as if I'm reading a
19 different Code and a different APA.

20 Your Honor, if I could just draw your attention when you
21 have a moment to look at 2.3 of the asset purchase agreement.
22 The asset purchase agreement at 2.3(b) says, "All liabilities
23 and obligations arising under, related to an assumed contract"
24 -- which is the ground lease -- "from and after closing."
25 That's the buyer's -- that what Mrs. Hatch testified to. We

1 are taking that on.

2 Three-sixty -- 2.4 of the APA says, "except for the
3 assumed liabilities." And then everything else after. You
4 know, you could have just stopped there, but, you know, good
5 lawyers, we just like to keep drafting.

6 So, very simple. We're going to assume the liabilities
7 from and after closing. That's expressed in the APA. We're
8 saying, if it's not after the closing, we're not taking it.
9 That's typical.

10 365(k) just says that the estate is not liable for any
11 breach after the assignment. It's a breach. It's not a
12 condition. It's a breach after the assignment. That's fine.
13 The estate gets that prerogative because that's what 365 gives
14 them. And we've said, Okay, Landlord, since the estate is not
15 picking up any breach after the assignment, you're going to
16 negotiate that and you're going to put it in the asset
17 purchase agreement. And that's what we did.

18 So the idea that there's an unknown condition down the
19 road, it just depends on is that a breach. If that's a
20 breach, they're not -- they're not liable for it. We are.
21 We've taken it on. Says it right there. From and after the
22 closing.

23 What they're trying to say is, two years down the road, if
24 you peel off the roof, I don't want to go to Tarrant County, I
25 want to have an order of this Court that gives them a little

1 bit more. And we're just saying, just look at the agreement.
2 That's what the agreement provides. It fits the Code. It's
3 been contracted for. I think we're trying -- he's trying to
4 put in historical conditions to breach or no breach.

5 Your Honor is going to make a decision what's a breach,
6 what's a default, and what needs to be cured. If there's a
7 condition down the road, you're going to look at -- we're
8 going to all look at it. Mrs. Hatch said, as a matter of
9 business, of course that's what we're going to do. She's not
10 a lawyer. So she's going to come and ask me and I'm going to
11 read a contract and we're going to have a conversation about
12 it.

13 But it fits the Code. This is not -- this is not a
14 doughnut hole. This is precisely what the Code provides.

15 So I just wanted to frame what the agreement provides, the
16 parties have contacted for. I think the Landlord is getting
17 the benefit of its bargain and what 365 provides.

18 THE COURT: Thank you, Ms. Walker.

19 Mr. Gold?

20 MR. GOLD: Your Honor should take note that Ms.
21 Walker did not read 2.4. That's probably where the biggest
22 problems lie. 2.4, when it creates the wall: "At any time
23 existing or asserted, whether or not accrued, fixed,
24 contingent, or otherwise, whether known or unknown, and
25 whether or not recorded in the books and records."

1 A couple -- go back to our examples. Slip-and-fall prior
2 to closing, asserted after the closing date. You heard Ms.
3 Hatch. Mrs. Hatch said bargained not to be responsible for
4 that. But you're going to give the Debtor a release under
5 365(k). The breach occurs after the date, after the closing
6 date. The failure to indemnify under 5.15 will be after the
7 indemnity, when we tender to Bay 9 as our tenant and they say,
8 Aha, the APA says not my problem. Judge Larson approved the
9 APA. That's a breach.

10 If conditions are discovered on the promises at any time,
11 the best roof in the house, when it's finally repaired in 2027
12 or 2028 and a historical condition is found, 2.4 sentences us
13 to a dispute. That is not adequate assurance of future
14 performance. Getting another shot is not adequate -- to have
15 to argue it is not adequate assurance. We should get out of
16 this courtroom knowing we have a tenant who will perform under
17 the lease and not have an agreement that they could use as a
18 defense.

19 They're the ones asking for more, Your Honor. They have
20 flipped the narrative. We are not asking for more. We're
21 asking for what's in the lease. They're the ones trying to
22 avoid liability. They're the ones asking. The Debtor wants a
23 release and Bay 9 wants a wall. We want performance of the
24 lease for the remainder of its terms. They're the ones
25 expanding the Code.

1 Thank you.

2 THE COURT: Thank you, Mr. Gold.

3 Okay. With respect to the 52(c) Motion for a Judgment on
4 Partial Findings, the Court will decline at this juncture to
5 render any judgment until the close of evidence.

6 I don't want to say too much right now, but I do want to
7 say a little, and here's what I'll say. Let the Court give
8 you two hypotheticals. Here are the two hypotheticals that I
9 don't want unanswered at the end of the day.

10 The first hypothetical is, I'll start with a hypothetical
11 that is similar to Mr. Gold's, which is the day after closing
12 something occurs and essentially the new owner says, yeah, but
13 we knew about those sidewalks before, we knew about this issue
14 with the roof before, and that's not our issue because the
15 problem with the roof, although maybe not a default under the
16 lease, occurred prior. That was the condition before the
17 closing.

18 I can't leave that situation unresolved. Okay? Just to
19 say, We'll take it up in state court after confirmation isn't
20 enough. I can't abide that. I'll be honest. But likewise, I
21 can't abide a situation in which the Court determines the
22 current conditions of the roofing structure not to be a
23 default under the lease, we close, and the next day the
24 Landlord basically says, We hereby declare a default based on
25 roofing conditions the day after closing. [Court correction:

1 sentence omitted.]

2 As you can imagine, each of those situations are untenable
3 in a go forward relationship. So I do believe there is some
4 tension between essentially what would constitute a full
5 assumption and assignment of the lease and what the APA
6 currently states. I don't believe it's impossible for the
7 parties to get there. And if not, it's not impossible for the
8 Court to get there. It is not the Court's preference to
9 rewrite APAs. I don't think that that is the proper way to
10 get things done. I would believe that it would be better for
11 folks to set off on a better foot.

12 I also don't agree, Mr. Gold, that what we see in the APA
13 is necessarily so out of proportion to what we normally see.

14 Now, granted, there's lots of words in 2.4, and I realize
15 how they can be used as a sword. So, again, all I'm going to
16 say today is that the 52(c) motion will be denied. I will
17 hear the remainder of evidence. But I'm going to want the
18 answer to these questions before I approve the sale and before
19 I confirm the plan, because essentially what we're setting up
20 is a tension between the estate, the Landlord, and the buyer.
21 And, again, I'd like to understand how folks plan to deal with
22 my hypotheticals and those which will arise after closing.

23 There are certainly a multitude of ways that these things
24 can be handled, and I won't try to put my thumb down on how to
25 fix any of it. But I just want you folks to recognize that I

1 realize that there is a tension there, and I think it should
2 be addressed one way or the other. Okay?

3 MR. GOLD: Thank you.

4 THE COURT: All right. With that, are we ready to
5 call our first witness, or would folks like a few minutes?

6 MS. VANDESTEEG: Good morning, Your Honor. For the
7 record, Elizabeth Vandesteeg on behalf of Intercity Investment
8 Properties, Inc. I was actually about to ask the Court what
9 the Court's preference would be. We are ready to put on our
10 first witness. I do suspect that it will be one of the
11 lengthier witnesses that we'll be presenting. So it's at the
12 decision of the Court and the remainder of the parties if we
13 would like to have a short recess before we get started or if
14 we should dive right in.

15 THE COURT: Okay. Thank you, Ms. Vandesteeg.

16 MS. WALKER: At Your Honor's pleasure.

17 THE COURT: Okay. Ms. Jeng, would you like a break
18 before we get started?

19 THE CLERK: I'm fine.

20 THE COURT: All righty. Let's go.

21 MS. VANDESTEEG: Thank you, Your Honor. We would
22 like to call Nicholas Hannon.

23 THE COURT: All righty. At some point, we're going
24 to carve your name on the side of that desk, Mr. Hannon.

25 MR. HANNON: I'll be decorating it, probably.

Hannon - Direct

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1 THE COURT: Exactly. You'll bring in pictures of
2 your family.

3 MR. HANNON: Sure.

4 THE COURT: If you could raise your right hand for
5 me, sir.

6 MR. HANNON: Oh. I should --

7 THE COURT: You're fine. Thank you.

8 (The witness is sworn.)

9 THE COURT: Thank you very much. Please be seated.

10 MS. VANDESTEEG: Your Honor, may I approach the
11 witness stand for a little bit of binder housekeeping for a
12 moment --

13 THE COURT: Of course.

14 MS. VANDESTEEG: -- before we start?

15 THE WITNESS: No shortage of them here.

16 MS. VANDESTEEG: I know, right? Okay. So, these are
17 Intercity Unsealed, Volume 1 of 2, 1 through 13. And here's
18 Intercity Unsealed, 2 of 2.

19 THE WITNESS: Okay.

20 MS. VANDESTEEG: This is going to be Bay 9's. And
21 these are our sealed exhibits.

22 THE WITNESS: I'll probably forget that. Thank you.
23 And over here we have --

24 (Pause.)

25 NICHOLAS HANNON, INTERCITY INVESTMENT PROPERTIES' WITNESS,

Hannon - Direct

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1 SWORN

2 DIRECT EXAMINATION

3 BY MS. VANDESTEEG:

4 Q Good morning, Mr. Hannon.

5 A Good morning.

6 Q How long have you been working or otherwise involved in
7 the commercial real estate industry?

8 A Approximately 50 years.

9 Q What is your current employment?

10 A Intercity Investments.

11 Q What's your role at Intercity Investments?

12 A I'm executive vice president.

13 Q How long have you served as Intercity's executive vice
14 president?

15 A Since 2012, mid-2012.

16 Q What was your experience in the commercial real estate
17 industry prior to joining -- can I call it ICI instead of
18 Intercity?

19 A Yes.

20 Q Great. What was your experience prior to joining ICI?

21 A I worked at a company called Territory, Incorporated,
22 doing similar work from the prior six years or so.

23 Q What about before that?

24 A The same kind of work for a company called Montecito.

25 Again, all facets of owning and managing, and some developing

1 in those years.

2 Q And what about prior to that?

3 A I think before that I was at NCS Commercial out of Atlanta
4 from somewhere around the late mid-'90s. Starting to get a
5 little dated now.

6 Q Let's go back to ICI, then.

7 A Okay.

8 Q What are your responsibilities as the executive vice
9 president of ICI?

10 A Overarching, all facets of the business. And reporting to
11 the president, though. Leasing. Construction. Management.
12 Whatever else we have that we have to do. Insurance.
13 Overarching interests.

14 Q In your role at ICI, are you familiar with ICI's
15 recordkeeping process?

16 A I am.

17 Q Does ICI negotiate terms of leases with tenants in its
18 ordinary course of business?

19 A Yes.

20 Q Are you personally typically involved in the negotiation
21 of leases on behalf of ICI?

22 A Typically.

23 Q Generally speaking, what are ICI's goals in the course of
24 its lease negotiations with potential future tenants?

25 A Well, first and foremost, to minimize risk. Aggravation.

1 Impact to our other stakeholders, like other tenants that
2 might be adjoining. Creditworthiness. That sort of thing.
3 Operational skills.

4 Q What due diligence does ICI typically conduct on its
5 prospective tenants?

6 A Well, that would depend on the conveyance of the type and
7 the scope of the real estate, whether it's a small, little
8 shop in a strip shopping center or if it's a Lowe's
9 freestanding home improvement center or something like -- or a
10 ground lease. It depends on the size and scope of the asset
11 and the importance of the operator, especially if it's a
12 special purpose kind of piece of property.

13 Q Let's expand that out a little bit. What types of
14 properties are in ICI's portfolio?

15 A Well, we kind of have a lot of stuff. We have office. We
16 have a retail. We have mixed-use. We have multifamily. We
17 have ground leases. We have big boxes. We have land.

18 Q So why is it --

19 A Other --

20 Q I interrupted. Go ahead.

21 A Perhaps other, you know, I can't -- a number of assets.

22 Q Why is it that the type of lease that you're entering into
23 or that the type of tenant that you're negotiating with might
24 impact the due diligence that you seek from that potential
25 tenant?

Hannon - Direct

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1 A One example I can give you. If you had a thousand-foot
2 small space in a strip center that's basically a vanilla box,
3 and this tenant is successful as long as they follow the
4 rules, there's a hundred other users that could go in. It's a
5 yogurt shop or a nail shop or a hair salon. The property
6 isn't special and unique. It's built generically for many of
7 the uses that can fit in that category. And also the
8 economics involved are not much. These are conveyance of
9 three to five years. So the actual contract value is less.
10 You're not conveying --

11 (Noise.)

12 A Whoop. You okay?

13 Q I'm all right.

14 A You're not conveying a -- possession of a special purpose
15 kind of building that's unique and usually valuable. So your
16 level of diligence with that, although you still follow the
17 pursuit, you're not as particular.

18 Q So, for those type of tenants, a lower level of diligence
19 for ICI?

20 A We actually follow the same questioning, but the threshold
21 would be normally much lower because you'd just use your
22 judgment.

23 Q So, for those types of tenants, what kind of diligence
24 would ICI expect to see?

25 A Well, not much different than any of them. The first

Hannon - Direct

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1 thing you'd want to do is go look at existing sites. Where is
2 the tenant who's on the lease, where else do they do that that
3 you can go walk on and see how they conduct themselves. Is
4 the property kept clean? Is their landlord happy with the way
5 they pay the rent? Do the other -- other stakeholders
6 affected. Are their vendors paid well? And to the extent we
7 can judge their work, do they seem to do a good job? In some
8 cases, you know, we can tell. In some cases, like in this
9 case, we don't know what -- how to do a good job.

10 Q What about for a tenant who is looking to enter into a
11 lease for a property that's more of one of those special
12 properties that you referenced? What types of diligence would
13 you expect to get from a tenant of that kind of property?

14 A Well, everything I just mentioned, and more.

15 Q What more?

16 A Well, you've got a conveyance. Typically, you're
17 conveying a much more valuable asset. This asset has to be
18 measured in the hundreds of millions of dollars. I don't know
19 where it is. Hundreds of million dollars. And it has a
20 special purpose kind of design upon it in that it's health
21 care. And it's more -- it'd be more accurately described as a
22 city. You can walk for 20 minutes and not go down the same
23 road in this building. Over a million square feet with an
24 incredible amount of exterior cladding.

25 Q Well, Mr. Hannon, before we talk specifically about The

1 Edgemere, --

2 A Uh-huh.

3 Q -- let's stay more generally.

4 A Sorry. Yeah.

5 Q It's okay. Let's talk still more generally with respect
6 to what would ICI's typical diligence process be with respect
7 to a potential tenant for one of the more special properties?

8 A We'd want to understand the actual name on the tenant and
9 the operator, what real experience they had in executing and
10 history they've had performed and have they ever sustained a
11 long-term commitment anywhere else.

12 We'd want to know who -- what their financial backing is.
13 We'd want to know, if things go bad, where do the pockets come
14 from, or are we going to end up having this building back,
15 which is not ever what we want, especially with a building
16 that has got a use that's unique in kind.

17 We would -- we would also look for credit enhancements so
18 we don't find ourselves in the situation we find ourselves in
19 here. That can come in the form of personal guarantees,
20 corporate guarantees, irrevocable letters of credit.

21 One case of a Newco like this recently, we got I want to
22 say it was on the order of a year's rent -- a much smaller
23 project -- a year's rent we held for a year. In fact, it was
24 always replenishing. And we let them burn it off after a
25 number of years. The size of that asset was nothing compared

1 to the size of this.

2 Q Are those all different types of credit enhancements that
3 ICI has received from tenants?

4 A Yes. But not limited to.

5 Q What other types of credit enhancements has ICI received?

6 A Well, besides the things I've mentioned, there are times
7 when there's other kinds of collateral supplied that we don't
8 have to go -- we've learned that going through court
9 procedures is really not how to prosecute your lease interest.
10 This has been an interesting lesson in that.

11 Q Now let's turn to The Edgemere are specifically.

12 A Thank you.

13 Q Tell me about the real property on which The Edgemere is
14 situated.

15 A Got ahead of myself, didn't I? It's approximately 16.25
16 acres, located in some of the primest real estate in North
17 Texas, across from the Park Cities on Northwest Highway. And
18 it's a -- depending on who you ask, in the range of a million-
19 plus square feet, over a dozen-plus buildings, with
20 courtyards, putting greens, ponds, swimming pools, with a
21 subterranean parking structure that even goes under city
22 streets. It's got a health care facility, kitchens,
23 auditoriums. And it's best described as an operating city.

24 Q Mr. Hannon, approximately how long has ICI owned that
25 piece of property?

1 A Well, to be clear, the land has been in the family for
2 decades. I'm familiar with it going back to the '40s. The
3 property, as improved with the current improvements upon it,
4 which are also the property, since the last 1990s, as
5 presently improved.

6 Q Well, let's talk about prior improvements. Prior to The
7 Edgemere, what was on that piece of property?

8 A Yes. Well, I, of course, did not -- was not part of ICI
9 at that time, but my understanding and the paperwork indicates
10 there were some post-World War II apartments that were fully-
11 leased that were on the ground.

12 Q To your knowledge, was ICI owning and managing those
13 apartment buildings?

14 A Yes.

15 Q Do you know how The Edgemere lease first arose?

16 A From looking at the file. I wasn't at ICI at the time.

17 Q Sure. So, what do you know of the inception of the ICI
18 lease?

19 A Well, my understanding, looking at the file, is that the
20 company was approached by a first-class senior living
21 developer who was considered the, you know, the top operator
22 in the business at the time, and asked to lease the ground. I
23 think they initially probably wanted to purchase it, but we
24 wouldn't sell it. And -- because we're a legacy company. We
25 hold our property. And we have a different mentality than

1 people that just want to build and sell or -- we hold our
2 property. We have fifth-generation family working at our
3 company.

4 Q How do you think that gives you a different mentality?

5 A It's entirely different. The real estate world has got
6 lots of different kinds of folks -- lenders, operators,
7 merchant builders. We're stewards of a family legacy, and we
8 make decisions through a lens, and when we make a decision we
9 talk about what about your grandkids, what are we going to be
10 leaving them? It's a very different mentality.

11 Q So let's go back, then, to -- I think you said that it's
12 your understanding that ICI was approached by someone with
13 respect to the property?

14 A Yes. Greystone approached us.

15 MS. WALKER: Objection, Your Honor. I don't think
16 there's a foundation of -- maybe that's where we're going.
17 I'm just concerned about the relevance in talking about what
18 happened 22 years ago and what this witness knows, since he
19 only became employed in 2012. And it's that disconnect
20 between what he knows in his personal knowledge versus what's
21 in the books and records. And I think he's telling a
22 narrative that he doesn't have personal knowledge of.

23 MS. VANDESTEEG: Your Honor, I'm happy to turn to the
24 documents themselves that this witness has testified that he
25 is familiar with. He has testified that he is familiar with

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1 the Debtors' books and records overall.

2 I think all of this is relevant because, as the Court is
3 aware, the Code and the case law do state that in accordance
4 with determinations as to adequate assurance of future
5 performance, one of the things to consider is what protections
6 were in place and were considered at the time of lease
7 inception. And that is the relevance of this line of
8 questioning, Your Honor.

9 THE COURT: Okay. To the extent that the witness can
10 testify as to personal knowledge, or based upon the documents
11 in evidence that he has knowledge of.

12 MS. VANDESTEEG: Excellent.

13 THE COURT: Thank you.

14 BY MS. VANDESTEEG:

15 Q Mr. Hannon, why don't you turn to, in ICI Volume 1 of 2,
16 Exhibit 5-A.

17 A That's this one, I think.

18 MS. VANDESTEEG: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes, you may.

21 THE WITNESS: I've got all these binders to remember.
22 I couldn't --

23 BY MS. VANDESTEEG:

24 Q I know. I know. That one.

25 A Thank you. 5-A. A. I am there.

1 Q Mr. Hannon, do you recognize what we have marked as
2 Exhibit -- ICI's Exhibit 5-A?

3 A I do.

4 Q What do you recognize it to be?

5 A Well, to be sure we have the right one, mine is from
6 Northwest Life Care Joint Venture. 5-A. And it's a letter to
7 Intercity Investments. It is a nonbinding letter of intent.

8 Q Do you recognize the name Northwest Life Care Joint
9 Venture?

10 A I do.

11 Q What do you recognize that entity to be?

12 A Well, I couldn't speak to it legally, but it's my
13 understanding that that was the entity they were creating for
14 the purpose of developing this property.

15 MS. WALKER: Objection, Your Honor. I mean, this
16 witness -- this witness was not around in 1997, so the fact
17 that he's reading from a document, it's just the document.
18 It's part of their books and records. I don't think this
19 witness can testify to the substance of the letter. I think
20 that's the difference. He's -- he might know that he got it
21 out of the files, but I don't think he has any personal
22 knowledge as to any of the substance, back and forth, how the
23 letter was created, what it says, what it means.

24 MS. VANDESTEEG: Your Honor, I don't think I've asked
25 him any of those questions yet in terms of getting into

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1 personal knowledge of the contents of the record. I simply
2 showed it to him. I've asked him if he has an understanding
3 as to who Northwest Life Care Joint Venture is.

4 MS. WALKER: Understood. But he did testify he
5 started at ICI back in 2012. It's all hearsay. It is --
6 again, it may be in their personal books and records. This
7 witness has no ability to testify to the substance of this
8 letter, other than saying he pulled it out of his files.

9 MS. VANDESTEEG: Your Honor, I think that we're
10 outside of hearsay. This document is dated June 9, 1997. So
11 I think I'm going to be able to establish that it comes in as
12 an exception to hearsay under Federal Rule 901(b)(8) as an
13 ancient record. And I'd appreciate the leeway to have this
14 admitted in evidence.

15 MR. GOLD: What until Your Honor finds out what the
16 definition of "ancient" is. It's really disturbing.

17 MS. WALKER: Your Honor, I understand it's been more
18 than 20 years. However, Your Honor, we're getting back to
19 relevance. We're getting back to the books and records. And
20 I even hate to say that I feel as if I'm now ancient when
21 we're getting back to this time period, because I vividly
22 remember working a lot in '97.

23 MS. VANDESTEEG: Your Honor, again, these records are
24 relevant. This goes toward lease inception. And I -- we've
25 got a few documents here to get through in terms of the

1 negotiations of the lease, which I understand no one will
2 object to admission of the lease.

3 However, documents with respect to negotiations of the
4 party and what the party's intentions were at lease inception
5 are absolutely relevant to issues around adequate assurance.

6 MS. WALKER: And finally, Your Honor, even if it
7 were, which I'd have objection to this, too, this witness has
8 no personal knowledge or basis to testify other than he opened
9 a file, he took it out, and gave it to his counsel.

10 THE COURT: Thank you. I blame Ms. Pittman for
11 finding this 901(b)(8), number one.

12 (Laughter.)

13 THE COURT: I guess I probably need that recess after
14 all, given that I'm ancient. Oh, my goodness. Just give the
15 Court one moment.

16 (Pause.)

17 THE COURT: Okay. In terms of the evidentiary
18 objection, number one, in 1997 I was sitting right over there.
19 So, let's just establish the time period. No, I'm joking.

20 I think in terms of having the witness testify, he could
21 certainly, if you want to qualify him as the custodian of the
22 records to get the document in and if you want him to go
23 through what the agreement says. But I don't think that any
24 narrative of what happened at the time is probably admissible
25 at this juncture because I think the witness has honestly

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1 testified that he wasn't with the company then.

2 So, again, if you're seeking to get the agreement in as a
3 books-and-record of ICI, unless you have an objection to that
4 that that I didn't hear, --

5 MS. WALKER: Beyond the relevance --

6 THE COURT: Right.

7 MS. WALKER: -- of a 1997 document to a --

8 THE COURT: Right.

9 MS. WALKER: -- 2023 adequate assurance trial, Your
10 Honor, I think that speaks for itself. I would suggest just
11 --

12 THE COURT: I think that goes to weight. I agree.
13 Thank you.

14 MS. WALKER: As to matters of efficiency, if it comes
15 in, I don't think it has value to the Court to spend time
16 reading into the record a document that this gentleman may be
17 the custodian of but has no further knowledge.

18 THE COURT: Okay. Thank you, Ms. Walker.

19 So, again, with that, Ms. Vandesteeg, if you want to get
20 the document in through Mr. Hannon, I think that's fine. I
21 think Mr. Hannon has already testified about what he would
22 look for today in terms of the types of qualifications he
23 looks for for tenants and things of that nature.

24 MS. VANDESTEEG: Your Honor, I think we're all on the
25 same page here.

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1 THE COURT: Okay.

2 MS. VANDESTEEG: I'm seeking to admit several
3 documents, and I'll go through each of them. I don't intend
4 for this witness to provide any sort of narrative as to events
5 that happened prior to his employment with ICI. I would seek
6 to admit the records, and I would seek testimony from him in
7 terms of what do the documents say, and that is it.

8 MS. WALKER: I don't think this witness can speak to
9 the substance of a letter that he had no basis in preparing or
10 was around at the time. All the other relevance for a 25-
11 year-old document.

12 MS. VANDESTEEG: Your Honor, these records are still
13 admissible. I will lay the foundation as books and records.
14 They are not hearsay. They are admissible. And I am not
15 seeking for any gloss that does not have Mr. Hannon's personal
16 narrative.

17 THE COURT: Okay. So let me direct you guys. I'm
18 going to allow, again, if we establish these are the books and
19 records, I'll allow them in. I will allow you, either as
20 counsel or through the witness, to point me to those sections
21 which you otherwise would be telling the Court are important,
22 so that I understand what you're pointing me to in these
23 exhibits, rather than just giving me 150 pages and saying,
24 They're admitted.

25 MS. VANDESTEEG: Excellent.

1 THE COURT: So I'll let you make the point of the
2 documents. But, again, I'm going to ask you to reduce any
3 questions of adding gloss or narrative to the documents
4 themselves. But I do believe, for efficiency's sake and for
5 the benefit of the Court's ruling, that I'll allow you to
6 direct me of what's important in the various documents.

7 MS. VANDESTEEG: Thank you, Your Honor. That will
8 streamline things greatly.

9 BY MS. VANDESTEEG:

10 Q So let us turn now to set the -- lay the foundation for it
11 to be a business record. Turning again to Hannon Exhibit 5-A.

12 A Isn't that where I'm at?

13 Q It is.

14 A Okay.

15 Q Is this an accurate copy of this document?

16 A It is.

17 Q Was this document created and signed at or near the time
18 of the agreement to its terms?

19 A Yes.

20 Q Was the document created by a person who had personal
21 knowledge of the relevant information?

22 MS. WALKER: Objection, Your Honor. How would this
23 witness know that?

24 MS. VANDESTEEG: Based on his role as a custodian of
25 ICI's books and records.

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1 MS. WALKER: How would he know when it was signed?

2 All of that. All of it.

3 THE COURT: I'm going to sustain that. Again, I know
4 where you're going. Let's just get there. So I'm going to
5 give you a restart.

6 MS. VANDESTEEG: Ay-yai-yai.

7 BY MS. VANDESTEEG:

8 Q Mr. Hannon, you are familiar with the recordkeeping of
9 ICI, correct?

10 A I am.

11 Q And in connection with -- were you asked at some point to
12 pull ICI's books and records as they were maintained with
13 respect to the lease at The Edgemere?

14 A I'm sorry. Could you ask that again? I was daydreaming.

15 Q Daydreaming? Were you asked to pull ICI's books and
16 records as they were maintained in ICI's files with respect to
17 the lease related to The Edgemere?

18 A Yes.

19 Q To your knowledge and to your recollection, was Exhibit 5-
20 A part of the records that you located in ICI's files with
21 respect to The Edgemere lease?

22 A Yes.

23 Q Who -- do you know who Edwin Jordan is?

24 A I think that's Edwin Jordan, Jr., if I'm not mistaken.

25 Q Yes.

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1 A And yes, I do.

2 Q Who is that?

3 A Mr. Jordan is a retired principal of the company.

4 Q Can --

5 A Now.

6 Q Can you turn to ICI 000027?

7 A Is that an exhibit number?

8 Q Yes.

9 A What letter is it?

10 Q If you -- it's still in 5-A, if you take a look at the
11 numbers on the bottom right-hand corner.

12 A All right.

13 Q The Bates-stamped.

14 A 27, though, right? I'm with you.

15 (Discussion.)

16 THE COURT: Take a moment.

17 (Pause.)

18 MS. VANDESTEEG: Your Honor, we are going to switch

19 tacks and we are going to proceed solely under Rule 901(8).

20 So -- 901(b)(8).

21 BY MS. VANDESTEEG:

22 Q Mr. Hannon, did you locate this document in its condition
23 as set forth in Exhibit 5-A?

24 A I did.

25 Q And where did you find this record?

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1 A In our files.

2 Q And how does ICI keep its files?

3 A We keep them in file cabinets.

4 Q And this record was found in that file cabinet?

5 A Yes, it was.

6 Q Did you keep specific files with respect to The Edgemere
7 lease documents?

8 A Yes.

9 Q And was this record located within that Edgemere file?

10 A Yes.

11 Q And what is the date on this document?

12 A I'll go back to the front. The date on it is June 9,
13 1997.

14 MS. VANDESTEEG: Your Honor, I move to have this
15 document admitted under Rule 901(b)(8).

16 MS. WALKER: Objection, Your Honor. I think it may
17 have passed authentication; I don't think it's passed hearsay
18 yet. I don't think this witness has testified to his
19 knowledge as to -- his personal knowledge as to when Mr. --
20 another Mr. Jordan -- he knows that this person may have been
21 associated; we don't know the temporal connection to his
22 personal knowledge that he had this title or any of that at
23 the time.

24 MS. VANDESTEEG: Your Honor, this is --

25 MS. WALKER: There's a 13-year gap, is my problem

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1 with this document so far.

2 MS. VANDESTEEG: It's a specific exception to hearsay
3 under Rule 803(16).

4 MS. WALKER: I understand. I don't think he has
5 confirmed his personal knowledge as to Mr. Jordan's timeline.
6 Was Mr. Jordan retired at the time? Was -- that Mr. Hannon
7 came to ICI?

8 MS. VANDESTEEG: Your Honor, none of that is
9 necessary under the applicable Rules of Evidence.

10 MS. WALKER: Thank you, Your Honor.

11 THE WITNESS: He was not retired. And I know him
12 well.

13 THE COURT: Okay. When coupling Rule 901(b)(8) with
14 Rule 803(16), I think that the Court will overrule the
15 objection and admit the document. Again, I think the document
16 is an exception to hearsay because it was prepared before
17 January 1, 1998. And also in terms of authentication, I
18 think, based upon the testimony of where the document was
19 found, it was in a condition that creates no suspicion about
20 authenticity and was in a place where, if authentic, it would
21 likely be. And it's at least 20 years old. So there you go.
22 Admitted.

23 MS. VANDESTEEG: Thank you, Your Honor.

24 (Intercity Investment Properties, Inc.'s Exhibit 5-A is
25 received into evidence.)

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1 MS. VANDESTEEG: And with that, I will not ask the
2 witness specific questions as to personal knowledge as to this
3 document, but instead will take the Court up on its direction
4 to simply point the Court to certain provisions of Section 4.

5 THE COURT: Uh-huh.

6 MS. VANDESTEEG: And Section 5. On what has been
7 Bates-stamped ICI 00025.

8 THE COURT: Section 4 and Section 5.

9 MS. VANDESTEEG: Yes, Your Honor.

10 THE COURT: All righty. Thank you.

11 BY MS. VANDESTEEG:

12 Q Mr. Hannon, let us turn to what has been marked as Exhibit
13 5-B.

14 A 5-B. Yes.

15 Q Mr. Hannon, do you recognize this document?

16 A I do.

17 Q Is this a document that you located in ICI's files?

18 A Yes.

19 Q Is this a document that you located within the file for
20 The Edgemere lease agreement?

21 A Yes. Fireproof file.

22 Q Mr. Hannon, can you read for me the date on this document?

23 A Yes. September 9, 1997.

24 MS. VANDESTEEG: Your Honor, like Exhibit 5-A, I seek
25 to have this document admitted under Rule 901(b)(8) and as an

1 exception to hearsay under Rule 803(16).

2 MS. WALKER: Your Honor, just to expedite some time,
3 I would have the same objection. I appreciate the Court may
4 have the same ruling.

5 THE COURT: Okay. Thank you very much. The Court
6 will note for the record that the document is actually dated
7 November 5, 1997, which is still within the time period, but
8 it is effective as of September 9, 1997. And the Court will
9 admit it for the same reasons state earlier.

10 MS. VANDESTEEG: Thank you, Your Honor.

11 (Intercity Investment Properties, Inc.'s Exhibit 5-B is
12 received into evidence.)

13 MS. VANDESTEEG: And again, to streamline, without
14 asking the witness for personal knowledge, I would point the
15 Court to certain of the recitals. And I would point the Court
16 to Section Roman XI, and I would --

17 THE COURT: Okay. I feel like I'm not following.
18 Are we looking at the ground lease option agreement?

19 MS. VANDESTEEG: Yes, Your Honor.

20 THE COURT: I don't have any paragraph markers for
21 the recitals that would say XI.

22 MS. VANDESTEEG: Your Honor, I was moving on to a
23 separate section.

24 THE COURT: Oh, so the recitals as a whole?

25 MS. VANDESTEEG: Correct, Your Honor.

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1 THE COURT: I apologize. Okay.

2 MS. VANDESTEEG: And also --

3 THE COURT: And then Section IX?

4 MS. VANDESTEEG: XI.

5 THE COURT: Okay.

6 MS. VANDESTEEG: On Page 10.

7 THE COURT: There's a lot of wasted Greek and Latin
8 study right there. Okay.

9 MS. WALKER: Your Honor, I rise again for the same
10 objections. And I just want to make clear: Our objection
11 included relevance. It wasn't just the documentation
12 authenticity.

13 THE COURT: Okay.

14 MS. WALKER: Thank you, Your Honor.

15 THE COURT: Thank you. And, again, I'll overrule the
16 objection and again weigh those issues as part of my ruling.
17 So, Article IX, Miscellaneous?

18 MS. VANDESTEEG: Article XI. X-I.

19 THE COURT: Okay. Is there an Article --

20 MS. VANDESTEEG: Yes, Your Honor. It should be on
21 Page 10.

22 THE COURT: Oh, okay. I moved to a different
23 agreement. That's what was confusing me. Okay. There we go.
24 There's an agreement in the back. I apologize. Okay.
25 Exercise of Option. All righty.

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1 BY MS. VANDESTEEG:

2 Q Mr. Hannon, can you please turn to what we have marked as
3 Exhibit 5-C?

4 A Yes.

5 Q Do you recognize this document?

6 A Yes.

7 Q Is this a document that you located in ICI's files?

8 A Yes.

9 Q Was this document located within ICI's files related to
10 The Edgemere lease?

11 A Yes.

12 Q What is the date of this document?

13 A May 20, 1999.

14 MS. VANDESTEEG: Again, Your Honor, I move to admit
15 this document as well under Rule 901(b)(8) and Rule 803(6).

16 MS. WALKER: Your Honor, I'm feeling spry with this
17 one, because we're after.

18 Your Honor, I still -- this really -- how is this relevant
19 to adequate assurance? I just want to take it back a step. I
20 don't think you've got maybe authentication. We have a whole
21 other person here with Greystone. Who's this document and
22 what's it about? I think at some point we're jumping through
23 a lot of hoops for something that's not relevant. I don't --
24 and I do think, finally, we're -- I'm feeling much younger
25 now. This is no longer ancient.

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1 THE COURT: Exactly. Like a second year at this
2 point.

3 So why don't you tell me the relevance, Ms. Vandesteeg,
4 and then we can address the hearsay or authentication issues.

5 MS. VANDESTEEG: Sure, Your Honor. The relevance,
6 again, for these -- and this is C and D, would be the last of
7 these, Your Honor -- again, the purpose here is to provide
8 information as to what was contemplated and provided at the
9 time of lease inception.

10 While I -- and we're going to hear all about Mr. Hannon's
11 thoughts about what current expectations would be -- again,
12 what was contemplated and provided at lease inception is
13 something that the Code and case law considers. And I don't
14 want to be foreclosed from having the opportunity for the
15 Court to have that knowledge and information as to the lease
16 inception and what was contemplated and provided when
17 considering what an appropriate measure of adequate assurance
18 would be for a go forward basis.

19 THE COURT: Okay. And the relevance of this
20 document?

21 MS. VANDESTEEG: Your Honor, C and D actually go
22 together. In creating these binders, we inadvertently had C
23 as a standalone document. It is indeed actually Exhibit A to
24 Document 5 -- Exhibit 5-D, --

25 THE COURT: Okay.

1 MS. VANDESTEEG: -- which I would have elucidated.
2 And Your Honor, what is important to my view with respect to
3 this particular document is Exhibit B, which helps to set
4 forth certain of the financial information and financial
5 promises that were made by the tenant at that time with
6 respect to demolition and construction costs and what the
7 expectations of the parties were around specific funding for
8 those go forward projects.

9 THE COURT: Uh-huh.

10 MS. VANDESTEEG: And that I do think is relevant,
11 Your Honor.

12 THE COURT: Okay.

13 MS. VANDESTEEG: And with respect to the hearsay
14 objection, Your Honor, I think that this one would fall
15 squarely under Rule 807 for the residual exception. Both C
16 and D.

17 THE COURT: Ms. Walker?

18 MS. WALKER: Thank you. Your Honor, first, as to
19 relevance, I still don't understand the connection between an
20 option agreement, an assignment of an option agreement, and
21 the amendment to a ground lease option from 1999, how that's
22 relevant to today. And I don't think you get past the
23 hearsay. It's not a hearsay exception.

24 Maybe if you have, you know, Mr. Lanahan here or someone
25 else, they could help us know why it's relevant. I don't

1 think this is relevant to today's trial. I don't think it
2 passes the hearsay exception. And I don't think it fits the
3 residual when we're here for a 2023 adequate assurance
4 transfer of a lease. And I don't think this witness could
5 illuminate anything further for the Court, and I don't think
6 these documents illuminate anything for the Court standing
7 alone.

8 THE COURT: Thank you, Ms. Walker.

9 Ms. Vandesteeg, anything further?

10 MS. VANDESTEEG: No, Your Honor.

11 THE COURT: In terms of objections to relevance, the
12 Court rarely sustains an objection to relevance, primarily
13 because it is a bench trial and the Court can always weigh
14 relevance or give certain evidence weight in accordance with
15 its ruling.

16 I am going to sustain the objection in this particular
17 time because I'm just taking a look at C and D, and we're
18 talking about the budget for the demolition of the
19 improvements that were on the property way back when in the
20 '90s. And also the budget for the improvements, which I think
21 we all know now have been built on the property. So I don't
22 see anything in C and D that I'd necessarily find relevant to
23 the continued operation of The Edgemere in accordance with the
24 ground lease today.

25 MS. VANDESTEEG: Understood. Thank you, Your Honor.

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1 BY MS. VANDESTEEG:

2 Q Moving on, Mr. Hannon, to what has been marked as ICI
3 Exhibit 5-E.

4 MS. WALKER: Your Honor, we stipulate to the
5 admission of this exhibit.

6 THE COURT: 5-E?

7 THE WITNESS: I'm there.

8 BY MS. VANDESTEEG:

9 Q Mr. Hannon, what is Exhibit 5-E?

10 A It appears to be a ground lease.

11 Q What ground lease is this?

12 A This is the ground lease between Intercity Investment and
13 Northwest Senior Housing Corporation.

14 MS. VANDESTEEG: Your Honor, I'm going to move to
15 admit Exhibit -- ICI Exhibit 5-E.

16 THE COURT: Yes. 5-E is hereby admitted by
17 stipulation.

18 MS. VANDESTEEG: Thank you.

19 (Intercity Investment Properties, Inc.'s Exhibit 5-E is
20 received into evidence.)

21 BY MS. VANDESTEEG:

22 Q Mr. Hannon, are you aware of any property condition
23 reports regarding The Edgemere?

24 A Yes.

25 Q What are you aware of?

1 A I'm aware of a -- several reports. I'm aware of The
2 Builder's Consultant. I think that's a consulting report.
3 I'm aware of the Plante Moran report. I'm aware of the
4 Terracon report and the -- I'm aware that Jezerinac structural
5 engineering did some work, but I don't have their report. On
6 behalf of the tenant.

7 Q Have you reviewed each of those reports, with the
8 exception of the last one that you said you hadn't received?

9 A Yes. Oh, I'm also aware of an ARCH report.

10 Q Thank you. And have you reviewed the ARCH report also?

11 A Yes.

12 Q What were your general takeaways from those reports?

13 A Well, it has been my experience with all consultants, it's
14 all about the instruction. What are you asked to look for?
15 What are you solving for? And so -- but you do see common
16 veins in a 20-plus-year-old building in North Texas that has
17 some suspicious issues that we're very -- we understand very
18 much what those things might cost. So there was a lot of
19 common veins in the reports, some not fully explored.

20 Q What do you mean by common veins? What did you see as
21 common veins through those reports?

22 A Well, a building's life cycle, if you look at such things
23 as the vertical transportation, the building envelope, which
24 includes the roof, the downspouts, soffits, gutters, and
25 cladding, as well as foundational and structural issues,

1 somewhere around 20 years it's time to pay the piper if you
2 haven't kept up on it.

3 And because we have -- are a different owner, we know what
4 you do when you're keeping the property. It's the old joke.
5 If it's for the selling, you do one thing. If it's for the
6 keeping, you do another. And this property looked to us like
7 it -- it hadn't properly been maintained. It's a tremendously
8 big property with an awful lot of skin. It's not a high-rise
9 where that amount of exposure isn't typically there. There's
10 a lot of exposure to the elements.

11 Q And were there other common veins, as you said, that
12 jumped out at you as you reviewed those reports?

13 A Signs of smaller deferred maintenance. You know, the
14 stuff that can be managed. Heaving in the concrete sidewalks.
15 Retaining walls that, over time, with our -- the clay that we
16 have in the soil in North Texas, if -- that hadn't been
17 maintained that needed to be done. Some concern about some
18 structural issues where Phase II or III was attached to the
19 prior phases. So, it clearly was in poor condition, with a
20 lot of deferred maintenance, no matter how you read the
21 reports.

22 Q Other than those property condition reports, is there
23 other information that ICI has received that raises concerns
24 about the property?

25 A Property condition?

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1 Q The property overall.

2 A I can't think of any off the top of my head on property
3 condition. We have -- I don't know if I would call it
4 property condition, but we received a certified letter from
5 the State of Texas indicating -- from their -- the Texas
6 Department of License and Registration that the new phase with
7 the skilled nursing expansion, all that, was out of compliance
8 for access to disabled people, or what we call Barriers to
9 Access laws. That comes with a fine that can look like
10 \$50,000 a day --

11 MS. WALKER: Objection.

12 THE WITNESS: -- that would be assigned to us.

13 MS. WALKER: And I apologize to interrupt. I think
14 he's getting into hearsay.

15 THE WITNESS: Actually, I'm not.

16 MS. WALKER: I think Mr. Hannon has got his J.D.
17 through this, and I actually think he's right. But not on the
18 hearsay.

19 THE COURT: Ms. Vandesteeg?

20 THE WITNESS: The certified letter came to me. I
21 opened it up.

22 MS. VANDESTEEL: Mr. Hannon.

23 THE WITNESS: Sorry.

24 BY MS. VANDESTEEL:

25 Q Mr. Hannon, did you personally view the TDLR notice of

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1 violation that you were just referencing?

2 A With my own hands, I opened up the certified letter.

3 Q Mr. Hannon, have you, in your --

4 THE COURT: I'm going to overrule the objection and
5 allow the witness to testify. Because it was with his own
6 hands.

7 THE WITNESS: Yes. Yes, that's right.

8 MS. WALKER: I think it's still hearsay. It's an
9 out-of-court statement by a party not here today.

10 THE COURT: I'm going to allow him to testify about
11 it.

12 BY MS. VANDESTEEG:

13 Q Mr. Hannon, you also mentioned that you're aware of
14 potential fees associated with these violations. How are you
15 familiar with potential fees associated with TDLR violations?

16 A We deal with this every day. When you own and operate
17 property in Texas, there's laws that say that you -- you need
18 to profile some forms, you need to get them in, and you need
19 to have what they call a RAS, which is an architect who's
20 specially trained in managing the Barriers to Entry Code so
21 that someone who has some disability, which could include a
22 wheelchair, can use the restroom or get up a set of stairs or
23 open a door or reach a handle. And they're very specific.
24 And the State is -- this is one of the places where the State
25 really does a good job.

1 To have a project this large -- and by the way, I just
2 received this letter in the last period of time, so this was a
3 violation that would have occurred five years ago that has
4 still not been cured.

5 Q Do you know whether this violation has been addressed by
6 The Edgemere between your receipt of the letter and as we are
7 here today?

8 A I do not.

9 Q Let's turn now to the potential purchaser and your
10 potential new tenant here, Bay 9. Has ICI received
11 information from Bay 9 regarding what it is offering with
12 respect to adequate assurance of future performance?

13 A Well, through our attorneys, we've been presented certain
14 things, and I assume that's what I'm supposed to describe to
15 you. I personally haven't been handed anything.

16 Q Well, do you recall --

17 A I guess that's an objection or anything.

18 Q Do you recall approximately when you were provided,
19 whether through counsel or otherwise, for the first time
20 information with respect to what Bay 9 was offering in terms
21 of adequate assurance?

22 A Yes. In the middle of December, we received a letter from
23 -- oh, no. Help.

24 Q Help is here.

25 A That's good. I received a letter from -- we received a

1 letter --

2 Q Yes.

3 A -- and the -- indicating that they were a potential bidder
4 for a bid -- an auction that was to be had to sell the
5 leasehold of the estate. Leasehold estate.

6 Q Mr. Hannon, --

7 A Just to be clear, the improvements and all the building
8 improvements and the -- all the hard surfaces and the
9 landscape and everything are owned by the Landlord. So they
10 had an offer to acquire the leasehold estate, and perhaps
11 trade personalty.

12 Q Mr. Hannon, can you turn to what has been marked as
13 Exhibit 5 -- ICI Exhibit 5-H?

14 A 5-H?

15 MS. WALKER: Your Honor, for efficiencies, Bay 9
16 stipulates to the admission of this exhibit.

17 MS. VANDESTEEG: And we seek to move for its
18 admission.

19 THE COURT: Okay. Thank you very much. Exhibit 5-H
20 is hereby admitted.

21 (Intercity Investment Properties, Inc.'s Exhibit 5-H is
22 received into evidence.)

23 BY MS. VANDESTEEG:

24 Q What is your understanding of what this Exhibit 5-H, a
25 letter with -- I believe it has two exhibits of its own. What

1 was your understanding of what this letter was offering?

2 A It was -- my understanding was that it was an offer to
3 acquire the leasehold estate at the auction out of bankruptcy.

4 Q What was ICI's reaction to this correspondence?

5 A I personally had no reaction. If it's going to be an
6 auction, you know, I've never heard of these people, but it
7 didn't matter, I didn't need to hear of them because to me
8 this was just a prospect. It was going to be dictated by this
9 Court.

10 Q Did you believe that this letter contained specific offers
11 of adequate assurance to ICI?

12 A No.

13 Q Why not?

14 A Well, to be honest with you, I just perused the letter,
15 waiting for the auction. But, you know, if we're going to
16 have a look to see if this is a tenant we want, then we'll
17 start looking at them.

18 Q After this December 16th letter, did ICI receive any other
19 communication or information from Bay 9?

20 A Yeah, I think we did. I'd have to see it. I think we
21 did. Not that date, but there were subsequent some things.

22 Q Do you recall approximately when you received additional
23 information?

24 A The first week in January or so I think there was
25 something.

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1 Q Mr. Hannon, can you now turn to ICI Volume 2 of 2 and turn
2 to what has been marked as ICI Exhibit 21?

3 A I hope I don't have a tree-ring binder crash.

4 Q It's dangerous.

5 A Like a hard disc. Okay.

6 Q Take a moment to look through Exhibit 21.

7 A So I'm looking at the right thing, Bay 9 Holdings Consent
8 of Sole Member?

9 Q Yes. And if you look down at the bottom right-hand
10 corner, there is a Bay Bates stamp.

11 A Uh-huh.

12 Q And Page 1 is Bay 00001.

13 A Yes.

14 Q Please go ahead and flip through Exhibit 21.

15 A (Pause.) Okay.

16 Q Is this what you were referencing as the additional
17 information that you believed you received in the first week
18 of January?

19 A I can't recall when I received this, but likely it was. I
20 just can't recall.

21 Q And what kinds of information were contained in Exhibit
22 21?

23 A Well, it appears to outline the price that they're going
24 to pay the estate should they be the winning bidder of \$48-1/2
25 million through a -- and I learned this subsequent -- is an

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1 asset purchase agreement. I hear everyone here use the term
2 APA. Something I had no experience with.

3 Q Continuing on through the information in -- or, the
4 information contained in Exhibit 21, what else were you
5 provided?

6 A In this document?

7 Q In Exhibit 21 overall.

8 A They indicate they've negotiated an asset sale from
9 Northwest Senior Housing. And there's a resolution from the
10 Grenelle Holdings, LLC that they resolve that the person
11 signing it has the authority, is my understanding.

12 Q What other stuff did you see?

13 A It seems to support the December 16th letter, which was
14 their, quote, purchase agreement.

15 It seems to be subject to the Bankruptcy Court and getting
16 regulatory licenses and permits to operate.

17 It also says if any qualified overbids are received for
18 the seller's assets, the seller will conduct an auction on
19 January 17th. If no qualified overbids are received, the
20 seller must cancel the auction and proceed to approve the sale
21 transaction in order to implement the plan.

22 Q So, Mr. Hannon, without having to read from each document,
23 what else in terms of overall information were you provided in
24 terms of Exhibit 21?

25 A Nothing that I can see.

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1 Q So, as we turn through, are you seeing other corporate
2 formation documents --

3 A Yeah.

4 Q -- in terms of certificates?

5 A Yes. It appears that the -- in this document, that there
6 are certificates of formation of Truro Holdings, Bay 9
7 Holdings, Grenelle Holdings. It appears to be all the
8 corporate filings to create all the layers to shield from
9 liability.

10 Q What other types of information did you see in Exhibit 21?

11 A I see a certificate of filing for Bay 9 Holdings from the
12 Office of the Secretary of State.

13 (Interruption.)

14 THE COURT: Ms. Jeng?

15 THE CLERK: Uh-huh.

16 THE COURT: Thank you. For those of you on WebEx,
17 please do keep your lines muted. I appreciate it. Thank you
18 so much.

19 I apologize, Mr. Hannon.

20 THE WITNESS: That's all right. The -- it appears
21 they've -- the filing of the -- certificate of filing with the
22 State of Texas for Bay 9 Holdings, the creation of that dated
23 October 27, 2022.

24 BY MS. VANDESTEEG:

25 Q More corporate certificates?

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1 A Uh-huh. Yes.

2 Q What else?

3 A More corporate certificates, and then there's an org chart
4 on 000014.

5 Q What else?

6 A Which shows a four-tier layer of organization, with the
7 tenant being at the bottom of that. I'm just reading on
8 through this.

9 Q Yeah. What other information did you receive?

10 A There's an email here from Basia Terrell indicating that
11 she has received access to the RBC data room, dated December
12 28, 2022.

13 MS. WALKER: Objection. Your Honor, Bay 9 is fine to
14 stipulate that this represents the production of documents,
15 and I think, for efficiencies, if that's what they're trying
16 to achieve, we will stipulate to that.

17 I am not stipulating to the admission of all of it. I
18 think half of it has already been admitted. But as far as --

19 THE COURT: Just two pages, I think.

20 MS. WALKER: Well, actually, the board consents and
21 the corporate stuff. We have --

22 THE COURT: Oh, as part of our exhibits?

23 MS. WALKER: Yes. Yes.

24 THE COURT: I understand. I apologize.

25 MS. WALKER: And so I'm just trying, for

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1 efficiencies, if that's the basis. If there's a question
2 about something, maybe we can get on to that.

3 THE COURT: Ms. Vandesteeg?

4 MS. VANDESTEEL: With that stipulation:

5 BY MS. VANDESTEEL:

6 Q Mr. Hannon, did this production of information and
7 documents, Exhibit 21, contain any evidence of any proposed
8 commitments or credit enhancements from Bay 9 to ICI?

9 A Not that I saw.

10 Q After receiving Exhibit 21, did Bay 9 provide additional
11 information and documentation?

12 A I don't think we received anything until after the
13 auction. I could be wrong.

14 Q Let's take a look at what we've marked as ICI Exhibit 22.
15 And take a moment to flip through Exhibit 22, please.

16 MS. WALKER: That may be in the confidential binder.

17 MS. VANDESTEEL: Oh, thank you. That is in the
18 confidential binder. May I approach the witness?

19 THE COURT: Please. Of course.

20 (Pause.)

21 THE WITNESS: I have the binder. What'd you say?
22 Which one?

23 BY MS. VANDESTEEL:

24 Q Exhibit 22, please. And --

25 MS. VANDESTEEL: Oh, I will note that this document

1 was filed under seal as it does contain a copy of the
2 unredacted Long Hill report. I will not be seeking to show
3 that unredacted version, nor will we get into specific details
4 as to the information that was redacted. But I'm flagging
5 that as I see that we are in open court.

6 MS. WALKER: If the purpose of going through these
7 documents is to elicit that we produced documents in response
8 to a document production, we will so stipulate. To the extent
9 it gets into admission, yes, there are unredacted things that
10 were not admitted into evidence.

11 THE COURT: Ms. Vandesteeg?

12 MS. VANDESTEEL: I haven't sought to admit this
13 exhibit. I simply want to have an opportunity to talk with
14 ICI as to what they perceived they received as part of this
15 document production and what their takeaways were from it.

16 MS. WALKER: As to that first part, we'll so
17 stipulate to for efficiencies.

18 THE COURT: Okay. And obviously with respect to the
19 fact that some of it's confidential, if we can just talk in
20 generalities, and that way we don't disclose anything that's
21 otherwise confidential. Thank you.

22 BY MS. VANDESTEEL:

23 Q Mr. Hannon, do you recognize Exhibit 22?

24 A I do.

25 Q What is this?

1 A It appears to be a business planning analysis --

2 Q Let's talk about --

3 A -- spreadsheet.

4 Q Let's talk about the exhibit more broadly, not just the
5 first page. So go ahead and flip through --

6 A Would you like me to describe what I'm seeing here?

7 Q No. Just take a moment. I wanted to understand, and I'll
8 lead you for a moment unless Ms. Walker disagrees: Do you
9 agree with me that Exhibit 22 is another production of
10 information and documentation that you were provided by Bay 9?

11 A Yes.

12 MS. WALKER: And so stipulated.

13 THE COURT: Thank you.

14 MS. VANDESTEEG: Thank you.

15 BY MS. VANDESTEEG:

16 Q Do you recall having had the opportunity to review this
17 information when it was provided to you?

18 A Yes. Barely.

19 Q To your knowledge and recollection, did this production at
20 Exhibit 22 contain evidence of any proposed commitment or
21 credit enhancement?

22 A No.

23 Q Did you receive any other -- subsequently --
24 communications or information from Bay 9?

25 A Subsequently, after the auction was closed out and nobody

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1 else showed up to bid on it, we -- actually, at about the same
2 time, we had a meeting with Lapis and Bay 9, one and the same,
3 --

4 Q Well, --

5 A -- at our office.

6 Q -- let's hold on that, and we want to be careful that we
7 don't talk about specific --

8 A Content.

9 Q -- communications within that meeting.

10 A Yes.

11 Q But let's talk first about documentation. Subsequent to
12 receiving the documentation contained in Exhibit 22, did Bay 9
13 provide additional documentation or information to ICI?

14 A I don't -- I don't recall it. I may be missing something.

15 Q Can you take a look in Volume 1 of 1, Exhibit 7? I'm
16 sorry. 1 of 2, Exhibit 7.

17 A This is the secret folder. 1 of 2?

18 Q Yes.

19 A 1 of 2.

20 Q ICI, Volume 1 of 2, Exhibit 7.

21 A I am there.

22 Q Do you recognize this document?

23 A Ah, thank you, I do.

24 Q What is this?

25 A This is a capital commitment letter from Lapis Municipal

1 Opportunities Fund to Bay 9 Holdings.

2 Q What's the date of this letter?

3 A February 13, 2023.

4 Q What is your understanding of what this letter does?

5 A My understanding of this was that this was a letter
6 indicating that, for three years, one entity would promise to
7 cover, under its lease obligations, up to a million dollars.
8 And it had a capital expense commitment between the two
9 entities of a contribution demand up to an aggregate of \$15
10 million.

11 Q To your view, did this letter, this capital commitment
12 letter, provide any firm commitments or enforceable
13 commitments as to those provisions that you just referenced?

14 A Not in any way. This is ridiculous. This is a piece of
15 paper between one entity that's substantially the other entity
16 that could be changed at any time after we're out of the
17 courtroom. This is nothing. This is no warranty. If
18 somebody came to us with this saying, hey, there's some parent
19 that's not guaranteeing the lease, but trust me, we'll -- if
20 they ask, we'll give this to you. Then you find out that the
21 "they" is the same human beings.

22 And I apologize if this is a little rough, but this looks
23 like a corporate shell game to me.

24 Q So this Exhibit 7 did not give ICI comfort of adequate
25 assurance of future performance by Bay 9?

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1 A Absolutely not. I don't know any businessperson that
2 would look at this as something that they could use to
3 prosecute the compliance of the other party's agreements under
4 a lease. Or any contract.

5 MS. VANDESTEEG: Your Honor, I'd move to admit ICI
6 Exhibit 7. I think it's already been admitted --

7 MS. WALKER: It's duplicative. I don't think we need
8 to have it in again, Your Honor. It's already been admitted
9 as Bay 8.

10 MS. VANDESTEEG: Bay 8?

11 (Discussion.)

12 THE COURT: It is admitted as Bay 8.

13 MS. VANDESTEEG: Thank you, Your Honor.

14 THE WITNESS: I can keep this? Great.

15 MS. VANDESTEEG: Got it. Bay 8.

16 (Interruption.)

17 BY MS. VANDESTEEG:

18 Q Okay. Mr. Hannon, can you please find in your pile of
19 binders the one that is labeled Bay 9 Holdings, LLC Amended
20 Witness and Exhibit List?

21 MS. VANDESTEEG: May I approach, Your Honor?

22 THE COURT: Yes.

23 MS. VANDESTEEG: That one.

24 THE WITNESS: Which one?

25 MS. VANDESTEEG: This one.

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1 THE WITNESS: What could be simpler? Okay.

2 THE COURT: And where are we focusing, Ms.

3 Vandesteeg?

4 MS. VANDESTEEG: We are going to turn to Bay 9,
5 Exhibit 13, Your Honor.

6 THE COURT: All righty.

7 MS. VANDESTEEG: And I am going to use this version,
8 as it is the redacted version of what was previously admitted
9 as ICI Exhibit 2 in unredacted form.

10 THE COURT: Okay.

11 MS. VANDESTEEG: And I'll move to admit Bay Exhibit
12 13 as well, the redacted version.

13 MS. WALKER: To the extent Your Honor requires two
14 versions, one redacted, unredacted, I leave that to the
15 Court's discretion. It's the same document. We just have
16 redacted for confidentiality.

17 THE COURT: Thank you very much, Ms. Walker. I will
18 admit Exhibit 13 just because I do believe that it's important
19 for the record today to state what the witness is testifying
20 about.

21 MS. WALKER: Certainly.

22 THE COURT: So we'll admit 13 for that purpose.

23 MS. WALKER: Certainly.

24 THE COURT: Thank you very much.

25 (Bay 9 Holdings, LLC's Exhibit 13 is received into

1 evidence.)

2 BY MS. VANDESTEEG:

3 Q Mr. Hannon, do you recognize this document?

4 A I do.

5 Q Is this one of the documents that was provided to you by
6 Bay 9 in connection with their provision of information and
7 documentation with respect to adequate assurance?

8 A Yes.

9 MS. WALKER: And just if I could, Your Honor, for the
10 record, he was provided the unredacted version. We didn't
11 redact for the Landlord.

12 THE COURT: Okay. Thank you.

13 MS. WALKER: Thank you.

14 MS. VANDESTEEG: Thank you for that clarification.
15 And we stipulate and agree.

16 BY MS. VANDESTEEG:

17 Q What are your thoughts on the projections contained within
18 Bay Exhibit 13, The Long Hill Business Planning Analysis?

19 A Not much. It seemed incredibly optimistic, given the
20 history of the performance of the property, and it wasn't
21 credible to us.

22 Q What parts of it weren't credible to you?

23 A Well, a combination of apparent assumptions of
24 occupancies, revenues, capital CAPEX, didn't seem realistic to
25 us.

1 Q ICI operates a lot of rental projects, right?

2 A We do.

3 Q And you, I think, were listening to testimony of both Mrs.
4 Hatch and Mr. Lawlor over the course of the last couple of
5 days of hearing, correct?

6 A Correct.

7 Q And do you recall them saying that it was their view that
8 these projections were, depending on the witness, conservative
9 or realistic?

10 A I do.

11 Q Do you agree with that position?

12 A I don't. I don't think so. I don't think they're
13 realistic.

14 Q And --

15 A Just by way of background, we own two other multifamily
16 properties that you could throw a stone to from this property.

17 MS. WALKER: I apologize to rise in mid-sentence.

18 THE WITNESS: Oh, sure.

19 MS. WALKER: Thank you. The objection is to
20 foundation. This witness has not been qualified to give an
21 opinion as to his knowledge of running a senior care facility.
22 Maybe we could allow some foundation. Maybe he does have some
23 experiences with running a senior care facility that I'm not
24 aware of.

25 THE WITNESS: I am getting older.

1 MS. VANDESTEEG: Let's --

2 THE COURT: We're both ancient, we've established.

3 Thank you.

4 MS. VANDESTEEG: I am, too.

5 THE COURT: Exactly.

6 BY MS. VANDESTEEG:

7 Q Let's narrow it back to where we started in terms of your
8 experience with rental facilities, rental properties.

9 THE COURT: Just one moment, Ms. Vandesteeg. Ms.
10 Walsh has risen.

11 MS. WALSH: Thank you. I just want to join in that
12 objection and make it clear that Mr. Hannon has testified
13 before in this court that he has no such expertise.

14 THE COURT: And I understand. I'm going to give Ms.
15 Vandesteeg a little bit of latitude here to establish what
16 sort of opinion she is requesting that Mr. Hannon deliver, and
17 additionally, whether that is experience specific to revenue
18 operations and projections for running a senior care facility
19 or real estate properties in general.

20 MS. VANDESTEEG: Thank you.

21 BY MS. VANDESTEEG:

22 Q Mr. Hannon, you don't have any experience running or
23 operating a senior living facility, correct?

24 A No. I do not.

25 Q But do you have experience managing and operating rental

1 properties more broadly?

2 A Yes.

3 Q And do you have --

4 A I do.

5 Q -- experience running and operating multifamily

6 residential properties more generally?

7 A Yes, I do.

8 Q So, with that experience, has it been your experience that
9 those types of rental or multifamily residential properties
10 will be generating positive cash flow from day one?

11 MS. WALKER: Objection, Your Honor. I do not think
12 we've laid the foundation to make an opinion about the model
13 for a senior living facility. It's very particularized. They
14 have experts. They have Mr. Polsky, who's going to look at
15 this model. I think connecting this model to his prior
16 experiences is just a little bit too -- too separated for
17 this, for this matter.

18 MS. VANDESTEEG: Your Honor, I was asking him, simply
19 based upon his experience with rental properties and
20 residential properties, whether those types of projects have
21 generated that positive cash flow from day one. I'd separated
22 it away from this particular report. I'm asking him in his
23 general experience with those properties.

24 MS. WALKER: I'm hard-pressed to understand the
25 relevance of other senior -- other housing to The Edgemere.

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1 I'm just -- I just feel as if he has a lot of great
2 information he's going to share with us today. I don't think
3 this is in his knowledge or the relevance.

4 MS. VANDESTEEG: Nothing further from me, Your Honor.

5 THE COURT: Okay. Again, I'm going to give Ms.
6 Vandesteeg a little bit of leeway to allow Mr. Hannon to give
7 his lay opinion with respect to his experience. And I'll
8 allow Ms. Vandesteeg to draw the conclusion of the relevancy
9 to the senior care space.

10 MS. VANDESTEEG: Thank you.

11 THE COURT: Thank you.

12 BY MS. VANDESTEEG:

13 Q Go ahead, Mr. Hannon.

14 A I'd like to -- anyone who's had any common financial
15 experience has to look at -- can see what historical
16 absorption has been in turnover in their IL, which is really
17 just apartment living for a specialized group. And to look at
18 -- anyone who would look at the prior five or so years, they
19 would look at that. And I realize COVID was in the middle of
20 that. That the projections, especially with all the
21 competition showing up, look rosy.

22 But moreover, what I can really talk about is CAPEX,
23 because both the properties we have that are within a stone's
24 throw, and we have different ownership relationships there but
25 we are the owner, we know what a 20-year -- because all those

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1 buildings were built about the same time. That's why we're
2 not guessing as to what this building needs, because it's not
3 what you see.

4 As Mrs. Hatch pointed out, it's a beautiful building. It
5 is beautiful. But the sad thing about it is it's what you
6 can't see that bites you. And you can keep doing carpet and
7 paint and it looks great, but what's going on underneath. And
8 we own two properties within a stone's throw, built at the
9 same time, with the same construction material, the same
10 issues, retaining walls, subterranean parking, stucco, two-
11 and three-story garden-type projects. So I am qualified to
12 talk about CAPEX. And when you look at this projection, it
13 discounts the entire relevance. Clearly, somebody flew in
14 from out of town.

15 Q Mr. Hannon, let's refocus.

16 THE COURT: Let's --

17 THE WITNESS: Sorry.

18 MS. VANDESTEEG: Let's refocus.

19 THE COURT: A few things. Number one, I don't think
20 this addresses CAPEX.

21 Number two, --

22 MS. WALKER: Your Honor had my -- Your Honor had my
23 point.

24 THE COURT: Okay.

25 THE WITNESS: Okay.

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1 THE COURT: Yes. And I appreciate and I'm eager to
2 hear all of your opinions, but let's try to stick exhibit to
3 exhibit.

4 MS. VANDESTEEG: Yes, Your Honor.

5 THE WITNESS: Sure.

6 THE COURT: Thank you.

7 BY MS. VANDESTEEG:

8 Q So, setting aside the specific exhibit, Mr. Hannon, --

9 A Sure.

10 Q -- after receiving information from Bay 9 starting in
11 December that we saw it, additional stuff coming in in early
12 January, --

13 A Yes.

14 Q -- this letter now dated February 13, we're here now on
15 February 23rd: Is ICI presently comfortable with what Bay 9
16 has proposed in terms of adequate assurance of future
17 performance?

18 A Not at all.

19 Q What more does ICI think would be necessary or appropriate
20 to get to a point where ICI is adequately assured of Bay 9's
21 future performance of its lease obligations?

22 A Absent the world of bankruptcy, which is new to us, if a
23 prospective tenant came along and the building's available to
24 convey in a leasehold in its present condition, again, this is
25 a hundreds-of-millions-of-dollars asset that much of it is

1 built as a special purpose.

2 Q Well, so let's -- let's unpack that, then. Because I
3 appreciate that there may not be, then, a single thing that
4 you could point to as that -- is there a menu of different
5 things that ICI could consider?

6 A Yeah, and that's where I was going.

7 Q Great.

8 A That we would -- we would immediately want to look at.
9 The entity or person on the lease, do they have real
10 experience with some history of operating such a property?
11 Preferably, in Texas. That would be the very first thing, is
12 the entity. Versus a lender, who's basically protecting its
13 interest on a nonperforming group of loans and setting up a
14 new entity to repurchase it to try to protect their bad loan.
15 And we see that common in mortgage loans, where basically it's
16 lenders ending up as owners. We saw a lot of it over various
17 decades in this world. And so suddenly your operator is a
18 lender, which is what's happening here.

19 Q So what types of protections or credit enhancements would
20 ICI think could be appropriate? What kind of options could be
21 out there?

22 A Well, because the proposed entity is a Newco, a brand new
23 entity with no background since -- for but several months, we
24 would immediately look for some sort of financial guarantees,
25 either from a parent that's not just a one-way or controlled

1 by everybody, but could be drawn upon by us. We could look to
2 that parent and the assets if the entity that signed the lease
3 didn't make good on their commitments.

4 Often, and most recently we had another Newco enter into a
5 space and we had them put up -- a much smaller space,
6 obviously, than this -- but we had them put up a year's worth
7 of rent. In that case, I'm guessing it was half a million,
8 which would be nothing in this case, but it was a year's worth
9 of rent.

10 Q And was that prepaid or --

11 A Prepaid. They --

12 Q -- in an escrow?

13 A They gave it to us. They gave it to us, and it was there
14 to secure it because they were a Newco and we knew that that's
15 the entity that we had.

16 Q What other kinds of options would give ICI adequate
17 assurance?

18 A Well, irrevocable letters of credit are a very good
19 vehicle, as long as they're irrevocable. Escrows that we are
20 a principal to so that we can pull the money down. Parent
21 guarantees. I think I mentioned that. Potentially other
22 pledges, but that's the typical ones. We want the tenant to
23 have skin in the game and operational skills so we don't end
24 up in situations like this.

25 Q Has Bay 9 at this point offered or provided any of those

1 to ICI?

2 A Not in my opinion.

3 Q Now, you mentioned a recent meeting with Bay 9 and Long
4 Hill. And, again, without getting into --

5 A Sure.

6 Q -- that content, what were your general takeaways and
7 opinions of Bay 9 and Long Hill after that meeting?

8 A I see two different opinions that we came away from. They
9 were sophisticated parties. The Bay 9 were clearly financial
10 engineers. They were people who were in the business of
11 buying distressed bonds, as they testified here. In the
12 industry, we call those vulture buyers. They -- when
13 something is distressed, meaning there is distress in a
14 property, they come in and buy the paper or the bonds. And
15 that's -- it's a business model and it's not uncommon. Very
16 bright people. And they -- it was obvious to us that they had
17 a vested interest, being what we believe is the dominant part
18 of the DIP loan. And -- because they had also bought those
19 bonds at some time earlier at a discount, seeing the distress
20 with the property. So they were vulture-buying. And they got
21 the bonds. And we were -- give me your question again. I got
22 lost.

23 Q I was asking about your general takeaways.

24 MS. WALKER: Your Honor?

25 THE WITNESS: These are my takeaways.

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1 MS. WALKER: Your Honor, I just move to strike the
2 word "vulture." I've been trying to be polite about it. I
3 don't like the pejorative and I don't think it's intended by
4 the witness.

5 THE WITNESS: No. It wasn't meant bad. It's an
6 industry word. It's not meant in any way horrible to hurt
7 people. That's a business model.

8 MS. VANDESTEEG: Your Honor? Mr. Hannon.

9 THE WITNESS: Sorry.

10 MS. VANDESTEEG: Just --

11 THE WITNESS: Shut up?

12 MS. VANDESTEEG: -- provide my response.

13 To the extent that there is a different industry term that
14 the witness could use, I don't have a problem with counsel's
15 objection.

16 THE WITNESS: Sorry. Apologize. It's an industry
17 word. I didn't just get mean.

18 THE COURT: I'll sustain the objection --

19 THE WITNESS: Yes.

20 THE COURT: -- to the use of the term. Why don't we
21 use distressed lender.

22 THE WITNESS: Yes. A distress lender. That's --
23 that's --

24 MS. WALKER: Thank you, Your Honor.

25 THE COURT: You're welcome.

1 THE WITNESS: That's fine.

2 BY MS. VANDESTEEG:

3 Q Mr. Hannon, were there any other general takeaways that
4 you had after that meeting?

5 A Yes. We had a night -- we appreciated Long Hill. We
6 thought they were also very sophisticated. Very, very smooth.
7 And they apparently were an operator of these distressed
8 operations. And we didn't see that they had any experience --
9 can I talk about this? Our opinion was they didn't have any
10 experience converting from a deposit environment to a rental
11 environment. And it was a new relationship to some degree
12 between Long Hill and Lapis or Bay 9 or Grenelle or whatever
13 entity they're putting up here. And they were all very nice
14 people.

15 Q Mr. Hannon, you were present in court this past Tuesday to
16 hear Mrs. Hatch testify, correct?

17 A Yes.

18 Q And you heard her testimony that she perceived ICI as
19 being litigious. What was your reaction to that?

20 A Not good.

21 Q Why is that?

22 A It struck me as incredibly arrogant that these people
23 could fly in from San Francisco and walk into our town and
24 take a family that has been incredibly good citizens, with
25 countless good deeds that go quietly under the radar, funding

1 such things as parts of the Children's Hospital, schools, and
2 ministries that help people that are suffering in this town.
3 We put real money into that. Quietly. Not shouting about it.
4 Our litigation experience, and I -- apparently you can say
5 anything you want in here and it just -- I can't -- we go for
6 the truth.

7 Since I've been around 10 years, the money we spent the
8 first two months in this thing is more than we've spent on
9 lawyers the last 10 years. Our legal fees are for
10 transactions, for construction management agreements, for
11 eminent domain, for easements through the property.

12 Just for that human being to come in here and say we're
13 litigious, that's ridiculous. This is a long-term family that
14 goes for the right thing. All the time. And we are not
15 litigious. And we find ourselves here in a runaway fee
16 environment because the tenant decided to borrow more money
17 than they should have, from the families of Texas and from the
18 Bondholders. And now they quit paying rent and they sue us.
19 And they sue us. And if anyone wonders what these costs are,
20 this is a room filled full of lawyers that a lot of people are
21 going to pay.

22 Q Mr. Hannon, --

23 A So it makes me very mad, to answer your question, the
24 short version.

25 Q Mr. Hannon, has your or ICI's view or opinion of Bay 9 or

1 Long Hill changed since your meeting with them?

2 A Yes.

3 Q How has it changed?

4 A Well, this is my opinion, that they are part of this
5 system that has a playbook. And what I've learned about
6 senior living and this -- the bonds and the industry, this
7 appears to start -- to be a start of a wave that's going on,
8 particularly in Texas, where, in my view, they're poorly
9 regulated. That's an opinion. But I think you're going to
10 see other bankruptcies and you're going to see a lot of them,
11 and the playbook is the same. Deny and counter-accuse and see
12 if you can outspend them.

13 Q Is ICI concerned about another bankruptcy?

14 A Absolutely.

15 Q Why is that?

16 A I believe, if nothing changed and this got confirmed,
17 we'll be back here in 24 to 36 months.

18 Q Why is that?

19 A My opinion?

20 Q Uh-huh.

21 A This isn't -- this isn't a change. This is a new
22 nameplate on the front. The same gang. The same people that
23 loan the money, the same people that operate, and the same
24 small group that runs around the country during this. They'll
25 be back again.

1 And it all stems, if we're looking for truth here, it all
2 stems from a failed business model. I won't go further than
3 that. Except to say that, in Texas, I believe this has been
4 under-regulated. Some hundred and plus million dollars has
5 been taken from Texas families, with the promise that you'll
6 get it back if another Texas family comes in and provides
7 money. Now, I'm no rocket scientist, but I think Bernie
8 Madoff had some trouble with that in the end.

9 Q Well, let's --

10 A And sadly, the money hadn't been escrowed.

11 Q Let's turn back to --

12 A Except for a short amount of it after September of '21.

13 Q Thank you. And let's turn back, then, to the proposed
14 path forward --

15 A Okay.

16 Q -- with Bay 9.

17 A You bet.

18 Q And you mentioned a few different protections that ICI
19 would seek if it were a new tenant off the street, and
20 additional protections that ICI thinks Bay 9 could provide.
21 And to be clear, Bay 9 has not offered an irrevocable -- has
22 not provided an irrevocable letter of credit to ICI, correct?

23 A Correct.

24 Q And Bay 9 has not provided any sort of a guarantee of its
25 lease obligations, correct?

1 A Bay 9 is guaranteeing it, but it's a --

2 Q I'm sorry.

3 A It's a shell.

4 Q There's no further guarantee of Bay 9's lease obligation
5 performance, correct?

6 A Correct.

7 Q And there's no proposal for any sort of an escrow, either
8 for rent or other lease obligations, such as necessary capital
9 expenditures. Correct?

10 A Correct. And the fact is we were given a flash -- a
11 snapshot of a bank statement, which we would normally ask for
12 in a tenant, especially a transferring of this size -- we'd
13 look at a bank statement. We know that about \$48 million plus
14 or minus is going to go immediately to other parties, not us,
15 leaving roughly \$9 million in an account. And the answer that
16 Mrs. Hatch provided on the stand was it's bad business or a
17 tax reason. We can't find any reason why that money couldn't
18 be sucked right back up to the parent in a second. And we've
19 talked with our accountants and no one can seem to find a
20 reason why that wouldn't be easily done.

21 So, in effect, we don't know if they have money there or
22 not. It's a Newco. And we're conveying 31 years of leasehold
23 control to an asset of this size.

24 Q Thank you, Mr. Hannon.

25 MS. VANDESTEEG: That's all I have on direct.

1 THE COURT: Okay. Thank you very much, Ms.
2 Vandesteeg.

3 So, it's a little bit after noon. It's probably a good
4 time to break for lunch, prior to commencing cross.

5 Ms. Walker?

6 MS. WALKER: No, Your Honor. I was going to agree
7 with you --

8 THE COURT: Okay.

9 MS. WALKER: -- and suggest that -- well, I was going
10 suggest at least five minutes. But lunch sounds fine, too.

11 THE COURT: I think it's probably a good time for
12 lunch for everyone. Do the parties have any preferences on
13 what time they return?

14 MR. GOLD: Does Your Honor have another calendar
15 today? I think that would be a factor.

16 THE COURT: I do not.

17 MR. GOLD: Okay. So we're free agents?

18 THE COURT: Yes.

19 MS. WALKER: Our strong preference would be to have
20 as brief of a lunch as the Court's needs are, just to see if
21 we can get through as much as we can, given the courtesies of
22 next week and getting through the case.

23 THE COURT: Okay.

24 MS. VANDESTEEG: We completely concur, Your Honor.

25 THE COURT: Okay. All right. With that, let me

1 check with my staff.

2 Oh, never mind. I have word. Let's return at 1:00.

3 MS. VANDESTEEG: Thank you, Your Honor.

4 MS. WALKER: Thank you, Your Honor.

5 MR. GOLD: Thank you.

6 THE COURT: You're welcome.

7 THE CLERK: All rise.

8 (A luncheon recess ensued from 12:07 p.m. until 1:05 p.m.)

9 THE CLERK: All rise.

10 THE COURT: Please be seated. All right. Good
11 afternoon, everyone. We're going to go back on the record in
12 Case No. 22-30659.

13 When we last broke, Mr. Hannon was on the stand, and I
14 believe that Ms. Vandesteeg had finished direct.

15 MS. VANDESTEEG: Yes, Your Honor. Thank you.

16 THE COURT: All right. Thank you.

17 Is there anything before we put Mr. Hannon back on?

18 MS. WALKER: Nothing prior. I was just --

19 THE COURT: Okay. Yes, please.

20 MS. WALKER: -- assuming to get ready.

21 THE COURT: Yes. Mr. Hannon? At your convenience.
22 Thank you very much, sir. And I'll remind you that you're
23 under oath.

24 THE WITNESS: Yes.

25 THE COURT: Whenever you're ready.

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1 MS. WALKER: May I?

2 THE COURT: Yes.

3 MS. WALKER: Thank you.

4 CROSS-EXAMINATION

5 BY MS. WALKER:

6 Q Mr. Hannon, good afternoon.

7 A Good afternoon.

8 Q Mr. Hannon, you and I have met before, but you might
9 recall my name is Adrienne Walker and I represent Bay 9
10 Holdings.

11 You're the key person at ICI that has the most information
12 about The Edgemere bankruptcy?

13 A I don't know if I'm -- what a key person means exactly.

14 Q You're the primary person at ICI that has the most
15 information about The Edgemere's bankruptcy case?

16 A I have a great deal of information about what we have,
17 yes.

18 Q And you're the primary person at ICI that has that
19 information?

20 A Yes.

21 Q And you were designated by ICI as the person most
22 knowledgeable, and you sat through a deposition that I took of
23 you on February 14th?

24 A I assume so.

25 Q You don't recall that I was the person who took your

1 deposition?

2 A I do recall that.

3 Q Thank you, sir. This is the first case that -- is this
4 the first case that the Landlord has been involved in
5 involving a lease in bankruptcy?

6 A No.

7 Q But is this the first case that the Landlord has ever had
8 an assignment of a lease in bankruptcy?

9 A I don't -- I think it might be. I don't recall. I'm not
10 sure.

11 Q And you might recall that there was a bankruptcy case that
12 you told me about that was a small space in a strip mall or a
13 shopping center?

14 A I do.

15 Q And that case was assumed, but not assigned to anyone
16 else?

17 A That is correct.

18 Q And this is the first assignment case that you've ever
19 been involved in a bankruptcy, right?

20 A Yes.

21 Q And is it fair to say that before this bankruptcy case ICI
22 had little knowledge about the operations of senior living
23 businesses that had a continuum of health care to older
24 adults?

25 A Personally, I have had -- don't -- I don't have experience

1 in this.

2 Q And the only property owned by ICI that's used to operate
3 a senior living facility is The Edgemere in Dallas?

4 A Yes.

5 Q And before the summer of 2021, when you learned that
6 Edgemere was in financial distress, ICI did not know the
7 difference between a senior living business that took in
8 entrance fees versus a senior living business that had monthly
9 rentals?

10 A I did not know.

11 Q And do you know if anyone else at ICI knew?

12 A I do not know.

13 Q And it's fair to say that The Edgemere has been a very
14 active bankruptcy case?

15 A I have no way of knowing.

16 Q In fact, ICI is claiming to have about \$12 million in fees
17 associated with this bankruptcy case, right?

18 A I don't know the exact number.

19 Q But it's more than \$10 million?

20 MS. VANDESTEEG: Your Honor, objecting on the
21 relevance of things that were just on trial with respect to
22 pecuniary loss. I don't understand the relevance on adequate
23 assurance.

24 MS. WALKER: I'm going to his knowledge, how he got
25 to have knowledge about the bankruptcy case and the amount of

1 effort that ICI has invested in the case. And I'm moving on.
2 It's very brief.

3 THE COURT: I'll give a little bit of leeway here.

4 BY MS. WALKER:

5 Q And ICI has had three law firms representing it in this
6 bankruptcy case?

7 A (No immediate response.)

8 Q And has ICI had at least three law firms representing it
9 in this bankruptcy case?

10 A Yes.

11 Q And you believe that those law firms have kept you well-
12 advised in the bankruptcy case?

13 A Hopefully.

14 Q You understand that the Debtor is going to liquidate their
15 business and that they're seeking to assign their lease to my
16 client, Bay 9, as part of the Debtors' sale of their assets?

17 A Could you restate that?

18 Q Uh-huh. Do you understand that the Debtor is liquidating
19 their business?

20 A I don't know about the word liquidated, but yes, they're
21 out of money.

22 Q You know they're going to go out of business?

23 A That's my understanding.

24 Q And that you know that they're asking the Court to allow
25 them to assign their lease to Bay 9?

1 A I do know that.

2 Q And from no later than the first week of November, were --
3 you were aware that Bay 9 was the proposed stalking horse
4 buyer for The Edgemere business?

5 A I'm not sure about that date, but it was sometime in '22.

6 Q And you understood that if no higher offers were received,
7 that the Debtor would be asking the Court to approve the sale
8 to Bay 9?

9 A I knew it was a possibility.

10 Q And since early in November '22, you had access to the
11 asset purchase agreement that was filed with the Court?

12 A The one that's presently there?

13 Q Well, you knew that in November of '22 there was an asset
14 purchase agreement that was proposing to sell The Edgemere
15 business to Bay 9. Is that right?

16 A I did know that.

17 Q And you understood from the pleadings filed in this case
18 since early November that the Debtors were seeking to assume
19 and assign that lease to Bay 9?

20 A Yes.

21 Q And at all times, you knew that, no matter what, whoever
22 bought The Edgemere business, whether it be the Debtor keeping
23 the business going or a new buyer, that the lease would need
24 to be still in place and operative, because without the lease
25 there's no Edgemere business?

1 A Could you restate that another way? I'm not sure I
2 understand the question.

3 Q You're -- you understand that the lease is necessary for
4 The Edgemere to operate?

5 A Yes.

6 Q And you first learned of Bay 9 when they submitted the
7 purchase agreement in the bankruptcy case in early November
8 '22, right?

9 A In my mind, I thought it was in December. But I'll bet
10 you're right. I don't know.

11 Q And you're aware, because your counsel informed you, in
12 mid-November that they sought to take an examination of Bay 9
13 in November of '22, right?

14 A Who's they?

15 Q They, your lawyers. Your counsel. They sought to take an
16 examination of Bay 9 in November?

17 A I wasn't aware of that, but I believe you.

18 Q And you're aware that ICI, through your counsel, asked for
19 some documents from Bay 9?

20 MS. VANDESTEEG: Your Honor, to the extent that she's
21 asking about what he may have knowledge of through his
22 counsel, I object to the extent that it may ask the witness to
23 divulge attorney-client privileged information.

24 MS. WALKER: I'll certainly do my best. I'm not at
25 all asking for attorney-client privilege.

1 THE COURT: Okay. I'll sustain the objection and
2 just ask us to tread lightly.

3 MS. WALKER: Definitely, Your Honor.

4 THE COURT: Okay. Thank you.

5 BY MS. WALKER:

6 Q Do you recall receiving a letter from Bay 9 in December
7 that gave you information about Bay 9's background, about
8 their ability to perform under the lease?

9 A I recall that we received a letter in December.

10 Q But yet you didn't read it yourself until February of '23,
11 right?

12 A I don't know about that.

13 Q At most, you perused it?

14 A As I explained earlier, I didn't take it seriously until
15 the auction was over.

16 Q So until just a few weeks ago, you hadn't had occasion to
17 really read the adequate assurance letter that Bay 9 used?

18 A I just perused the letter.

19 Q And after you --

20 A For all I knew, I was going to have 20 offers. Turns out
21 just one.

22 Q And you waited until February, at least February 3rd, to
23 really take any real interest to learn about Bay 9?

24 A Personally, until after the auction, that's true for me
25 personally.

1 Q And you didn't direct your staff to give you diligence
2 information about Bay 9?

3 A No.

4 Q And you also have not -- you didn't review the asset
5 purchase agreement?

6 A (No immediate response.)

7 Q And you did not -- did you review the asset purchase
8 agreement with Bay 9?

9 A I looked at it quickly.

10 Q And by looking at it quickly, that would have been within
11 the last two weeks?

12 A I don't recall.

13 Q But it certainly wasn't in '22, was it?

14 A I don't recall.

15 Q And in fact, you made a decision not to diligence it until
16 you knew that Bay 9 was the successful bidder, right?

17 A Personally, I didn't look closely at the documents until I
18 knew they were the winning bidder.

19 Q So, up until about two weeks ago, you had really no
20 knowledge or information yourself about Bay 9?

21 A I don't know when it was, but it was after the auction
22 that we looked at them being a Newco.

23 Q So, prior to Bay 9 offering to purchase The Edgemere and
24 hire Long Hill as its manager, you'd never heard of Long Hill
25 Company either, right?

1 A Correct.

2 Q And after you learned that Bay 9 was proposing to have The
3 Long Hill entity manage the business, you -- that was when you
4 first knew the principals of Long Hill, right?

5 A Correct.

6 Q And you received a letter from Long Hill, either
7 indirectly or directly, back in November of '22, right?

8 A I don't recall.

9 Q But as of today, you've never actually read any letters
10 from Long Hill telling you about their qualifications, right?

11 A No.

12 Q And you've not taken any actions to direct your staff to
13 --

14 A No, it's not right.

15 Q Okay. When did you first read the letter from Long Hill
16 about their qualifications?

17 A I don't recall.

18 Q Was it in '22 or '23?

19 A I still don't recall.

20 Q Okay. And you've taken no actions independent of the
21 letter or -- to learn about Long Hill, have you?

22 MS. VANDESTEEG: Again, objection, just to the extent
23 that it may call for the disclosure of attorney-client
24 privileged information.

25 MS. WALKER: And I agree. I've asked him just his

1 own -- what has he done directly?

2 THE COURT: Fair enough. Sustained to the extent of
3 attorney-client.

4 THE WITNESS: I personally have done nothing besides
5 go to website.

6 BY MS. WALKER:

7 Q And did you go to the website before or after the auction
8 was called? February 3rd?

9 A I don't recall.

10 Q And you don't know of Long Hill's experiences in managing
11 senior living communities, do you?

12 A Yes, I do.

13 Q And did you learn that because you were in court
14 yesterday?

15 A I gained some information yesterday, and I gained it from
16 meeting with them prior to that, and I gained that from
17 reading their information.

18 Q And all of that --

19 A And --

20 Q I apologize.

21 A Go ahead.

22 Q No, no. Please. It's --

23 A You go ahead.

24 Q Thank you. But all of that was after February 3rd?

25 A I don't recall.

1 Q But you did, you mentioned, you did personally meet with
2 Mr. David Lawlor, who was on the stand from Long Hill, right?

3 A Yes.

4 Q And that meeting was earlier in this month?

5 A I think so.

6 Q And after that meeting, you determined that Long Hill was
7 a capable manager, and I think you had suggested they weren't
8 unpleasant.

9 A Yes. They were very pleasant. Very smooth.

10 Q Thank you. And I think today you said that they were
11 sophisticated.

12 A It appeared to me they were.

13 Q Thank you.

14 A Of course, I don't know if they'll be the manager, because
15 they don't have an agreement with the buyer.

16 Q Understood. But you do understand that, because you were
17 in court yesterday, that that is in prospect?

18 A I don't.

19 Q Okay. One of the reasons you didn't diligence Long Hill
20 yourself was because you don't personally have any experience
21 running a senior care community, right?

22 A I don't have any experience running a senior care
23 community.

24 Q And you would just rely on your professionals and advisors
25 to assist you with that?

1 A Not necessarily.

2 Q Okay. Are you aware that on December 30th, through your
3 counsel, ICI filed an objection to Bay 9's adequate
4 assurances?

5 A I couldn't have dreamt that up, but possibly. A lot of
6 things have been filed.

7 Q And do you recall reviewing ICI's pleadings before they're
8 filed in the Court?

9 MS. VANDESTEEG: Objection, again, to the extent that
10 we're calling for any attorney-client privileged
11 communications.

12 MS. WALKER: I'm not asking about any communications
13 with counsel. I'm just seeing what he has seen.

14 THE COURT: Fair enough. Please proceed.

15 THE WITNESS: Most of the pleadings, if not all of
16 them, have been presented to our leadership team before filed.

17 BY MS. WALKER:

18 Q And you're key in that leadership team?

19 A I am.

20 Q And you -- I think you said that all of the information
21 regarding Edgemere is within your best personal knowledge for
22 ICI?

23 A Could you say that again?

24 Q Sure. You're the -- you're the most likely person at ICI
25 that would have seen any pleadings before they're filed in the

1 Court, right?

2 A It would have been presented to me, too.

3 Q And do you recall seeing any pleading from ICI back in '22
4 objecting to Bay 9's adequate assurances?

5 A Not specifically as I sit here. The documents come by
6 every two days.

7 Q And at the time an objection was filed to Bay 9 back in
8 December, I think you just said that you didn't even diligence
9 Bay 9 or Long Hill until at least February, right?

10 A Could you restate that?

11 Q Sure. So, there's pleading filed in December from ICI
12 objecting to Bay 9, but yet you've testified that you didn't
13 diligence, personally diligence Bay 9 or Long Hill until at
14 least February, right?

15 A I don't think I've testified to that.

16 Q I think you said -- well, you're aware that ICI produced
17 -- requested Bay 9 to produce documents to ICI?

18 A I assume we did.

19 Q And do you recall just before lunch you reviewed, I think
20 at one of the tabs, all of the documents that Bay 9 provided
21 to your counsel, to ICI?

22 A I reviewed all that were in that tab.

23 Q Uh-huh. And before February 3rd, you didn't personally
24 review any of those documents, did you?

25 A I don't recall.

1 Q And wasn't it your position that there was no reason to
2 look at those documents until at least February 3rd, to know
3 the identity of the buyer in the case?

4 A Could you restate that?

5 Q Sure. I think you said earlier in a deposition, and I
6 think you said even earlier today, that it was your position
7 there was no reason to look at any of the documents provided
8 by Bay 9 until you knew, after February 3rd, that they were
9 going to be the winner. Right?

10 A From my perspective. Not so much from others, but from my
11 perspective.

12 Q As the key person at ICI? One of the documents produced
13 was a business plan by the sponsor. Do you recall seeing
14 that?

15 A Vaguely.

16 Q I'm going to ask you, there's a small binder. And I'm
17 going to tell you, it might say Bay 9's Exhibits.

18 A Locke Lord?

19 Q Yes, sir. I think it's Tab 10. You'd think I'd have all
20 this memorized by now, but I don't.

21 THE COURT: I think there's probably going to be two,
22 Mr. Hannon.

23 THE WITNESS: Oh.

24 THE COURT: One will maybe just be with some sealed
25 exhibits, and then one with --

1 MS. WALKER: Thank you, Your Honor.

2 THE COURT: -- the filed.

3 BY MS. WALKER:

4 Q And Mr. Hannon, if you need, I'm happy to approach, but
5 I'll give you some space.

6 A I have two Locke Lord binders.

7 Q Sure. May I approach? Would you mind, Mr. Hannon, if I
8 helped?

9 A Oh, please.

10 Q Thank you.

11 (Pause.)

12 A Thank you.

13 Q So, do you see this is a one page, it says Bay 29 at the
14 bottom right, or with a lot of zeroes, but Bay 29?

15 A Yes.

16 Q And before February 6th, when you -- when you had a
17 meeting with Bay 9 and ICI, you didn't review -- you had not
18 yet reviewed this business plan, correct?

19 A I don't recall when I first reviewed it.

20 Q Uh-huh. Mr. Hannon, I think you mentioned earlier that
21 you're the key -- you understand the records of Bay 9, and in
22 essence, you understand how those records are kept, right?

23 MS. VANDESTEEG: Objection. I think you referenced
24 Bay 9 but you meant to reference ICI.

25 MS. WALKER: Thank you.

1 MS. VANDESTEEG: No problem.

2 THE WITNESS: No, --

3 MS. WALKER: I should have had the full Coca-Cola at
4 lunch.

5 THE COURT: Mr. Murphy was supposed to get everyone
6 espressos.

7 (Laughter.)

8 MS. WALKER: I apologize.

9 BY MS. WALKER:

10 Q You're the keeper -- you understand the records and how
11 they're kept from ICI?

12 A That's still true.

13 Q It's not true or it is true?

14 A No, it's still true.

15 Q Thank you. Thank you. And you're very familiar with the
16 ground lease in this case?

17 A Of a ground lease, or this ground lease?

18 Q This ground lease with Edgemere, between Edgemere and ICI.

19 A I am.

20 Q Thank you. And the lease between The Edgemere and ICI, it
21 doesn't require the tenant under that lease to post a security
22 deposit, does it?

23 A I looked recently and I don't see a security deposit in
24 the traditional way.

25 Q Uh-huh. And it doesn't require the tenant to pay any rent

1 in advance, correct?

2 A As the deal stands today, no.

3 Q And it --

4 A It's an existing tenant.

5 Q And it doesn't require a corporate guaranty or any
6 personal guaranties from any person?

7 A That's not true.

8 Q So you think the lease has a guaranty in it?

9 A If you'd restate the question. I think your question was
10 does it have a corporate or personal guaranty, and there is no
11 personal guaranty.

12 Q And you believe there's a corporate guaranty?

13 A I do.

14 Q From whom?

15 A I assume it's the entity on the lease. The not-for-profit
16 SQ-whatever.

17 Q I understand. So --

18 A Isn't that a corporation?

19 Q I understand, and I apologize if I'm using some legal
20 terms and --

21 A Sorry.

22 Q No, no. I think you've gained a tremendous amount of
23 legal knowledge in the case, so I apologize for making an
24 assumption. So you understand -- my understanding is you
25 understand that there's a tenant who's responsible to pay the

1 rent, right?

2 A Yes.

3 Q But there's no other person, there's no other corporate
4 entity or human out there besides the tenant who's required to
5 pay the rent under the lease?

6 A No, not that I know of.

7 Q And you're very familiar with the records of ICI, right?

8 A Yes. But I'm not an attorney.

9 Q But if there was a document that had a guarantor, a
10 guaranty document, you would be familiar with that, right?

11 A Yes.

12 Q And to your knowledge, there's no such document?

13 A Yes.

14 Q And is there any requirement in the current lease to
15 provide a letter of credit to ICI, an irrevocable -- you had
16 mentioned an irrevocable letter of credit. Is there anything
17 like that under -- that's required under this lease?

18 A No.

19 Q And I think we touched upon this, but just briefly: You
20 weren't employed at ICI back in 1999, so you don't have any
21 direct knowledge about the negotiations that were relating to
22 the lease inception?

23 MS. VANDESTEEG: Objection to the extent that Ms. --
24 Ms. Walker referred to 1989 as the time of the lease
25 negotiations.

1 MS. WALKER: I'm just going to have to --

2 THE COURT: It was a different ancient period.

3 MS. WALKER: Yeah. Yeah. Yeah.

4 (Laughter.)

5 MS. WALKER: That was more of a typo than my Coca-
6 Cola.

7 BY MS. WALKER:

8 Q When the lease was incepted, at the inception of the lease
9 in 1999, you weren't working with ICI at the time, right?

10 A Yes.

11 Q And you have no direct knowledge of the negotiations that
12 -- that were -- that preceded the document, the lease
13 document?

14 A Yes.

15 Q And the lease with the Debtors was entered into in the
16 ordinary course of business, to your knowledge?

17 A Could you restate that?

18 Q Uh-huh. Was there -- was the lease -- to your knowledge,
19 based on perhaps what you reviewed in the lease, was it
20 entered into in the ordinary course?

21 A Ordinary course? I'm sorry?

22 Q Of the, I'm sorry, of the business. So, ICI typically
23 enters into leases. Is this a typical lease that ICI enters
24 into?

25 A No.

1 Q Based on your knowledge that you received from looking at
2 the ICI lease, what assurances was ICI given, in your view,
3 for the lease, to enter into the lease?

4 MS. VANDESTEEG: Objection, Your Honor. I think this
5 goes into the same line of questioning that Ms. Walker
6 objected to previously in that Mr. Hannon was not present at
7 the time of the lease negotiation or execution.

8 MS. WALKER: And I'm just hoping he says no.

9 THE COURT: Well, I think we've established that he
10 has no direct knowledge --

11 MS. VANDESTEEG: Thank you.

12 THE COURT: -- of the inception of the lease, so
13 anything further than that --

14 MS. WALKER: And I'm just -- sure.

15 THE COURT: -- I think would probably be
16 objectionable.

17 MS. WALKER: I'm just going to go quickly and grab
18 one more binder.

19 THE COURT: Oh, fair enough.

20 MS. WALKER: No, I've got the water. I need the
21 binder.

22 BY MS. WALKER:

23 Q Mr. Hannon, you recently submitted a declaration to this
24 Court, do you recall that, in February?

25 A Yes.

1 Q And if I --

2 MS. WALKER: May I approach, Your Honor?

3 THE COURT: Yes. Please. Is it the declaration of
4 Exhibit 5?

5 MS. WALKER: Um, --

6 THE COURT: Is it a different one?

7 MS. WALKER: It is the same one.

8 THE COURT: Okay.

9 BY MS. WALKER:

10 Q Mr. Hannon, does this look like a declaration you signed?

11 A It does.

12 Q Thank you. And in that declaration, you state some
13 personal knowledge about the lease assurances back in 1999.

14 A Yes. From the files.

15 Q From -- so you derived these from the files only?

16 A Yes.

17 Q And when you looked at the files, you noticed and you've
18 testified in this declaration that the lease included a \$3
19 million of equity capital from the original tenant, right?

20 MS. VANDESTEEG: Objection in that the declaration
21 does not state that the lease included that. It provides that
22 it was a -- one of the prerequisites to the execution of the
23 lease.

24 BY MS. WALKER:

25 Q Mr. Hannon, --

1 THE COURT: Please restate.

2 MS. WALKER: Thank you. Thank you.

3 BY MS. WALKER:

4 Q Mr. Hannon, it's -- you stated that there was a \$3 million
5 prerequisite before entering into the lease, correct? In your
6 declaration?

7 A Yes.

8 Q And you stated it was a prerequisite to enter into the
9 lease that the tenant incur about \$118 million of debt.
10 Correct?

11 A Yes. With public reporting requirements.

12 Q And you stated that it was a prerequisite to enter into
13 the original lease that there were some references that were
14 given to ICI, right?

15 A Yes.

16 Q And you stated that in order to enter into the original
17 lease that there would need to be some audited financial
18 statements that ICI would review, right?

19 A Yes.

20 Q Thank you. So, at the time of the original lease, to your
21 knowledge, based on your signed declaration, the assurances
22 that ICI was given was \$3 million of equity capital, right?

23 A Prerequisites. Yes.

24 Q Sure. And you'll agree with me some basic math: \$3
25 million is less than \$9 million. Right?

1 A Three million is less than nine.

2 Q And you're aware that Bay 9, at the end of -- I think you
3 testified that after the end of the sale Bay 9 will have \$9
4 million in equity capital on their books. Right?

5 A No.

6 Q I think you said there'd be \$9 million after the sale
7 still remaining from the -- from the \$55 million.

8 A No.

9 Q Okay.

10 A I didn't say that.

11 Q ICI was given assurances to enter into the new lease that
12 the tenant would have \$118 million of debt on its books.
13 Right? And that provided you comfort?

14 A According to the documents, there would be \$118 million of
15 bond financing.

16 Q And so, with those assurances that we just walked through
17 as a prerequisite to the lease, ICI entered into a 55-year
18 lease. Correct?

19 A There may have been other assurances I'm unaware of. I
20 wasn't there.

21 Q Uh-huh. And it entered into a 55-year lease for a
22 business that was going to accept entrance fees from -- from
23 residents, right?

24 A That's what happened.

25 Q And ICI was aware of the business that was -- that was

1 contemplated at The Edgemere?

2 A I do not know.

3 Q Mr. Hannon, by the -- you became at employed at ICI in
4 2012, right?

5 A Yes.

6 Q And you understood a few years later that Edgemere had
7 undertaken an expansion project, right?

8 A Yes.

9 Q And you were aware because the tenant had told you and
10 came to you and told you about their expansion project.

11 Right?

12 A Yes.

13 Q At the time of the expansion, did you understand that the
14 Debtor would be taking on additional debt?

15 A Yes. Subordinate to our ground lease.

16 Q And you understood that the Debtors would be financing
17 that expansion project with about \$53 million of par value of
18 new debt. Of debt. Right?

19 A I don't recall the amount, but I do recall the financing.

20 Q And you recall it was several millions of dollars?

21 A Yes.

22 Q Yet at the time of the expansion, ICI never asked the
23 Debtors for any additional security for the lease, correct?

24 A I don't recall that additional security was requested.

25 Q And at the time of the expansion, similar, there was no

1 additional request for a letter of credit for the tenant.

2 Correct?

3 A Correct.

4 Q And at the time of the expansion, ICI never asked for any
5 guaranties from any other third party other than the tenant to
6 pay the rent, correct?

7 A Correct.

8 Q A few years later, still while you're with ICI, in 2019,
9 you first heard of a company called Lifespace, correct?

10 A Don't recall the date, but it was around that time.

11 Q And you were aware that, under the ground lease, it
12 provided for right of consent for assignment for the lease?

13 A Yes.

14 Q And that right of consent would happen outside of
15 bankruptcy. Perhaps there might be different rules inside
16 bankruptcy. But you understood you needed -- they needed your
17 consent, right?

18 A Yes.

19 Q And yet they never asked for your consent, correct?

20 A I don't recall.

21 Q And you didn't ask for the Debtor to provide you with any
22 -- any other assurances from Lifespace under the lease, any
23 guaranties?

24 A Is that a question?

25 Q Yes. You didn't ask Lifespace for a guarantee of the

1 lease, did you?

2 A No. We did not ask Lifespace for a guaranty.

3 Q You didn't ask anybody else for a guaranty when Lifespace
4 came to be the sole member of the Debtor, of Edgemere?

5 A Correct.

6 Q At the time Lifespace became the new member, ICI didn't
7 ask for any financial statements of Lifespace, right?

8 A That question was asked of me earlier when deposed. And
9 subsequent to that time, I've -- at that time, I didn't
10 recall. Subsequent, I've looked deeper into the file and
11 found that we did get financials.

12 Q Audited financials?

13 A I don't recall.

14 Q And ICI was not aware in 2019 if Lifespace had ever
15 defaulted on any of its obligations in any other community,
16 right?

17 A I personally don't recall them being someone who was a
18 credit risk.

19 Q And to your knowledge, because you were the executive vice
20 president at the time, you didn't take any independent
21 diligence of Lifespace at the time, right?

22 A No. That's not true.

23 Q You took personal diligence of Lifespace at the time?

24 A Limited, but yes.

25 Q Okay. And maybe that would have included some financials

1 for Lifespace?

2 A Yes. And they weren't a Newco.

3 Q Understood. But you didn't ask for any -- anything other
4 than this limited diligence, correct?

5 A Not that I recall.

6 Q And at the time --

7 A And their financials.

8 Q Thank you. Apologize to interrupt. At the time of the
9 expansion, ICI never requested any other backstops or
10 prepayments from Lifespace? There were no other assurances
11 from Lifespace, other than what's required under the lease.
12 Correct?

13 A Correct.

14 Q And we touched upon this. Edgemere is the only property
15 owned by ICI that operates senior living? To this day?
16 Correct?

17 A Yes.

18 Q And when ICI first heard of Edgemere's financial distress
19 in 2021, ICI determined it was time to organize a team of
20 professionals to guide it in this process, correct?

21 A Could you say that one more time?

22 Q Sure. When ICI first learned of Edgemere's financial
23 distress, that's when ICI took steps to organize a team of
24 professionals to guide it in dealing with The Edgemere.

25 Correct?

1 A We began the process of organizing a team of
2 professionals.

3 Q And ICI retained counsel, correct?

4 A On or about that time, yes.

5 Q And ICI retained Kong Capital?

6 A We did retain Kong Capital at some point.

7 Q And Kong, to your knowledge, is a real estate private
8 equity firm, correct?

9 A Yes.

10 Q And Kong holds itself out as specializing in senior
11 housing?

12 MS. VANDESTEEG: Your Honor, objection to the extent
13 that I think that this is veering well beyond the bounds of
14 direct.

15 MS. WALKER: Your Honor, I'm just simply trying to
16 lay a foundation for his knowledge to the business plan that
17 he opined, said was unrealistic.

18 THE COURT: Anything further, Ms. Vandesteeg?

19 MS. VANDESTEEG: I don't understand how this line of
20 questioning goes to that limited testimony with respect to
21 projections in The Long Hill report and his experience in
22 rental and those rental properties. His personal experience.

23 THE COURT: Ms. Walker?

24 MS. WALKER: Yes. I apologize. It's hard to tell
25 you where I'm going without telling you where I'm going.

1 THE COURT: Okay.

2 MS. WALKER: But Your Honor, --

3 THE COURT: I'll let you --

4 MS. WALKER: Thank you. Just a --

5 THE COURT: I'll give you a little bit more work to
6 lead us there.

7 BY MS. WALKER:

8 Q And you understand that Kong holds itself out as
9 specializing in senior housing, right?

10 A Yes.

11 Q And interestingly, it was actually Kong that called you,
12 right? It wasn't the other way around? Kong --

13 MS. VANDESTEEG: Your Honor?

14 MS. WALKER: -- approached you. Right?

15 MS. VANDESTEEG: Your Honor, again, raising objection
16 as to going beyond the scope of the direct, and also relevancy
17 as to this particular line of questioning.

18 THE COURT: I told her I'd give her a few questions
19 to lead us there, and I'll give her those few questions.

20 MS. VANDESTEEG: Understood. Thank you.

21 THE WITNESS: Could you restate the question?

22 BY MS. WALKER:

23 Q Sure. Kong actually reached to you? You didn't call
24 Kong. Right?

25 A Initially. Correct.

1 Q I mean, there's one only initial connection, correct?

2 A That is correct.

3 Q Thank you. Only one time to make a first impression. Yet
4 you trusted Kong to advise you on a complex continuum of care
5 senior living facility in Dallas. Correct?

6 A Not initially.

7 Q But they have? This is what they're doing for you,
8 correct? They're advising you on a complex continuum of care
9 of a senior living facility in Dallas?

10 A Yes.

11 Q And part of that work is to look at business plans?

12 MS. VANDESTEEG: Your Honor, to this line of
13 questioning, I'm going to object along the lines that, as Your
14 Honor knows, we have -- ICI has engaged Kong as a consulting
15 expert, and I'm cautioning the witness that we may be entering
16 into questions that go to the nature of specific conversations
17 that may be protected by either consulting expert and/or
18 attorney-client privilege.

19 THE COURT: Well, attorney-client privilege--?

20 MS. VANDESTEEG: Well, Your Honor, in addition, as
21 the Court may recall, there is also an engagement whereby
22 conversations involving ICI and Kong subject to LP's retention
23 and engagement letter --

24 THE COURT: Uh-huh.

25 MS. VANDESTEEG: -- also applies attorney-client

1 privilege over certain communications involving all three of
2 those parties.

3 So just, again, to the extent that she is asking about
4 communications that involve discussions with respect to
5 business planning, business plans, those are likely fine. But
6 if we're drifting into anything that would involve consulting
7 expert, that's where I'm concerned. I don't want to open that
8 door.

9 MS. WALKER: And perhaps, Your Honor, it's because
10 I'm the new kid on the block and I didn't attend the other
11 hearings as much. My intention is to understand, you know,
12 what -- he talked about his financial analysis opinion,
13 opinion about our business plan.

14 THE COURT: Uh-huh.

15 MS. WALKER: But yet he didn't have any of his own.
16 So he must have got it from somewhere.

17 THE COURT: I'm rereading my consulting expert
18 opinion in my head. I recognize there is a limited -- there
19 were limitations put on that. So just give me a moment.

20 MS. VANDESTEEG: Of course.

21 (Pause.)

22 THE COURT: Okay. So, again, from the Court's
23 February 6th order regarding the Court's *in camera* review of
24 certain documents in connection with Plaintiff and the
25 Defendants' motion to compel, there was a joint defense common

1 interest privilege that was recognized and preserved from
2 February 23rd onward. February 23, 2022 onward. Adversary-
3 based. And so I'm trying to understand what the scope of a
4 privilege related to Kong's business plan would be in this
5 context. Ms. Vandesteeg?

6 MS. VANDESTEEG: I don't know that it would, Your
7 Honor, and that's why --

8 THE COURT: Okay.

9 MS. VANDESTEEG: -- I was letting you know that it's
10 a preemptive, --

11 THE COURT: Okay.

12 MS. VANDESTEEG: -- that I don't know that it would
13 apply, where I think what her question was was going to
14 business planning. I was simply letting her -- saying that if
15 we were going to go further for anything else, that is where
16 it may be a concern.

17 THE COURT: Okay.

18 MS. WALKER: Ms. Vandesteeg is an excellent lawyer.
19 I'm sure she will object when the time comes.

20 THE COURT: All of those things. So I'm going to
21 overrule the objection for now, recognizing that more may be
22 coming.

23 MS. VANDESTEEG: Understood. Thank you.

24 BY MS. WALKER:

25 Q I think where we left off was that Kong had approached

1 you. Let me try and keep going. And when you were approached
2 by Kong, you understood that Kong was a relatively new firm,
3 started in 2020, right?

4 A I did not know how long they had been in existence when
5 they approached me.

6 Q And did you ask for their -- any background information
7 about Kong before you entered into an engagement with them?

8 A Yes.

9 Q And you trusted Kong, based on the information you got, to
10 help advise you with a complex regulated senior living
11 community that offers a continuum of care to seniors?

12 A Yes.

13 Q And part of Kong's work for ICI was to help it with
14 contingency planning, correct?

15 A Yes.

16 Q And this contingency planning involved planning for a
17 scenario where ICI would become the owner of The Edgemere.
18 Correct?

19 A Not correct.

20 Q Mr. Hannon, I am going to hand you a document.

21 THE COURT: While she's handing out the documents, I
22 do want to address that we are aware of how warm it is in the
23 courtroom. This is our effort to keep you guys awake. No,
24 I'm kidding. They are working on it. I recognize that it's
25 ridiculously warm in here, especially for the -- well, I don't

1 know, I guess the gentlemen wearing jackets are probably worse
2 than the gal wearing the robe, but I specifically understand
3 and I apologize for that.

4 MS. WALKER: May I approach, Your Honor?

5 THE COURT: Of course.

6 MS. WALKER: Thank you.

7 THE COURT: Thank you so much. So we are, in theory,
8 working on it.

9 BY MS. WALKER:

10 Q Mr. Hannon, have you seen this letter before?

11 A I don't recall as I look at it, but I may well have.

12 Q If you'd like a moment.

13 A Sure.

14 Q And let me know when you're finished looking at it
15 entirely.

16 A Thank you.

17 (Pause.)

18 Q And Mr. Hannon, as you're looking through it, I'm going to
19 -- I'm going to ask you some questions about the bottom of
20 Page 3 and 4. And top of 4. Just to orient yourself where
21 you might want to finish reading that section before we speak.

22 A Thank you.

23 (Continued pause.)

24 A Yes?

25 Q Thank you.

1 A Uh-huh.

2 Q Does that refresh your recollection that ICI was working
3 with Kong Capital contingency planning?

4 A Yes.

5 Q And this contingency planning involved planning for a
6 scenario that ICI would become the owner of The Edgemere
7 business, right?

8 MS. VANDESTEEG: Your Honor, renewed objection now, a
9 few questions later, as to going beyond the scope. I'm not
10 fully understanding where we're going with this line of
11 questioning and how it relates to testimony that Mr. Hannon
12 provided on his direct examination.

13 THE COURT: All right. Why don't you give us that
14 road map now.

15 MS. WALKER: Yes, Your Honor. ICI identified that a
16 rental plan was the best plan for The Edgemere and said, there
17 won't be any debt on it, it'll be -- we'll just have it, won't
18 have these entrance -- the burdens of the entrance fees that
19 Mr. Hannon testified was harmful to families of Texas. And he
20 I think identified that it was part of something like a Madoff
21 scheme. So part of his business plan was to eliminate that,
22 which is precisely what Bay 9 is doing.

23 THE COURT: Ms. Vandesteeg?

24 MS. VANDESTEEG: I understand that, Your Honor. I
25 just, again, don't understand where the nature of this

1 specific line of questioning is going and how it relates
2 specifically again to the testimony that he made on direct.
3 And I'll stand on that.

4 THE COURT: Okay.

5 MS. WALKER: And Your Honor, part of it is clearly
6 I'm impeaching this witness as to their motivation. To be the
7 full road map.

8 THE COURT: All right. The only one who can't be
9 impeached here -- well, no, bad joke. Bad joke. Can't help
10 myself sometimes.

11 (Laughter.)

12 THE COURT: Totally apologize for bad jokes, bad
13 puns, all of it.

14 I am going to overrule the objection. Again, I think Ms.
15 Walker has now given us the road map of essentially this is
16 addressing the potential for the Landlord's motivations with
17 respect to the objections to adequate assurance. So I'm going
18 to allow it for that purpose.

19 MS. VANDESTEEL: Understood. Thank you, Your Honor.

20 THE COURT: You're welcome.

21 BY MS. WALKER:

22 Q Do you recall seeing a copy of this letter?

23 A I don't recall.

24 Q Is it typical that your counsel shares copies of letters
25 with you?

1 MS. VANDESTEEG: Objection to the extent that we are
2 calling for attorney-client communications between counsel and
3 client.

4 MS. WALKER: I don't think it's communications.
5 That's a delivery of a document.

6 THE COURT: I'm going to over -- well, I'm going to
7 sustain the objection as to an attorney-client privilege. I'm
8 going to allow him to testify about whether or not he received
9 a copy of this from counsel.

10 THE WITNESS: I don't recall seeing it, but I'm sure
11 I did.

12 BY MS. WALKER:

13 Q And when you would look in your books and records for all
14 the other documents relating to The Edgemere, would you find
15 this letter?

16 A If I received it. The only one -- you've given it to me
17 today from you. But if it's -- comes to our office, it's
18 filed.

19 Q Thank you.

20 MS. WALKER: One brief moment, Your Honor.

21 (Pause.)

22 MS. WALKER: Your Honor, we're not exactly sure what
23 number we're on for Bay 9 exhibits, --

24 THE COURT: Right.

25 MS. WALKER: -- but we would like to add this as -- I

1 believe we're on Bay 19.

2 THE COURT: That's what I have in terms of filed
3 exhibits. This would be Bay 9 Exhibit 19. And so are you
4 moving for admission of this exhibit?

5 MS. WALKER: Yes, Your Honor.

6 THE COURT: Any objection to the admission of Bay 9
7 19?

8 MS. VANDESTEEG: Your Honor, I -- this letter was a
9 communication. It was a response to a prepetition default
10 here. I suppose to the extent that it is simply a basis for
11 impeachment. I don't really, again, necessarily see how this
12 specific document is relevant, but I think Your Honor has
13 already ruled on that. So I -- I object on relevance grounds,
14 knowing where I suspect the Court is going.

15 MS. WALKER: If you would like me to say something,
16 or -- but it's -- I'm fine not saying anything, either.

17 THE COURT: I appreciate it all. Let's just say that
18 I will overrule the objection in this instance. I understand
19 ICI's objection to relevance. The Court will weigh the
20 relevance objection as part of her ruling.

21 So the Court will admit Bay 9 Exhibit 19.

22 (Bay 9 Holdings, LLC's Exhibit 19 is received into
23 evidence.)

24 THE COURT: And I will ask, Ms. Walker, that at the
25 conclusion of the hearing, whatever exhibits that were not

1 filed of record, to get those filed on the docket. Because,
2 again, the Clerk's Office doesn't maintain exhibits the way we
3 used to in the ancient times back in 1998.

4 (Laughter.)

5 MS. WALKER: Ah. I'm feeling it myself.

6 BY MS. WALKER:

7 Q Mr. Hannon, --

8 THE COURT: Do you have an extra copy of that, by the
9 way?

10 MS. WALKER: I wish I did.

11 THE COURT: No? Okay.

12 MS. WALKER: But we will make sure --

13 THE COURT: I won't write on mine.

14 MS. WALKER: We will have -- we will have a couple
15 more tomorrow morning.

16 THE COURT: Okay. That's fine.

17 BY MS. WALKER:

18 Q Mr. Hannon, before Edgemere filed for bankruptcy, ICI made
19 a determination that the business plan for The Edgemere was
20 best as a rental community, correct?

21 A I don't think that's a complete characterization.

22 Q It's not fair to say, through this letter that your
23 counsel sent on ICI's behalf that said a go forward solution
24 would be to have it be a rental facility and no longer
25 accepting entrance fees, is that not accurate?

1 A That is accurate.

2 Q Okay.

3 A We no longer wanted to have the Ponzi scheme going on.

4 Q So, under the current asset purchase agreement, it's going
5 -- it would be a rental community because all of the residency
6 agreements are going to be terminated and there's a settlement
7 with the residents, right?

8 A That's what it says.

9 Q Understood. And you heard the testimony in court that
10 said it's going to be a rental community, correct?

11 A I heard that someone said they were going to make it a
12 rental community.

13 Q Okay. And you also have been up to date with the
14 pleadings that say that Bay 9 gave you assurances that it was
15 going to be a rental community, correct?

16 A No.

17 Q Okay. If it's a rental community, it would no longer be
18 taking entrance fees, correct?

19 A Could you restate that?

20 Q If Edgemere becomes a rental community, it will no longer
21 be accepting entrance fees. Correct?

22 A That's not correct.

23 Q You think that a rental community involves entrance fees
24 as well?

25 A It can.

1 Q And you've got that because of your own personal knowledge
2 of rental communities in senior living?

3 A No.

4 Q Okay. You're not knowledgeable about the regulatory
5 aspects of senior living communities, are you?

6 A I know more than I knew two years ago.

7 Q Understood. And does that include knowing that you cannot
8 accept an entrance fee and have it be a pure rental community?

9 A That's not true.

10 Q Okay. Part of the contingency planning that --

11 A The missing word is refundable.

12 Q Refundable?

13 A Does that help you?

14 Q No. Actually, I think it's a regulated term, so --

15 A Okay.

16 Q -- I apologize, with all deference to you, I think the
17 State of Texas has told us something else.

18 A Well, from our perspective, the word that's operative is
19 refundable.

20 Q Sure. So do you understand --

21 A Because that misleads those families.

22 Q I appreciate that. Let's stick with business rather than
23 law. And -- but I think you're exactly where I'd like to ask
24 you about. It's your understanding that when you were doing
25 business planning with Kong, that you decided that no longer

1 having refundable entrance fees was best for Edgemere,
2 correct?

3 A To have refundable deposits, we concluded, with the many
4 sources that we had, that it was not the best thing for
5 Edgemere and us.

6 Q And is it part because it's best for ICI because at the
7 end of the lease term ICI will get the property back, right?

8 A No.

9 Q At the end of the lease, what happens to the property?

10 A It depends what the condition is. But if it's in decent
11 condition, the lease would expire, we would take possession of
12 it.

13 Q And you would take possession of --

14 A Unless we otherwise did something, extended the lease.

15 Q Understood. No one is asking us -- any of us to predict
16 the future.

17 A Sure.

18 Q Just the current document. So, under the current
19 document, ICI is better off if there's no longer refundable
20 entrance fees due back to residents, correct?

21 MS. VANDESTEEG: Your Honor, I think that she may be
22 asking -- I object to the extent that she is asking the
23 witness to draw a legal conclusion on this.

24 MS. WALKER: It was a business --

25 THE COURT: I'm going to overrule the objection.

1 THE WITNESS: I don't think that I'd characterize it
2 as that -- the breadth of the decision.

3 THE COURT: Well, again, you can answer your question
4 and add whatever flavor you'd like.

5 THE WITNESS: Thank you. I don't like that flavor.

6 BY MS. WALKER:

7 Q Let --

8 A We don't think a nonrefundable deposit environment in the
9 state of Texas is a good idea.

10 Q And --

11 A For anybody.

12 Q Understood. So the proposal on the table to sell to Bay
13 9, the asset purchase agreement that we're talking about, does
14 not include a requirement for refundable entrance fees,
15 correct?

16 A Could you say that again?

17 Q Sure. The current asset purchase agreement that's being
18 approved or considered by the Court doesn't contemplate taking
19 refundable entrance fees from any resident, correct?

20 A Nor does it give a covenant not to.

21 Q Uh-huh. And have you ever given -- been -- have you been
22 given assurances directly from Mrs. Hatch that they were not
23 going to be having refundable entrance fees going forward,
24 right?

25 MS. VANDESTEEG: Objection to the extent that we're

1 talking about conversations that happened in a meeting that
2 was a settlement conference covered by FRE 408.

3 BY MS. WALKER:

4 Q I think this has been said several times by Mrs. Hatch,
5 and so perhaps maybe not in that one meeting, but are you
6 aware that Bay 9 has communicated to the Landlord that Bay 9
7 has no interest, expectation, and has affirmatively said it
8 will not be soliciting refundable entrance fees from any
9 resident?

10 MS. VANDESTEEG: Objection, again, to the extent that
11 it calls for communications that are covered by FRE 408. To
12 the extent that Mrs. Hatch made such a statement in other
13 contexts is irrelevant to where Mr. Hannon may or may not have
14 heard such potential statements.

15 THE COURT: Okay. I'm going to sustain the objection
16 to the extent that you heard it in the settlement meeting,
17 which they refer to as the Rule 408 meeting. You can testify
18 as to any knowledge that you have from Ms. Hatch other than
19 that meeting, or other 408 settlement meetings that I might
20 not know about, nor do I want to.

21 THE WITNESS: I think an old layman like me
22 understands what's going on. The representations have been
23 made that it's a rental, and yet I don't believe them.

24 BY MS. WALKER:

25 Q Okay.

1 A There is no guarantee.

2 Q So the only thing that would satisfy ICI is something in
3 writing to say it's only going to -- that Bay 9 will only hold
4 it as a rental community? Would that satisfy ICI?

5 A We do not want to see this become a -- continue to be
6 where they take the money from families on the hope that
7 they'll get money from the next family that goes in there.

8 Q And --

9 A That's what we want to see happen. And our experience
10 with this whole gang, you can't count on what they say.
11 You've got to have some teeth in it.

12 Q And yet you didn't know about Bay 9 before this case,
13 right?

14 A How could you? It's a Newco.

15 Q And you --

16 A A startup company.

17 Q And you didn't know the sponsor of Bay 9 before this case,
18 right?

19 A Correct.

20 Q Okay. And if you did get a letter that said that Bay 9
21 would not take refundable entrance fees during its ownership,
22 that would give you assurances, right?

23 A I'd have to see the context of the document and ask my
24 attorneys.

25 Q Understood. But generally, you would find greater

1 assurance if that concern that you've just identified for the
2 Texas families was alleviated, right?

3 A If there could be a way to prosecute the failure of that
4 promise that would be efficient, yes.

5 Q Mr. Hannon, in understanding the business plan for Bay 9,
6 ICI has also retained Getzler Henrich -- in particular, Mr.
7 Polsky, correct?

8 A Correct.

9 Q And ICI understood that Mr. Polsky, when you hired him,
10 held himself out as a specialist in health care financial
11 analysis. Correct?

12 A Correct.

13 Q And did you ask for references from Mr. Polsky about his
14 senior living communities experiences?

15 A I personally did not, but I know that our -- people at our
16 company did.

17 Q Were you aware at the time that you engaged Getzler
18 Henrich that Mr. Polsky had two prior experiences in senior
19 living?

20 A Could you say that again?

21 Q Uh-huh. When ICI engaged Mr. Polsky to advise it on The
22 Edgemere bankruptcy, were -- you were aware that Mr. Polsky
23 only had two other senior living community experiences in his
24 background, right?

25 A Only had two? Is that what you're saying?

1 Q Yes.

2 A I'm sure our people were. I don't know what the
3 qualifications were when they vetted him.

4 Q So you personally didn't review any references or
5 qualifications regarding Mr. Polsky?

6 A Remember, I don't know anything about senior living.

7 Q I understand. And that's why I'm asking you if you
8 engaged someone that did, that you think you engaged a
9 financial expert who had expertise in senior living.

10 MS. VANDESTEEG: Objection. Getzler Henrich was not
11 retained by ICI. Getzler Henrich was retained by LP.

12 MS. WALKER: Understood.

13 BY MS. WALKER:

14 Q Do you think that ICI -- that Getzler Henrich was
15 providing services that assisted ICI in understanding the
16 business model from someone who had significant senior living
17 experience? Is that your understanding?

18 A I understood that they were competent to perform the
19 services that we hired them for.

20 Q And those services --

21 A That Levenfeld Pearlstein hired them for.

22 Q Understood. And you understood that Getzler Henrich has
23 significant -- Mr. Polsky has significant experience in senior
24 living communities?

25 A I didn't ask Mr. Polsky if he'd had more than two

1 experiences in senior living.

2 Q And did you review the analysis that Mr. Polsky put
3 together relating to his view as to the -- as to Bay 9's
4 business plan?

5 A Yes. Casually.

6 Q And did you understand it to be a mathematical equation or
7 a business analysis based on senior living industry?

8 A Hmm. I would think both would be involved.

9 Q So you thought it also included his expertise on senior
10 living communities?

11 A His or people that he would -- other sources he would tap.

12 Q Understood.

13 MS. WALKER: Your Honor, just one moment to check my
14 notes.

15 THE COURT: Please.

16 (Pause.)

17 MS. WALKER: I'm advised I didn't forget any numbers.
18 Your Honor, I am done with questioning. I actually do
19 understand that maybe others have some questions of Mr.
20 Hannon.

21 THE COURT: Okay. Thank you. Ms. Walsh?

22 Mr. Hannon, I know it's been getting warm in here. Do you
23 need a moment before further cross-examination? Would you
24 like to --

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

1 THE COURT: Oh, you're fine? Okay.

2 MR. GOLD: Your Honor, do you mind a five-minute
3 break?

4 THE COURT: No, I don't. I don't mind at all.

5 MR. GOLD: Or recess?

6 THE COURT: Yes.

7 MR. GOLD: Can we have a five-minute recess?

8 THE COURT: I think the hallway is probably a little
9 cooler. Everybody can go out there and fan.

10 MR. GOLD: Okay.

11 THE COURT: So we'll be in recess until 2:15.

12 MR. GOLD: Thank you again, Your Honor.

13 THE CLERK: All rise.

14 (A recess ensued from 2:07 p.m. to 2:25 p.m.)

15 THE CLERK: All rise.

16 THE COURT: Please. Be seated. We'll go back on the
17 record in Case No. 22-30659.

18 And, again, I apologize for the heat. You can feel free
19 to take your jackets off, get comfortable. I've got lots of
20 hair clips. I've got these big giant ones. Wouldn't be the
21 first time. So, again, I am so sorry. I'm happy to provide
22 waters, if you don't have any. So, can't apologize enough for
23 that.

24 So, when we last broke, we had Mr. Hannon was on the
25 stand. So, sir, at your convenience, you can take the stand.

Hannon - Cross

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1 And if you'd be more comfortable, sir, feel free to remove
2 your jacket as well. If you're more comfortable.

3 THE WITNESS: Thank you.

4 THE COURT: And then I believe, Ms. Walsh, you were
5 going to begin cross-examination?

6 MS. WALSH: And thank you, Your Honor, for the heat-
7 related accommodations. I greatly appreciate it.

8 THE COURT: Oh, of course. I had a flashback of when
9 I was pregnant in Judge Lynn's courtroom and he was getting
10 increasingly nervous.

11 (Laughter.)

12 MS. VANDESTEEL: That's a liability.

13 THE COURT: Yes. Exactly. That, too, was ancient.
14 But please.

15 CROSS-EXAMINATION

16 BY MS. WALSH:

17 Q Good afternoon, Mr. Hannon.

18 A Good afternoon.

19 Q Mr. Hannon, you've testified in the past that it is the
20 Landlord's worst nightmare for the property to return to it.
21 Correct?

22 A This property, yes.

23 Q And in fact, today you said that getting the property is
24 not ever what the Landlord would want, right?

25 A Not this Landlord. Doesn't want this property back.

1 Q That you. That ICI.

2 A Yes.

3 Q Thank you. And Kong has been assisting ICI in contingency
4 planning in the event that the property does come back to ICI.
5 Correct?

6 A Yes.

7 Q And that contingency planning continues to this day,
8 right?

9 A Yes.

10 Q If the Court determines that Bay 9 is unable to
11 demonstrate adequate assurance of future performance under the
12 ground lease, the sale will not happen, right?

13 A I don't know all the rules.

14 Q Do you understand that if this Court does not approve Bay
15 9 as the purchaser of the property, that the sale won't happen
16 as contemplated by the plan?

17 MS. VANDESTEEG: Objection to the extent that it
18 calls for a legal conclusion.

19 MS. WALSH: Your Honor, Mr. Hannon has submitted a
20 declaration in support of ICI's objection to the plan, so I
21 think it's perfectly reasonable to ask him questions about the
22 understandings of the ramifications of that objection and the
23 basis for that objection.

24 THE COURT: The Court will overrule the objection to
25 the extent that you're asking for lay testimony essentially of

1 the witness.

2 MS. WALSH: Thank you, Your Honor.

3 BY MS. WALSH:

4 Q Do you remember my question?

5 A I don't.

6 Q Okay.

7 A Sorry.

8 Q I'm not sure I do, either.

9 A This might be naptime.

10 THE COURT: I think it was about whether the sale
11 would go forward if the adequate assurance objections were --

12 MS. WALSH: Thank you, Your Honor. Thank you.

13 THE COURT: You're welcome.

14 BY MS. WALSH:

15 Q Mr. Hannon, do you understand that if the Court does not
16 approve Bay 9 as the purchaser of the property, that the sale
17 will not go forward?

18 A That's my understanding.

19 Q And do you understand that, if that happens, that the plan
20 will not be approved?

21 A That is my understanding.

22 Q And if the plan is not confirmed and the sale doesn't
23 happen, your worst nightmare would come true, right?

24 A I don't know.

25 Q Do you know that -- withdrawn. You know that if the plan

1 is approved, that the residents' refunds will be paid,
2 correct?

3 A Could you restate that? I'd like to hear that one.

4 Q Of course. If the Plan Sponsors' plan is approved, the
5 residents' refund claims will be repaid, right?

6 A I don't believe that.

7 Q And why don't you believe that?

8 A Because I don't believe that there will be money there
9 that will get distributed to these families.

10 Q If the Landlord took over the facility -- or, withdrawn.
11 If the plan is not confirmed and the property goes back to the
12 Landlord, would the Landlord pay the residents \$144 million --

13 MS. VANDESTEEG: Objection.

14 MS. WALSH: -- for their refund claims?

15 MS. VANDESTEEG: Objection as to relevance, Your
16 Honor.

17 THE COURT: I'm going to overrule the objection.

18 THE WITNESS: I wouldn't expect that that would
19 happen, either. The Landlord didn't make those promises.
20 That would be unrealistic.

21 BY MS. WALSH:

22 Q You have made your feelings about Bay 9 very clear here
23 today. In truth, you will -- the Landlord will never be
24 satisfied with Bay 9 as a tenant because you just don't trust
25 them. Right?

Hannon - Redirect

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1 A It's one of the reasons.

2 MS. WALSH: May I just have one moment, Your Honor?

3 THE COURT: Please.

4 (Pause.)

5 MS. WALSH: That's all the questions I have today,

6 Mr. Hannon. Thank you very much.

7 THE WITNESS: Thank you.

8 THE COURT: Thank you, Ms. Walsh.

9 Is there anyone else who wishes to further cross-examine?

10 Ms. Vandesteeg, redirect?

11 MS. VANDESTEEG: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. VANDESTEEG:

14 Q Hello again, Mr. Hannon.

15 A Hello.

16 Q When Ms. Walker was questioning you, she had some
17 questions about dollars and years. Now, \$3 million in 1999 is
18 not the same as \$3 million in 2023, correct?

19 A Correct.

20 Q Do you recall what the rent was in 1999?

21 A It was a step up that quickly got to \$2 million.

22 Q Do you recall what the rent is now?

23 A I do.

24 Q What is that?

25 A Just a little over \$4 million, based on a not-to-exceed

1 Consumer Price Index of five percent. Each year.

2 Q What was the increase in the last step up, the last year
3 step up?

4 A Last year?

5 Q Uh-huh.

6 A I'm not certain, but it was -- I would guess it's five
7 percent, because the Consumer Price Index moved up more than
8 five percent.

9 Q When the original bonds were issued, did that result in
10 the Debtor having additional cash on hand?

11 A Yes. It was one of the sources.

12 Q What were the other sources?

13 A They had pre-leased 60 percent of the units. They called
14 it preselling. But --

15 MS. WALKER: Objection, Your Honor. I don't think
16 that the foundation for this witness's knowledge of the
17 presales from 1999 --

18 THE COURT: Ms. Vandesteeg?

19 BY MS. VANDESTEEG:

20 Q Mr. Hannon, what would be the basis for the answer that
21 you just gave to us?

22 A Looking at the documents in the lease and lease option in
23 our file.

24 Q No other personal knowledge?

25 A No other personal knowledge.

1 Q Okay. Thank you.

2 THE COURT: Okay. I'll overrule the objection to
3 that extent.

4 MS. VANDESTEEG: Thank you.

5 BY MS. VANDESTEEG:

6 Q We heard also about additional bond issuances with respect
7 to expansions. I think it was 2015 and 2017. Is that
8 correct?

9 A That seems about right.

10 Q Are those public bond offerings?

11 A Yes, they are. They're public bond offerings, where all
12 that underwriting and so forth can be observed by anybody.

13 Q You testified that at the time those bonds, the new bond
14 issuances were done in 2015 and 2017, that ICI did not seek
15 any additional credit enhancements at that time. Correct?

16 A Correct.

17 Q Does the lease allow for ICI to negotiate new terms in
18 connection with that type of a bond financing, refinancing?

19 A No, it does not.

20 Q Now, in 2019, when Lifespace stepped in, or SQLC, I think
21 you were asked again, did ICI seek any additional credit
22 enhancements from Lifespace?

23 A Yeah. And we did not.

24 Q Does the assignment provision in the lease allow for ICI
25 to negotiate new terms in connection with an assignment?

1 A No, it does not.

2 Q Mr. Hannon, to your knowledge, does the Kong team have
3 expertise in management and operations of CCRCs and senior
4 living facilities?

5 A Yes.

6 Q Is there someone in particular?

7 A Well, they have expertise across several areas that we
8 needed. One of them was one of the members had been a CEO and
9 CFO of a hospital system, had developed and built and operated
10 health care, senior living.

11 Another one of the key team members had come ground up in
12 being a field manager onsite of a senior living center for
13 years, and then had also operated in a company as a regional
14 director of multiple units.

15 Another member understood the complex area of these tax-
16 free municipal bonds.

17 So those are just some of the areas where they lent great
18 experience to us and great advice to us.

19 Q Mr. Hannon, you talked with Ms. Walker about a potential
20 written promise from Bay 9 that it would run -- that it may
21 potentially run only a rental model. Would such a promise
22 from Bay 9 be adequate assurance that the property would be a
23 rental through the duration of the lease?

24 A Not at all.

25 Q Why not?

1 A Well, there's two pieces of that. You know, what we've
2 learned about Lapis, which is -- owns Grenelle, which owns
3 this newly -- Newco called Bay 9 -- or is it Bay 29? I don't
4 recall.

5 THE COURT: It's Bay 9. The Bay 29 is a reference to
6 a specific Bates number of a specific exhibit.

7 THE WITNESS: That's how I got confused.

8 THE COURT: I believe it's Exhibit 10. But Bay 29 is
9 --

10 MS. VANDESTEEG: It is --

11 THE COURT: It was Mr. Gold's inside joke.

12 THE WITNESS: Oh, sorry.

13 MS. VANDESTEEG: Yeah. Bay 9 is the entity.

14 THE WITNESS: A corner of my memory bank held onto
15 it.

16 THE COURT: You see? It's repetition.

17 THE WITNESS: Yes. Please ask the question. I got
18 lost in there.

19 BY MS. VANDESTEEG:

20 Q Why wouldn't such a promise by Bay 9 give adequate
21 assurance that that would remain the case for the duration of
22 the lease?

23 A Well, our experience with Bay 9 is that they've only owned
24 -- operated one piece of property, which they flipped after
25 three years of owning. The chances of them being around down

1 the road are minimal.

2 Two, I don't see that as an entity that has the resources
3 to back up any promise.

4 Third, I don't think a letter is a -- we'd need something
5 that would allow us to prosecute a failure to meet that
6 promise that would have a lot, lot more teeth in it. Some
7 lawyer can figure that out.

8 Q Mr. Hannon, even if you had such a commitment with respect
9 to the potential business model go forward, to ICI's view
10 would that constitute sufficient adequate assurance of future
11 performance of the lease obligations from Bay 9, or would
12 something in addition be required?

13 A No, it would not. It would be a piece that would be
14 appropriate, but we would look for all the other things we
15 spoke about earlier before we conveyed, for 31 years, a
16 hundreds-of-million-dollar asset.

17 Q Let's go back again to the bond refinancing in 2015 and in
18 2017 and the assignment to Lifespace in 2019. At any of those
19 periods of time, was The Edgemere in default under its lease
20 obligations?

21 A It was -- to our knowledge, it wasn't. They were -- the
22 rent was on time, wired in every month.

23 Q So, by 2019, that had been 20 years of performance of
24 lease obligations? To your knowledge?

25 A To our knowledge, yeah.

1 Q And there was a default, a payment default subsequently.

2 Correct?

3 A Correct.

4 Q And after that default, was it your understanding that,

5 without some cure and correction, that the lease could

6 terminate?

7 A Yes.

8 Q So, under those circumstances, is it your view that the

9 Landlord was prudent in beginning contingency planning for the

10 possibility that the property -- the possession of the

11 property might return to the Landlord?

12 A Absolutely.

13 Q And didn't ICI view that contingency planning as a way to

14 minimize potential impact on the residents in the face of the

15 tenant's distress?

16 A Absolutely. I've already testified that the family has

17 many friends over the years that live in that facility, and

18 the last thing we wanted is to have a situation where

19 ambulances were pulling up at the door with gurneys, trying to

20 relocate people to another location.

21 Q Thank you, Mr. Hannon. Those are all the questions that I

22 have for you.

23 A You're welcome.

24 THE COURT: Thank you very much, Ms. Vandesteeg.

25 Is there any recross?

Hannon - Recross

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1 MS. WALKER: Briefly.

2 RE CROSS-EXAMINATION

3 BY MS. WALKER:

4 Q Mr. Hannon, when the funds were placed originally, to your
5 knowledge, they were used to build a community. Right? The
6 bond funds?

7 A I don't understand the question. At which time?

8 Q Uh-huh.

9 A In 2015 or --

10 Q In 2019. Sorry. 1999.

11 A Okay. The question is--?

12 Q The \$118 million bond financing that you referenced, those
13 funds were used to build the project, correct?

14 A Yes. The first phase. But not all of them.

15 Q Understood. But it wasn't like there was \$118 million of
16 cash that could protect the Landlord, right?

17 A The Landlord received the benefit of brand new buildings
18 being built on its property and a well-capitalized company
19 with a track record.

20 Q And it was well-capitalized because you --

21 A By a proven operator.

22 Q And -- but the prerequisites were only, to your knowledge,
23 based on your review of the books and records, \$3 million of
24 cash. Right?

25 A That's -- the \$3 million, that was incidental.

1 Q Uh-huh. But yet it's actually one of the four things you
2 identified in your declaration that were key prerequisites to
3 going forward with the lease. Those are the assurances that
4 you said you relied upon, ICI relied up to its lease.

5 Correct?

6 A I don't think the declaration said those were the only
7 things.

8 Q Well, I think we can dispute what you said --

9 A Okay.

10 Q -- in your declaration.

11 A That's fine.

12 Q Kong's expertise. You -- I think you testified that you
13 didn't actually do any diligence on Kong before you hired
14 them. Correct? You left that to others?

15 A I don't know that I said exactly that. But we looked at
16 them, myself or others, and had confidence after reviewing
17 them.

18 Q And then through Kong --

19 A We were given references --

20 Q I apologize. Please.

21 A -- which we, myself or others, called.

22 Q Uh-huh. And since you've engaged Kong for the past two
23 years, you've been planning to take back The Edgemere,
24 correct?

25 A No.

1 Q You're still contingency planning for The Edgemere,
2 correct?

3 A Yes.

4 Q And there's nothing -- there's no assurance that Bay 9
5 could give you to stop you from objecting to Bay 9, correct?

6 A No.

7 Q You think there could be some assurances?

8 A Yes.

9 Q Okay. Yet you're still contingency planning with Kong,
10 correct?

11 A Yes.

12 Q You had just said with the prior questioning that you had
13 no opportunity to ask Lifespace for additional assurances. Is
14 that right?

15 A Can you give me a context of when?

16 Q Uh-huh. Well, the when was just a few minutes ago, Ms.
17 Vandesteeg was asking you some questions about your
18 understanding of when Lifespace came on. And I think your
19 answer was that you didn't have an ability to require
20 additional security deposits.

21 A The lease didn't provide for any. So you're talking about
22 when Lifespace --

23 Q Correct. When Lifespace --

24 A -- became sponsor?

25 Q In 2019. Yes.

1 A Thank you.

2 Q And you -- and it's your opinion that you had no ability
3 to ask for any other assurances?

4 A The lease didn't provide for any.

5 Q But the lease did give you consent rights. You could have
6 declined to consent to Lifespace's entity, correct?

7 A That'd be a question for our lawyers.

8 Q Sure. But you're familiar with the lease, correct?

9 A I am familiar with the lease.

10 Q And the lease has an anti-assignment clause, which would
11 be typical in most of your leases?

12 A It would be a question for our lawyers.

13 Q Okay. And you're not -- you're not yourself aware whether
14 or not there's an anti-assignment clause in the lease?

15 A When you say anti-assignment, meaning you cannot assign
16 the lease?

17 Q Without your consent. Yes.

18 A And that's called an anti-assignment lease?

19 Q Well, a provision. I don't think it's the lease.

20 A Okay.

21 Q But a clause.

22 A We're aware that our leases have an approval of
23 assignment.

24 Q Uh-huh. And you gave your assignment to Lifespace, your
25 consent to the assignment to Lifespace, right?

1 A Yes.

2 Q Or perhaps maybe you didn't even know it happened because
3 you weren't asked?

4 A No, I believe we did. I don't recall it firsthand, but
5 I've looked at the paperwork subsequently and seen that
6 publicly available information was available on Lifespace and
7 their health and the scope of the properties they managed and
8 handled at the time. I don't recall actually doing it, but it
9 would be typical for us to do that.

10 Q Thank you.

11 MS. WALKER: No further questions.

12 THE COURT: Okay. Thank you, Ms. Walker.

13 Ms. Walsh, any further questions?

14 MS. WALSH: No, thank you, Your Honor.

15 THE COURT: Okay. Ms. Vandesteeg, anything further?

16 MS. VANDESTEEG: No, thank you, Your Honor.

17 THE COURT: Okay. Mr. Hannon, just a couple of
18 questions from the Court.

19 EXAMINATION BY THE COURT

20 THE COURT: I think I soundly understand ICI's
21 positions with respect to an assumption and assignment of the
22 lease to Bay 9 from ICI's perspective. In terms of the
23 operator, with the proposed operator being Long Hill, do you
24 have any objections to Long Hill?

25 THE WITNESS: What we've looked at at Long Hill, as

Hannon - Examination by the Court

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1 we stand here right now, they seem like they might be an okay
2 operator.

3 THE COURT: Okay.

4 THE WITNESS: Yeah. I don't -- if they end up being
5 hired.

6 THE COURT: Uh-huh.

7 THE WITNESS: And if they end up -- this Newco ends
8 up being the owner. They've clearly got some experience.

9 THE COURT: Okay. And recognizing that ICI and Kong
10 have certainly done a certain amount of contingency planning,
11 based upon Exhibit 19, is that your testimony that if the
12 property were to revert to ICI in any way, that you as the
13 Landlord would require a rental model on the property rather
14 than an entrance fee model?

15 THE WITNESS: So I understand the question, Your
16 Honor, so if we ended up in possession and the leasehold was
17 gone, --

18 THE COURT: Uh-huh.

19 THE WITNESS: -- we would not allow, in any capacity,
20 as long as we had some say-so, to have that refundable deposit
21 model applied again.

22 THE COURT: Okay. And as part of the contingency
23 planning, and from what I understand, the contingency planning
24 has been going on since on or about December 2021. Is that
25 correct?

Hannon - Examination by the Court

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1 THE WITNESS: Yes.

2 THE COURT: And would Kong be the new lessee or would
3 Kong be the operator? What was your anticipation there? And
4 recognizing that nothing is set in stone.

5 THE WITNESS: Certainly. We would hope that it
6 doesn't come to this. But if it should, we believe that the
7 Kong team is capable of operating it and aligning with our
8 goals of not having a refundable deposit.

9 So, is that likely to happen? Perhaps, because we trust
10 them and we know that they have the same long view that we
11 have. So, yes, they could be the operator under some other
12 operational name.

13 THE COURT: So, making it apples-to-apples, in
14 contingency planning, is Kong Bay 9, the tenant, or is Kong
15 Long Hill, the operator?

16 THE WITNESS: Oh, that's an interesting question.
17 May I think about this just a second?

18 THE COURT: Yes, you may.

19 (Pause.)

20 THE WITNESS: If it worked out that way -- that's not
21 been set out -- I think they would be Long Hill.

22 THE COURT: They would be Long Hill?

23 Okay. I don't think I have any further questions. Does
24 anyone have questions based on the Court's questions?

25 MS. WALKER: I just have one question, Your Honor.

1 THE COURT: Okay. And Ms. Vandesteeg will have the
2 last word to the extent that any other issues are raised. So
3 --

4 MS. WALKER: And may I just --

5 THE COURT: Yes.

6 FURTHER RECROSS-EXAMINATION

7 BY MS. WALKER:

8 Q To your knowledge, has Kong ever operated a senior care
9 facility that offered a continuum of health care to an aging
10 population?

11 A Members of their team have.

12 Q But Kong has not?

13 A As an entity, as organized presently, I'm not aware that
14 they have. They may. I'm just not sure of it.

15 Q I apologize. I have one more. Did you ever ask them if
16 they've operated a senior care facility that offered a
17 continuum of health?

18 A I have, but I just don't know if they've done it under the
19 name of Kong.

20 Q Understood.

21 MS. WALKER: No further questions.

22 THE COURT: Thank you, Ms. Walker.

23 Any final questions, Ms. Vandesteeg? You'll have the
24 final word. So be really, really short. Take your time.

25 (Pause.)

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1 MS. VANDESTEEG: No further questions, Your Honor.

2 THE COURT: Okay. Thank you very much, Ms.

3 Vandesteeg.

4 MS. VANDESTEEG: And thank you, Mr. Hannon.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you for your testimony, Mr. Hannon.

7 You may be excused.

8 THE WITNESS: Thank you.

9 THE COURT: Appreciate it.

10 (The witness steps down.)

11 THE COURT: Does it feel like it's getting a little
12 bit better?

13 A VOICE: Yes.

14 THE COURT: Okay. That's good. That's good. All
15 righty.

16 And again, Mr. Hannon, I thank you for your testimony.

17 Ms. Vandesteeg, Mr. Gold, whenever you're ready, call your
18 next witness.

19 MS. VANDESTEEG: Thank you, Your Honor. ICI calls
20 Michael Hull.

21 THE COURT: All right, Mr. Hull. If you could raise
22 your right hand for me.

23 (The witness is sworn.)

24 THE COURT: Thank you very much.

25 THE WITNESS: Thank you, Your Honor.

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1 THE COURT: You're welcome. Some things are so fun
2 you have to do them twice.

3 MICHAEL HULL, INTERCITY INVESTMENT PROPERTIES' WITNESS, SWORN

4 DIRECT EXAMINATION

5 BY MS. VANDESTEEG:

6 Q Thank you, Mr. Hull. I think that everyone in the court,
7 including the judge, is aware of who you are, but perhaps we
8 can do a quick CliffsNotes version. Mr. Hull, who are you
9 employed by?

10 A I am employed with Terracon Consultants, Incorporated.

11 Q How long have you been employed by them?

12 A About seven years this May.

13 Q And you're a professional engineer, a licensed
14 professional engineer, correct?

15 A I am.

16 Q What's a PCA?

17 A A PCA is a Property Condition Assessment.

18 Q Have you done a PCA before in your career?

19 A I have done a few.

20 Q How many?

21 A 260. Plus. Probably more at this point.

22 Q Now, you prepared a PCA with respect to the property at
23 issue here, the Edgemere, correct?

24 A I did.

25 Q When was your site visit?

1 A Our site visit, the team visited July of 2021. Sorry,
2 '22.

3 THE COURT: I'll spot you 2022. For efficiency.

4 BY MS. VANDESTEEL:

5 Q Were you alone on that site visit?

6 A I was not alone.

7 Q Who was with you?

8 A I had a team of six individuals, including myself, and
9 then I conducted an interview with onsite personnel.

10 Q Were any of your team members also professional engineers?

11 A They were.

12 Q And after your site visit, you did create a report,
13 correct?

14 A We did.

15 Q What kind of report was it?

16 A A property condition report.

17 Q When you create a property condition report, do you
18 incorporate budgetary concerns of your client?

19 A Typically not.

20 Q Do you incorporate clients' potential intended use for the
21 property?

22 A No. The PCA takes a snapshot of use, and it's -- we don't
23 forecast future use or a change thereof.

24 Q So what is it that you are assessing with your property
25 condition reports?

1 A We are assessing the physical condition of the building
2 and its components at that time of the reconnaissance.

3 Q With respect to our hearing here today, have you reviewed
4 the report prepared by ARCH Consultants?

5 A I have.

6 Q And did you also listen to Mr. Winnecke's testimony here
7 in court and at his deposition?

8 A I did.

9 Q Are there some differences between your report and the
10 ARCH report?

11 A Yes.

12 Q What are some of those differences?

13 A A big one is, first of all, the ARCH report is not in
14 accordance with ASTM, though Mr. Winnecke admitted to that.
15 That document, the ARCH report, is not signed. It doesn't
16 clearly indicate who was in the field at the time of
17 reconnaissance, which is a normal content of any report that
18 we provide. The cost tables were a bit difficult to
19 interpret. It seemed to have had a lot of references to
20 future intended change in use, and that kind of -- it shaped
21 how the report was laid out.

22 Q Anything else that you saw in terms of differences?

23 A I'd have to look back at the report.

24 Q Okay. Let's first address the two that you identified.
25 You said that it is not ASTM-compliant. Why is that relevant

1 to you as a difference between the Terracon report and the
2 ARCH report?

3 A The Terracon report, the objective of it, is to give a
4 snapshot of the physical condition of the property to any
5 reader so that they can incorporate those -- our findings into
6 whatever budgetary constraints that that particular reader
7 has. In this instance, our user is ICI, and any other reader
8 would have a different priority.

9 Q Did you hear -- as part of Mr. Winnecke's testimony
10 yesterday, he referenced factoring in the repositioning or
11 factoring in the disruptive nature of certain of the capital
12 projects that he identified. Are those factors that you
13 considered in preparing your property condition assessment?

14 A Not -- no. No. Disruption is somewhat irrelevant to the
15 condition of the property.

16 Q Was there a difference between the two reports in terms of
17 their -- the timeframe for which they were looking forward?

18 A Yes. I believe the ARCH report forecasted five years and
19 the Terracon report forecasts ten.

20 Q What, in your opinion, is the significance, if any, of the
21 difference between a five-year look-forward period and a ten-
22 year look-forward period?

23 A Ten-year gives more outlook, more data, more awareness to
24 possible deterioration of building conditions. It's a better
25 resource for planning. But that -- sometimes it can be much

1 longer. So, --

2 Q Did you also notice that there was a difference in the
3 escalation factors in the Terracon report versus the ARCH
4 report?

5 A Yes. I believe they phrased it as an escalation rate, and
6 I believe it was 2.1 percent. Terracon used a five percent
7 inflation rate, and over 10 years that's about 1.68, a factor,
8 if you had to multiply one item spent now -- money now versus
9 money in 10 years, it's about a 68 percent increase. So it's
10 significant. But they used a different escalation rate.

11 Q Do you think that ARCH's use of the 2.1 percent escalation
12 rate was realistic?

13 A No.

14 Q Why not?

15 A In light of recent events in years and what we've all
16 experienced from a materials cost perspective, I would say
17 it's safer for anyone reading that document to take a more
18 conservative approach with material and labor cost. So that's
19 what we did.

20 Q Mr. Hull, setting aside differences, did you see
21 similarities between the Terracon property condition report
22 and ARCH's report?

23 A Yes.

24 Q What similarities did you see?

25 A Mr. Winnecke reportedly, and testified to this, that he

1 visited the site. He conducted a reconnaissance. He
2 conducted an interview, collected information, provided a
3 report, photo log, and a -- and budgetary opinions and cost
4 table based on those observations and based on that interview.
5 So those are similarities.

6 Q In connection with his budgetary analysis, were certain of
7 the capital projects that he factored in some of the same
8 conditions that you noted in your report?

9 A Yes.

10 Q Were there any of those that jumped out at you as --
11 (Echoing.)

12 THE COURT: Ms. Jeng, if you could please mute the
13 lines.

14 BY MS. VANDESTEEG:

15 Q -- as significant similarities of findings?

16 A Yes. They also documented the envelope issues that we had
17 observed and some -- and the roofing. Envelope is technically
18 walls and roof. So when I say it, it's generally both.

19 Q So, --

20 A So, --

21 Q -- both your report and the ARCH report identified either
22 a property condition or capital planning necessary to address
23 the building envelope and the roof?

24 A That is correct.

25 THE COURT: And just so I have clarity, when you say

1 walls and roof, Mr. Hull, you're talking about the exterior
2 walls in terms of the building envelope?

3 THE WITNESS: Yes.

4 THE COURT: Thank you.

5 THE WITNESS: Yes, Your Honor.

6 BY MS. VANDESTEEG:

7 Q Any other of those substantial either property conditions
8 identified in the Terracon report or capital projects
9 identified in the ARCH report where you saw substantial
10 overlap?

11 A The ARCH report also identified and the Terracon report
12 was in agreeance with HVAC replacement.

13 Q We spoke with Mr. Winnecke briefly about the split system,
14 the R22 system. Is that what you're referencing?

15 A Yes. Well, that's one of them.

16 Q What's the other?

17 A We had other -- the Terracon report included cooling
18 towers and a various number of other mechanical components.

19 Q But you guys agreed on that split system?

20 A That is correct.

21 Q How would you describe the relation between the Terracon
22 report and the ARCH report?

23 A As the ARCH report is not in accordance with ASTM, they
24 are not brother and sister, they are more cousins as far as a
25 technical document, but that's -- yeah.

1 Q Mr. Hull, I am going to have you find the binder over
2 there that is marked --

3 MS. VANDESTEEG: Your Honor, may I approach the
4 witness?

5 THE COURT: Yes.

6 BY MS. VANDESTEEG:

7 Q We are looking what is ICI's Exhibits Volume 1 of 2, and
8 specifically I would ask that you turn to Exhibit 5-F.

9 A I'm here.

10 Q Do you recognize this document?

11 A I do.

12 Q What is this document?

13 A This document is the Terracon property condition report
14 dated January 6th.

15 Q Are you the author of this report?

16 A I am one of the authors.

17 Q Who are the other authors?

18 A As the project manager, I provided the main authorship of
19 this report and then it's reviewed by an authorized project
20 reviewer. APR. Another acronym. I apologize. But Mr. Jesse
21 Aguilar.

22 Q Mr. Hull, I'm going to have you turn a few pages into this
23 document to your Chart 1.1, Immediate Repairs Cost Table.

24 MS. VANDESTEEG: And as the Court may recall, we have
25 already admitted through stipulation this cost table -- sorry,

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1 Table 1.1 Immediate Repairs Cost Table -- as well as the next
2 page, 1.2 Replacement Reserve Cost Table.

3 THE COURT: Right. I've got Pages 3 and 4 with no
4 page numbers being admitted. Got it.

5 MS. VANDESTEEG: Thank you.

6 BY MS. VANDESTEEG:

7 Q Mr. Hull, what is this table?

8 A This table is the Immediate Repairs Cost Table 1.1.

9 Q How did you determine what or which conditions should be
10 listed on this table?

11 A This list of conditions, during our reconnaissance, we
12 observed that they represented either a failed state or a
13 threat to life safety conditions. So trip hazards, non-
14 functional equipment, items like that.

15 Q Now, the cost estimation at the bottom of this page, what
16 is that a summation of?

17 A At the very -- I'm sorry, could you describe which?

18 Q At the very bottom where it says, Total Immediate Repairs.

19 A Yes, I apologize for the font size. This usually prints
20 on a tabloid, 11 by 17.

21 THE COURT: Can we pull it up, perhaps, for him?

22 THE WITNESS: I've got it.

23 MS. VANDESTEEG: Yes, we can.

24 THE COURT: Okay.

25 THE WITNESS: That is the summed -- the sum of the

1 listed conditions in this table.

2 BY MS. VANDESTEEG:

3 Q The --

4 A But please be aware there are investigations built into
5 each -- some of these.

6 Q Understood.

7 A Okay.

8 Q Now, you understand that the judge has already provided a
9 ruling on existing non-monetary defaults under the lease,
10 correct?

11 A I do understand.

12 Q And you understand that not all of the items listed on
13 your Table 1.1 were encompassed within the judge's prior
14 ruling, correct?

15 A I do understand.

16 Q For those items that were not included within the judge's
17 ruling on those non-monetary defaults, does it change your
18 opinion as to whether these are items that should still have
19 prompt attention from a tenant?

20 A No, it does not change my point of view.

21 Q Let's go to the next table, on Page 4, please. Oh, one
22 follow-up question. Why hasn't your opinion changed on that?

23 A First, we haven't gone back to the site since July, so it
24 is my assumption that the condition has not changed since our
25 reconnaissance. And given that, I have no evidence to tell me

1 otherwise that any of this has changed.

2 Q Now let's turn to the next page, please.

3 A I think I'm here.

4 Q Thank you. What is this table?

5 A This is Table 1.2. This is the Replacement Reserve Cost
6 Table.

7 Q How did you determine what or which conditions to list on
8 this table?

9 A Conditions listed on this table are -- were identified by
10 the team as those items that don't fall under life safety
11 issues or aren't classified as a failure state. So they may
12 be fair and poor, and possibly some good items towards the
13 end. But it's just some of these are more capital
14 expenditures that are assigned and allotted across the term.

15 Q In setting forth these conditions on the reserve table,
16 did Terracon take into account any client-driven use or
17 repurposing of the property?

18 A No.

19 Q Did Terracon take into account any potential capital
20 budget of the client?

21 A No.

22 Q Again, Terracon was simply identifying specific conditions
23 at the property that you believed would need attention over
24 this period of time?

25 A True. And what is found, unfortunately, is sometimes

1 independent of what is affordable. So it is up to the end-
2 user to decide some of those priorities. So Terracon doesn't
3 influence those priorities.

4 Q How did you arrive at your estimated cost for each of
5 these conditions listed on Table 1.2?

6 A The -- so, each condition is represented by a quantity, a
7 unit of measure, a unit cost, and then it's summed -- it's
8 multiplied to reach a total of that individual condition.

9 The quantity is an estimated quantity takeoff based on
10 observations of that condition.

11 The unit cost is collected from industry data, our
12 experience, databases such as RSMeans, which is just a vast
13 database of material costs and labor costs that we use.

14 And then those are totaled and then allocated in
15 accordance with the useful life or -- or another --

16 Q And I see down at the -- toward the bottom, there is also
17 a line for escalation factor, correct?

18 A Yes. Yes.

19 Q And I think that you testified -- I don't see it
20 necessarily on this page, or maybe I'm missing it -- but I
21 think you testified that that is at five percent under your
22 estimate? Oh, it is there. I just couldn't see it on my very
23 small page. So, five percent, correct?

24 A Yes, that is correct.

25 Q Thank you. Did the ARCH Consultants report provide that

1 unit times cost breakdown of their estimated pricing for the
2 capital projects contained within their report?

3 A Not where I saw. It's possible they had it on an internal
4 file that was used to create their document, but it's not in
5 the final ARCH report.

6 Q Now, Mr. Hull, the conditions listed on this Table R2 that
7 were not included, again, in the prior ruling on non-monetary
8 defaults, and I think -- I think that's all of them, has your
9 opinion changed with respect to the existence of the condition
10 and your opinion as to when the condition will need to be
11 addressed?

12 A It has not.

13 Q Why not?

14 A Like I said before, we have not conducted any follow-up
15 reconnaissance. Therefore, we don't have any additional
16 evidence to make us believe it has changed.

17 Q So it is still your opinion here today that the -- both
18 the cost estimate and the timing for when the work will need
19 to be done to address the condition are still accurate and, in
20 your opinion, correct?

21 A That is correct.

22 Q Nothing further. Thank you, Mr. Hull.

23 THE COURT: Thank you, Ms. Vandesteeg. Mr. Davis?

24 MR. DAVIS: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. DAVIS:

2 Q Good afternoon, Mr. Hull.

3 A Good afternoon.

4 Q As to the last line of questioning there, your current
5 opinion is based on your assumption regarding the conditions
6 not changing in any way between your site visit in July and
7 now, correct?

8 A Yes, but we were there in July, and so we did not go back.
9 Therefore, I'd have no other evidence or photographs to
10 dictate that that condition has changed.

11 Q Right. But I just wanted to clarify your current -- you
12 stating that these numbers are the same today is an assumption
13 referring back to your July visit. There's not additional
14 information you've received?

15 A That's correct.

16 Q I think you also made some references to the purpose of
17 property condition assessment and kind of your view of your
18 report compared to the ARCH report. Do you recall that?

19 A Yes.

20 Q The purpose -- the ultimate purpose of a property
21 condition assessment is to assist the client or the operator
22 in evaluating the condition of the property, correct?

23 A Yes, that's correct.

24 Q And it's step one, and I think we discussed at your
25 deposition, it's step one in a process, in a capital budgeting

1 process that ultimately leads to the operator determining what
2 to spend and when, right?

3 A True. It is an independent step.

4 Q Right. This is -- your report or any property condition
5 report is step one. Then there's still a bunch of other steps
6 before you actually figure out how much you need to spend?

7 A Possibly, yes.

8 Q Okay. The reserve term in a property condition assessment
9 is also ultimately a client-directed choice, correct?

10 A Typically.

11 Q Okay.

12 A It doesn't have to be.

13 Q Right. But there's nothing unusual about it being a
14 client-directed choice, right?

15 A No. No. Sometimes a shorter term gives less insight, and
16 that's up to the client. Sometimes a longer term, like 20
17 years, 30 years, would give far too much, and you might end up
18 replacing one thing twice because the useful life of certain
19 things occurs over multiple years.

20 Q Right. But ultimately it's the client who decides what
21 snapshot budgeting window they think makes sense for them?

22 A That is correct.

23 Q You also identified and you just talked with Ms.
24 Vandesteeg about the Immediate Repair Cost Table, which was
25 that Table 1.1 within Exhibit 5-F. You recall that?

1 A I do.

2 Q And for those conditions in the Immediate Repair Cost
3 Table, you provided your estimated cost to either further
4 investigate or remedy those issues, right?

5 A The cost to -- the cost of the additional investigation is
6 not known, but we do have allowances for some of those items.

7 Q Fair enough. Yeah, to break -- let's break it out.

8 A Okay.

9 Q You either provided a cost to investigate as a standalone
10 cost, right, --

11 A Yes.

12 Q -- or a cost to actually remedy for items you did not
13 require -- suggest a further investigation?

14 A Correct.

15 Q And the operator or the client could elect to undertake
16 what you have identified in the Immediate Repair Cost Table at
17 a time different than you recommend, right?

18 A That is entirely possible.

19 Q I'm sorry. You said possible?

20 A It's possible.

21 Q Okay.

22 A Yeah.

23 Q I just wanted to make sure I didn't hear an "im" in front
24 of that.

25 A Oh, no. Oh, no, no.

1 Q You also identified conditions you anticipate could need
2 to be addressed over the course of the capital budgeting
3 period in your Replacement Reserve Cost Table, that Table 1.2
4 that you looked at with Ms. Vandesteeg, right?

5 A That is correct.

6 Q And similarly, for those conditions you identified as
7 potential capital needs, you provided your estimated costs to
8 either investigate or to repair or remedy, right?

9 A That is correct.

10 Q And again, the operator of the facility could elect to
11 take steps to address the items you identified in the
12 Replacement Reserve Cost Table at a time different than you
13 recommend, right?

14 A Yes. But that is also a risk that they incur.

15 Q Okay. But it's their choice as to that risk and what
16 makes sense for them, right?

17 A Absolutely.

18 Q And your recommendations in the Capital -- in the
19 Replacement Reserve Cost Table are not intended to suggest
20 exactly how much money must be spent on capital expenditures
21 at The Edgemere over the next ten years, right?

22 A Could you say that again?

23 Q Sure. Your recommendations in the Replacement Reserve
24 Cost Table are not intended to suggest how much money must
25 actually be spent for capital expenditures of The Edgemere

1 over the next ten years, right?

2 A No.

3 Q Sorry. No meaning that's right, or no you disagree?

4 A No, you are correct.

5 Q Okay. Because it's ultimately the client's needs and
6 priorities that determine when to make a capital expenditure,
7 right?

8 A That's correct. But a client's needs and priorities are
9 somewhat independent of the physical nature of their building.

10 Q Right. But your report is assisting them in evaluating
11 how to proceed, not saying that you have to do this in this
12 way, correct?

13 A Correct. But physics typically doesn't lie to us.

14 Q So, for example, a condition you recommend addressing in
15 year two of the capital budgeting period could actually be
16 addressed earlier or later, right?

17 A It's possible.

18 Q And in addition to the actual timing of any expenditure,
19 you would also expect there to be a potential difference in
20 the actual costs different from what you estimated, right?

21 A These items would need to be scoped out for contractors.
22 So yes, there may be a difference.

23 Q Right. And that's because these items are order-of-
24 magnitude budget estimates, right?

25 A Yes.

1 Q Okay.

2 A And typically we take a conservative approach, so that way
3 we prepare our clients and end-users for an overestimation.
4 That way, they plan accordingly and have the budget plus more
5 of the actual. It's far more concerning to actually be -- to
6 propose less than is needed and then be surprised when the
7 repair actually shows up.

8 Q And the potential capital needs you've identified
9 represent your professional recommendation for items that
10 could be addressed, but it is not your assertion that any
11 particular item must be addressed depending on the client
12 need, right? For the Reserve Cost Table.

13 A Must from whose perspective?

14 Q From the client perspective.

15 A No.

16 Q And you have no training in asset management plans,
17 correct?

18 A I do not.

19 Q Or finance?

20 A I do not.

21 Q Or capital planning?

22 A I do not.

23 Q Or capital budgeting?

24 A I do not.

25 Q It's possible to extend the estimated useful -- or, sorry.

1 It's possible to extend the useful life of a system through
2 appropriate maintenance, is it not?

3 A Yes, but that maintenance would -- and that maintenance
4 plan would need to involve some -- appropriate staffing and
5 training. There's a number of steps to preventative
6 maintenance.

7 Q But on a go forward basis, assuming there is appropriate
8 staffing and maintenance, an item's useful life could be
9 extended through a preventative maintenance program?

10 A It's possible.

11 Q And the deferred maintenance you identified in your report
12 and in your testimony, you don't equate that to a system at
13 the Edgemere not presently functioning, right?

14 A No. Well, deferred maintenance -- deferred maintenance is
15 something that needs to be addressed promptly or it will
16 rapidly result in a failed state.

17 Q Right. But deferred maintenance does not mean the system
18 is not presently functioning?

19 A Correct. It isn't -- yeah. Correct.

20 Q And I think, as you discussed with Ms. Vandesteeg, you
21 prepared your report pursuant to ASTM E2018-15, correct?

22 A That is correct.

23 Q And you agree that, pursuant to that standard, assuming
24 the report is prepared in conjunction with that standard,
25 different reports could come to different conclusions. Right?

1 A It's entirely possible, based on their reconnaissance and
2 their experience. The team.

3 Q Because, ultimately, any property condition assessment is
4 the subjective view of the team onsite at that visit in their
5 professional opinion. Right?

6 A True. But I would argue that the subjective opinion of a
7 number of professional engineers is possibly more credible
8 than one person.

9 Q But the standard you rely on itself says that these are
10 intended to be interpreted as subjective opinions?

11 A Yes.

12 Q And the ASTM standard also recognizes that there could be
13 alternative methods for remedying any identified condition,
14 right?

15 A Yes. Possible. Depends on the condition.

16 Q Right. And depending on the circumstances, any one of
17 those multiple alternative methods could be appropriate to
18 remedy a condition?

19 A Still depends on the condition.

20 Q Right. The ASTM standard also recognizes that you as a
21 property consultant who's onsite for a couple of days at most,
22 or -- and specific to this case, just two days -- is not as
23 familiar with the property as the actual operator, right?

24 A That is correct.

25 Q And it's possible that the operator's detailed knowledge

1 and those people who are familiar with the property could lead
2 to them having their own opinion of the best approach for
3 capital needs of the project of the property, correct?

4 A That's possible.

5 Q And that would be the -- at The Edgemere specifically,
6 that could be the case, correct?

7 A That's possible.

8 Q And also in the standard, the ASTM standard, it has the
9 concept that these opinions are intended to assist the user in
10 developing a general understanding of the physical condition
11 of the property. Right?

12 A That is correct.

13 Q And that's because these assessments are intended to help
14 the end-user, the operator or the client or however you want
15 to describe it, help them determine what conditions exist and
16 to figure out when and how they should address those, right?

17 A That is correct.

18 Q And I think you've also testified that property condition
19 is a function of its estimated useful life and its current
20 physical condition. Is that correct?

21 A Yes.

22 Q And because it's an average, an actual system in the field
23 could last longer than its estimated useful life, right?

24 A Depends on the system.

25 Q Right. But it's not -- again, we're talking about --

1 since estimated useful life itself is an average, things could
2 last longer than the average anticipated, right?

3 A And shorter.

4 Q Right.

5 A As it is an average.

6 Q Exactly. And an otherwise-working system does not need to
7 be replaced simply because its estimated useful life is, say,
8 20 years, right?

9 A That is correct.

10 Q There would have to be other factors suggesting that it
11 needs to be replaced or repaired

12 A Correct. But prudent maintenance would apply some
13 foresight to that planning. And if something is approaching
14 the end of its useful life but still functioning, you might
15 have an accelerated exponential deterioration of certain
16 building system components.

17 Q But determination of whether to continue to maintain or
18 replace would ultimately be a client choice or an operator
19 choice based on their financial needs and priorities?

20 A Yes.

21 Q If maintenance is keeping something functioning, this mere
22 fact that it's reached end of estimated useful life does not
23 mean it has to be replaced?

24 A Yes. And hopefully it's functioning in an efficient way,
25 where it's --

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1 Q Right.

2 A -- not costing more to repair every year than it does just
3 to replace it.

4 Q I have no further questions. Thank you, Mr. Hull.

5 A Thank you.

6 THE COURT: Thank you, Mr. Davis.

7 Redirect? Or any further cross? I apologize. Ms. Walsh,
8 any cross for Mr. Hull?

9 MS. WALSH: No, thank you.

10 THE COURT: Okay. Thank you. Ms. Vandesteeg?

11 MS. VANDESTEEG: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. VANDESTEEG:

14 Q Hello again, Mr. Hull.

15 A Hello.

16 Q Do you know when -- do you recall when Mr. Winnecke
17 visited the property, when his site visit was?

18 A I believe it was August.

19 Q So about a month after your site visit?

20 A Yes.

21 Q And in his testimony, did you hear anything implying that
22 any of the property conditions that you and your team observed
23 had been addressed or otherwise improved between your July
24 visit and his August visit?

25 A No. I don't believe anything had been addressed.

1 Q If a client does not elect to fix or pay attention to a
2 poor or fair condition, that condition either remains poor or
3 fair or it gets worse, right?

4 A That is correct. There is an inherent entropy to building
5 components. Things decay.

6 Q They don't fix themselves?

7 A Yes. I wish. That would kind of put me out of a job,
8 though.

9 Q Now, Mr. Davis asked you some questions about an operator
10 potentially having more information about a property than
11 perhaps an engineering team, such as yours at Terracon. Now,
12 an operator might have best knowledge as to its capital
13 planning needs, but it may not have the ability to identify
14 the physical conditions that you and your team go in to
15 assess, correct?

16 A That's true.

17 Q Over the remainder of the lease -- do you know how long is
18 remaining approximately on the term of this lease?

19 A Based on what I've heard, I believe it's approximately 30
20 years.

21 Q So over the remainder of the lease, in your expert
22 opinion, do you think that there's going to be more money that
23 will need to be spent than the sum of your 10-year forecast?

24 A Yes.

25 Q Again, though, to the best of your knowledge, the cost

Hull - Examination by the Court

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1 estimates contained in your Table 1.1 and 1.2 are reasonable?

2 A Yes.

3 MS. VANDESTEEG: Nothing further.

4 THE COURT: Thank you. Mr. Davis?

5 MR. DAVIS: Nothing further, Your Honor.

6 THE COURT: One question for your, Mr. Hull.

7 THE WITNESS: Yes, Your Honor.

8 EXAMINATION BY THE COURT

9 THE COURT: You said that something that was in a
10 failure state couldn't change if not replaced. It could be
11 repaired, right?

12 THE WITNESS: To an extent, yes, but it depends on
13 the nature of the failure state.

14 THE COURT: Okay.

15 THE WITNESS: Certain building systems have a number
16 of components, and if one portion of those components failed
17 it's possible it still may function in a partial inefficient
18 way.

19 THE COURT: Uh-huh.

20 THE WITNESS: Not always. It's likely quite rare for
21 that to occur.

22 For example, a condensing unit for a split system outside
23 most of our homes, if the compressor fails, just the
24 compressor, that's a non-functional condensing unit, and in
25 Texas you'll notice.

1 THE COURT: I would.

2 THE WITNESS: As we all would probably feel right
3 about now.

4 THE COURT: Right about now. But again, using your
5 example, I could replace a coil. I could replace various
6 pieces on that HVAC unit which would extend the life of it
7 without expending the entire cost of replacing the unit as a
8 whole?

9 THE WITNESS: That is correct.

10 THE COURT: Okay.

11 THE WITNESS: But there are, Your Honor, there are
12 still labor costs incurred and a number of other probably
13 costs that would be (inaudible).

14 THE COURT: Fair enough. Question of Band-Aids
15 versus full replacement. I do understand.

16 One other question with respect to your Table 1.2, I
17 believe it is. I noticed that you had a few things that I
18 just found just a little different. You had an allowance on
19 here for a replacement of the commercial washers and dryers.
20 Would you normally take a look at something like that as part
21 of capital planning or a PCA?

22 THE WITNESS: Mainly for like a hotel or a large
23 establishment. Those are critical pieces of equipment for the
24 operation of that building. So, yes.

25 THE COURT: So based upon their useful life and the

1 possibility they'd be capitalized as an expense?

2 THE WITNESS: Yes.

3 THE COURT: Okay. All righty. No further questions.

4 Anyone have any questions based upon the Court's
5 questions? Okay.

6 MR. DAVIS: No, Your Honor.

7 THE COURT: Okay. Thank you very much. Appreciate
8 your time again, Mr. Hull.

9 THE WITNESS: Thank you very much, Your Honor. You
10 have a wonderful day.

11 THE COURT: You, too. Now, don't make this your
12 regular gig. I know you're starting to have a lot of fun with
13 these.

14 (The witness steps down.)

15 THE COURT: All right. It's 3:30. Would folks like
16 a break before the next witness?

17 MR. GOLD: Yes, Your Honor. Our next witness will be
18 Mr. Harshfield, and a short break would be ideal.

19 THE COURT: Okay. And I think I saw Mr. Harshfield
20 in the back earlier. Okay. Excellent. It's 3:30. We'll
21 return at 3:45.

22 MR. GOLD: Thank you, Your Honor.

23 MS. VANDESTEEG: Thank you, Your Honor.

24 THE CLERK: All rise.

25 (A recess ensued from 3:29 p.m. until 3:49 p.m.)

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1 THE CLERK: All rise.

2 THE COURT: Please be seated. We'll go back on the
3 record in Case No. 22-30659.

4 All right. Mr. Gold?

5 MR. GOLD: Thank you, and good afternoon, Your Honor.
6 ICI would like to call Mr. Nick Harshfield to the stand,
7 please.

8 THE COURT: Thank you very much. Mr. Harshfield? I
9 think this is the first time we've had you live.

10 MR. HARSHFIELD: Oh, I was here during the early
11 part.

12 THE COURT: Oh, that's true. That's true. All
13 right. Please be seated. If you could raise your right hand
14 for me.

15 (The witness is sworn.)

16 THE COURT: Thank you very much.

17 NICK HARSHFIELD, INTERCITY INVESTMENT PROPERTIES' WITNESS,

18 SWORN

19 DIRECT EXAMINATION

20 BY MR. GOLD:

21 Q Good afternoon, Mr. Harshfield. We haven't met. My name
22 is Ivan Gold. I'm with the Allen Matkins law firm. We're co-
23 counsel to ICI. And when I say ICI, you understand that to be
24 the Landlord; --

25 A Yes, I do.

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1 Q -- is that correct?

2 A Yes, I do.

3 Q Okay. Mr. Harshfield, by whom are you employed?

4 A Lifespace Communities.

5 Q Okay. And what is your current title at Lifespace
6 Communities?

7 A Chief Financial Officer.

8 Q Okay. Do you have any other titles?

9 A I'm also the treasurer as an officer of Lifespace
10 Communities, Inc.

11 Q Okay. And how about with respect to the Debtor? Do you
12 have any --

13 A Northwest Senior Housing?

14 Q Northwest Senior Housing, yes.

15 A Yes. I'm a board member, treasurer, and vice chair.

16 Q Okay. How long have you been with Lifespace Communities?

17 A I started with Lifespace in June of 2020.

18 Q And how about your association through Lifespace with The
19 Edgemere?

20 A Oh. Right about that same time, --

21 Q Okay.

22 A -- yes.

23 Q And I'm not asking for a legal opinion, and if I am,
24 people will remind me, just your understanding in your dual
25 capacities of the relationship between Northwest Senior

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1 Housing and Lifespace Communities, Inc.

2 A As far as--?

3 Q Well, in terms of the operation of The Edgemere.

4 A Are you asking for what the ownership structure is or just
5 day-to-day operations?

6 Q Let's start with day-to-day operations.

7 A Okay. So, Lifespace is responsible for supporting the
8 day-to-day operations of Edgemere.

9 Q Okay. And with respect to ownership, is there a
10 relationship there?

11 A Lifespace Communities, Inc. is the sole member of
12 Northwest Senior Housing Corporation.

13 Q Okay. In your almost three years, I'm being optimistic,
14 two and a half, three years that you've been with Lifespace,
15 do you serve in similar capacities for any other properties?

16 A Yes, I do.

17 Q How many other properties?

18 A I serve in a similar capacity with the Stayton and
19 Querencia.

20 Q So, two others?

21 A Two others.

22 Q And where are those properties located?

23 A So the Stayton, which is -- I believe the legal name is
24 Tarrant County --

25 Q Okay.

1 A -- Corporation, that's in Fort Worth. And Querencia,
2 which is the Barton Creek Senior Housing, that's in Austin,
3 Texas.

4 Q Okay. So your territory is Texas, in terms of your
5 involvement with Lifespace? Nothing outside the state?

6 A Oh, no, we have communities all over the country.

7 Q I understand Lifespace does.

8 A Yes. Yes.

9 Q I'm talking about your personal involvement with
10 communities. Are they nationwide or are they the three
11 properties you identified?

12 A Oh, it'd be nationwide, since we're responsible for all 18
13 communities.

14 Q Okay. With respect to your involvement here with The
15 Edgemere, you have functioned pretty much since the first day
16 of the case as I'll call it the Debtors' representative; is
17 that your understanding?

18 A I'm not sure what the definition of that is.

19 Q Well, you signed what's called the First Day Declaration
20 in the case.

21 A Sure. Okay. Yes.

22 Q You sign the monthly operating reports?

23 A Yes.

24 Q You signed a declaration in support of the plan?

25 A Sure.

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1 Q Okay.

2 A Yeah.

3 Q So, as a result of that, you are familiar with the
4 operations of The Edgemere and the reporting requirements
5 under the Bankruptcy Code and Court since the Edgemere has
6 been in bankruptcy. Is that fair?

7 A I am familiar, yes.

8 Q Okay. So in the year 2022, do you know how much The
9 Edgemere spent on capital improvements? And approximate.
10 Like, please, not to the penny. I'm not expecting anything
11 close to that. Just give us your best estimate or
12 recollection.

13 A I'd say best estimate would be approximately a million
14 dollars.

15 Q Okay. And I -- that's consistent with the last MOR you
16 just signed, so --

17 A Okay.

18 Q Okay? And has the physical condition of The Edgemere
19 changed significantly over the last six months?

20 A Not that I'm aware of.

21 Q Has the physical condition of The Edgemere changed
22 significantly in the last year?

23 A Not that I'm aware of.

24 Q Have you undertaken any projects, single projects where
25 the cost was in excess of, say, \$50,000?

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1 A Over what course of time?

2 Q The last year.

3 A I really am not aware of what the dollar amount would be
4 for each one, no, but --

5 Q Okay.

6 A -- I can't tell you specifically.

7 Q I'm talking about, you know, either a major repair or a
8 replacement of a component. In any part of the facility. Are
9 you aware of anything that would have approximated \$50,000 or
10 more?

11 A You know, I really couldn't say.

12 Q Okay. And as part of your role with Lifespace, are you
13 familiar with the ground lease between my client and the
14 Debtor?

15 A I am familiar.

16 Q Okay. And the -- it's your understanding that the sale of
17 The Edgemere business and the assignment of that ground lease
18 is part of the plan in this case?

19 A Yes.

20 Q What role did you have in the formulation of the asset
21 purchase agreement?

22 A Frankly, very little.

23 Q Okay. And I'm going to break that down, because I still
24 want to ask about the little.

25 A Yeah.

1 Q But in terms of your capacity with the Debtor, did you
2 have a specific role, or in your capacity with Lifespace, did
3 you have a specific role? Or can you even separate them?

4 A I did not. That's -- I had really no role in negotiating
5 that asset purchase agreement.

6 Q To your understanding, on behalf of the Debtor, who did?

7 A The attorneys, is my understanding.

8 Q To your understanding -- just, we have so many attorneys.

9 A Uh-huh.

10 Q And I don't want you to tell me about any communications
11 with the attorneys. I just want you to identify the law firm.
12 I'm even going to go to the highest level.

13 A Sure.

14 Q Is which law firm, to your understanding, was representing
15 the Debtor in the negotiation of the APA?

16 A Primarily Polsinelli.

17 Q Okay. So, since you didn't take -- is it fair to say you
18 didn't take any role in the negotiations?

19 A I did not.

20 Q Okay. Are you familiar with the document at all?

21 A I am familiar with it, yes.

22 Q Okay. And do you know who signed it on behalf of the
23 Debtor?

24 A I believe it was an independent director of Edgemere.

25 Q Okay. Member of the board?

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1 A Yes.

2 Q Okay. In your capacity particularly as CFO at Lifespace,
3 are you familiar with the insurance that's maintained at The
4 Edgemere?

5 A Somewhat, but I'm no insurance expert.

6 Q Okay. I'll start with a few broad questions. Does the
7 Edgemere through Lifespace maintain commercial general
8 liability insurance for the business?

9 A Yes.

10 Q Okay. And it maintains property, fire, that type of
11 insurance coverage as well?

12 A Yes, it does.

13 Q And other Workers' Comp and those types of general
14 business coverages?

15 A Yes.

16 Q Okay. What is your understanding as you sit here today as
17 to the status of that insurance? Is it in place?

18 A It's all in force.

19 Q Okay. And what is the payment arrangement with respect to
20 that insurance? Has it been prepaid for the year? Do you pay
21 it in monthly installments, or quarterly?

22 A So, it's mix, and I don't have the details in front of me,
23 but there are a mix of prepayments as well as monthly
24 payments. And it actually depends on which line of coverage
25 you're talking about. But certainly I don't have those

1 details on the forefront of my mind.

2 Q Do you know, if I just picked on a commercial general
3 liability policy, do you know how that is paid?

4 A I don't, off the top of my head, --

5 Q Okay.

6 A -- no.

7 Q In the formulation of the plan, do you have an
8 understanding of what happens to that insurance when the
9 Debtor confirms its plan of reorganization in this case?

10 A I don't.

11 Q Okay. And do you know whether or not, if the plan is
12 confirmed and that plan becomes effective and the lease is
13 assigned to Bay 9 as proposed, whether that insurance would be
14 canceled?

15 A I do not.

16 Q Do you know whether the Landlord is an additional insured
17 on the policy?

18 A I could not tell you specifically, no.

19 Q Okay. Do you know the term -- so you don't know any
20 details about that status; is that fair?

21 A Correct.

22 Q Okay. Do you have an understanding that as part of the
23 sale that the Debtor is asking for a release of all pre-
24 closing liabilities under the ground lease?

25 A The Debtor -- I'm not sure that I follow.

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1 Q Do you understand that as part of the sale and the plan,
2 that the Debtor is asking for a release of the Debtor of all
3 liabilities prior to closing?

4 A So, I'm not -- I can't tell you specifically that I'm
5 familiar with that provision. It wouldn't surprise me, but
6 I'm not specifically familiar with it.

7 Q Are you aware of the recent slip-and-fall litigation, the
8 lawsuit that was filed this year with respect to an incident
9 at The Edgemere?

10 A No.

11 Q Who would be in your organization, if not you?

12 A Our risk manager and general counsel.

13 Q Okay. So you have no knowledge of the fact that that
14 occurred?

15 A Not that I remember, no.

16 Q Okay. In the course of our business with respect to other
17 properties in the Lifespace portfolio -- I think 18? Did I --

18 A Yes.

19 Q -- get that right? Are you aware of slip-and-falls that
20 occur there?

21 A None specific, no. We certainly review loss claims.
22 There are slip-and-falls that occur. But any specifics, I'm
23 not familiar with.

24 Q Okay. And if, say, Judge Larson was to approve the
25 assignment of the lease in these proceedings and the plan was

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1 confirmed next week -- the air quotes won't be reflected in
2 the record -- and there was a slip-and-fall at The Edgemere
3 say middle/end of March, before closing, who'd be responsible
4 for that, to your understanding?

5 A I couldn't --

6 Q Okay.

7 A I couldn't address that.

8 Q Okay. Do you understand under the plan that the Debtor,
9 Northwest Senior Housing, will be dissolved?

10 A Yes.

11 Q Okay. And what is the anticipation as to when that would
12 occur, if you understand any timing as to that?

13 A So, I would say that would -- so, I don't -- again, I
14 don't know the legal details around it, but just my experience
15 from operations, there'll be some time to transfer licenses,
16 change of ownership for the Medicare license, and that usually
17 takes months. But I couldn't tell you exactly what the
18 timeline would look like.

19 Q Do you at this point have any involvement in some of the
20 inspections, that process that's going on at the property as a
21 result of prior rulings in this case?

22 A No.

23 Q That -- is that handled strictly at the property level?

24 A So, we also have a National Director of Plant Operations
25 who has supported -- supports all of our communities, but

1 specifically supported Edgemere with inspections and support
2 with routine maintenance and other projects.

3 Q Okay. So is that -- who is that?

4 A Chris Soden.

5 Q And Mr. Soden, is he the one interfacing with, say, the
6 inspectors who are onsite? We heard some testimony here this
7 week about SOCOTEC. Have you ever heard of them?

8 A No, I have not.

9 Q Okay. So it would be Mr. Soden as to any activity going
10 on onsite with any inspectors or engineers or contractors? He
11 would be the one?

12 A I'm not saying he specifically is involved in every
13 inspection.

14 Q Uh-huh.

15 A He may or may not be aware. Certainly, the local
16 leadership is aware of what's going on on the ground. But
17 obviously, you know, as our national support, he does provide
18 support to all of our communities.

19 Q Okay. I'd like to pivot for a moment to another topic.
20 We've heard testimony over the last couple of days before you
21 were able to join us too regarding the contemplated transition
22 of The Edgemere from the entry fee model, entrance fee model,
23 to a rental model. You're familiar with that aspect of the
24 plan?

25 A Yes.

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1 Q And we've heard various testimony regarding underwriting
2 and occupancy rates and that transition, so I just want to ask
3 you a few brief questions. Did Lifespace provide any
4 occupancy statistics to any of the consultants that have been
5 employed in this case?

6 A Not that I'm aware of, no. So, I know there was a due
7 diligence data room that was provided. But as far as
8 providing information directly to consultants, I am not aware
9 of that.

10 Q Well, do you know, in terms of occupancy statistics being
11 put in a data room, that would have been in the fall/winter of
12 this past year?

13 A Sounds about right.

14 Q Okay. So it's your understanding that Edgemere operating
15 statistics and occupancy statistics were provided on a
16 confidential basis in a data room that had been set up with
17 respect to the sale?

18 A Well, you know, a lot of that information in a summary
19 level is also available for public consumption as well. So,
20 --

21 Q And that's in connection with the bonds --

22 A Yes.

23 Q -- that support The Edgemere?

24 A Quarterly EMMA filings, yes.

25 Q Correct. So, and you actually sign the EMMA filings,

1 don't you?

2 A I do.

3 Q Okay. So, but the -- I want to focus on the data room for
4 a minute. Was there more than one data room?

5 A Not that I'm aware of.

6 Q Okay. So you're not aware of whether there was a data
7 room earlier in the year for another purpose and a data room
8 in connection with the sale later in the year?

9 A Not that I'm aware of. And as far as populating the data
10 room, primarily our financial advisor, FTI Consulting, did the
11 lion's share of that work for us.

12 Q Okay. We'll just put a pin in. For timeline, when was
13 FTI retained?

14 A It would have been, I believe, February of 2021 was their
15 engagement, but -- I haven't looked at that date for a while,
16 but that sounds about right.

17 Q So then, obviously, February '21 is over a year prior to
18 the Chapter 11 filing?

19 A Yes.

20 Q Is it your understanding that you provided data to FTI as
21 a consultant and they may have provided it to other
22 stakeholders and other parties?

23 A They may have.

24 Q But you're not personally aware of any of that?

25 A Not of the details, no.

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1 Q Or just merely the fact that it happened? That they were
2 sharing data to other parties prior to the sale process?

3 A I would say yes. Other -- well, the parties that I would
4 be aware of is, for instance, RBC, --

5 Q Okay.

6 A -- who's been on the creditors' side from a financial
7 advisor perspective. They've shared information with them.
8 But outside of that, I'm not certain. There was some
9 confidential information shared during -- when we initially
10 had the forbearance agreement in place in December of '21 with
11 the other parties. But outside of that and then populating
12 the data room, I'm not aware of any others.

13 Q Okay. When was the last entrance fee charged at The
14 Edgemere?

15 A The last entrance fee charged? We had a couple of move-
16 ins, I believe, in the third quarter of '22, but I don't know
17 precisely what dates those were.

18 Q Okay. Third quarter is fine.

19 A I think that's right.

20 Q Okay. Do you know what that -- those last entrance fees
21 were, what, literally the dollar amount?

22 A I don't, no.

23 Q Okay. Do you know what -- the average entrance fee charge
24 for what I'll call the Legacy population at the Edgemere?

25 A I would be guessing, it would be a ballpark, so I don't

Harshfield - Direct

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1 have, you know, exactly --

2 Q Okay.

3 A -- what the average is.

4 Q Well, let's start in the ballpark and see if we can make
5 it down onto the field and maybe find a position. Is it above
6 \$500,000?

7 A Well, I mean, I'd be speculating, because I don't have the
8 data in front of me.

9 Q But in the last two years of -- two and a half years being
10 involved in this property, in terms of the entrance fee model,
11 you don't have an estimate within six figures of what the
12 entrance fee is at The Edgemere?

13 A I can give you a general range.

14 Q Okay.

15 A But do I know what the actual mix is and what that would
16 average out to be? That would be a difficult --

17 Q Okay.

18 A -- number for me to --

19 Q Let's start --

20 A -- testify to.

21 Q Let's start with the range.

22 A So, I'd say generally, depending upon the contract and the
23 refundability in that contract, whether it's a zero refund, 50
24 percent refund, 90 percent refundable, I'd say the range is
25 anywhere from in the \$300,000 to 400,000 and all the way up to

1 a million dollars.

2 Q And again, in broad strokes, that range was fine. When
3 you talk about refundability, are the majority of the entrance
4 fee contracts at The Edgemere refundable, or --

5 A Yes.

6 Q The majority? Are the majority of them more than 50
7 percent refundable?

8 A They're -- the majority are 90 percent refundable.

9 Q Okay. And we've heard testimony about the -- I'll say the
10 quality of The Edgemere. Of all the facts in this case, the
11 resident experience is not one that's disputed. But we've
12 also heard about the exclusivity of The Edgemere. And what,
13 over your time, was the minimum net worth requirement to get
14 into The Edgemere?

15 A Oh, my goodness. I would not have -- I don't know that
16 number.

17 Q Okay. Is that strictly at the property level?

18 A Yes.

19 Q So when you're looking as the CFO of the Debtor, that's
20 something that, you know, you don't even have an estimate as
21 to?

22 A Once again, it depends on the contract. The minimum
23 financial needs of a \$300,000 contract versus a million-dollar
24 contract are very different.

25 Q Okay. Well, let's pick on the \$300,000 contract. Is

1 there a minimum for a \$300,000 contract, to your knowledge?

2 A So, it's not just simply a minimum. There's actually a
3 worksheet that is completed at the time of the potential
4 resident wanting -- expressing interest.

5 Q Okay.

6 A And I could not tell you the details of how that worksheet
7 -- how that entire packet works. And then it comes out to --
8 we have a system, I believe it's called LifeCal, that is used
9 across all of our communities, and that system is what
10 provides support in determining if a resident is financially
11 able to support the entrance fees and monthly service fees.

12 Q So, does the -- to your knowledge; again, I'm not focusing
13 on specific numbers -- but assuming the lower range, a
14 \$300,000 or \$400,000 entrance fee, entry fee, would be
15 underwritten with a lower net worth requirement than a
16 million-dollar entry fee?

17 A Generally speaking, yes.

18 Q Okay. Now, as part of the sale process, have you
19 discussed any go forward resident underwriting standards with
20 anyone associated with the buyer?

21 A Oh, no. I have not spoken with the buyer at all.

22 Q Okay. So, on any -- is it your testimony, on any subject,
23 you have not spoken with anybody from either Bay 9 or Lapis
24 Advisers?

25 A So, I had a phone call with Long Hill, answering -- gosh,

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1 I can't remember when it was -- just answering some clarifying
2 questions on information that was in the data room. And that
3 was the extent of it. It was a very short call.

4 Q Was the Long Hill -- can you place the timing of the Long
5 Hill inquiry?

6 A I can't recall. It's within a few weeks. It was -- it
7 was not -- it was just within weeks ago.

8 Q This month?

9 A I honestly can't recall.

10 Q Do you know whether it was before or after Bay 9 had been
11 declared to be the winning bidder?

12 A I do not.

13 Q And then we've heard testimony that Long Hill has been
14 onsite frequently, interviewing staff, residents. You haven't
15 had any interaction with them at the property?

16 A No.

17 Q When was the last time you were at the property?

18 A I was at the property for a town hall meeting. I believe
19 it was in January.

20 Q Okay.

21 A And --

22 Q Before that?

23 A Before that? I can't recall.

24 Q Matter of months? Matter of weeks?

25 A Matter of months.

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1 Q Okay. Have you ever had a discussion regarding a go
2 forward business model in connection with the formulation of
3 the sale process?

4 A No.

5 Q Have you ever met Mr. Lawlor of Long Hill?

6 A Don't know that I have.

7 Q Okay.

8 MR. GOLD: Your Honor, just so everybody is clear,
9 I'm going to ask a small group of questions of Mr. Harshfield
10 relating to the Lifespace settlement. This is not intended to
11 be a plan feasibility inquiry. This is the components of that
12 we've heard relative to some of the projections and some of
13 the expert discussion. I just want it clear before I start,
14 it is not my intent to waive the opportunity to ask those
15 questions in a more appropriate forum. You heard a lot this
16 morning in response to my motion about those buckets, and it's
17 not my intent to fill that bucket based on what I heard this
18 morning.

19 THE COURT: Mr. Walker?

20 MR. WALKER: Thank you. Eric Walker on behalf of
21 Lifespace.

22 We would object to questions regarding the Lifespace
23 settlement agreement as not relevant to the adequate assurance
24 portion of this hearing. We understand we're coming back for
25 the confirmation portion of the hearing, where that certainly

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1 is fair game. I am just not sure what the relevance here is.

2 MR. GOLD: I'll tender that real quick, Your Honor,
3 without going too deep. There are mixed messages in the
4 pleadings. There is a representation in one document filed by
5 the Plan Sponsors that they're independent, but you've also
6 heard testimony about the subsidy, that part of it helps
7 residents take -- lower the cushion -- or, cushion the
8 escalation in their rental rate as they move to a higher level
9 of care. And that's baked into the occupancy statistics that
10 are baked into the projections.

11 We've had testimony from at least two witnesses, including
12 Mrs. Hatch. And we expect -- we've heard some expert, and we
13 expect more on that topic.

14 So I think to the -- again, my goal is to be limited in
15 this. I do not want to talk about bond ratings or -- there
16 are plenty of things to talk about in feasibility that will be
17 addressed in the future. I'm trying to be in a box, a smaller
18 box here, just as it relates to that fund and how it impacts
19 residents on a rent payment level, which is baked into all the
20 projections.

21 THE COURT: Mr. Walker?

22 MR. WALKER: Thank you, Your Honor. I believe we
23 heard from Long Hill yesterday that the settlement agreement
24 with Lifespace did not have any impact on the projections that
25 Long Hill used for the adequate assurance portion of this

1 hearing.

2 So, again, we would object on relevancy.

3 MR. GOLD: Not all the witnesses have been heard.

4 And I think it's relevant for this limited purpose. We heard
5 from Mrs. Hatch. Her answer to it was that she was just going
6 to raise the rent, the residents could afford it.

7 And frankly, I believe Mr. Lawlor did testify about it,
8 and he said it did impact his analysis. He assumed it would
9 occur, that they would receive that money. And I think I'm
10 entitled to explore what the -- briefly, what we would
11 understand if it doesn't happen, or more importantly, when it
12 would happen.

13 THE COURT: Well, thank you. Thank you both. I
14 don't want to slow the evidence down. I could probably find
15 it in my notes. But I believe that the greater part of Mr.
16 Lawlor's testimony was how that affected -- he testified two
17 things, about the conservative nature that he gave to the Long
18 Hill report, that he thought the numbers were actually going
19 to come in better than the Long Hill report because of the --
20 I'll loosely refer to the 45 prospective contracts that were
21 waiting on things, and that he also testified that he also had
22 what I'll just call a rosy outlook due to the fact that the
23 Lifespace settlement was out there and that that was another
24 essentially cushion. Or, excuse me, not cushion, bonus in
25 that regard.

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1 So I'm going to give you a little bit of leeway with the
2 witness. I don't want to go too far afield of kind of where
3 we are with adequate assurance. And I think the case in chief
4 has been put on by the proposed buyer.

5 So, with that, go forward, Mr. Gold.

6 MR. GOLD: We're on the same page, Your Honor. As I
7 said, I have a -- I think that it's less than a page of notes.

8 BY MR. GOLD:

9 Q Just briefly, what is your understanding of the Lifespace
10 Communities settlement with the estate?

11 A It's with the -- it's for the residents' benefit, and it's
12 an Entrance Fee Refund Trust to the complete separate third-
13 party trust, separate from all other parties. And it's a
14 commitment from Lifespace to fund that trust over a period of
15 18 or 19 years, in support -- primarily in support of
16 providing refunds to residents or their estates.

17 Q What role did you play in that, just to set up some of the
18 future -- a couple more questions?

19 A I was certainly part of doing the analysis and working
20 with Mr. Walker as well as our CEO to develop a plan that
21 would provide the support but also have a plan that was
22 feasible for Lifespace to support.

23 Q And when you were involved in that, you were wearing a
24 Lifespace hat? We've talked a lot about hats here this week.
25 So, that was your role? You weren't the Debtor

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1 representative?

2 A Correct.

3 Q You were the Lifespace representative?

4 A That's right.

5 Q Okay. And what is the entity or entities that are
6 responsible for funding that trust?

7 A Lifespace Communities, Inc.

8 Q Okay. What's the Obligated Group?

9 A The Obligated Group is a group of 11 communities that are
10 collected together as a single set of collateral in support of
11 credit and debt issuances.

12 Q So, a pool of collateral, say, for purposes of bond
13 issuance?

14 A Yes.

15 Q Are they tied in any way, that same Obligated Group, to
16 the trust?

17 A Yes.

18 Q So it's that same 11 entities? Are they literally -- is
19 that funding source for the trust?

20 A Yes.

21 Q Okay. So with those 11 entities, is the source of funding
22 the operations of those 11 properties, or is it something
23 else, or is it a combination?

24 A It's a combination.

25 Q What's -- what else is in the combo?

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1 A So, there is the initial funding that is to occur at the
2 effective date of the plan that we are doing a subordinated
3 bond issuance to support that funding.

4 Q And the timing on that, if -- I'm sure we could engage in
5 four hours of debate about what the effective date of this
6 plan might be. But let's assume it's in the next few months,
7 which I'll randomly choose 60 days. If the effective date is
8 in the plan in the next 60 -- if the effective date of the
9 plan is in the next 60 days, do you believe that that
10 subordinated debt offering will be completed funding and then
11 you will put those funds or that portion of the funds --

12 A Yes.

13 Q -- into the trust?

14 A Yes.

15 Q Okay. What's the status of that bond offering at this
16 time? Just timing?

17 MR. WALKER: Your Honor, I'm going to object again on
18 relevance. I think we're starting to go down a path here
19 where it's -- we're getting far afield from adequate assurance
20 and --

21 MR. GOLD: Almost done.

22 MR. WALKER: -- we're really getting into the
23 feasibility and confirmation aspect of the hearing that's
24 scheduled for next week.

25 THE COURT: We're having a little bit of trouble

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1 picking you up.

2 MR. WALKER: I'm sorry.

3 THE COURT: But did you catch that, Ms. Jeng?

4 THE CLERK: No.

5 THE COURT: Okay. Could you repeat?

6 MR. WALKER: It was really good.

7 THE COURT: Could you repeat?

8 A VOICE: Second chance.

9 THE COURT: Okay.

10 MR. WALKER: Eric Walker on behalf of Lifespace.

11 Objecting to the relevance of this line of inquiry. I think
12 we're getting particularly far afield now from the adequate
13 assurance part of this hearing. You know, we've given, I
14 think, Mr. Gold some leeway here, and now we're going into
15 timing, into the details of the subordinated debt offering.
16 That really has nothing to do with adequate assurance at this
17 point.

18 MR. GOLD: I just asked for -- I just asked the
19 timing. I don't want the details. I probably don't
20 understand half of them.

21 THE COURT: I doubt that.

22 MR. GOLD: I just -- I'm just looking for timing as
23 it relates to the closing date, the effective date of
24 assignment, those types of -- the starting date for the
25 projections that we've heard about. Is -- these are all

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1 running into the same date. I'm just asking what the
2 anticipated timing is.

3 THE COURT: I think --

4 MR. WALKER: I think he answered that question.

5 THE COURT: Yes. And I think you asked whether or
6 not they'd started the process for the bond issuance. I'll
7 allow him to ask that. But anything further, I think we're --

8 MR. GOLD: Okay.

9 THE COURT: -- delving into confirmation.

10 BY MR. GOLD:

11 Q So, a narrow question here. What is the amount that's due
12 on the effective date, regardless of how it's funded? To your
13 understanding?

14 A Roughly \$69 million.

15 Q And what is the \$52 million figure that's been in the
16 documents filed with the Court? What's the relationship
17 between the \$52 million and the \$69 million?

18 A Yeah. So, yeah, that's a great -- so, I'm actually mixing
19 two numbers together. So, --

20 Q Okay.

21 A -- the six -- what I'm adding together is the \$16.5
22 million, which is the contribution, which is part of support
23 for the plan, and then there's approximately \$50 million, \$52
24 million, that is the initial deposit into the Entrance Fee
25 Refund Trust.

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1 Q Okay. Wait, so I'm confused. Now you've confused me. I
2 confused you.

3 A Yeah.

4 Q So I guess it was fair.

5 A Yeah.

6 Q The \$52 million is the initial deposit into the Residents'
7 Trust; is that correct?

8 A That's correct. Yeah.

9 Q And that \$52 million is due roughly in 60 days?

10 A My understanding is it's due at or near the effective
11 date, yes.

12 Q Okay. So if the effective date is in a month or two,
13 that's when those funds are due? I mean, there will be a few
14 business days' lag, of course, to fund, --

15 A Okay.

16 Q -- but it would be second quarter, for lack of a better
17 metric. Is that -- is that your expectation?

18 A Yes.

19 Q Okay. And so what's the other component?

20 A The other component is the \$16.5 million, which is
21 Lifespace contribution to the restructuring plan.

22 Q And when is that due? Also at the effective date?

23 A That's my understanding, yes.

24 Q Okay. And then my last question on this topic is, then,
25 when are the next payments due, to your understanding?

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1 Because you said it was a 17- to 18- -- or, excuse me, 18- to
2 19-year payout. So, we've got the April/May --

3 A Yes.

4 Q -- initial payment. And then when is the next
5 installment?

6 A The next installment is due December 31st of 2023.

7 Q Okay. And my understanding, it's calendar-year-end in all
8 of the successive years?

9 A Correct.

10 Q Okay. So the only non-calendar-year-end is the initial
11 payment?

12 A Correct.

13 Q Okay.

14 MR. GOLD: Just a moment, Your Honor, if I can --

15 THE COURT: Please.

16 MR. GOLD: -- consult with the team?

17 THE COURT: Please.

18 (Pause.)

19 MR. GOLD: Thankfully, just a few more. For both of
20 us.

21 BY MR. GOLD:

22 Q Is it your understanding that the funding of the trust is
23 a condition to the effectiveness of the plan?

24 MR. WALKER: Objection, Your Honor. Sorry. I didn't
25 mean to interrupt.

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1 MR. GOLD: Go ahead.

2 MR. WALKER: Object. Calls for a legal conclusion.

3 And again, I don't understand the relevancy to the adequate
4 assurance --

5 MR. GOLD: I prefaced it with his understanding. And
6 I'll get there.

7 THE COURT: You're going to get me to adequate
8 assurance based on the effective date or the effectiveness --

9 MR. GOLD: Yes.

10 THE COURT: -- of the plan?

11 MR. GOLD: Yes.

12 MR. WALKER: Same objection.

13 THE COURT: A little tiny piece of rope here.

14 MR. GOLD: Okay.

15 BY MR. GOLD:

16 Q Do you understand my question?

17 A It sounds like a legal question, but --

18 Q No. What is your understanding? How does it work?

19 A My understanding is it's two separate matters.

20 Q So the plan could be confirmed and the sale of the
21 business to Bay 9 and the assignment of the lease could all be
22 approved, and you could fail to fund? Is that your
23 understanding, that they're not all linked together?

24 A I thought you mentioned the agreements, not --

25 Q No, no. I'm saying, is -- is your contribution tied to,

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1 linked to confirmation of the plan and approval of the sale?
2 Is that your understanding? Or could all those things happen
3 and you could still not fund?

4 MR. WALKER: Your Honor, I'm going to object again.
5 I think we've gotten to the end of the tiny piece of rope.

6 MR. GOLD: If I may, Your Honor? If we approve the
7 assignment and they don't fund, the subsidy goes away and all
8 the projections that you just relied on to approve a sale are
9 flawed. That's why I want to see if they're linked.

10 THE COURT: I appreciate your argument, but, again,
11 that is the core of confirmation and conditions to
12 confirmation. So I'm going to sustain the objection as to
13 that portion of the questioning of the witness.

14 MR. GOLD: Okay. So you're -- if I -- just so we're
15 all clear going forward, since we're not done in the big
16 scheme of things, --

17 THE COURT: Uh-huh.

18 MR. GOLD: -- is it's denied for now, but that's a
19 question I could ask at confirmation?

20 THE COURT: Absolutely.

21 MR. GOLD: Okay.

22 THE COURT: Absolutely.

23 MR. GOLD: Okay. Thank you, Your Honor.

24 THE COURT: You're welcome.

25 MR. GOLD: And thank you, Mr. Harshfield.

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1 THE WITNESS: Thank you.

2 THE COURT: All right. Any further questioning of
3 Mr. Harshfield? Or are you still checking, Mr. Gold? Were
4 you finished?

5 MR. GOLD: Oh, no, we're good. I'll pass the
6 witness.

7 THE COURT: Okay. Thank you very much.

8 MR. GOLD: Thank you. Thank you, Your Honor.

9 THE COURT: Ms. Walker?

10 MS. WALKER: Thank you.

11 CROSS-EXAMINATION

12 BY MS. WALKER:

13 Q Good afternoon, Mr. Harshfield. I'm Adrienne Walker. I
14 represent Bay 9 Holdings, the potential acquirer of The
15 Edgemere. How are you today?

16 A Good afternoon. Well.

17 Q Thank you. Thank you. You're aware that the Debtors are
18 party to an asset purchase agreement with Bay 9 Holdings,
19 right?

20 A Yes.

21 Q And to your knowledge, none of the principals of Bay 9,
22 the officers, directors, and the like, they're not officers or
23 directors or otherwise in control of the Debtors, right?

24 A No, they're not.

25 Q And to your knowledge, other than the conditions precedent

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1 to closing, which of course includes the judge's approval of
2 this process, there's no other conditions or authorizations
3 required by the Debtor to move forward with the asset purchase
4 agreement, right?

5 A None that I'm aware of.

6 Q And it's because they've already signed the asset purchase
7 agreement, right?

8 A Correct.

9 Q You're aware that your counsel, Polsinelli, extensively
10 negotiated the terms of the asset purchase agreement on behalf
11 of the Debtors, right?

12 A Correct.

13 Q And to your knowledge, those negotiations were all at
14 arm's length between parties represented by counsel of their
15 choosing, right?

16 A To my knowledge, yes.

17 Q And you're -- while you didn't negotiate it, you generally
18 know at a high level the terms of the asset purchase
19 agreement, right?

20 A Yes, I do.

21 Q And you understand that one of those provisions is that
22 certain contracts are going to be assigned over to Bay 9 as
23 part of the sale, right?

24 A Correct.

25 MR. GOLD: Objection, Your Honor. The witness

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1 previously testified he had no knowledge of the negotiations
2 of the APA. So now counsel is asking him to opine on
3 provisions of the APA?

4 MS. WALKER: I actually thought he said that he
5 allowed his counsel of record to negotiate the APA and he knew
6 generally, you know, what the asset purchase agreement was
7 about.

8 THE COURT: I believe that counsel, that Ms. Walker
9 has correctly summarized Mr. Harshfield's testimony. He did
10 not negotiate it, and I think he said that he has a -- I think
11 she asked if he has a high-level knowledge of what's in it.
12 So we'll let her test that now.

13 MS. WALKER: Thank you.

14 BY MS. WALKER:

15 Q And you're aware that the asset purchase agreement
16 provides the ground lease with ICI and the Debtors is to be
17 assigned under that purchase to Bay 9?

18 A I am aware of that, yes.

19 Q And with respect to the lease and just your general
20 understanding of those terms, you understand that the lease is
21 going to be assigned at the closing of the transaction?

22 A I would assume so. I don't know that specifically.

23 Q Uh-huh. And you understand that the lease is necessary
24 for The Edgemere to operate? If the lease didn't -- if you
25 didn't have the lease, you couldn't operate under --

1 A That's correct, yes.

2 MR. GOLD: Your Honor, I'm going to impose a
3 relevance objection with a little argument, because the case
4 law is the importance of an unexpired real property lease to
5 the debtor is not a 365 factor or it would subsume the entire
6 Code. I need to state that for the record, because this line
7 of testimony, it could be the most important thing in the
8 world, but if they don't cure and they don't provide adequate
9 assurance of future performance, it doesn't matter.

10 MS. WALKER: This --

11 MR. GOLD: That's why I object to the relevance of
12 this line of inquiry from a party who only has high-level
13 knowledge of the APA.

14 MS. WALKER: You know, my next question was precisely
15 -- and I'll preview with the Court -- whether or not the
16 Debtor has just a general understanding from his high-level
17 knowledge of the APA that -- that the Debtor is going to cure
18 the lease, you know, lease, and if Bay 9 is going to take the
19 adequate assurance. Just that level of his knowledge.

20 THE COURT: Okay. So, I'm going to overrule the
21 objection to essentially the relevance of the question of
22 whether or not the lease is important. The Court will
23 properly weigh that. I think the Court is aware of all
24 parties' positions on that.

25 And I'm going to allow Ms. Walker to ask again the high-

Harshfield - Cross

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1 level questions about the APA. And of course, you'll have an
2 opportunity to redirect and probe his further knowledge if
3 you'd like.

4 MS. WALKER: And you're -- thank you. I apologize.

5 BY MS. WALKER:

6 Q You're generally aware that the assignment of the lease is
7 an integral part of the sale to Bay 9?

8 A Yes.

9 Q Thank you. And you're not aware of any side agreements,
10 to your knowledge, between Bay 9 and anybody else that are
11 interested in purchasing The Edgemere, right?

12 A To my knowledge, no.

13 Q And you have no reason to believe, by, you know, your
14 knowledge of the case, that there has been any actions taken
15 by Bay 9 to chill bidding or to control the sale process, are
16 you?

17 A No.

18 Q And you were generally kept aware about that there was an
19 auction process in this case?

20 A Yes.

21 Q And you know that RBC ran the auction process in this
22 case?

23 A Yes.

24 Q And you knew that the Court set a deadline in early
25 February for other parties to submit offers to buy the assets?

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1 A Yes.

2 Q And to your knowledge, no other party submitted any other
3 qualified overbid for The Edgemere, right?

4 A That's my understanding.

5 Q And do you agree, as we sit here today, that the \$48.5
6 million purchase price was the highest offer for The Edgemere?

7 A That is my understanding.

8 Q And in fact, it was the only offer?

9 A Correct.

10 Q And so based on the fact that no other party submitted an
11 offer, and given the financial condition that The Edgemere is
12 in today, is it your general understanding that Bay 9 has put
13 forward the best -- the best opportunity for Edgemere to exit
14 this bankruptcy case?

15 MR. GOLD: Objection. Relevance. And just for the
16 record, Your Honor, but I'd also like to point out the goose-
17 gander rule. That's a plan issue.

18 MS. WALKER: I -- I

19 THE COURT: I think it's a sale issue.

20 MS. WALKER: It's a -- it's a -- and this is the
21 sale. This is my one opportunity to get in the findings that
22 Your Honor knows are very basic to a 3 -- a sale order.

23 MR. GOLD: The Debtors' business judgment to sign the
24 APA is not at issue.

25 MS. WALKER: Your Honor, that's actually my last

1 question, and I actually think it's imperative for your
2 findings. And that's why I think you -- this evidence of just
3 his understanding that this is the best opportunity for
4 Edgemere to maximize value is important.

5 THE COURT: I think that's an appropriate question of
6 the Debtor, of the Debtors' representative for sale purposes,
7 and so I'll overrule the objection.

8 BY MS. WALKER:

9 Q Do you recall -- do you understand the question?

10 A If you could repeat, please.

11 Q Thank you. So, based on the fact that nobody, no other
12 entity other than Bay 9 submitted an offer for \$48.5 million,
13 do you believe that the sale of the assets to Bay 9 is
14 critical to the sale and the best interest the Debtors?

15 A I believe so, yes.

16 Q Thank you.

17 MS. WALKER: I have no further questions.

18 THE COURT: Thank you, Ms. Walker.

19 MS. WALKER: Thank you.

20 THE COURT: Any further cross before I go back to Mr.
21 Gold?

22 No?

23 MR. JOHNSON: Nothing.

24 THE COURT: Okay. Mr. Gold, any further questions?

25 MR. GOLD: Just a few. Thank you, Your Honor.

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1 THE COURT: Of course.

2 REDIRECT EXAMINATION

3 BY MR. GOLD:

4 Q Mr. Harshfield, are you familiar with the sale procedures
5 that Judge Larson previously approved in this case that set
6 the auction process and movement?

7 A I'm not familiar with the details, no. Just -- just a
8 general understanding.

9 Q Did you play any part in determining whether or not Bay 9
10 was a qualified bid?

11 A I did not.

12 Q Did you do any vetting of Bay 9 as part of the sale
13 process?

14 A I did not.

15 Q Did you review any financial information from Bay 9 as
16 part of the process?

17 A I did not.

18 Q Were you provided with any information on Bay 9 as part of
19 the sale process?

20 A I was not.

21 Q Did you review any adequate assurance materials provided
22 by Bay 9 in this process?

23 A I did not.

24 MR. GOLD: Thank you, Your Honor.

25 THE COURT: You're welcome.

1 Anything further?

2 MR. JOHNSON: No redirect, Your Honor. Thank you.

3 THE COURT: Okay. The Court doesn't have any
4 questions of Mr. Harshfield today. Thank you very much for
5 your testimony, sir.

6 THE WITNESS: Thank you.

7 (The witness steps down.)

8 MS. PITTMAN: Your Honor, could we take a quick five-
9 minute recess just to reorganize?

10 THE COURT: Absolutely. All righty.

11 A VOICE: Switch chairs.

12 THE COURT: It's 4:40. We'll return at 4:45.

13 MS. PITTMAN: Thank you.

14 THE CLERK: All rise.

15 (A recess ensued from 4:38 p.m. until 4:52 p.m.)

16 THE CLERK: All rise.

17 THE COURT: Please. Be seated. We're back on the
18 record in Case No. 22-30659.

19 When we last broke, we had just concluded with the
20 testimony of Mr. Harshfield.

21 Ms. Pittman?

22 MS. PITTMAN: Good afternoon. Elizabeth Pittman with
23 Jackson Walker on behalf of Intercity Investments, Inc.

24 Before I get too far in, if any of my Jackson Walker
25 colleagues are watching, the judge has allowed us to remove

1 our jackets because it's very warm, so please don't make jokes
2 at my expense when I get back to the office.

3 Your Honor, at this point we would like to call by former
4 deposition Mr. Kyle DeHenau of Plante Moran. His deposition
5 was taken earlier this month.

6 THE COURT: Uh-huh.

7 MS. PITTMAN: And he works in and resides in
8 Illinois. He is outside of subpoena range. We were unable to
9 subpoena his testimony. But we were able to get him to sit
10 for an evidentiary deposition.

11 That was taken, again, earlier this month, with notice to
12 all parties that it was an evidentiary deposition. Counsel
13 for all interested parties attended, including Debtor, Initial
14 Plan Sponsors, and Bay 9. Bay 9 also asked questions of Mr.
15 DeHenau at that deposition.

16 We are seeking to admit that deposition transcript in
17 full, understanding that that contains any objections made by
18 counsel as well as examination made by other parties.

19 Assuming I'm going to get an evidentiary objection, I can
20 argue those now, or wait until the objections are lodged.

21 THE COURT: Let's take the objections first.

22 MS. PITTMAN: Okay.

23 THE COURT: Mr. Davis?

24 MR. DAVIS: Thank you, Your Honor. Matthew Davis for
25 Bay 9.

1 Yes. As expected, we object to the admission of this
2 deposition transcript because ICI has failed to satisfy Rule
3 804 and to show that Mr. DeHenau, the declarant, or deponent,
4 is unavailable.

5 In particular, they have not satisfied 804(a)(5), which
6 states that the witness must be absent from trial or hearing
7 and the statement's proponent has not been able, by process or
8 other reasonable means, to procure the witness. We have not
9 heard any indication that they even requested his appearance
10 at this trial, that they've made any effort to defray any
11 costs related to that, or that they have inquired as to the
12 possibility that he could appear remotely, which has been
13 regularly used throughout these proceedings.

14 And similarly, I believe, in addition to 804, we have an
15 objection on relevance grounds because this entire deposition
16 transcript relates to a property condition assessment
17 conducted two years ago or more at this point. We've had
18 multiple property condition assessments since that date.
19 We're talking about a stale report that was prepared for an
20 entirely different purpose than we face today.

21 THE COURT: Ms. Walsh?

22 MS. WALSH: UMB joins in Bay 9's objections to the
23 admission of the testimony in this way, for all the reasons
24 that Mr. Davis stated.

25 And additionally, as the parties and the Court is aware,

1 at the trial held on the property condition cure part of this
2 process, the Debtors testified that the purpose of the Plante
3 Moran report was in furtherance of negotiations with
4 Bondholders.

5 So, in addition to being stale and surpassed now by
6 multiple property condition -- more recent property condition
7 reports, there is testimony from the Debtors that the purpose
8 was for that specific Bondholder negotiations. And as Mr.
9 Hull testified earlier today, when evaluating a property
10 condition report, it's important to take into the context of
11 what its purpose is.

12 So, for those reasons, we think it is not relevant to
13 these proceedings. And same with the testimony of Mr.
14 DeHenau.

15 THE COURT: Okay. Thank you very much, Ms. Walsh.

16 MS. WALSH: Thank you.

17 THE COURT: Before I get to you, Ms. Pittman,
18 anything further, Ms. Walker?

19 MS. WALKER: No, Mr. Davis covered it for us.

20 THE COURT: Oh, okay.

21 MS. WALKER: Thank you.

22 THE COURT: Thank you.

23 MR. DAVIS: Same team.

24 THE COURT: Ooh. Long day. I'm sorry.

25 Ms. Pittman?

1 MS. VANDESTEEG: It's a warm robe.

2 THE COURT: I can only imagine what you're going
3 through, because it's stifling when I walk in through here. I
4 am so sorry.

5 Okay. Ms. Pittman?

6 MS. PITTMAN: I actually want to switch things up a
7 little bit from the Federal Rules of Evidence to direct this
8 Court's attention to Federal Rule of Civil Procedure 32. And
9 the title of that rule is "Using Depositions in Court
10 Proceedings."

11 THE COURT: Uh-huh.

12 MS. PITTMAN: And it starts in Section A(1). "In
13 general, at a hearing or trial, all or part of a deposition
14 may be used against a party on these conditions." And then --
15 I'm sorry. Going down to Subsection (4). So, A(4). I'm
16 sorry.

17 THE COURT: Uh-huh.

18 MS. PITTMAN: It states, "A party may use, for any
19 purpose, the deposition of a witness, whether or not a party,
20 if the court finds," and I would direct you to Subsection B,
21 "that the witness is more than 100 miles from the place of
22 hearing or trial or is outside of the United States, unless it
23 appears that the witness's absence was procured by the party
24 offering the deposition."

25 Mr. DeHenau is outside of subpoena range. He lives in

1 Illinois. That far exceeds a hundred miles. There has been
2 no allegation, nor do I think there could even be one, that
3 somehow we've procured his place of residence to be outside of
4 subpoena range.

5 If you look down to Subsection 5, "Limitations on Use,"
6 there are only two limitations placed on a use of an
7 unavailable declarant's deposition, and that's that the
8 deposition was taken on short notice if, and only if, a party
9 receiving that notice promptly moved for a protective order
10 under Rule 26. I think all parties can agree that that didn't
11 happen.

12 And then also, Subsection B, that the unavailable deponent
13 could not obtain an attorney. That also did not happen. The
14 deposition was actually scheduled in coordination with Plante
15 Moran's general counsel.

16 So, I believe that Mr. DeHenau's deposition is admissible
17 and permissible for use, again, in full, to avoid any optional
18 completeness concerns, pursuant to Federal Rule of Evidence
19 32(a)(4)(B).

20 THE COURT: Okay. What about the relevance
21 objection?

22 MS. PITTMAN: Oh. Thank you. Great sticky note.
23 Your Honor, you have heard about two different property
24 condition reports in this Court that no one has argued is
25 irrelevant.

1 Plante Moran also conducted a property condition
2 assessment commissioned by Debtors. I understand that it is
3 older than the other two, but I believe that that only goes to
4 the weight of the evidence, not the admissibility of it.

5 The threshold for relevance is relatively low under
6 Federal Rule of Civil Procedure -- or, not Civil Procedure;
7 back to Rules of Evidence -- 401: Tendency to make any fact
8 more or less probable than it would be without the evidence.

9 Again, although I understand that it occurred a year
10 before the other reports, it does make it more probable what
11 potentially the anticipated CAPEX costs would be over the
12 remainder of this lease duration. And it -- I believe it
13 clears the relevancy threshold as a binary is it relevant or
14 not?

15 To whatever extent counsel believes that it's not relevant
16 enough to be admitted, the only way to exclude that would be
17 under Federal Rule of Evidence 403, which would require that
18 they show that the relevance is substantially outweighed by
19 the danger of unfair prejudice, confusing the issues,
20 misleading the jury, undue delay, wasting time, or needlessly
21 presenting cumulative evidence.

22 Undue delay, wasting time, and needlessly presenting
23 cumulative evidence are inapplicable here as we're not
24 offering or seeking to read Mr. DeHenau's deposition
25 transcript into evidence. We just would like to give it to

1 the Court to accept as witness testimony in full.

2 There is no jury. This is a bench trial. I don't believe
3 that Your Honor would confuse the issues. As you've noted
4 multiple times, you have the context as to why Debtors claim
5 that Plante Moran report was admissible, as well as the entire
6 content of Mr. DeHenau's deposition, which discusses the
7 circumstances of his report, how he conducted it, his personal
8 observations.

9 And unfair prejudice, I don't see any unfair prejudice
10 caused here that would substantially outweigh the probative
11 value. Again, this would permit a property condition
12 assessment to be before the Court by every stakeholder here.
13 You have one by the Landlord, you have one by Plan Sponsors
14 that was adopted by the purchaser, and then you have one for
15 the Debtors.

16 THE COURT: Well, let me stop you, Ms. Pittman. I
17 don't have those before me. I've got a couple of pages.

18 MS. PITTMAN: Correct.

19 THE COURT: I've got two pages of Terracon and I have
20 the declaration of Mr. Winnecke, which has two or three tables
21 in it.

22 MS. PITTMAN: Uh-huh.

23 THE COURT: And so are you asking me to take in the
24 deposition along with every exhibit thereto, and then
25 essentially rule on them myself?

1 MS. PITTMAN: No, Your Honor, and that was my error.

2 THE COURT: Okay.

3 MS. PITTMAN: I misspoke. Yes. Your Honor has
4 testimony from the other two drafters, creators --

5 THE COURT: Sure.

6 MS. PITTMAN: -- of the property condition
7 assessments. At this juncture, we are only seeking admission
8 of Mr. DeHenau's deposition testimony.

9 THE COURT: Uh-huh.

10 MS. PITTMAN: Again, because that's what is permitted
11 under Federal Rule of Civil Procedure 32.

12 We are not seeking to move into admission the exhibits
13 used in his deposition, just the testimony itself, which we
14 believe would be relevant, and, again, provides the Court with
15 an even more fulsome picture that, if the Court deems it to
16 be, you know, again, older than the ARCH or the Terracon
17 reports, that would, we believe, go to weight of the evidence
18 --

19 THE COURT: Uh-huh.

20 MS. PITTMAN: -- and not its admissibility as a
21 threshold relevance question.

22 THE COURT: And what of Mr. Davis's argument that
23 804(a)(5) says that essentially the declarant is not able by
24 other reasonable means? Why couldn't he have testified by
25 WebEx?

1 MS. PITTMAN: Your Honor, we reached out to Plante
2 Moran's counsel to try to coordinate it. We were offered an
3 evidentiary deposition and we took it.

4 THE COURT: Okay.

5 MS. PITTMAN: We also have a declaration from Mr.
6 DeHenau that is in our exhibit book that -- in which he
7 confirms that he lives and resides in Illinois. And we took
8 the deposition because it was offered to us. He's otherwise
9 unavailable for trial testimony. And we'd just seek to admit
10 his testimony under Rule 32.

11 And I guess, if we want to use the Federal Rules of
12 Evidence -- although I would argue that that's a separate
13 procedural vehicle, I don't think it's entirely necessary
14 here, because that would put it in direct conflict with the
15 Federal Rules of Civil Procedure -- there is an exception made
16 for former testimony. And it specifically carves out that the
17 former testimony has to be given as a witness at trial,
18 hearing, or a lawful deposition. And that's certainly what
19 has occurred here.

20 And, again, we're seeking to provide it to the Court in
21 its entirety to ensure that no party is prejudiced. They were
22 all there. They all had the opportunity to object, to
23 question. I believe Bay 9 took us -- or, took Mr. DeHenau up
24 on his availability to do so. And we're happy to let the
25 Court review that testimony as well.

1 THE COURT: Uh-huh.

2 MS. PITTMAN: And, again, because he's outside of
3 subpoena range, there's no way that we could compel him to
4 testify, even if it is by WebEx.

5 THE COURT: Just give me a moment.

6 (Pause.)

7 THE COURT: Okay. Anything further before I take a
8 brief recess? Mr. Davis?

9 MR. DAVIS: Nothing further, Your Honor.

10 THE COURT: Okay. Ms. Walsh?

11 MS. WALSH: No, thank you, Your Honor.

12 THE COURT: Okay. Ms. Pittman?

13 MS. PITTMAN: No, Your Honor, thank you.

14 THE COURT: Okay. The Court will take a brief
15 recess. It's 5:07. I'll be back around 5:20.

16 MR. GOLD: Thank you, Your Honor.

17 THE CLERK: All rise.

18 (A recess ensued from 5:08 p.m. until 5:34 p.m.)

19 THE CLERK: All rise.

20 THE COURT: Please. Be seated. We'll go back on the
21 record in Case No. 22-30659, Northwest Senior Housing.

22 When we last broke, there was an evidentiary submission on
23 behalf of the Landlord, ICI, to take in the entire deposition
24 transcript of Mr. Kyle DeHenau with Plante Moran in support of
25 ICI's objection to adequate assurance.

1 In terms of the Court's ruling, given where we are in the
2 trial -- I'm not going to go through a lengthy walk through of
3 the Code -- I have had an opportunity to review Federal Rule
4 of Civil Procedure 32. I'll just note that what Rule 32
5 provides is that -- let me get to it; okay, here we go -- in
6 (a)(1), "At any hearing or trial, all or part of a deposition
7 may be used against the party on these conditions." And
8 Subsection (1)(B) says it is used to the extent it would be
9 admissible under the Federal Rules of Evidence if the deponent
10 were present and testifying.

11 In addition, in (a)(4), it talks about the unavailability
12 of a witness, and (4)(B) is that the witness is more than a
13 hundred miles.

14 Then we flow over to the Federal Rules of Evidence, and
15 specifically 804(a)(5), which provides a declarant is
16 considered to be unavailable if they're absent from trial or
17 hearing and the statement's proponent has not been able, by
18 process or other reasonable means, to procure the declarant's
19 attendance.

20 Obviously, the objection on behalf of the Plan Proponents
21 and Bay 9 is that ICI didn't use other reasonable means to
22 procure attendance.

23 I have read the very, very small amount of Fifth Circuit
24 law on this issue, and there is a case, *Bailey v. Southern*
25 *Pacific Transportation*, which is ancient per our definitions

1 that we've used in this case. It's a 613 F.2d 1385 citation
2 to a 1980 decision. And in that case, the Fifth Circuit was
3 posed with a plaintiff's counsel that stated at the trial that
4 the witness had resided in Arizona and was beyond the court's
5 process and that he couldn't be brought to Beaumont to testify
6 and it was within the discretion of the trial court to accept
7 or reject counsel's representations about unavailability.
8 And, again, that was also citing *Castilleja v. Southern*
9 *Pacific*, and that's 445 F.2d 183. It's another Fifth Circuit
10 decision.

11 In this case, the Court is going to accept ICI's
12 representation of unavailability of the witness in that Ms.
13 Pittman did state that they sought to have Mr. DeHenau testify
14 here and that his counsel instead offered up an evidentiary
15 deposition.

16 The Court will accept the deposition transcript as an
17 exhibit. But as with all deposition transcripts that are
18 taken in, the Court is going to require excerpts. Okay? And
19 so if the parties want to point the Court to what's important,
20 rather than the Court just read an entire deposition, I can't
21 imagine that the parties believe that every part of the
22 deposition is critical.

23 MS. PITTMAN: Thank you, Your Honor. Elizabeth
24 Pittman on behalf of Intercity Investment Properties, Inc.

25 We are willing to provide deposition designations.

1 Candidly, that was our first attempt to do here. And then we,
2 of course, under Federal Rule of Civil Procedure 32, if the
3 deposition of an unavailable witness is offered, the party --
4 the opposing party is free to provide --

5 THE COURT: Counterdesignate?

6 MS. PITTMAN: -- essentially counterdesignations.

7 THE COURT: Uh-huh.

8 MS. PITTMAN: And due to the amount of affirmative
9 designations, we didn't believe that would be the most
10 fruitful process. However, that being said, if we could have
11 until tomorrow morning to --

12 THE COURT: Oh, I don't expect you to do it right
13 now.

14 MS. PITTMAN: Okay. To provide, because we have
15 already gone through the exercise. And we will provide our
16 affirmative designations to counsel for Bay 9 to allow them to
17 provide their counterdesignations before submitting to the
18 Court, --

19 THE COURT: Okay.

20 MS. PITTMAN: -- if that's your preference.

21 THE COURT: So let me take a step back. Is what
22 you're telling me that you're going to provide me designations
23 and I'm going to be reading three-quarters of the deposition
24 transcript anyway?

25 MS. PITTMAN: That was the conclusion from our

1 attempt to do this before.

2 THE COURT: Okay. Well, then, with that, I don't
3 believe it's probably a good use of time to require the
4 deposition excerpts.

5 In terms of Bay 9 and the Plan Sponsors, the same offer
6 would go to you. If there's something you want to point me to
7 in terms of experts -- excerpts -- I knew I wasn't going to be
8 able to say the word -- I'm willing to take them. But, again,
9 if you just would like the Court to read it as a whole, I'm
10 happy to do that as well.

11 MR. DAVIS: Your Honor, I think -- obviously, the
12 entire transcript will be in the record, but we will certainly
13 take you up on your offer to point out relevant pieces that we
14 think you should focus on.

15 THE COURT: Sure. And again, I don't require that by
16 tomorrow. We'll talk a little bit further about when we'll be
17 pushing the sale and the confirmation conclusion. And so I
18 think that if you could just give it to me before then, that
19 would be fine. And, again, that way, because it might not be
20 pointed out in your papers, I'll have the important portions
21 of the transcript from your clients' perspective.

22 MR. DAVIS: Absolutely. Thank you, Your Honor.

23 THE COURT: Okay. Thank you.

24 MS. PITTMAN: Thank you, Your Honor.

25 THE COURT: You're welcome. And so is that

1 transcript anywhere in your exhibit notebooks?

2 MR. DAVIS: It is at ICI Exhibit 25, Your Honor.

3 THE COURT: Okay. Thank you very much. Okay. And
4 so the Court will admit ICI Exhibit 25.

5 (Intercity Investment Properties, Inc.'s Exhibit 25 is
6 received into evidence.)

7 THE COURT: And I will allow, as part of closing,
8 again, obviously, before we close evidence, I'll allow those
9 excerpts to come in, and I will allow as part of closing each
10 of you, but I'd speak specifically to the Objectors on this
11 point, the Plan Sponsors and Bay 9, I'll allow for you to make
12 your argument about what weight I should give to his testimony
13 one way or the other. All right? And obviously the same
14 goes for ICI in terms of the importance of it. Okay?

15 MR. DAVIS: Understood, Your Honor.

16 One point of clarification or direction. Obviously, in a
17 normal scenario, where you would have page and line
18 designations and counterdesignations and offering of that,
19 there would also be within that the Court addressing the
20 objections made within the deposition transcript, many of
21 which will just be objection to form because they would
22 preserve that for the ultimate trial.

23 I'm not sure how the Court wants to handle -- I mean,
24 obviously, it's one thing if what we want you to focus on
25 doesn't have any objections. But my concern is, if the

1 entire transcript is admitted, there's a lot of objections
2 that the Court will not ultimately have a ruling on on the
3 record.

4 THE COURT: Okay. So, would it be the proposal to
5 point the Court to various portions of the transcript in which
6 you would seek to have the Court's ruling?

7 MR. DAVIS: Well, I suppose -- we could do that,
8 certainly, Your Honor.

9 I guess if we're admitting the entire transcript, it seems
10 like a bit of waste of time to argue objections on the issues
11 that might not ultimately be deemed relevant. But if that's
12 what we are faced with, we can certainly do it that way if
13 that's your preference. We'll just defer -- I just wanted to
14 flag the issue because I think it is something we need to
15 address.

16 THE COURT: Obviously, your objections are limited in
17 terms of the objections to form there. Hmm. Let me take a
18 look at the transcript.

19 (Pause.)

20 MS. PITTMAN: Your Honor, if I may?

21 THE COURT: Please. Ms. Pittman?

22 MS. PITTMAN: I believe that there were no objections
23 made during Landlord's examination of Mr. DeHenau, and the
24 first objection occurs on Page 92 of the 110-page transcript.

25 THE COURT: Yes. I was just looking. I only see

1 five objections.

2 MS. PITTMAN: Yes. So I just --

3 THE COURT: Excuse me. Five instances of the word
4 "Objection."

5 MS. PITTMAN: So I just wanted to provide that
6 context to the extent that it's helpful to the Court.

7 THE COURT: Okay. Again, given in the whole scheme
8 of things it's a fairly short deposition transcript, and I
9 only see, again, instances of the word "Objection" five times,
10 I'll allow whoever the objection was lodged by, I'll allow
11 that objector, we can argue that before we get to closings.
12 And if the parties need rulings on those five objections, the
13 Court will be prepared to do that prior to closing. So,
14 again, given that we're talking about five. I'll be prepared
15 to go on all the instances of the word "Objection," but if you
16 want to limit them, you could just let me know.

17 MR. DAVIS: Thank you, Your Honor.

18 THE COURT: Okay. You're welcome.

19 Okay. And so, for sake of the record, Exhibit 25 will be
20 admitted.

21 Okay. So it is a quarter to 6:00. What's your plan, Ms.
22 Vandesteeg?

23 MS. VANDESTEEG: Thank you, Your Honor. For the
24 record, Elizabeth Vandesteeg on behalf of Intercity Investment
25 Properties, Inc.

1 Your Honor, I'm also looking at the clock, and I see that
2 it's 5:45. We did have another witness that we were hoping to
3 put on today. However, I think it is unlikely that we will be
4 able to complete direct ahead of our 6:30 allotted end time
5 today, and I really would prefer not to disrupt direct.

6 Candidly, it's also been a bit of long, hot day. What may
7 make more sense, and I've not discussed this with counsel, not
8 knowing what time we were going to end, but we did start the
9 day with some potential scheduling issues. And perhaps if we
10 could revisit, then, for a few minutes here toward the end of
11 the day, we can maybe knock out, then, what might work for
12 continuation into next week. And I suspect that we will still
13 have time, then, to complete what we expected to complete
14 tomorrow in terms of the remainder of ICI's witnesses on
15 adequate assurance, one, as well as, then, Mr. Fields and then
16 Mr. Donosky's issues. And I think that that would be, then,
17 the remainder of the adequate assurance and sale-related
18 issues.

19 So it may make more sense to spend a little bit more time
20 on scheduling.

21 THE COURT: Okay. So, if the parties are prepared to
22 talk dates, then I'm happy to do that in our remaining time.

23 MR. BLECK: Your Honor?

24 THE COURT: Mr. Bleck?

25 MR. BLECK: Yes, Your Honor. I think it would be

1 helpful if we could take a five-minute recess so perhaps the
2 parties could speak, determine if we can land on dates that
3 work, and then we could present it to the Court.

4 THE COURT: Yes. Why don't we take a short recess.
5 We can figure out if we've got some acceptable dates. And
6 then if there's any other little things that we need to button
7 up today so that we can hit the ground running with Mr. Polsky
8 tomorrow, then I'll give you guys a little bit of time to do
9 that.

10 MR. BLECK: All right. Appreciate it.

11 MS. VANDESTEEG: Thank you, Your Honor.

12 MR. BLECK: Thank you.

13 THE COURT: You're welcome.

14 THE CLERK: All rise.

15 THE COURT: Ms. Jeng will poke her head back in in
16 about ten minutes and you can tell her if you're ready.

17 MS. VANDESTEEG: Thank you so much.

18 THE COURT: Thank you.

19 (A recess ensued from 5:49 p.m. to 5:56 p.m.)

20 THE CLERK: All rise.

21 THE COURT: Please be seated. We're going to go back
22 on the record in Case No. 22-30659. Scheduling.

23 MS. VANDESTEEG: Good evening, Your Honor, at this
24 point.

25 Great news. The parties have conferred in the hallway and

1 we have come to agreement that we would like to resume with
2 respect to the confirmation side of things starting in your
3 afternoon availability, which I believe you said was 2:00 p.m.
4 on March 7th,

5 THE COURT: Uh-huh.

6 MS. VANDESTEEG: -- and continuing through, then, for
7 all day on March 8th.

8 THE COURT: And let me take a look. Just one second.
9 I apologize. I have been promptly signed out of my calendar.
10 Just one moment.

11 (Pause.)

12 THE COURT: All right. So the 7th, we have a short
13 stay docket. And I couldn't start in the morning if I wanted
14 to. So, a short stay docket on March 7th. We'll do that
15 around 1:30. We should be -- we also have a trial docket
16 call. But we'll go ahead and start the 7th at 2:00.

17 Okay. So, on the 8th, how much time do the parties
18 anticipate needing on the 8th? And this is the reason. I was
19 asked to speak at a luncheon over the lunch hour, and it might
20 not be possible, just the time that it takes to come and go,
21 given that it would be off-campus. But I just want to
22 clarify. So, Mr. Johnson?

23 MS. VANDESTEEG: Your Honor?

24 THE COURT: Ms. Vandesteeg?

25 MS. VANDESTEEG: Yeah, I will in large part defer to

1 --

2 THE COURT: Sure.

3 MS. VANDESTEEG: -- Plan Sponsors on timing. Just in
4 terms of structure, my understanding is that the expectation
5 would be for brief confirmation-related openings, evidence to
6 go in, and then cumulative closing by all parties on all
7 issues.

8 THE COURT: Okay. That's going to take a while.
9 Okay.

10 MR. JOHNSON: Yeah. The closing -- that is correct.
11 We're all hoping a day and a half gets it done.

12 THE COURT: Okay.

13 MR. JOHNSON: Not that we'd necessarily need to go
14 until real late, but we understand that we have a little
15 spillover time the next day if that's where we go to.

16 THE COURT: Okay.

17 MR. JOHNSON: But we don't anticipate a lot of
18 evidence.

19 THE COURT: Okay.

20 MR. JOHNSON: The only evidence would come in by
21 declaration. There'd be some cross of the declarant, I think.
22 And then --

23 THE COURT: Okay.

24 MR. JOHNSON: -- I think after that it's going to be
25 a whole bunch of legal argument.

1 THE COURT: Okay. Excellent. All righty. So we'll
2 go tomorrow. And did I understand from Ms. Jeng that you want
3 to go until 4:30 tomorrow?

4 MR. JOHNSON: That'd be ideal, Your Honor.

5 MS. VANDESTEEG: We're all hoping that you'll kick us
6 out of here by 4:30.

7 MR. JOHNSON: Yes. We appreciate the figuring out
8 how to exit the building after it's closed.

9 THE COURT: Shall I line your Ubers up?

10 MR. JOHNSON: So, but --

11 MR. GOLD: Thank you.

12 THE COURT: Okay. So, all right. So, for today, so
13 we will continue this to 2/24, to Friday. We'll begin at
14 9:30. And then, as you'll recall, we'll pick that up. I have
15 that one matter at 1:30 that I think that will go for about 30
16 minutes, and then we'll go after that until 4:30. Then you
17 ain't gotta go home, but you gotta get the heck out of here.
18 And then March 7th we will begin at 2:00, and then March 8th
19 all day. Okay.

20 MS. VANDESTEEG: Thank you, Your Honor.

21 THE COURT: All right. Anything else?

22 MR. JOHNSON: Nothing else.

23 MS. VANDESTEEG: No, thank you.

24 THE COURT: All righty. Okay. So, with that, again,
25 thank you to all the witnesses who have testified today, and

1 I'll see you tomorrow at 9:30.

2 MS. VANDESTEEG: Thank you, Your Honor.

3 MR. JOHNSON: Thank you, Your Honor.

4 THE COURT: You're welcome. Court will stand
5 adjourned for the day. I'll be on the bench for a minute, so
6 feel free.

7 (Proceedings concluded at 6:00 p.m.)

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CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the
above-entitled matter.

23 **/s/ Kathy Rehling**

02/29/2023

24

25

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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