

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

VWS Holdco, Inc., *et al.*,

Debtors.¹

Chapter 11

Case No. 25-10979 (JKS)

(Jointly Administered)

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
PURSUANT TO SECTIONS 105, 361, 362, 363, 364, 503, 506, 507 AND 552 OF THE
BANKRUPTCY CODE AND RULES 2002, 4001, 6004 AND 9014 OF THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE (I) AUTHORIZING THE DEBTORS TO
(A) USE CASH COLLATERAL, (B) OBTAIN SENIOR SECURED
SUPERPRIORITY POSTPETITION FINANCING AND GRANTING LIENS AND
SUPERPRIORITY ADMINISTRATIVE CLAIMS, AND (C) PROVIDE ADEQUATE
PROTECTION, (II) MODIFYING THE AUTOMATIC STAY, (III) SCHEDULING
A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF**

The Official Committee of Unsecured Creditors (the “Committee”) objects to the *Debtors’ Motion for Entry of Interim and Final Orders Pursuant to Sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of the Bankruptcy Code and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (I) Authorizing the Debtors to (A) Use Cash Collateral, (B) Obtain Senior Secured Superpriority Postpetition Financing and Granting Liens and Superpriority Administrative Claims, and (C) Provide Adequate Protection, (II) Modifying the Automatic Stay, (III) Scheduling A Final Hearing, and (IV) Granting Related Relief* (the “DIP Financing Motion”) [Docket No. 15] as follows:²

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification numbers are as follows: VWS Holdco, Inc. (5412) and Shoosmith Bros., Inc. (6914). The Debtors’ mailing address is P.O. Box 2770, Chesterfield, VA 23832.

² Capitalized terms not specifically defined herein shall have the meanings set forth in the DIP Financing Motion.

PRELIMINARY STATEMENT

1. The Committee serves as an advocate in these cases for the benefit of all of the Debtors' unsecured creditors. The Committee's objective is to ensure that a fulsome and fair process is run that will provide the opportunity for general unsecured creditors to receive the greatest recovery available while preserving the value of the Debtors' estates for the benefit of all stakeholders. The Committee understands that the Debtors must make certain concessions to obtain DIP financing. Unfortunately, certain parties have sought, *inter alia*, through an overreaching (with nearly every conceivable benefit requested), insider financing package, to hamstring the Committee, run a sale process that appears destined (or designed) to fail, all the while refusing to pay the freight of these chapter 11 cases, provide an appropriate runway to a value maximizing transaction. Instead, the Directors hope to run out the clock and obtain the benefit of exceedingly broad releases to whitewash their bad conduct.

2. Unfortunately, the DIP financing appears to have less to do with providing the Debtors with appropriate financing than with benefitting and protecting the insider DIP Lenders and insider Prepetition Secured Parties under the guise of a chapter 11 proceeding which may be more appropriately converted to chapter 7. The proposed DIP Budget and first monthly operating reports filed by the Debtors paint a grim picture.

3. Moreover, despite its requests, the Committee has been provided only limited documentation, and received limited financial reporting, in the late afternoon of July 23, 2025—and only after making multiple requests—as required under the Second Interim DIP Order (as defined below).

4. Of particular concern is that both before and after the commencement of these cases, the actions of the Debtors' directors, Larry McGee and Fred Nichols (the "Directors")

through their captive lending vehicle, Volunteer Enterprises, LLC (the “Volunteer”) have been motivated by one central, unwavering and inappropriate goal: to extract every last cent of value from Debtors’ assets at the expense of the Debtors’ creditors, contract counterparties and the regulatory authorities of the Commonwealth of Virginia.

5. The Directors, DIP Lenders, Volunteer, Prepetition Secured Parties and a litany of “Releasees” seek to include numerous related parties and affiliates. They cannot have it both ways. The Committee cannot allow this to happen and anticipates filing the necessary pleadings to obtain standing to challenge many bad actions and/or claims against the Directors and Volunteer, and other appropriate parties. Potentially valuable estate causes of action (or their proceeds) should not be given away or encumbered, particularly at this early stage of these cases. Nor can the DIP Financing be approved as proposed.

6. As set forth herein, the Committee’s concerns with the DIP Financing Motion and DIP Facility include:³

- **Insufficient Budget and Runway for a Value Maximizing Transaction.** The budget must cover anticipated administrative expenses; the Debtors may already be administratively insolvent. The Committee has received limited financial reporting, as required by the Second Interim DIP Order. The self-serving insider DIP Financing is not designed to benefit anyone other than the DIP Lenders, Directors, and Prepetition Secured Parties.
- **No Waivers of 506(c), 552(b), or Marshaling Rights.** The Court should not grant waivers of the Debtors’ section 506(c) surcharge rights, section 552(b) equities of the case exception, or marshaling rights without first assuring that all administrative claims and other costs and expenses of preserving these estates will be paid in full. At this early stage of these cases, the requested waivers are inappropriate and harmful to the estates.
- **No Liens on Avoidance Action Proceeds or Commercial Tort Claims.** Avoidance Actions, commercial tort (or litigation) claims, and their proceeds are property of the estates created by the Debtors’ bankruptcy filing and are typically reserved for unsecured creditors. The DIP Lenders, which are receiving first-

³ The Committee and DIP Lenders have agreed to certain modifications which the Committee anticipates will be reflected in the proposed final order (but reserves all rights with respect thereto if not).

priority priming liens and superpriority claims, should not also receive the protections of liens on proceeds of Avoidance Actions or commercial tort claims, which may be the only material value available for unsecured creditors.

- **Disparate Budget for Professional Fees.** The DIP budget includes only \$200,000 for the Committee's professionals, compared to \$2,150,000 for the Debtors' army of professionals. This is wholly inadequate and impairs the Committee's ability to fulfill its fiduciary duties. The Committee's professional fee allotment should be at least 33% of the amount budgeted for the Debtors' professionals.

7. The Committee recognizes the Debtors' need for postpetition financing. However, the Committee simply cannot support the proposed DIP Facility, with all downside risk placed on the Debtors' general unsecured creditors, and no meaningful ability for the Committee to maximize value and protect the interests of its constituency.

BACKGROUND

A. The Debtors' Chapter 11 Cases

8. On June 1, 2025 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Case. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses as debtors-in-possession. No trustee or examiner has been appointed in these cases.

9. The Debtors filed the DIP Financing Motion on June 2, 2025, seeking entry of interim and final orders: (i) authorizing the Debtors to obtain postpetition financing, (ii) authorizing the Debtors to grant security interests and superpriority administrative claims, (iii) granting adequate protection to the Debtors' Prepetition Secured Parties, and (iv) authorizing the use of cash collateral, among other relief.

10. On June 4, 2025, the Bankruptcy Court entered the *Interim Order Pursuant to Sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of the Bankruptcy Code and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (I) Authorizing the Debtors to (A) Use Cash Collateral, (B) Obtain Senior Secured Superpriority Postpetition Financing and*

Granting Liens and Superpriority Administrative Claims and (C) Provide Adequate Protection, (II) Modifying the Automatic Stay, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief [Docket No. 42] (the “First Interim DIP Order”).

11. On June 16, 2025, the United States Trustee appointed the Committee, which consists of the following members: (i) Industrial Power Generating Company, LLC c/o Archaea Energy, (ii) Mr. Bult’s Inc., and (iii) One Environmental Group. *See Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 79].

12. On June 16, 2025, the Committee selected Greenberg Traurig, LLP as proposed counsel.

13. On July 2, 2025, the Bankruptcy Court entered the *Second Interim Order Pursuant to Sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 of the Bankruptcy Code and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (I) Authorizing the Debtors to (A) Use Cash Collateral, (B) Obtain Senior Secured Superpriority Postpetition Financing and Granting Liens and Superpriority Administrative Claims and (C) Provide Adequate Protection, (II) Modifying the Automatic Stay, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. 146] (the “Second Interim DIP Order”).

B. Summary of DIP Facility

14. The Debtors seek authority for Debtor VWS Holdco, as borrower, and Debtor Shoosmith, as guarantor, to obtain a senior secured superpriority DIP Facility in an aggregate amount of \$5,400,000 (with \$4,900,000 in new money), including a roll-up of interim funding in the amount of \$500,000.00, on the terms and conditions set forth in the credit agreement attached to the First Interim DIP Order as Exhibit 1. The Debtors also seek authority to use Cash Collateral in accordance with the DIP Budget and DIP Credit Agreement.

15. As security, the Debtors seek the Court's authorization to grant to the DIP Agent, for the benefit of the DIP Secured Parties, subject to the Carve-Out, a superpriority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code and first priority priming liens on and security interests in substantially all assets and property of the Debtors (now owned or hereafter acquired) pursuant to sections 364(c)(2), (c)(3), and (d)(1) of the Bankruptcy Code.

16. In connection with the DIP Facility, the Debtors would also be permitted to grant adequate protection for the benefit of the Prepetition Secured Parties, including adequate Protection Superpriority Claim, Adequate Protection Liens, and Adequate Protection Payments, to the extent of and as compensation for any diminution in value, the payment of fees of the Prepetition Secured Parties.

OBJECTION

A. The Insider DIP Facility Cannot Withstand Scrutiny

17. The Debtors acknowledge that the DIP Lenders are insiders (*i.e.*, the Debtors' sole officers and directors and sole board members). *See* DIP Financing Motion at n. 4. As a result, the DIP Facility must be subjected to a higher level of scrutiny. *See In re Los Angeles Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011); *In re Latam Airlines Grp. S.A.*, 620 B.R. 722, 769 (Bankr. S.D.N.Y. 2020) (“[C]ourts apply a heightened scrutiny test in assessing the bona fides of a transaction among a debtor and an insider of the debtor.”); *see also In re Philadelphia Newspapers, LLC*, 445 B.R. 450, 465 (Bankr. E.D. Pa. 2010) (stating that a proposed DIP loan to be funded by an insider of the debtor is “even less likely” to be approved).

18. The DIP Facility cannot withstand this scrutiny. Based on the limited information received and reviewed by the Committee to date, it is clear that the Debtors and Volunteer seek to effectuate a process that will provide less than two months to pay lip service to a likely dead from inception sale process, or attempt to formulate and finalize an alternative exit from these cases.

This severely constricted timeframe will instead effectively foreclose certain restructuring alternatives and investigation into questionable prepetition activities. Perhaps that is what the DIP Lenders truly seek.

19. Viewed realistically, this chapter 11 process instead appears designed to improperly eliminate significant exposure that the Directors and Volunteer have for their prepetition actions. The Court should not allow the bankruptcy process to be used for the exclusive benefit of a secured creditor or as here, for an alleged secured creditor. *See In re Def. Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992) (prohibiting “convert[ing] the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the postpetition lender.”).

B. Debtors’ Insiders Acquire the \$150 Million Debt for \$10 Million Using the Debtors’ Assets

20. More specifically, with full knowledge that the Debtors possessed substantial valuable assets that could be (and were shortly thereafter) monetized for over \$40 million, the Directors approached the Debtors’ original senior secured lenders (the “Prior Lenders”) and negotiated the acquisition of approximately \$150 million in debt for \$10 million through their captive entity, Volunteer, to buy the debt. To finance the acquisition of the debt, the ***Directors used \$10 million from Shoosmith’s postclosure bond to fund Volunteer’s acquisition of the debt.***⁴

⁴ *See Defendants’ Response Plaintiffs’ Motion for Sanctions, Leave, and to Compel Against Defendants* (the “Sanctions Response”), at p. 2, attached hereto as **Exhibit A**. In this pleading, the Directors make the following judicial admission: “Nichols and McGee, through Volunteer Enterprises, a separate entity owned by Nichols and McGee, ***used \$10 million dollars from the Evergreen post closure bond fund*** to acquire the debt held by PNC and Erie.” *Id.* (emphasis added). The Directors’ pleading provides no analysis of why the Debtors’ funds were not used to acquire and either restructure or cancel the \$150 million in secured debt. As demonstrated below, the Directors’ true intent was to cause nearly all of the value of the Debtors’ assets to flow directly to them.

C. Debtors' Insiders Get Sued in Texas

21. After becoming aware of the Directors' actions, various investors in the Debtors' upstream equity-entities (the "Investor Plaintiffs") initiated litigation in the state district court for Tarrant County, Texas (the "State Court Litigation")⁵ asserting various causes of action against the Directors and seeking injunctive relief to prevent further dissipation of the Debtors' assets by the Directors. To avoid this injunctive relief, counsel for the Directors and Volunteer agreed that the Directors would "freeze things" and take no actions to wind down the upstream equity-entities without providing notice to the Investor-Plaintiffs.⁶ Based on counsel's representation, the state court Judge denied the injunctive relief.

D. Debtor's Insiders Sell Valuable Property for \$40 Million and Pay Themselves with the Proceeds

22. Notwithstanding the Directors' agreement in the State Court litigation, the Directors thereafter caused the Debtor to consummate two sales of Shoosmith's real property to affiliates of Vulcan Materials (together with the affiliate purchasers "Vulcan"). The first sale closed April 2024 resulting in \$25 million of proceeds.⁷ Instead of repaying the funds they took from Shoosmith to acquire the secured debt for \$10 million, the Directors instead caused the Debtors to make a **\$23 million cash payment** on the newly acquired debt to Volunteer.⁸ Subsequently, in November 2024, the Directors caused yet another asset sale to be made to Vulcan

⁵ A copy of the docket for the State Court Litigation is attached hereto as Exhibit B.

⁶ See May 9, 2023, Hearing Transcript on *Plaintiff's Application for Temporary Restraining Order*, a copy of which is attached hereto as Exhibit C, Hr'g Tr. at 23:22-24:2 ("[I]t kind of tends to freeze things. I would be willing to agree that if we felt that it was necessary to move forward that we would provide them requisite notice of some period of days so that they could come to the Court and try to stop that if they saw fit to do that.").

⁷ Sanctions Response, at Exhibit 5 (Seller's Settlement Statement).

⁸ See *Shoosmith Bros., Inc. Statement of Financial Affairs*, attachment 13 [D.I. 174] (scheduling a \$23,000,000 cash transfer on 4/1/24 to Volunteer).

for \$15 million.⁹ The Directors caused the proceeds of this sale to be utilized to make a **\$4.5 million cash payment** to Volunteer.¹⁰

23. During the year prior to the Petition Date, the Directors effectively extracted over **\$31 million in cash from Shoosmith**¹¹ (despite the fact that the Debtors actually funded the acquisition of the Prior Lenders' debt), the Debtors were insolvent or were careening into insolvency. Per the testimony of the Debtors' CRO, the Debtors' costs "for the removal and treatment of the effluent Leachate" rose by over 1000% and "left the Debtors in an impossible financial position and necessitated this bankruptcy filing." Notably, the \$28.8 million in cash payments made to Volunteer are nearly triple the highest cost estimates provided by the Debtors to construct a water treatment facility that would allow the Debtors to operate profitably for the next several decades.

24. Instead of utilizing these funds to adequately provision the Debtors' business, the Directors extracted these funds from the Debtors without advising the State Court or the other Investor-Plaintiffs. When the Investor-Plaintiffs discovered that the Debtors' assets were being divested for the benefit of the Directors, on April 25, 2025, the Investor-Plaintiffs filed their Plaintiffs' *Motion for Sanctions, Leave, and to Compel Against Defendants* (the "Sanctions Motion") for sanctions against the Directors and Volunteer, to obtain additional discovery and add

⁹ See Chesterfield County VA, Sale and Ownership Information. While the Committee has requested documents relating to this transfer, no documents have been produced as of the filing of this Objection.

¹⁰ While it is unclear how the remaining funds were distributed, Shoosmith made approximately \$8.8 million of payments to the Evergreen Cash Collateral Account – the account that was raided by the Directors to fund Volunteer's debt acquisition.

¹¹ See Shoosmith Bros., Inc. *Statement of Financial Affairs, attachment 13* [D.I. 174] (scheduling \$29,880,000 in cash payments to Volunteer, \$1,237,707 in legal fees to the Directors' legal counsel in the State Court Litigation, \$144,467 in expert fees in the State Court Litigation, and \$72,000 in salaries for the Directors).

additional counter claims against the Directors. In granting the Sanctions Motion, the State Court Judge focused on the Directors' agreement at the beginning of the litigation:

[A]ny time the Court is asked to consider a TRO is there a ripeness issue, and when one party says we're not going to do it -- and there's all kinds of case law on that - - that when they say they're not, they've taken away the ripeness issue, but the Court has to be able to believe them.¹²

Less than three weeks after the sanctions hearing, the CRO was retained and these chapter 11 cases were filed.

25. Since the Petition Date, the Directors have caused the Debtors and Volunteer to obfuscate the true reasons for filing these cases by failing to disclose the material facts surrounding the Directors' acquisition of the secured debt for \$10 million and the \$29.880 million in cash payments to Volunteer.

26. The Directors' and Volunteer's goals and objectives in these cases (*i.e.*, to have the bankruptcy process run solely for their benefit without regard to the rights and interests of other constituents) is further evidenced by their efforts to limit the Committee's ability to fulfill its fiduciary duties. Most offensive among these efforts is a provision in the DIP Agreement that provides that (a) it will be an event of default if the Committee's professionals (in conjunction with the Debtors' professionals) expend more than a projected amount set forth in the DIP budget (the "Budget") and (b) expenses incurred by the Committee in excess of the projected amount may not get paid.

27. In essence, the Committee will be forced to decide between either (x) protecting the interests of unsecured creditors or (y) creating an event of default, which would allow Volunteer to foreclose on the Debtors' assets.

¹² See May 8, 2025, Hearing Transcript on *Plaintiffs' Motion for Sanctions, Leave, and to Compel Against Defendants*, a copy of which is attached hereto as Exhibit D, Hr'g Tr. at 21:21-22:1.

E. The Expansive Releases of the Insiders Should Not Be Approved

28. The proposed releases are particularly troublesome. The text thereof spans nearly two pages and the releases are exceedingly broad in scope (both as to released claims and released parties) and coverage. Specifically, the First Interim DIP Order (and presumably the proposed Final DIP Order, which has not been provided to the Committee) provides:

Release. Effective as of the date of entry of this Interim Order, but subject to entry of the Final Order, the Debtors hereby forever and irrevocably release, discharge, and acquit all former, current and future (a) DIP Secured Parties, (b) Prepetition Secured Parties, (c) the Related Parties, (d) Affiliates of the DIP Secured Parties and Prepetition Secured Parties, and (e) officers, employees, directors, agents, representatives, owners, members, partners, financial and other advisors and consultants, legal advisors, shareholders, managers, consultants, accountants, attorneys, investment committee members, sub advisors and predecessors and successors in interest of each of the DIP Secured Parties and Prepetition Secured Parties and each of their respective Affiliates, in each case acting in their respective capacities as such (collectively, the “Releasees”) of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the Prepetition Loans, the DIP Facility, the DIP Loan Documents (including the DIP Credit Agreement), the Prepetition Term Loan Agreement, and/or the transactions contemplated hereunder or thereunder including, without limitation, (x) any so-called “lender liability” or equitable subordination claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity of the liens or claims of any of the Prepetition Secured Parties or the DIP Secured Parties (the “Releases”); provided that nothing in this paragraph is intended to limit or release (i) any commitments and obligations of any of the DIP Secured Parties under the DIP Credit Agreement or (ii) any claims, causes of action, costs or demands of whatever kind or nature, whether known or unknown, liquidated or unliquidated, fixed or contingent, asserted or unasserted, foreseen or unforeseen, or matured or unmatured, resulting solely from the gross negligence or willful misconduct or fraud of the Releasees, as determined by a court of competent jurisdiction in a final and unappealable judgment or order. The Debtors further waive and release any defense, right of counterclaim, right of setoff or deduction to the payment of the Prepetition Obligations and the DIP Obligations which the Debtors now have or

may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions, or events occurring prior to the entry of this Interim Order by the Court.

See First Interim DIP Order at ¶ G(ix).

29. In sum, if the DIP Lenders are not willing to appropriately fund these cases, and provide an appropriate vehicle for either a viable sale or alternative restructuring transaction to develop, the Committee respectfully requests that this Court deny the Debtors' request for a final order approving the DIP Agreement, and (ii) schedule a hearing on an expedited basis to consider conversion of these cases to chapter 7.¹³

F. The Budget for the Committee's Professional Fees Is Inadequate and Curtails the Committee's Ability to Fulfill its Fiduciary Duties

30. The DIP Budget includes a mere \$200,000 for the Committee's professional fees, compared to \$2,150,000 for the Debtors' army of professionals. The budget for the Committee is wholly inadequate under any metric. The amount budgeted for the Committee's professionals must be proportionate to the amount budgeted for the Debtors' professionals to ensure the Committee is adequately equipped to fulfill its fiduciary role. *See In re Channel Master Holdings, Inc.*, 2004 Bankr. LEXIS 576, at *8–9 (Bankr. D. Del. Apr. 26, 2004) (holding cap on official committee's professional fees under DIP facility was unreasonable relative to larger budgets for other professionals in case and determining cap on the committee's fees provided for inadequate compensation); *see also In re Blink Holdings, Inc. et. al.*, Case No. 24-11686 (JKS) Hr'g Tr. at 65:16–65:21) an excerpt of which is attached hereto as **Exhibit E** ("I am going to sustain the Committee's objection, with respect to the budget. I appreciate that this financing is a multi-pronged negotiation and that the Court cannot compel a lender to lend more money for professional

¹³ Any order converting these cases to chapter 7 should preserve challenge rights for the chapter 7 trustee to at least the same extent possessed by the Committee—and possibly greater relief, and not provide any unwarranted windfall to the insider DIP Lenders and Releasees.

fees, but the budget is insufficient and unfair, and potentially prejudices the Committee. So what I'm going to do is require all estate professionals to share pro rata.”); *In re Orchids Paper Products Company, et al.*, Case No. 19-10729 (CSS) (Bankr. D. Del. May 30, 2019); Hr’g Tr. at 186:18–186:25, an excerpt of which is attached hereto as **Exhibit F** (“I have always taken the position that I don’t care what a line item is for committee professionals or debtors’ professionals. That if there’s not sufficient funds to pay professionals, generally, that they will be paid pro rata, regardless of what limits the DIP may place on that. I consider the line items for professionals to be an aggregate and it’s inappropriate to have line items.”).

31. The great disparity in compensation between the Committee’s professionals, on the one hand, and the Debtors’ professionals and secured creditors, on the other hand, as contemplated in the proposed professional fees budget would not only limit the Committee’s ability to fulfill its fiduciary duties, but also materially impair the Debtors’ unsecured creditors in their ability to protect and exercise their rights in these cases. To ensure that the Debtors and the Committee have equal access to quality professionals, the funds allotted to the Committee’s professionals for the payment of their fees and expenses should, at a minimum, amount to at least 33% of the funds budgeted for the Debtors’ professionals.

G. The Proposed Waivers of Sections 506(c), 552(b), and Marshalling Rights Are Inappropriate

32. The Debtors propose to waive several critical rights, including (i) the estates’ right to surcharge Prepetition Collateral and DIP Collateral under section 506(c) of the Bankruptcy Code, (ii) the statutory right to apply the “equities of the case” exception under section 552(b) of the Bankruptcy Code, and (iii) the doctrine of marshaling. These waivers are inappropriate and harmful to the estates.

i. Section 506(c) Rights Must Be Preserved

33. Congress’ intent in enacting section 506(c) was to ensure that the debtor in possession would be entitled to recover expenses from its secured lender to the extent that those expenses are necessary and reasonably associated with preserving or disposing of the lender’s collateral. *Precision Steel Shearing, Inc. v. Fremont Fin. Corp. (In re Visual Industries, Inc.)*, 57 F.3d 321, 325–26 (3d Cir. 1995) (discussing Congressional Record, 124 Cong.Rec. 32,398 (Sept. 28, 1978) (statement of Rep. Edwards)). Section 506(c) is thus designed to prevent “a windfall to the secured creditor at the expense of the claimant.” *Id.* (citing *IRS v. Boatmen’s First Nat’l Bank of Kansas City*, 5 F.3d 1157, 1159 (8th Cir. 1993)).

34. Courts view such waivers skeptically and often times will not approve them absent committee consent. *See, e.g.*, Mar. 20, 2007 Hr’g Tr. at 21:7–13, *In re Mortg. Lenders Network USA, Inc.*, Case No. 07-10146 (PJW) (Bankr. D. Del.), [ECF No. 346] (the court noting: “If the Committee doesn’t agree with the waiver, it doesn’t happen.”); *In re NEC Holdings Corp.*, Case No. 10-11890 (KG), (Bankr. D. Del. July 13, 2010), ECF No. 224, Hr’g Tr. at 101:7–13 (“[Y]ou don’t give a 506[(c)] waiver over an objection by the committee So I would not be inclined to give a 506(c) waiver.”).

35. Here, there is no justification for a preemptive waiver of section 506(c). The Committee was only recently appointed, and it would be inappropriate to waive the Debtors’ surcharge rights, particularly where the DIP Facility is priming the Debtors’ prepetition secured debt, thereby already reducing the value that could otherwise be available to satisfy administrative costs. Waiving their section 506(c) surcharge rights poses a risk to the Debtors’ estates that the costs of preserving the Prepetition Collateral and DIP Collateral may ultimately be borne by unsecured creditors. Accordingly, the estates’ right to surcharge collateral should not be waived in a blanket fashion in any final order.

ii. Waiver of the Section 552(b) Equities of the Case Exception Is Inappropriate

36. Section 552(b) of the Bankruptcy Code allows a court to refuse, based on the equities of a case, to extend a prepetition lien to postpetition “proceeds, products, offspring or profits” of prepetition collateral. 11 U.S.C. § 552(b)(1). “The purpose of the equity exception is to prevent a secured creditor from reaping benefits from collateral that has appreciated in value as a result of the trustees/debtor-in-possession’s use of other assets of the estate (which normally would go to general creditors) to cause the appreciated value.” *In re Muma Servs.*, 322 B.R. 541, 558–59 (Bankr. D. Del. 2005) (citation omitted); *see also Nanuet Nat’l Bank v. Photo Promotion Assocs., Inc. (In re Photo Promotion Assocs., Inc.)*, 61 B.R. 936, 939 (Bankr. S.D.N.Y. 2000).

37. For the same reasons that a section 506(c) waiver is inappropriate, the Debtors should not be permitted to waive their rights under section 552(b) given the uncertainty that all administrative claims will be paid. The Committee is not requesting a prospective application of the “equities of the case” exception, but merely requests that the Court preserve the right to seek, and for the Court to make, a determination as to whether such exception applies at a later time. Granting a section 552(b) waiver at the outset of these proceedings would unfairly prejudice unsecured creditors and deprive the estates of important statutory rights that could yield value for all stakeholders.

iii. The Estate’s Marshaling Rights Should Not Be Waived

38. Marshaling requires a “senior secured creditor to first collect its debt against the collateral other than that in which the junior secured creditor holds an interest, thereby leaving that collateral for the junior secured creditor’s benefit.” *Simon & Schuster, Inc. v. Advanced Mktg. Servs., Inc. (In re Advanced Marketing Servs., Inc.)*, 360 B.R. 421, 427 n.8 (Bankr. D. Del. 2007). Marshaling “prevent[s] the arbitrary action of a senior lienor from destroying the rights of a junior

lienor or a creditor having less security.” *Meyer v. United States*, 375 U.S. 233, 237 (1963). Marshaling can be pursued by the Committee for the benefit of unsecured creditors. *See, e.g., Official Comm. of Unsecured Creditors of America’s Hobby Ctr., Inc. v. Hudson United Bank (In re America’s Hobby Ctr., Inc.)*, 223 B.R. 275, 287 (Bankr. S.D.N.Y. 1998) (“Because a debtor in possession has all the rights and powers of a trustee . . . [the Committee] standing in the shoes of the debtor in possession . . . can assert this [marshaling] claim.”).

39. For the same reasons that section 506(c) and 552(b) waivers are inappropriate, the Court should reject any limit to the marshaling doctrine. At this early stage of the cases, the requested waivers are inappropriate and harmful to the estates.

H. The DIP Collateral Should Not Include Liens on Avoidance Actions, Proceeds, Commercial Tort Claims, Nor Should Superpriority Claims be Paid from Such Proceeds

40. Avoidance actions are distinct creatures of bankruptcy law designed to benefit and ensure equality of distribution among general unsecured creditors. *See Official Comm. Of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics Corp.)*, 226 F.3d 237, 244 (3d Cir. 2000), *rev’d en banc*, 330 F.3d 548 (3d Cir. 2003) (identifying underlying intent of avoidance powers to recover valuable assets for the estate’s benefit); *In re Tribune Co.*, 464 B.R. 126, 171 (Bankr. D. Del. 2011) (noting “that case law permits all unsecured creditors to benefit from avoidance action recoveries.”); *see also Buncher Co. v. Official Comm. of Unsecured Creditors of GenFarm L.P. IV*, 229 F.3d 245, 250 (3d Cir. 2000) (stating that “any recovery [under avoidance powers] is for the benefit of all unsecured creditors, including those who individually had no right to avoid the transfer”). Commercial tort claims are unencumbered assets.

41. The Debtors have not provided any justification for granting liens on, or paying superpriority claims from, Avoidance Actions or commercial tort claims, or the proceeds of either.

Keeping the proceeds of Avoidance Actions and commercial tort claims available for unsecured creditors is critical here where the Debtors appear to have few unencumbered assets, are granting the DIP Lenders priming liens on already encumbered assets, and the value of Avoidance Actions and commercial tort claims has not been determined. It would be inequitable to allow the Debtors to administer these cases for the sole benefit of the Debtors' secured creditors and potentially claw back prepetition payments to trade creditors for the benefit of the DIP Lenders.

RESERVATION OF RIGHTS

42. The Committee will work in good faith with the Debtors and DIP Lenders to resolve the Committee's objections to the DIP Financing Motion and the DIP Facility prior to the final hearing. The Committee reserves all rights with respect to the proposed DIP Facility (including, without limitation, any Final Order) and expressly reserves and preserves all rights to raise any additional objections to the relief requested in the DIP Financing Motion or in connection with the proposed DIP Facility at or prior to any final hearing.

43. The Committee also reserves the right to seek expedited consideration of a motion to convert these cases to chapter 7.

Dated: July 24, 2025
Wilmington, Delaware

Respectfully submitted,

GREENBERG TRAURIG, LLP

/s/ Dennis A. Meloro

Anthony W. Clark (DE Bar No. 2051)

Dennis A. Meloro (DE Bar No. 4435)

222 Delaware Avenue, Suite 1600

Wilmington, Delaware 19801

Tel: (302) 661-7000

anthony.clark@gtlaw.com

dennis.meloro@gtlaw.com

-and-

Shari L. Heyen (*admitted pro hac vice*)

Karl D. Burrer

1000 Louisiana Street, Suite 6700

Houston, TX 77002

Tel: (713) 374-3500

shari.heyen@gtlaw.com

*Proposed Counsel to the Official Committee
of Unsecured Creditors*

Exhibit A

Sanctions Response

352-342125-23

CAUSE NO. 352-342125-23

WILLIAM KENT DURHAM AND
JOHN DOUGLAS COLLINS, II,

Plaintiffs,

v.

PAUL LAWRENCE MCGEE AND
FRED G. NICHOLS,

Defendants.

§
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§

IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

352nd JUDICIAL DISTRICT**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR SANCTIONS, LEAVE,
AND TO COMPEL AGAINST DEFENDANTS**

Plaintiffs' Motion for Sanctions, Leave, and to Compel Against Defendants ("Plaintiffs' Motion") should be denied. Plaintiffs admit that Defendants produced documents showing the quarry sale nearly a year ago—in early July 2024—and additional documents in January 2025. Plaintiffs' Motion seeks to shift the blame for their own lack of diligence in seeking to amend their claims. Further, Plaintiffs have failed to show they were diligent in seeking leave to amend their pleadings and have not identified any discovery rule that Defendants have violated. Accordingly, Plaintiffs' Motion should be denied.

I. BACKGROUND

Plaintiffs Durham, Collins, Orcutt, and Kelly, along with Defendants McGee and Nichols (the "ESM Members") invested in ESM Management Group ("ESM") nearly 20 years ago as an investment vehicle to fund the purchase of Shoosmith, an entity that owns and operates the Shoosmith Landfill in Virginia. Shoosmith was purchased by ESM through capital contributions from the ESM Members, as well as with a substantial loan from PNC and Erie.

In addition to owning the Shoosmith Landfill, Shoosmith also owned the Dale Quarry, a piece of land that was located adjacent to the Landfill. For years, ESM through Shoosmith



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attempted to receive permits from Chesterfield County, Virginia, to expand the Landfill into the Dale Quarry after successfully receiving a permit from the Virginia Department of Environmental Quality in February 2016. After numerous failed appeals on the denial of permits, it became apparent that the Quarry was not going to receive approval from the County. And in 2022, it was anticipated that the Shoosmith Landfill would reach capacity and be forced to cease operations by late 2023. But a potential additional revenue source was identified: the collection and sale of methane gas produced from the Shoosmith Landfill.

In 2022, the deadline for payments on Shoosmith's Erie and PNC note was approaching, and majority members Nichols and McGee became increasingly concerned that Shoosmith would be forced into bankruptcy. Nichols and McGee, through Volunteer Enterprises, a separate entity owned by Nichols and McGee, used \$10 million dollars from the Evergreen post closure bond fund to acquire the debt held by PNC and Erie. Nichols and McGee were able to use these funds because they personally had guaranteed the post closure bond fund and McGee was owed approximately \$8 million for his investment in secured debt held by PNC and Erie. This acquisition allowed the debt from PNC and Erie to be acquired so that Shoosmith could avoid bankruptcy or having its assets acquired by PNC or Erie, or some other entity. Through this acquisition, Volunteer Enterprises owned the majority of both the Shoosmith Landfill and the Dale Quarry.

On May 5, 2023, Plaintiffs Durham and Collins filed suit against Nichols and McGee. On November 10, 2023, Plaintiffs Durham, Collins, Orcutt, and Kelly, individually and on behalf of ESM Management Group, LLC and its subsidiaries, filed its First Amended Petition, bringing claims against Nichols, McGee, and Volunteer Enterprises for breach of fiduciary duties, fraud by nondisclosure, violations of the Texas Theft Liability Act, fraud, and civil conspiracy. On May 17, 2024, Plaintiffs filed their Second Amended Petition alleging claims of breach of fiduciary duties,

fraud by nondisclosure, violations of the Texas Theft Liability Act, fraud, breach of partial assignment, breach of contract, tortious fraudulent transfer, civil conspiracy promissory estoppel, and unjust enrichment.

Throughout the discovery process, Plaintiffs have impermissibly sought extremely broad and effectively unlimited discovery. Their requests had no time limits, were vague and disproportionate to the needs of the case. *See* Plaintiff's Motion at Exhibits A-C. Defendants objected to these improper requests and attempted to meet and confer multiple times with Plaintiffs' counsel to narrow the scope of the requests. Plaintiffs, however, waited until the end of discovery to engage in any meaningful discussions, but they did Defendants subsequently produced additional documents responsive to properly narrowed requests.

On April 1, 2024, Volunteer Enterprises sold the Dale Quarry for \$25,000,000. On July 3, 2024, Defendants produced three financial spreadsheets explicitly showing the revenues from the sale of assets (Dale Quarry). *See* Exhibits 1, 2, and 3. These spreadsheets detailed the financials for the "Gain on Sale of Assets" showing an income of nearly \$25 million dollars resulting from the sale of the Dale Quarry. *See* Exhibits 2 and 3. One of the three spreadsheets expressly states in yellow highlighting "\$2,000,000 in February asset sales is from the Quarry Sale." *See* Exhibit 1. Plaintiffs' Expert David Fuller specifically cited these spreadsheets in his Supplemental Expert Report that was served on September 6, 2024. Defendant Fred Nichols was deposed in this case two months after the production of these spreadsheets, on September 11, 2024. Plaintiffs did not serve any discovery requests directed at this transaction.

Further, the parties worked together to resolve the discovery dispute raised in Plaintiffs' motion to compel filed two days before the close of discovery. Ultimately, Plaintiffs agreed to provide would provide Defendants with a list of ESI search terms. But it took Plaintiffs until

December 17, 2024, to confirm their agreement with the proposed search terms. *See* Exhibit 4 (emails between counsel discussing search terms for ESI). Within three weeks, and despite the holidays that fell within those three weeks, Defendants produced approximately 1,300 documents, based on the search parameters requested by Plaintiffs. Within these documents were multiple transaction documents and communications related to the sale of the Quarry. On January 10, 2025, Defendants made a supplemental production, also based on the search terms provided by Plaintiffs. This production also contained numerous documents and communications related to the sale of the Quarry. *See* Exhibit 5.

After these documents were produced, the parties had a hearing with the Court on January 23, 2025. This hearing included a discussion about amending the case schedule and delaying the trial date. The parties thereafter negotiated and then filed—on February 21, 2025—a joint motion to amend the scheduling order, setting a trial date in July 2025. Plaintiffs’ expert David Fuller supplemented his expert report (again) on February 25, 2025. The parties attended mediation on March 25, 2025. And then on April 21, 2025, Plaintiffs for the first time demanded additional discovery and demanded that they be allowed to amend their Petition again.

II. LEGAL AUTHORITY

A. Leave to Amend Standard

“Rule 63 is clear that the trial court has no discretion but to grant leave to amend unless the party opposing amendment shows evidence of surprise or prejudice, or the amendment asserts a new cause of action or defense and is thusly prejudicial on its face and the opposing party objects accordingly.” *Lower Valley Water Dist. v. Danny Sander Constr., Inc.*, 657 S.W.3d 404, 409 (Tex. App. —El Paso 2022, no pet.). “An amended pleading that asserts a new cause of action or defense and “reshapes” the litigation prejudices the opposing party.” *Price v. Short*, 931 S.W.2d 677, 685—

86 (Tex. App.—Dallas 1996, no pet.). A trial court in its discretion may deny leave to amend if a party is not diligent in seeking leave. *Id.* at 686.

“The legitimate purposes of discovery sanctions are threefold: 1) to secure compliance with discovery rules; 2) to deter other litigants from similar misconduct; and 3) to punish violators.” *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 849 (Tex. 1992). In order to impose a sanction, “a direct relationship must exist between the offensive conduct and the sanction imposed.” *TransAmerican Nat. Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991). If a court determines that a party’s discovery responses are sufficient, there is no abusive conduct to sanction. *Van Heerden v. Van Heerden*, 321 S.W.3d 869, 878 (Tex. App. — Houston [14th Dist.] 2010, no pet.) (“In the absence of sanctionable conduct, sanctions are unwarranted.”)

III. ARGUMENT

A. **Plaintiffs’ Motion for Leave to Amend its Petition Should be Denied Because Plaintiffs were not Diligent in Seeking Leave to Amend.**

The Court should deny Plaintiffs’ Motion for Leave to Amend because Plaintiffs have failed to show diligence in seeking leave to amend. Defendants produced responsive documents showing the sale of the Dale Quarry on July 3, 2024. *See* Exhibits 1, 2, and 3. Plaintiffs’ expert cited and utilized these documents in his supplemental expert report. Plaintiffs categorize these spreadsheets as “cryptic,” yet their expert witness is trained and very experienced in reviewing such documents. Plaintiffs had previously received the same spreadsheets for alternate time periods showing very little income or asserts for the other time periods. A nearly \$25 million dollar increase in proceeds, as shown in the spreadsheet, was something that Defendants anticipated that



Plaintiffs' expert would analyze. Moreover, one of these spreadsheets explicitly states that "\$2,000,000 in February asset sales is from the Quarry Sale." See Exhibit 1.

But even if Plaintiffs can somehow justify their failure to ascertain from these spreadsheets that the Quarry was sold, Plaintiffs must concede that they had multiple documents explicitly discussing the sale of the Dale Quarry by January 6, 2025. Yet Plaintiffs' Motion fails to explain why they waited more than three months to seek leave to amend to add claims related to these documents, and in the intervening time period agreed to an extension of the case schedule without asking for the relief they now seek.

Plaintiffs' lack of diligence in seeking leave to amend their pleadings clearly prejudices Defendants. Trial is set to start in approximately two months, on July 21, 2025. If the Court were to allow Plaintiffs' leave to amend, Defendants would be prejudiced in their preparation for the upcoming trial. Plaintiffs' new claim would undeniably "reshape" the litigation by adding a new theory and a new damages claim. The schedule for this case would need to be extended so that Defendants could properly any new allegations. Accordingly, the Court should deny Plaintiffs' Leave to Amend their Pleadings as Plaintiffs have failed to be diligent in seeking leave to amend.

B. Plaintiffs Have Failed to Show that Defendants Committed Any Misconduct Warranting Sanctions.

The Court should deny Plaintiffs' Motion for Sanctions as Plaintiffs have failed to identify any misconduct during discovery. Plaintiffs undeniably served extremely broad requests for production and were unwilling or unable to narrow the requests when the parties met and conferred. Discovery requests must be limited to the relevant time, place, and subject matter. *In re Sun Coast Resources, Inc.*, 562 S.W.3d 138, 147 (Tex. App.—Houston [14th Dist.] 2018, no pet.). Requests not so reasonably tailored as to time, place or subject matter are overbroad as a matter of law. *Id.* Defendants were within their rights to object to producing documents to these requests.



Plaintiffs then waited until two days before the close of discovery before filing a motion to compel, even though Defendants had responded to these requests nearly a year earlier. *See* Plaintiffs' Motion at Ex. A. Plaintiffs eventually withdrew their motion following an agreement that Defendants would conduct an ESI search for specific terms. But then Plaintiffs' counsel took nearly a month to provide and revise the search terms it requested Defendants to apply to its search. *See* Exhibit 4. And even then, after Defendants provided the requested documents, it seems that Plaintiffs' counsel simply failed to look at them for more than three months.

Plaintiffs' Motion does not identify any discovery requests that encompass the Quarry transaction documents. The Motion does not cite any deposition testimony that was allegedly false or inaccurate. Instead, Plaintiffs attach the entirety of their extremely broad request for production that Defendants objected to and sought to narrow. When Plaintiffs finally cooperated in discovery by providing search terms, Defendants accepted the search terms requested by Plaintiffs and promptly produced those documents—even though doing so necessitated work over the Christmas and New Years' Day holidays. Defendants thereafter requested and worked with Plaintiffs to agree to an extension of the case schedule that should have provided Plaintiffs an opportunity to review Defendants' supplemental production. It is inexplicable that having filed a Motion to Compel and then negotiating search terms and receiving a production of documents, that Plaintiffs would then apparently ignore those documents for three months. But it seems that's what has happened.

For the Court to impose sanctions, Plaintiffs would be required to show that Defendants failed to comply with the discovery rules. Plaintiffs' Motion fails to identify any discovery rule the Defendants have not complied with, so Plaintiffs' Request for Sanctions should be denied.



C. Defendants Have Made a Reasonable Production of Documents Pertaining to the Dale Quarry Sale.

Plaintiffs ask the Court to “compel Defendants to produce all of their responsive documents relating to the quarry sale.” Plaintiffs’ Motion at 7. This is, as is typical, an overly broad request. Plaintiffs obviously know that the quarry was sold, when it was sold, and that some of the proceeds of the sale were paid to Volunteer Enterprises to pay down the debt owed by Shoosmith. It is unclear what additional Plaintiffs want Defendants to produce at this point.

IV. CONCLUSION

For the reasons discussed above, Plaintiffs’ Motion should be denied.

Dated: May 6, 2025

Respectfully submitted,

/s/ Aaron Davidson

COLE SCHOTZ P.C.

Aaron Davidson

Texas Bar No. 24007080

Email: adavidson@coleschotz.com

Vishal Patel

Texas Bar No. 24065885

Email: vpatel@coleschotz.com

Amanda Leigh DeGroote

Texas Bar No. 24132179

Email: adegroote@coleschotz.com

Seokin Yeh

Texas Bar No. 24131942

Email: syeh@coleschotz.com

901 Main Street, Suite 4120

Dallas, TX 75202

Main Telephone: (469) 557-9390

Main Fax: (469) 533-1587

**COUNSEL FOR DEFENDANTS PAUL
LAWRENCE MCGEE, FRED G.
NICHOLS, AND VOLUNTEER
ENTERPRISES LLC**



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon Plaintiffs' counsel registered for electronic service in accordance with Rule 21a of the Texas Rules of Civil Procedure on this 6th day of May 2025.

/s/ Aaron Davidson

Aaron Davidson



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EXHIBIT 1



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Shoosmith Bros., Inc.
Operating Costs - 2024

Feb 2 - 8 Feb 9 - 16

Beginning of month Cash 1,162,097 1,214,154

Salaries (Base Salaries):

Fred Nichols	36,000
Larry McGee	36,000
Mike Cole	165,000
Mark Hills	50,000
Theresa Jones	71,000
James Blackwell	97,000
Tim Inge	81,000
Bruce Coble	90,000
4 Laborers	240,000

866,000

Plus: Benefits (35%) 303,100

Total Salaries & benefits 1,169,100 (97.4K/month)

Repairs & maintenance 300,000 (25K per month)

Vehicle Operating Costs (Fuel) 60,000 (5K/month)

Equipment Rent 36,000 (3K/month)

Safety/Insurance 120,000 (10K/month)

Property Taxes 240,000 (20K/month)

Other Operating Costs:

Engineering	360,000 (30K/month)
Shoosmith Const maint	1,320,000 (110K/month)

Facility/Electrical Costs 240,000 (20K/month)

Professional Fees 600,000 (50K/month)

Other Operating Costs -

4,445,100 (356.8K/month)

Inflows:

Collection of 12/31 AR 162,676 149,918

Refund of Volunteer Interest

Sales of Assets (Net)

Gas Royalty Revenue

GFL Payment Scale Fee and back taxes

Total Inflows: 162,676 149,918

Total Available Cash 1,324,773 1,364,072

Outflows:

Salaries & benefits 10,697 44,553

EXPENSES: (Payables)

Repairs & maintenance 16,141 2,526

Vehicle Operating Costs (Fuel) 349

Equipment Rent

Safety/Insurance (Much Prepaid)

Property Taxes (Most June/Dec)

Engineering
Shoosmith Const maint

Facility/Electrical Costs 2,723 208

Professional Fees 825 2,500

Other Operating Costs 1,449 3,807

Total Outflows-Operating 32,185 53,593

Capping - Shoosmith 28,435

Ingenco Payment

Volunteer Int Payment 50,000

Income Tax Deposits

Travel Expense

Capping Material Invoices

Total Outflows 110,620 53,593

Net Cash 1,214,154 1,310,478

\$2,000,000 in February asset sales is from the Quarry Sale.



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-----Actual-----										
Feb 17 - 23	Feb 24 - Mar 1	Mar 2 - 8	Mar 9 - 15	Mar 16 - 22	Mar 23 - 29	Mar 30-Apr 5	Apr 6 - 12	Apr 13 - 19	Apr 20 - 26	Apr 27-May 3
1,310,478	1,353,104	1,391,288	1,187,470	1,020,867	989,785	973,051	2,717,285	2,165,777	1,355,491	1,238,631
123,904	139,795	183,552	47,417	21,877	28,705	116,070	41,417	43,025	37,167	42,818
	344,121		379,942			24,973,800	441,644			
	63,938									
123,904	547,854	183,552	427,359	21,877	28,705	25,089,870	483,061	43,025	37,167	42,818
1,434,382	1,900,959	1,574,840	1,614,828	1,042,744	1,018,490	26,062,921	3,200,346	2,208,802	1,392,659	1,281,450
24,910	47,302	12,603	42,824	11,462	41,897	39,438	86,677 (Bonus)	10,524	37,411	12,883
10,421	10,673	20,318	10,990	19,658	-	17,944	2,803	7,640	4,493	1,088
1,084	357	449	516	666	-	1,127	214	336	449	
8,845	-	-	8,845				9,243			
	7,371	-	-							
2,889	34,025	-	-							
	67,127	-	-			72,637			8,745	128,418
	138,396	-	-			162,902				119,983
18,843	784	129	212	5,843	-	33,093			19,343	1,779
-	8,055	1,116	21,708	7,922	3,542	15,108	7,500		57,815	27,116
14,285	10,898	2,756	2,183	7,407	-	3,388	3,132	8,128	25,772	1,235
81,278	324,988	37,371	87,279	52,959	45,439	345,637	109,568	26,628	154,027	292,501
	58,000	-	-							162,387
	126,682	-	126,682					126,682		
		350,000	380,000			23,000,000		700,000		
							925,000			
81,278	509,670	387,371	593,962	52,959	45,439	23,345,637	1,034,568	853,310	154,027	454,888
1,353,104	1,391,288	1,187,470	1,020,867	989,785	973,051	2,717,285	2,165,777	1,355,491	1,238,631	826,562



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May 4 -10	May 11 -17	May 18 -24	May 25 -31	Jun 01 - 07	Jun 08 - 14
826,562	423,650	375,280	319,723	1,583,110	772,240
37,190	29,516	26,965	13,269 1,500,000	7,595	48,894
348,671					380,959
385,861	29,516	26,965	1,513,269	7,595	429,853
1,212,424	453,167	402,245	1,832,992	1,590,705	1,202,093
22,015	34,940	26,431	13,092	22,378	11,524
18,686	7,724	21,112	2,344	1,498	14,809
819	568	402	753	457	1,289
	9,913	422		8,845	
			7,371		
			112,326		
	687		12,762	107,364	258,293
1,032		15,174	13,171	214	1,925
			78,119	7,638	
6,480	24,055	18,981	9,943	562	6,323
49,032	77,887	82,522	249,881	148,955	294,162
126,682					369,655 126,682
613,059				669,511	
788,773	77,887	82,522	249,881	818,466	790,499
423,650	375,280	319,723	1,583,110	772,240	411,594



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EXHIBIT 2



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Cash Flow Statement
For the Periods Ended April 30, 2024

	Month Ended 04/30/24	Year to Date Ended 4/30/24
OPERATING ACTIVITIES		
Net Income	\$ 1,026,837.84	\$ 434,327.76
NON-CASH EXPENSES		
Depreciation and amortization	-	-
Non-Cash Senior Subordinated Debt Interest	-	-
Non-Cash Junior Subordinated Debt Interest	-	-
Non-Cash Preferred Stock Dividend	-	-
Loss (Gain) on sales of fixed assets	(24,973,800.00)	(25,583,800.00)
Total Non-Cash Expenses	(24,973,800.00)	(25,583,800.00)
Source of Cash from Operations	(23,946,962.16)	(25,149,472.24)
CHANGES IN WORKING CAPITAL		
(Increase)/Decrease in Accounts Receivable	80,180.69	1,781,299.83
(Increase)/Decrease in Other Receivables	-	-
(Increase)/Decrease in Prepaids & Other Current Assets	(965,531.00)	(819,792.38)
Increase/(Decrease) in Accounts Payable	1,861,547.22	1,616,083.47
Increase/(Decrease) in Accrued Liabilities	16,903.03	1,375.64
Increase/(Decrease) in Income Taxes Payable	-	-
Increase/(Decrease) in Landfill Closure Reserve	(1,700,962.26)	(1,952,874.50)
Net Cash from Changes in Working Capital	(707,862.32)	626,092.06
Total Operating Cash Flow	(24,654,824.48)	(24,523,380.18)
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchases of fixed assets	-	-
Landfill addition to Closure Bond	-	-
Proceeds from sale of fixed assets	24,973,800.00	25,583,800.00
Other investing activities	-	-
Total Cash Flow from Investing Activities	24,973,800.00	25,583,800.00
CASH FLOW FROM FINANCING ACTIVITIES		
Net Change in INGENCO Lease Liability	(92,624.56)	(366,174.38)
Net Change in Deferred Financing Costs	105,468.75	421,875.00
Net Change in Other Term Loan	-	(264,675.14)
Senior Subordinated Debt Payment	-	-
Junior Subordinated Debt Payment	-	-
Total Cash Flow from Financing Activities	12,844.19	(208,974.52)
Net Increase (Decrease) in Cash	331,819.71	851,445.30
Cash and Cash Equivalents - Beginning of Period	9,803,513.02	
Cash and Cash Equivalents - End of Period	\$ 10,135,332.73	



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EXHIBIT 3



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INGENCO, Inc.
Consolidated
For the Month Ended April 30, 2024

	April				Year to Date			
	Actual	Budget	Variance	Var. %	Actual	Budget	Variance	Var. %
TONNAGE								
Third-Party	0.00	0.00	0.00	#DIV/0!	0.00	0.00	0.00	#DIV/0!
Total Tonnage	0.00	0.00	0.00	#DIV/0!	0.00	0.00	0.00	#DIV/0!
REVENUE								
Landfill	181,071.66	0.00	181,071.66	#DIV/0!	760,917.20	0.00	760,917.20	#DIV/0!
Morrow - net Revenue	0.00	0.00	0.00	0.00%	0.00	0.00	0.00	0.00%
GROSS REVENUE	181,071.66	0.00	181,071.66	#DIV/0!	760,917.20	0.00	760,917.20	#DIV/0!
Subcontract	0.00	0.00	0.00	0.00%	0.00	0.00	0.00	0.00%
Cost of Sales - resale	0.00	0.00	0.00	0.00%	0.00	0.00	0.00	0.00%
NET REVENUE	181,071.66	0.00	181,071.66	#DIV/0!	760,917.20	0.00	760,917.20	#DIV/0!
OPERATING COSTS								
Labor & Benefits	53,855.37	0.00	(53,855.37)	#DIV/0!	226,992.25	0.00	(226,992.25)	#DIV/0!
Repairs & Maintenance	37,334.20	0.00	(37,334.20)	#DIV/0!	150,170.86	0.00	(150,170.86)	#DIV/0!
Vehicle Operating Costs	2,360.44	0.00	(2,360.44)	#DIV/0!	10,947.37	0.00	(10,947.37)	#DIV/0!
Equipment & Facility Rent	10,097.70	0.00	(10,097.70)	#DIV/0!	29,816.19	0.00	(29,816.19)	#DIV/0!
Safety, Insurance & Claims	20,450.00	0.00	(20,450.00)	#DIV/0!	82,574.47	0.00	(82,574.47)	#DIV/0!
Landfill Closure/ Post Closure	0.00	0.00	0.00	#DIV/0!	0.00	0.00	0.00	#DIV/0!
Property Taxes	25,800.00	0.00	(25,800.00)	#DIV/0!	103,200.00	0.00	(103,200.00)	#DIV/0!
Other Operating Costs	368,808.10	0.00	(368,808.10)	#DIV/0!	1,100,269.69	0.00	(1,100,269.69)	#DIV/0!
TOTAL OPERATING COSTS	518,705.81	0.00	(518,705.81)	#DIV/0!	1,703,970.83	0.00	(1,703,970.83)	#DIV/0!
OPERATING PROFIT	(337,634.15)	0.00	(337,634.15)	#DIV/0!	(943,053.63)	0.00	(943,053.63)	#DIV/0!
S. G. & A. COSTS								
Salaries	118,571.72	0.00	(118,571.72)	#DIV/0!	382,338.63	0.00	(382,338.63)	#DIV/0!
Facility & Office Costs	25,584.94	0.00	(25,584.94)	#DIV/0!	106,765.09	0.00	(106,765.09)	#DIV/0!
Travel & Entertainment	700.03	0.00	(700.03)	#DIV/0!	5,705.15	0.00	(5,705.15)	#DIV/0!
Professional Fees	75,953.00	0.00	(75,953.00)	#DIV/0!	191,082.29	0.00	(191,082.29)	#DIV/0!
Management Fees	0.00	0.00	0.00	0.00%	0.00	0.00	0.00	0.00%
Other Expense	11,920.88	0.00	(11,920.88)	#DIV/0!	58,333.48	0.00	(58,333.48)	#DIV/0!
TOTAL S. G. & A. COSTS	232,730.57	0.00	(232,730.57)	#DIV/0!	744,224.64	0.00	(744,224.64)	#DIV/0!
	(570,364.72)	0.00	(570,364.72)	#DIV/0!	(1,687,278.27)	0.00	(1,687,278.27)	#DIV/0!
OTHER INCOME & EXPENSE								
Royalty/Other Income	(445,240.76)	0.00	445,240.76	#DIV/0!	(1,507,910.14)	0.00	1,507,910.14	#DIV/0!
TOTAL OTHER INCOME & EXPENSE	(445,240.76)	0.00	445,240.76	#DIV/0!	(1,507,910.14)	0.00	1,507,910.14	#DIV/0!
EBITDA	(125,123.96)	0.00	(125,123.96)	#DIV/0!	(179,368.13)	0.00	(179,368.13)	#DIV/0!
DD&A								
Depreciation - Equipment	0.00	0.00	0.00	#DIV/0!	0.00	0.00	0.00	#DIV/0!
Amortization - INGENCO Lease Cost	105,468.75	0.00	(105,468.75)	(100.00%)	421,875.00	0.00	(421,875.00)	(100.00%)
Depletion - Landfill	0.00	0.00	0.00	#DIV/0!	0.00	0.00	0.00	#DIV/0!
TOTAL DD&A	105,468.75	0.00	(105,468.75)	#DIV/0!	421,875.00	0.00	(421,875.00)	#DIV/0!
EBIT	(230,592.71)	0.00	(230,592.71)	#DIV/0!	(601,243.13)	0.00	(601,243.13)	#DIV/0!
GAIN ON SALE OF ASSETS	24,973,800.00	0.00	(24,973,800.00)	0.00%	25,583,800.00	0.00	(25,583,800.00)	0.00%
INTEREST EXPENSE/INCOME								
Interest Expense	23,753,557.64	0.00	(23,753,557.64)	(100.00%)	24,699,918.22	0.00	(24,699,918.22)	(100.00%)
Interest Income	(37,188.19)	0.00	37,188.19	0.00%	(151,689.11)	0.00	151,689.11	0.00%
TOTAL INTEREST - NET	23,716,369.45	0.00	(23,716,369.45)	(100.00%)	24,548,229.11	0.00	(24,548,229.11)	(100.00%)
INCOME FROM CONTINUING OPERATION:	1,026,837.84	0.00	1,026,837.84	#DIV/0!	434,327.76	0.00	434,327.76	#DIV/0!
NET INCOME	1,026,837.84	0.00	1,026,837.84	#DIV/0!	434,327.76	0.00	434,327.76	#DIV/0!

VWS Holdco, Inc.
Consolidated
2023

	2022 YTD Total	% of Gross Revenue	1st Quarter 2023	% of Gross Revenue	2nd Quarter 2023	% of Gross Revenue	3rd Quarter 2023	% of Gross Revenue	October 2023	% of Gross Revenue	November 2023	% of Gross Revenue	December 2023	% of Gross Revenue	2023 YTD Total	% of Gross Revenue
REVENUE																
Landfill	23,638,031.94	100.00%	5,129,415.32	100.00%	4,906,927.14	100.00%	3,899,049.68	100.00%	1,201,576.90	100.00%	1,275,640.52	100.00%	1,100,081.86	100.00%	17,512,691.42	100.00%
Other	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%
GROSS REVENUE	23,638,031.94	100.00%	5,129,415.32	100.00%	4,906,927.14	100.00%	3,899,049.68	100.00%	1,201,576.90	100.00%	1,275,640.52	100.00%	1,100,081.86	100.00%	17,512,691.42	100.00%
Subcontract	278,900.00	1.18%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%
Cost of Sales - resale	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%
NET REVENUE	23,359,131.94	98.82%	5,129,415.32	100.00%	4,906,927.14	100.00%	3,899,049.68	100.00%	1,201,576.90	100.00%	1,275,640.52	100.00%	1,100,081.86	100.00%	17,512,691.42	100.00%
OPERATING COSTS																
Labor & Benefits	2,216,284.05	9.38%	559,257.25	10.90%	511,873.33	10.43%	461,842.78	11.85%	152,246.77	12.67%	149,324.41	11.71%	215,321.29	19.57%	2,049,865.83	11.71%
Repairs & Maintenance	1,304,846.47	5.52%	394,240.09	7.69%	347,757.76	7.09%	195,430.58	5.01%	73,442.28	6.11%	53,779.74	4.22%	77,128.57	7.01%	1,141,779.02	6.52%
Vehicle Operating Costs	945,425.04	4.00%	190,224.93	3.71%	187,787.79	3.83%	158,413.71	4.06%	66,017.36	5.49%	38,071.30	2.98%	24,076.13	2.19%	664,591.22	3.79%
Equipment & Facility Rent	176,716.47	0.75%	81,459.24	1.59%	80,991.25	1.65%	34,455.06	0.88%	8,844.94	0.74%	0.00	0.00%	60.49	0.01%	205,810.98	1.18%
Safety, Insurance & Claims	263,878.27	1.12%	66,735.69	1.30%	64,434.50	1.31%	63,169.03	1.62%	21,380.00	1.78%	21,367.00	1.68%	24,406.94	2.22%	261,493.16	1.49%
Landfill Closure/ Post Closure	971,556.00	4.11%	240,000.00	4.68%	240,000.00	4.89%	240,000.00	6.16%	80,000.00	6.66%	100,000.00	7.84%	100,000.00	9.09%	1,000,000.00	5.71%
Property Taxes	412,556.36	1.75%	103,500.00	2.02%	103,500.00	2.11%	103,500.00	2.65%	34,500.00	2.87%	34,500.00	2.70%	23,956.81	2.18%	403,456.81	2.30%
Other Operating Costs	1,839,603.92	7.78%	620,619.04	12.10%	578,719.07	11.79%	444,493.93	11.40%	251,650.45	20.94%	226,148.33	17.73%	189,344.71	17.21%	2,310,975.53	13.20%
TOTAL OPERATING COSTS	8,130,866.58	34.40%	2,256,036.24	43.98%	2,115,063.70	43.10%	1,701,305.09	43.63%	688,081.80	57.26%	623,190.78	48.85%	654,294.94	59.48%	8,037,972.55	45.90%
OPERATING PROFIT	15,228,265.36	64.42%	2,873,379.08	56.02%	2,791,863.44	56.90%	2,197,744.59	56.37%	513,495.10	42.74%	652,449.74	51.15%	445,786.92	40.52%	9,474,718.87	54.10%
S. G. & A. COSTS																
Salaries	1,742,193.61	7.37%	407,128.96	7.94%	362,784.49	7.39%	355,267.00	9.11%	120,815.76	10.05%	84,176.13	6.60%	26,798.94	2.44%	1,356,971.28	7.75%
Facility & Office Costs	439,500.53	1.86%	207,131.82	4.04%	165,309.37	3.37%	88,246.97	2.26%	26,283.94	2.19%	30,420.08	2.38%	32,485.45	2.95%	549,877.63	3.14%
Travel & Entertainment	43,899.03	0.19%	21,935.96	0.43%	10,800.39	0.22%	9,000.79	0.23%	5,076.94	0.42%	3,494.99	0.27%	2,833.45	0.26%	53,142.52	0.30%
Professional Fees	218,259.07	0.92%	79,719.00	1.55%	88,213.84	1.80%	209,029.94	5.36%	117,845.21	9.81%	65,448.75	5.13%	90,670.38	8.24%	650,927.12	3.72%
Management Fees	558,400.00	2.36%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	22,130.04	2.01%	22,130.04	0.13%
Other Expense	331,465.01	1.40%	82,852.69	1.62%	136,685.55	2.79%	59,378.91	1.52%	18,144.25	1.51%	20,353.72	1.60%	0.00	0.00%	317,415.12	1.81%
TOTAL S. G. & A. COSTS	3,333,717.25	14.10%	798,768.43	15.57%	763,793.64	15.57%	720,923.61	18.49%	288,166.10	23.98%	203,893.67	15.98%	174,918.26	15.90%	2,950,463.71	16.85%
	11,894,548.11	50.32%	2,074,610.65	40.45%	2,028,069.80	41.33%	1,476,820.98	37.88%	225,329.00	18.75%	448,556.07	35.16%	270,868.66	24.62%	6,524,255.16	37.25%
OTHER INCOME & EXPENSE																
Royalty/Other Income	(412,838.18)	-1.75%	(530,829.19)	-10.35%	(100,551.18)	-2.05%	(41,180.88)	-1.06%	(3,233.20)	-0.27%	(327,515.42)	-25.67%	(53,714.49)	-4.88%	(1,057,024.36)	-6.04%
TOTAL OTHER INCOME & EXPENSE	(412,838.18)	-1.75%	(530,829.19)	-10.35%	(100,551.18)	-2.05%	(41,180.88)	-1.06%	(3,233.20)	-0.27%	(327,515.42)	-25.67%	(53,714.49)	-4.88%	(1,057,024.36)	-6.04%
EBITDA	12,307,386.29	52.07%	2,605,439.84	50.79%	2,128,620.98	43.38%	1,518,001.86	38.93%	228,562.20	19.02%	776,071.49	60.84%	324,583.15	29.51%	7,581,279.52	43.29%
TOTAL DD&A	3,662,942.51	15.50%	763,930.00	14.89%	752,600.00	15.34%	1,014,440.63	26.02%	316,438.75	26.34%	317,793.75	24.91%	(142,925.54)	-12.99%	3,022,277.59	17.26%
EBIT	8,644,443.78	36.57%	1,841,509.84	35.90%	1,376,020.98	28.04%	503,561.23	12.91%	(87,876.55)	-7.31%	458,277.74	35.93%	467,508.69	42.50%	4,559,001.93	26.03%
INTEREST EXPENSE/INCOME																
Interest Expense (Net)	21,311,589.26	90.16%	1,808,301.86	35.25%	(25,720.84)	-0.52%	73,298.53	1.88%	718,527.03	59.80%	215,987.89	16.93%	138,609.57	12.60%	2,929,004.04	16.73%
Preferred Dividends	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	0.00	0.00%	(42,762.07)	-3.89%	(42,762.07)	-0.24%
TOTAL INTEREST - NET	21,311,589.26	90.16%	1,808,301.86	35.25%	(25,720.84)	-0.52%	73,298.53	1.88%	718,527.03	59.80%	215,987.89	16.93%	95,847.50	8.71%	2,886,241.97	16.48%
INCOME FROM CONTINUING OPERATION:	(12,667,145.48)	-53.59%	33,207.98	0.65%	1,401,741.82	28.57%	430,262.70	11.04%	(806,403.58)	-67.11%	242,289.85	18.99%	371,661.19	33.78%	1,672,759.96	9.55%
NET INCOME	(12,667,145.48)	-53.59%	33,207.98	0.65%	1,401,741.82	28.57%	430,262.70	11.04%	(806,403.58)	-67.11%	242,289.85	18.99%	371,661.19	33.78%	1,672,759.96	9.55%

EXHIBIT 4



A CERTIFIED COPY
ATTEST: 07/22/2025
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Irene Aldana

From: Evan Bell <evan@wlawpllc.com>
Sent: Monday, January 6, 2025 4:26 PM
To: Davidson, Aaron <ADavidson@coleschotz.com>
Cc: Jay Wieser <jay@wlawpllc.com>; Patel, Vishal <VPatel@coleschotz.com>; DeGroote, Amanda <ADeGroote@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>
Subject: RE: Durham/McGee - Joint Status Report



Following up on the below.

Thanks,

Evan M. Bell
Associate Attorney
WIESER LAW PLLC
3732 Hulen Street, Suite 100
Fort Worth, Texas 76107
Direct: 817.912.2124
Office: 817.242.8490
evan@wlawpllc.com
www.wlawpllc.com





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From: Evan Bell
Sent: Thursday, January 2, 2025 4:26 PM
To: Davidson, Aaron <ADavidson@coleschotz.com>
Cc: Jay Wieser <jay@wlawpllc.com>; Patel, Vishal <VPatel@coleschotz.com>; DeGroote, Amanda <ADeGroote@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>
Subject: RE: Durham/McGee - Joint Status Report

Aaron,

I hope you had a good new years. I understand your below email to mean that you are requesting category 2 to exclude all documents that refers to Cole Schotz. If so, we are fine with excluding communications with Cole Schotz from the second category.

Happy to discuss.

Evan M. Bell
Associate Attorney
WIESER LAW PLLC
3732 Hulen Street, Suite 100
Fort Worth, Texas 76107
Direct: 817.912.2124
Office: 817.242.8490
evan@wlawpllc.com
www.wlawpllc.com



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From: Davidson, Aaron <ADavidson@coleschotz.com>

Sent: Wednesday, January 1, 2025 7:03 AM

To: Evan Bell <evan@wlawpllc.com>

Cc: Jay Wieser <jay@wlawpllc.com>; Patel, Vishal <VPatel@coleschotz.com>; DeGroote, Amanda <ADeGroote@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>

Subject: RE: Durham/McGee - Joint Status Report

Evan,

To avoid further delays, we went ahead and reviewed the documents matching the key words previously discussed and working to get those produced, hopefully by Friday. With regard to the new requests from your December 17 email:

1) The number of additional documents is 154 (some of which are likely duplicates) for communications between McGee and Nichols during the time period 1/1/2022 to 5/5/2023 that include any of the following: "Volunteer Enterprises" "Kent" "Durham" "Collins" "Orcutt" Kelly /2 Sam!

2) The number of additional documents is approximately 3,000 (some of which are likely duplicates) for communications to or from Fred Nichols from 1/1/2022 to present that include any of the following: "Volunteer Enterprises" "Kent" "Durham" "Collins" "Orcutt" Kelly /2 Sam!

We are fine reviewing and producing any non-privileged documents in category #1, but are asking for a new search for category #2 that is limited to communications that refers to Cole Schotz as I think the majority of these documents are privileged communications about this lawsuit after it was filed. If you are agreeable to narrowing this to communications before 5/5/2023, that may also narrow the number of documents. Let me know.

Thanks,
Aaron



AARON DAVIDSON

MEMBER

OFFICE 469.557.9396

EMAIL adavidson@coleschotz.com

901 Main Street | Suite 4120 | Dallas, TX 75202

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Legal Practice Assistant: Adrienne Hickey | 469.557.9393 | ahickey@coleschotz.com

From: Evan Bell <evan@wlawpllc.com>

Sent: Tuesday, December 31, 2024 1:44 PM



A CERTIFIED COPY
ATTEST: 07/22/2025
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Irene Aldana

To: Davidson, Aaron <ADavidson@coleschotz.com>
Cc: Jay Wieser <jay@wlawpllc.com>; Patel, Vishal <VPatel@coleschotz.com>; DeGrootte, Amanda <ADeGrootte@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>
Subject: RE: Durham/McGee - Joint Status Report

Aaron,

I hope you enjoyed the holidays. Do you have any updates on the search?

Thanks,

Evan M. Bell
Associate Attorney
WIESER LAW PLLC
3732 Hulen Street, Suite 100
Fort Worth, Texas 76107
Direct: 817.912.2124
Office: 817.242.8490
evan@wlawpllc.com
www.wlawpllc.com



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From: Davidson, Aaron <ADavidson@coleschotz.com>
Sent: Wednesday, December 18, 2024 11:12 AM
To: Evan Bell <evan@wlawpllc.com>
Cc: Jay Wieser <jay@wlawpllc.com>; Patel, Vishal <VPatel@coleschotz.com>; DeGrootte, Amanda <ADeGrootte@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>
Subject: RE: Durham/McGee - Joint Status Report

Evan,

Welcome back to Texas. As you might imagine, getting significant changes to searches in the evening on December 17 will make it impossible to complete any review and production by Friday. We will endeavor to run the searches below as quickly as possible but I don't know how quickly our vendor will be able to get results for us.

I also think quite a few of these searches are beyond the scope of any discovery request. We will run the searches.



A CERTIFIED COPY
ATTEST: 07/22/2025
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Irene Aldana

One issue is the search for emails to and from Fred Nichols that mention Durham, Volunteer Enterprises, etc. Running that search “to the present” means that every email about this lawsuit after it filed would be responsive, and of course we’re not going to produce or log all of those privileged communications. I think we can address this with a search to exclude communications with counsel, etc., but I did want to note the impact of removing the end date of May 5, 2023 on our ability to collect and produce emails because I’m not sure this was intentional on your part.

Thanks,
Aaron



AARON DAVIDSON
MEMBER

OFFICE 469.557.9396

EMAIL adavidson@coleschotz.com

901 Main Street | Suite 4120 | Dallas, TX 75202

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Legal Practice Assistant: Adrienne Hickey | 469.557.9393 | ahickey@coleschotz.com

From: Evan Bell <evan@wlawpllc.com>
Sent: Tuesday, December 17, 2024 5:32 PM
To: Davidson, Aaron <ADavidson@coleschotz.com>
Cc: Jay Wieser <jay@wlawpllc.com>; Patel, Vishal <VPatel@coleschotz.com>; DeGroote, Amanda <ADeGroote@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>
Subject: RE: Durham/McGee - Joint Status Report

CAUTION: External Message

Aaron,

Apologies for the delay. I was out of the state most of last week and yesterday.

In your original email, you mentioned you did not know what was meant by “financial documents relating to the transactions at issue.” The transactions at issue include (i) the transfers from Shoosmith for the purchase of the debt and equity and (ii) the transfers of any gas royalties to Shoosmith and/or Volunteer. For example, presumably there are additional spreadsheets from Swift Creek indicating the gas production and royalties through November 2024. We only have the spreadsheet through August 2024, and, if additional spreadsheets exist, we need to review them. On the transfers of gas royalties, we are looking for payment records from Swift Creek or Morrow to Shoosmith and from Shoosmith to Volunteer from September 2023 to the present (and supplemented through trial).



A CERTIFIED COPY
 ATTEST: 07/22/2025
 THOMAS A. WILDER
 DISTRICT CLERK
 TARRANT COUNTY, TEXAS
 BY: /s/ Irene Aldana

On the other documents and communications, please see below comments in red.

Documents and communications (time period January 1, 2022 to **present, unless otherwise indicated below**):

Texts and emails between Larry and Fred that contain the following words: ESM, VWS Holdco, VWS Acquisitions, Shoosmith, PNC, Erie, Evergreen, **Volunteer Enterprises, LLC, William Kent Durham, John Douglas Collins, Marilyn Orcutt, or Sam Kelly (or any iterations of these names)**. The time period on this request is only from January 1, 2022 to May 5, 2023.

Texts and emails from or to Fred that contain the words: ESM, VWS Holdco, VWS Acquisitions, Shoosmith, PNC, Erie, Evergreen, **Volunteer Enterprises, LLC, William Kent Durham, John Douglas Collins, Marilyn Orcutt, or Sam Kelly**.

Texts and emails with Morrow and/or Swift Creek. **Yes**.

Texts and emails to Len Woodard or Kay Gotshall. **Yes**.

Communications with James Kelly Foster about ESM's tax returns. **Yes. The time period on this request is from January 1, 2008 to present.**

Please let us know as soon as possible.

Thanks,

Evan M. Bell

Associate Attorney

WIESER LAW PLLC

3732 Hulen Street, Suite 100

Fort Worth, Texas 76107

Direct: 817.912.2124

Office: 817.242.8490

evan@wlawpllc.com

www.wlawpllc.com



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From: Davidson, Aaron <ADavidson@coleschotz.com>

Sent: Friday, December 13, 2024 11:15 AM

To: Evan Bell <evan@wlawpllc.com>

Cc: Jay Wieser <jay@wlawpllc.com>; Patel, Vishal <VPatel@coleschotz.com>; DeGroote, Amanda

<ADeGroote@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>; Patel, Vishal <VPatel@cole>



A CERTIFIED COPY
ATTEST: 07/22/2025
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Irene Aldana

DeGroote, Amanda <ADeGroote@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>

Subject: RE: Durham/McGee - Joint Status Report

Evan,

For these searches we used the terms in my email from nearly 10 days ago, and it did not include Durham, Kelly, Collins, or Orcutt. I would expect there to be a large number of additional emails involving Fletcher Kelly that pertains solely to his work at the Shoosmith landfill, but very few (if any) emails for the others that haven't already been collected or produced in this case. Here are the terms from my email back at the beginning of this month:

Breaking down the rest of these points, it seems like you're looking for:

Documents and communications (time period January 1, 2022 to May 5, 2023)

Texts and emails between Larry and Fred that contain the following words: ESM, VWS Holdco, VWS Acquisitions, Shoosmith, PNC, Erie, or Evergreen. We can agree to run this search and produce any non-privileged documents.

Texts and emails from or to Fred that contain the words: ESM, VWS Holdco, VWS Acquisitions, Shoosmith, PNC, Erie, or Evergreen. We can agree to run this search and produce any non-privileged documents.

Texts and emails to Len Woodard or Kay Gotshall. We can agree to run this search and produce any non-privileged documents.

Texts and emails with Morrow and/or Swift Creek from January 2022 to the present. We can agree to run this search and produce any documents concerning gas royalties or the gas production facility.

Communications with James Kelly Foster about ESM's tax returns. We can agree to produce this. Note that Foster handled Nichols' personal tax returns, and we're not agreeing to produce communications about that.

Financials of Volunteer Enterprises and Shoosmith that show payments of gas royalties from Morrow (and from Shoosmith to Volunteer) from September 2023 to November 2024. We can agree to provide records of all transfers regarding gas royalties between Volunteer Enterprises and Shoosmith, and all payments from Morrow to Shoosmith.

Net worth discovery

We will agree to provide a statement with support documents 20 days before trial, unless tort claims that support exemplary damages are no longer pending (i.e., they've been dismissed).

If you would like us to run that as a search and report back on the number of hits, we can do that. I'm also still waiting for confirmation that the searches above, including the time periods, are what you want us to run and review, given the number of hits. We don't want to do multiple iterations of this.

A privilege log will be produced for all documents that are required to be logged under the Texas rules.

Please let me know as soon as possible if you agree with the search terms described above or want us to make further changes.

Thanks,
Aaron



AARON DAVIDSON
MEMBER

OFFICE 469.557.9396

EMAIL adavidson@coleschotz.com

901 Main Street | Suite 4120 | Dallas, TX 75202

NEW JERSEY NEW YORK DELAWARE MARYLAND TEXAS FLORIDA

VCARD | BIO | COLESCHOTZ.COM

Legal Practice Assistant: Adrienne Hickey | 469.557.9393 | ahickey@coleschotz.com

From: Evan Bell <evan@wlawpllc.com>

Sent: Wednesday, December 11, 2024 2:36 PM

To: Davidson, Aaron <ADavidson@coleschotz.com>

Cc: Jay Wieser <jay@wlawpllc.com>; Patel, Vishal <VPatel@coleschotz.com>; DeGroote, Amanda <ADeGroote@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>; Patel, Vishal <VPatel@coleschotz.com>; DeGroote, Amanda <ADeGroote@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>

Subject: RE: Durham/McGee - Joint Status Report

CAUTION: External Message

Aaron,

Can you please confirm the search terms used and that they included the names of ESM's members, as they relate to the subject companies.

We will need a privilege log on the privileged communications as well.

Thanks,

Evan M. Bell
Associate Attorney
WIESER LAW PLLC
3732 Hulen Street, Suite 100
Fort Worth, Texas 76107
Direct: 817.912.2124
Office: 817.242.8490
evan@wlawpllc.com



A CERTIFIED COPY
ATTEST: 07/22/2025
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Irene Aldana

www.wlawpllc.com

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From: Davidson, Aaron <ADavidson@coleschotz.com>

Sent: Tuesday, December 10, 2024 11:20 AM

To: Evan Bell <evan@wlawpllc.com>

Cc: Jay Wieser <jay@wlawpllc.com>; Patel, Vishal <VPatel@coleschotz.com>; DeGroote, Amanda <ADeGroote@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>; Patel, Vishal <VPatel@coleschotz.com>; DeGroote, Amanda <ADeGroote@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>

Subject: Re: Durham/McGee - Joint Status Report

Ballpark of about 1,000 total texts and emails, but that looks like it includes duplicates, some outside the date ranges, and privileged communications. Let me know if you want more details or if you want to suggest further narrowing. Some of these are not relevant and would not be produced regardless—for example, communications with Foster about Nichols' wife's tax returns.



AARON DAVIDSON

MEMBER

OFFICE 469.557.9396

EMAIL adavidson@coleschotz.com

901 Main Street | Suite 4120 | Dallas, TX 75202

NEW JERSEY NEW YORK DELAWARE MARYLAND TEXAS FLORIDA

VCARD | BIO | COLESCHOTZ.COM

Legal Practice Assistant: Adrienne Hickey | 469.557.9393 | ahickey@coleschotz.com

On Dec 10, 2024, at 11:03 AM, Evan Bell <evan@wlawpllc.com> wrote:

CAUTION: External Message

Aaron,



A CERTIFIED COPY
ATTEST: 07/22/2025
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Irene Aldana

Do you have any updates on the ESI data?

Thanks,

Evan M. Bell
Associate Attorney
WIESER LAW PLLC
3732 Hulen Street, Suite 100
Fort Worth, Texas 76107
Direct: 817.912.2124
Office: 817.242.8490
evan@wlawpllc.com
www.wlawpllc.com
<image001.png>

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From: Davidson, Aaron <ADavidson@coleschotz.com>
Sent: Tuesday, December 3, 2024 5:22 PM
To: Evan Bell <evan@wlawpllc.com>
Cc: Jay Wieser <jay@wlawpllc.com>; Patel, Vishal <VPatel@coleschotz.com>; DeGroote, Amanda <ADeGroote@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>; Patel, Vishal <VPatel@coleschotz.com>; DeGroote, Amanda <ADeGroote@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>
Subject: Re: Durham/McGee - Joint Status Report

Good to file, thanks.

<~WRD1101.jpg>

AARON DAVIDSON
MEMBER

OFFICE 469.557.9396

EMAIL adavidson@coleschotz.com

901 Main Street | Suite 4120 | Dallas, TX 75202

NEW JERSEY NEW YORK DELAWARE MARYLAND TEXAS FLORIDA

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Legal Practice Assistant: Adrienne Hickey | 469.557.9393 | ahickey@coleschotz.com



A CERTIFIED COPY
ATTEST: 07/22/2025
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Irene Aldana

On Dec 3, 2024, at 5:20 PM, Evan Bell <evan@wlawpllc.com> wrote:

CAUTION: External Message

Aaron,

Attached updates. Jay has reviewed. Let me know if we are good to file.

Evan M. Bell
Associate Attorney
WIESER LAW PLLC
3732 Hulen Street, Suite 100
Fort Worth, Texas 76107
Direct: 817.912.2124
Office: 817.242.8490
evan@wlawpllc.com
www.wlawpllc.com
<image001.png>

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From: Davidson, Aaron <ADavidson@coleschotz.com>
Sent: Tuesday, December 3, 2024 4:55 PM
To: Jay Wieser <jay@wlawpllc.com>; Evan Bell <evan@wlawpllc.com>
Cc: Patel, Vishal <VPatel@coleschotz.com>; DeGroote, Amanda <ADeGroote@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>
Subject: RE: Durham/McGee - Joint Status Report

Thanks Jay. I think that's more accurate. Will wait to respond on the next version.



<~WRD2494.jpg>

AARON DAVIDSON
MEMBER

OFFICE 469.557.9396

EMAIL adavidson@coleschotz.com

901 Main Street | Suite 4120 | Dallas, TX 75202

NEW JERSEY NEW YORK DELAWARE MARYLAND TEXAS FLORIDA

VCARD | BIO | COLESCHOTZ.COM

Legal Practice Assistant: Adrienne Hickey | 469.557.9393 | ahickey@coleschotz.com

From: Jay Wieser <jay@wlawpllc.com>

Sent: Tuesday, December 3, 2024 4:54 PM

To: Evan Bell <evan@wlawpllc.com>; Davidson, Aaron <ADavidson@coleschotz.com>

Cc: Patel, Vishal <VPatel@coleschotz.com>; DeGroote, Amanda
<ADeGroote@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>

Subject: RE: Durham/McGee - Joint Status Report

CAUTION: External Message

Sorry Aaron, doing this in real time.

Evan, I wouldn't say that we've reached agreements on all of the issues because we haven't. I would instead say that we've reached an agreement on the net worth issue and are working through the remaining issues pending some ESI work to be done.

Can you please revise and resend?

Jay K. Wieser
WIESER LAW PLLC
3732 Hulen Street, Suite 100
Fort Worth, Texas 76107
Office: 817.242.8490
Cell: 817.319.0116
jay@wlawpllc.com
www.wlawpllc.com
<image001.png>

From: Evan Bell <evan@wlawpllc.com>

Sent: Tuesday, December 3, 2024 4:50 PM

To: Davidson, Aaron <ADavidson@coleschotz.com>

Cc: Patel, Vishal <VPatel@coleschotz.com>; DeGroote, Amanda
<ADeGroote@coleschotz.com>; Yeh, Seokin <SYeh@coleschotz.com>; Jay Wieser
<jay@wlawpllc.com>

Subject: Durham/McGee - Joint Status Report

Aaron,



Based on your discussion with Jay, please find attached joint status report for your review and comment.

Best,

Evan M. Bell
Associate Attorney
WIESER LAW PLLC
3732 Hulen Street, Suite 100
Fort Worth, Texas 76107
Direct: 817.912.2124
Office: 817.242.8490
evan@wlawpllc.com
www.wlawpllc.com
<image001.png>

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* * * * *

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<Joint Status Report re Discovery, 1.docx>



EXHIBIT 5



A CERTIFIED COPY
ATTEST: 07/22/2025
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Irene Aldana

Fidelity National Title Insurance Company

7130 Glen Forest Drive, Suite 300
 Richmond, VA 23226
 Phone: (804)643-5404

Seller's Settlement Statement

Settlement Date: April 01, 2024
Disbursement Date: April 01, 2024
Order Number: VA2400051
Buyer: Computershare Trust Company, N.A., as Qualified Intermediary for Florida Rock Industries, Inc.
 1505 Energy Park Drive, St Paul, MN 55108
Seller: Shoosmith Bros. Inc., a Virginia corporation
Property: 11520 Iron Bridge Road
 VA
 APN/Parcel ID: 772653541800000
 148.5 acre portion of the referenced Tax Parcel

	Seller	
	Debit	Credit
Total Consideration:		
Purchase Price		25,000,000.00
Prorations:		
Independent Consideration		100.00
Title Company:Charges		
Settlement Fee	1,250.00	
Clerk's Fees and Recording Tax:		
Recording/Clerk Fees	50.00	
Grantor Tax (Deed)	25,000.00	
Subtotals	26,300.00	25,000,100.00
Balance Due TO Seller	24,973,800.00	
Totals	25,000,100.00	25,000,100.00



This Closing Statement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement and the signatures of any party to any counterpart shall be deemed to be a signature to, and may be appended to any other counterpart. To facilitate execution and delivery of this Closing Statement, the parties may execute and exchange counterparts of the signature pages hereof by email or telecopier services.

Seller and Purchaser understand that Escrow Agent has assembled this information representing the transaction from the best information available from other sources and cannot guarantee the accuracy thereof, except for the title fees. Each of the undersigned parties hereby approve this Closing Statement and authorize Escrow Agent to make expenditures and disbursements as shown and by execution below acknowledges receipt of a copy of this Closing Statement. The stipulations above shall survive the closing.

Escrow Agent is released from and shall have no liability, obligation or responsibility with respect to (a) withholding of funds pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, (b) advising the parties as to the requirements of such Section or (c) determining whether the transferor is a foreign person under such Section, acting as the Qualified Substitute or otherwise making any inquiry concerning compliance with such Section for any party to the transaction.

Purchaser confirms it has full authority to direct the application and disbursement of proceeds received from any person or entity not a Lender or party to the Closing.

In order to close this transaction, Escrow Agent relies on tax reports and other information provided by third parties, governmental agencies, Purchaser and Seller. In some instances, the calculation of transfer and/or recordation taxes, intangible taxes, ad valorem and/or real estate taxes, may differ from the local jurisdiction's calculation. By their signatures hereto Purchaser and Seller agree to fund or make any deficiencies or adjustments necessary to complete this transaction. Purchaser and Seller understand and agree that Escrow Agent shall have no responsibility for collection or re-proration of any taxes after the closing date.

SELLER

Shoosmith Bros. Inc., a Virginia corporation

BY: _____



Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Adrienne Hickey on behalf of Aaron Davidson

Bar No. 24007080

ahickey@coleschotz.com

Envelope ID: 100513704

Filing Code Description: Answer/Response

Filing Description: Defendants' Response to Plaintiffs Motion for Sanctions, Leave, and to Compel Against Defendants

Status as of 5/7/2025 8:20 AM CST

Associated Case Party: WILLIAMKENTDURHAM

Name	BarNumber	Email	TimestampSubmitted	Status
Jay K.Wieser		jay@wiesertaylor.com	5/6/2025 8:48:17 PM	SENT
Stephen DTaylor		stephen@wiesertaylor.com	5/6/2025 8:48:17 PM	SENT
Lauren Johnson		lauren@wiesertaylor.com	5/6/2025 8:48:17 PM	SENT
Evan Bell		evan@wiesertaylor.com	5/6/2025 8:48:17 PM	SENT
Emily EBaker		emily@wiesertaylor.com	5/6/2025 8:48:17 PM	SENT

Associated Case Party: PAULLAWRENCEMCGEE

Name	BarNumber	Email	TimestampSubmitted	Status
Seokin Yeh	24131942	syeh@coleschotz.com	5/6/2025 8:48:17 PM	SENT
Aaron Davidson		adavidson@coleschotz.com	5/6/2025 8:48:17 PM	SENT
Andrea Hegedish		ahegedish@coleschotz.com	5/6/2025 8:48:17 PM	SENT
Amanda DeGroote		ADeGroote@coleschotz.com	5/6/2025 8:48:17 PM	SENT

Associated Case Party: FREDGNICHOLS

Name	BarNumber	Email	TimestampSubmitted	Status
Seokin Yeh	24131942	syeh@coleschotz.com	5/6/2025 8:48:17 PM	SENT
Vishal Patel		vpatel@coleschotz.com	5/6/2025 8:48:17 PM	SENT
Aaron Davidson		adavidson@coleschotz.com	5/6/2025 8:48:17 PM	SENT

Associated Case Party: THEVOLUNTEER ENTERPRISES LLC



A CERTIFIED COPY
 ATTEST: 07/22/2025
 THOMAS A. WILDER
 DISTRICT CLERK
 TARRANT COUNTY, TEXAS
 BY: /s/ Irene Aldana

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Adrienne Hickey on behalf of Aaron Davidson

Bar No. 24007080

ahickey@coleschotz.com

Envelope ID: 100513704

Filing Code Description: Answer/Response

Filing Description: Defendants' Response to Plaintiffs Motion for Sanctions, Leave, and to Compel Against Defendants

Status as of 5/7/2025 8:20 AM CST

Associated Case Party: THEVOLUNTEER ENTERPRISES LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Vishal Patel		vpatel@coleschotz.com	5/6/2025 8:48:17 PM	SENT
Aaron Davidson		adavidson@coleschotz.com	5/6/2025 8:48:17 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
James Kiser		jkiser@andersonriddle.com	5/6/2025 8:48:17 PM	SENT
James Walker	20709600	jwalker@pszjlaw.com	5/6/2025 8:48:17 PM	SENT



A CERTIFIED COPY
 ATTEST: 07/22/2025
 THOMAS A. WILDER
 DISTRICT CLERK
 TARRANT COUNTY, TEXAS
 BY: /s/ Irene Aldana

Exhibit B

Docket for State Court Litigation



Tarrant County District Clerk Online

Thomas A. Wilder, District Clerk

Civil Case and Transaction Information

07/16/2025 11:58 AM

Court : **352** Case : **342125** ☐ Show Service Documents ONLY

Cause Number : 352-342125-23**Date Filed : 05-05-2023**

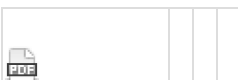
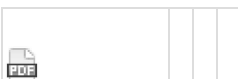
WILLIAM KENT DURHAM, ET AL | VS | PAUL LAWRENCE MCGEE, ET AL

Cause of Action : OTHER CIVIL, OTHER**Case Status :** MISC. JUDGMENT, FOREIGN JUDGMENT ETC. - BANKRUPTCY

File Mark	Description	Assessed Fee Credit/Paid Fee		
05-05-2023	<u>PLTFS' ORIG PET & APPL FOR TRO, TEMP INJ, & PERM INJ</u>	N	<u>\$350.00</u>	
05-05-2023	<u>PAYMENT RECEIVED trans #1</u>	Y		<u>\$213.00</u>
05-05-2023	<u>PAYMENT PAID TO STATE trans #1</u>	Y		<u>\$137.00</u>
05-05-2023	<u>NOTICE, T.R.O.</u>	N Svc	<u>\$8.00</u>	
05-05-2023	<u>PAYMENT RECEIVED trans #4</u>	Y		<u>\$8.00</u>
05-05-2023	<u>JURY REQUESTED</u>			<u>\$0.00</u>
05-05-2023	<u>(PROPOSED)TRO AGA DEFNS/ORD SET HRG FOR TEMP INJ</u>			<u>\$0.00</u>
05-08-2023	<u>DEFNS' RESP TO PLTFS' APPL FOR TRO</u>			<u>\$0.00</u>
05-26-2023	<u>DEFNS ORIG ANS TO PLTFS ORIG PET</u>			<u>\$0.00</u>
05-26-2023	<u>JURY REQUESTED</u>			<u>\$0.00</u>
05-30-2023	<u>PLTF UNOPPOSED MOT SUB COUNSEL</u>			<u>\$0.00</u>

05-30-2023	<u>(PROPOSED)ORD GRANT UNOPPOSED MOT SUB COUNSEL</u>							\$0.00
05-31-2023	<u>***ORD UNOPPOSE SUB COUNSEL WIESER/JOHNSON(PLTF).</u>					M		\$0.00
06-01-2023	<u>***ORD SET CASE FOR TRIAL WK OF 10/7/24***</u>					M		\$0.00
06-26-2023	<u>JOINT MOT L3 SCHEDULE ORD</u>							\$0.00
06-26-2023	<u>(PROPOSED)AGRD PROTECTIVE ORD</u>							\$0.00
06-26-2023	<u>JOINT MOT ENTRY AGRD PROTECTIVE ORD</u>							\$0.00
06-26-2023	<u>(PROPOSED)JOINT L3 SCHEDULE ORD</u>							\$0.00
07-03-2023	<u>***JOINT L3 SCHEDULE ORD, TRIAL WK OF 10/14/24***</u>					M		\$0.00
07-07-2023	<u>***AGRD PROTECTIVE ORD***</u>					M		\$0.00
08-21-2023	<u>DEFNS'UNOPPOSED MOT SUB COUNSEL ATTY WALKER</u>							\$0.00
08-21-2023	<u>(PROPOSED)ORD GRANT DEFN UNOPPOSED MOT SUB COUNSELATTY WALKER</u>							\$0.00
08-23-2023	<u>***ORD DEFNS' UNOPPOSE SUB COUNSEL DAVIDSON/YEH***</u>					M		\$0.00
11-10-2023	<u>PLTF 1ST AMD PET/APPL INJ RELIEF(ADD VOLUNTEER ENTERPRISES LLC DEFN)</u>							\$0.00
11-10-2023	<u>CIT-ISSUED ON VOLUNTEER ENTERPRISES LLC-On 11/16/2023</u>				N		Svc	\$8.00
11-10-2023	<u>PAYMENT RECEIVED trans #25</u>				Y			\$8.00
12-14-2023	<u>PLTF UNOPP MOT ISSUE LETTERS ROGATORY/SUBPOENAS</u>							\$0.00

12-14-2023	<u>LETTER ROGATORY</u>	 N Svc	<u>\$8.00</u>	
12-14-2023	<u>Letter Rogatory-ISSUED ON Evergreen National Indemnity Company-On 05/29/2024</u>	 N Svc	<u>\$8.00</u>	
12-14-2023	<u>PAYMENT RECEIVED trans #29</u>	 Y		<u>\$8.00</u>
12-14-2023	<u>PAYMENT RECEIVED trans #28</u>	 Y		<u>\$8.00</u>
12-15-2023	<u>***LETTER ROGATORY-ERIE INSURANCE EXCHANGE</u>	  		<u>\$0.00</u>
12-15-2023	<u>***LETTER ROGATORY-PNC MEZZANINE PARTINTERS III LP</u>	  		<u>\$0.00</u>
12-15-2023	<u>DEFN VOLUNTEER ENTERPRISE ORIG ANS/SPEC EXCEPTIONS</u>	  		<u>\$0.00</u>
12-15-2023	<u>DEFNS MCGEE/NICHOLS 1ST SUPPL ANS/SPEC EXCEPTIONS</u>	  		<u>\$0.00</u>
12-18-2023	<u>JURY REQUESTED</u>	  		<u>\$0.00</u>
12-18-2023	<u>JURY REQUESTED</u>	  		<u>\$0.00</u>
04-23-2024	<u>PLTF'S 2ND UNOPP MOT ISSUE LETTERS ROGATORY</u>	  		<u>\$0.00</u>
04-23-2024	<u>(PROPOSED) LETTER ROGATORY</u>	  		<u>\$0.00</u>
04-23-2024	<u>ATTY SUBP RET (THE BLUM FIRM PC)</u>	  		<u>\$0.00</u>
04-24-2024	<u>***LETTER ROGATORY***EVERGREEN NATIONAL INDEMNITY COMPANY</u>	  		<u>\$0.00</u>
04-25-2024	<u>ATTY SUBP RET (MORROW ENERGY)</u>	  		<u>\$0.00</u>
05-17-2024	<u>DEFN MCGEE 2ND SUPPL ANS,SPECIAL EXECEPTION,CTRCLMAGA WILLIAM KENT DURHAM</u>	  N 	<u>\$80.00</u>	
05-17-2024	<u>PAYMENT RECEIVED trans #43</u>	 Y 		<u>\$35.00</u>

05-17-2024	<u>PAYMENT PAID TO STATE trans #43</u>	 Y		<u>\$45.00</u>
05-17-2024	<u>PLTFS 2ND AMD PET (NO CHANGES)</u>			<u>\$0.00</u>
05-23-2024	<u>LTR ROGATORY APPL</u>			<u>\$0.00</u>
06-10-2024	<u>DEFN MCGEE ANS,SPEC/EXC,CTR-CLM TO 2ND AMD PET</u>			<u>\$0.00</u>
06-12-2024	<u>JOINT MTN CONT/ENTRY AMD SCHED ORD</u>			<u>\$0.00</u>
06-12-2024	<u>(PROPOSED) 1ST AMD JOINT L3 SCHED ORD</u>			<u>\$0.00</u>
08-27-2024	<u>***1ST AMD JOINT LVL 3 SCHED ORD TRL(WK OF 2-24-25</u>	 M		<u>\$0.00</u>
10-25-2024	<u>PLTFS MOT TO COMPEL PROD OF DOC & MOT TO COMPEL NEW WORTH DISC</u>			<u>\$0.00</u>
10-29-2024	<u>NOT/HRG 11-14-24 @1:30PM PLTFS MOT TO COMPEL</u>			<u>\$0.00</u>
11-07-2024	<u>THE WIDOWS' TRAD MTN PART S/JDG</u>			<u>\$0.00</u>
11-07-2024	<u>LTR/WIESER RE:UNREDACTED MTN COMPEL PROD</u>			<u>\$0.00</u>
11-07-2024	<u>DEFN RESP TO PLTF'S MTN TO COMPEL</u>			<u>\$0.00</u>
11-07-2024	<u>(PROPOSED)ORD DENY MTN TO COMPEL</u>			<u>\$0.00</u>
11-12-2024	<u>***ORD TO CANCEL HRG ON 11/14/24***</u>	 M		<u>\$0.00</u>
11-20-2024	<u>NOT HRG 12/13/24 @9AM RE:TRAD MTN PART S/JDG</u>			<u>\$0.00</u>
11-27-2024	<u>JOINT STATUS REPORT</u>			<u>\$0.00</u>
12-03-2024	<u>JOINT STATUS REPORT</u>			<u>\$0.00</u>

12-10-2024	<u>1ST AMD NOT/HRG 1-10-25 10:30 AM MOT FOR PARTIAL SJ</u>			\$0.00
12-13-2024	<u>PARTIALLY AGRD MOT/ENTRY OF AMD SCHED ORD</u>			\$0.00
12-13-2024	<u>(PROPOSED)2ND AMD JOINT LVL 3 SCHED ORD</u>			\$0.00
12-17-2024	<u>NOT HRG 1/9/24 @1:30PM RE:MTN OF AMD SCHED ORD/ OPPOSED MTN FOR CONT</u>			\$0.00
12-31-2024	<u>***ORD TRL WK OF 2-24-25 @9:00AM</u>		M	\$0.00
01-02-2025	<u>DECLARATION OF AARON DAVIDSON SUPPORT PART AGRD MTN FOR AMD SCHED ORD/OPPOSED MTN FOR CONT</u>			\$0.00
01-03-2025	<u>DEFN'S RESP TO PLTF'S MSJ</u>			\$0.00
01-07-2025	<u>LTR TO JUDGE RE TRAD MOT/PARTIAL SJ</u>			\$0.00
01-08-2025	<u>PLTFS NOT OF APPEARANCE & COUNSEL FIRM & ADDRESS CHANGE</u>			\$0.00
01-08-2025	<u>(PROPOSED)ORD DENYING DEFNS OPPOSED MOT/CONT</u>			\$0.00
01-08-2025	<u>PLTFS RESP TO DEFNS OPPOSED/CONT</u>			\$0.00
01-09-2025	<u>2ND AMD NOT HRG 1/23/25 @1PM-MOT FOR PARTIAL SJ</u>			\$0.00
01-09-2025	<u>DEFN MTN STRIKE EXPERT OPINION TESTIMONY</u>			\$0.00
01-10-2025	<u>(PROPOSED) ORD GRANT DEFN MTN STRIKE EXPERT OPINION TESTIMONY</u>			\$0.00
01-10-2025	<u>1ST AMD NOT HRG 1/23/25 @1PM RE:AMD SCHED ORD/ MTN FOR CONT</u>			\$0.00
01-10-2025	<u>DEFN NO-EVID MTN FOR PART S/JDG</u>			\$0.00
01-10-2025	<u>DEFN'S MTN STRIKE EXPERT OPINION TESTIMONY</u>			\$0.00

01-14-2025	<u>NOT HRG 2/6/25 @10AM RE:DEFN NO-EVID MPSJ/MTN STRK</u>			<u>\$0.00</u>
01-17-2025	<u>LTR/DAVIDSON RE:TO JUDGE BURGESS(UNREDACTED DOCS)</u>			<u>\$0.00</u>
01-17-2025	<u>DEFN'S REPLY RE OPPOSED MTN FOR CONT</u>			<u>\$0.00</u>
01-17-2025	<u>(PROPOSED) ORD GRANT DEFN'S OPPOSED MTN CONT</u>			<u>\$0.00</u>
01-22-2025	<u>THE WIDOWS REPLY TO DEFNS RESP TO MSJ</u>			<u>\$0.00</u>
01-23-2025	<u>(PROPOSED)ORD GRNT WIDOWS TRAD MOT/PARTIAL SJ</u>			<u>\$0.00</u>
01-28-2025	<u>NOT CANCELLATION OF HRG 2/6/25</u>			<u>\$0.00</u>
01-29-2025	<u>CERT/DEPO(BRYAN A FINLEY)\$3,548.75 PLTF</u>			<u>\$0.00</u>
01-31-2025	<u>AMD NOT HRG 2/27/25 @9:30AM RE:MTN STRIKE TEST</u>			<u>\$0.00</u>
02-21-2025	<u>JOINT MTN FOR AMD L3 SCHED ORD</u>			<u>\$0.00</u>
02-21-2025	<u>(PROPOSED) AMD JOINT L3 SCHED ORD</u>			<u>\$0.00</u>
02-21-2025	<u>(PROPOSED) DOCK CALL ORD</u>			<u>\$0.00</u>
02-25-2025	<u>PLTF RESP DEFN MTN STRIKE EXPERT TESTIMONY</u>			<u>\$0.00</u>
02-25-2025	<u>EXHIBITS A THROUGH D</u>			<u>\$0.00</u>
02-25-2025	<u>EXHIBITS E THROUGH F</u>			<u>\$0.00</u>
02-25-2025	<u>EXHIBITS G THROUGH M</u>			<u>\$0.00</u>
02-26-2025	<u>AMD NOT HRG 4/3/25 9AM DEFNS MOT STRIKE EXPERT OPINION TESTIMONY</u>			<u>\$0.00</u>

04-01-2025	<u>NOT CANCELLATION OF HRG 4/3/25 @9AM</u>			<u>\$0.00</u>
04-23-2025	<u>***AMD JOINT LVL 3 SCHED ORD(TRL WK OF 7-21-25)</u>		M	<u>\$0.00</u>
04-25-2025	<u>PLTF'S MTN SANCTIONS,LEAVE TO COMPEL AGA DEFN</u>			<u>\$0.00</u>
04-28-2025	<u>NOT/HRG 5-8-25 @3:30PM</u>			<u>\$0.00</u>
05-06-2025	<u>DEFN'S RESP TO PLTF'S MTN/SANCTIONS/LEAVE/COMPEL</u>			<u>\$0.00</u>
05-07-2025	<u>(PROPOSED)ORD GRNT PLTF'S MOT FOR SANCTIONS LEAVE & TO COMPEL AGAINST DEFNS</u>			<u>\$0.00</u>
05-14-2025	<u>LTR TO JUDGE RE PLTF MOT/SANCTIONS</u>			<u>\$0.00</u>
05-14-2025	<u>(PROPOSED)ORD GRNT PLTF'S MOT/SANCTIONS LEAVE TO COMPEL AGAINST DEFN</u>			<u>\$0.00</u>
05-15-2025	<u>LTR TO JUDGE RE PROPOSED ORDER</u>			<u>\$0.00</u>
05-19-2025	<u>***ORD GRNT IN PART PLTF'S MOT/SANCTIONS LEAVE & TO COMPEL AGAINST DEFN</u>		M	<u>\$0.00</u>
05-21-2025	<u>VAC LTR/JAY K WIESER</u>			<u>\$0.00</u>
06-02-2025	<u>DEFNS SUGGESTION OF BANKRUPTCY & NOT OF AUTOMATIC STAY(FRED G NICHOLS & PAUL LAWRENCE MCGEE).</u>			<u>\$0.00</u>
06-18-2025	<u>***ORD CLOSING CASE/REMOVE FROM ACTIVE DOCKET***</u>		M	<u>\$0.00</u>
06-18-2025	<u>REMOVED FROM ACTIVE DOCKET</u>			<u>\$0.00</u>
06-18-2025	<u>*****CASE CLOSED*****</u>			<u>\$0.00</u>

Exhibit C

Preliminary Injunction Transcript

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME(S)
CAUSE NO. 352-342125-23

WILLIAM KENT DURHAM, ET AL, § IN THE DISTRICT COURT
Plaintiff(s) §
§
VERSUS § 352ND JUDICIAL DISTRICT
§
PAUL LAWRENCE MCGEE, ET AL, §
Defendant(s) § TARRANT COUNTY, TEXAS

PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER

On the 9th day of May, 2023, the following proceedings
came on to be heard in the above-entitled and numbered cause
before the Honorable Josh Burgess, Judge presiding, held in
Fort Worth, Tarrant County, Texas:

Proceedings reported by computerized stenotype machine;
Reporter's Record produced by computer-assisted
transcription.

MICHELLE FORD ESCOBAR, CSR
Official Court Reporter
(817) 884-2732
MFEscobar@TarrantCounty.com

A P P E A R A N C E S

JAMES S. KISER
SBOT NO. 24063690
ANDERSON & RIDDLE, LLP
1604 8th Avenue
Fort Worth, Texas 76104-4114
(817) 334-0059
jkiser@andersonriddle.com

FOR THE PLAINTIFF(S)

JAMES W. WALKER
SBOT NO. 20709600
COLE SCHOTZ P.C.
901 Main Street, Suite 4120
Dallas, Texas 75202
(496) 557-9390
jwalker@coleschotz.com

SEOKIN YEH
SBOT NO. 24131942
COLE SCHOTZ P.C.
901 Main Street, Suite 4120
Dallas, Texas 75202
(496) 212-1813
syeh@coleschotz.com

FOR THE DEFENDANT(S)

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1 P R O C E E D I N G S

2 THE COURT: All right. We're here in the case
3 of Durham versus McGee, 352-342125-23. May I have the
4 parties make their appearances, please?

5 MR. KISER: Jim Kiser on behalf of plaintiffs,
6 William Kent Durham and John Douglas Collins.

7 THE COURT: All right. Thank you, sir.

8 MR. WALKER: Jim Walker of Cole Schotz, Your
9 Honor, for the defendants. I'm joined today by my associate,
10 Seokin Yeh.

11 THE COURT: All right. Thank y'all.

12 We're here on Plaintiffs' Motion for Temporary
13 Restraining Order. I've read the motion. I've read the
14 response. The parties can keep that in mind when making
15 their arguments, but with that, I'll turn it over to the
16 plaintiff.

17 MR. KISER: Thank you, Your Honor.

18 In summary, this is a situation in which my
19 clients are looking to press the pause button or a time-out
20 to have the opportunity to fairly and reasonably undertake
21 the financial accounting of what's gone on with these various
22 entities. Right now, it is basically that a debt was bought
23 of ESM. The defendants wish to use ESM's money to pay off
24 that debt, and then turn around and shut ESM down, while
25 giving my clients what they anticipate will be the royalties

1 over the next 25 years from ESM being shut down, as well as
2 accruing a rather large capital gains tax. It appears from
3 the reply or response of the defendants that this is planned
4 to shut down ESM; thus, it's imminent, it's irreparable.

5 As far as the monetary aspects of it, the rule
6 on that is stated -- let me pull that up, Your Honor. An
7 injury is irreparable if the injured party cannot be
8 adequately compensated in damages or if the damages cannot be
9 measured by any certain pecuniary standard. As we sit here
10 today, we don't even know what that full amount is in
11 monetary damages, much less other damages that may arise from
12 finding out what's going on through the injunction through
13 this case.

14 THE COURT: That may be true, but that's not
15 the standard. The standard is whether or not that could be
16 ascertained. I mean, the fact that you don't know it on
17 Day One of litigation doesn't mean that there's not a
18 monetary figure that could be ascertained.

19 MR. KISER: And I don't believe, Your Honor,
20 that it can be ascertained from a standpoint of we're not
21 sure what's happened to the remaining \$10 million debt, we're
22 not sure of the accounting for the full capital accounts in
23 these ESM, and furthermore, as far as what the damages will
24 be as we stand here today. And can they be? They can be
25 estimated, Your Honor; however, the problem is the bonds for

1 closing down Shoosmith were collateralized. We're not sure
2 exactly what's happened with those bonds, how that approval
3 was obtained, which then triggers questions about --

4 THE COURT: And since you asked -- I don't
5 know which side asked for a record, but I'd ask you to slow
6 down --

7 MR. KISER: Sure.

8 THE COURT: -- so my court reporter doesn't
9 throw something at one of us.

10 MR. KISER: And it begs the question of what's
11 happening with the shutdown of the landfill and does it put
12 those bonds in jeopardy with the proper shutdown of the
13 landfill.

14 For those reasons, my client is asking for a
15 temporary restraining order to pause funds going to the
16 defendants, to pause the funds being distributed to any of
17 these five entities for at least the period of the temporary
18 restraining order. Should we determine in that time period,
19 we may even pull down the injunction should we determine it's
20 not warranted. However, we still remain quite adamant and
21 certain that there should be an injunction placed after a
22 couple of weeks here of looking at the accounting and getting
23 an opportunity to look at the accounting prior to 2021, which
24 has been offered so far to date. And (indecipherable) back
25 that up, we can get the capital accounting, so we can figure

1 out what the capital gains tax may be as far as that
2 assessment, to figure out exactly what's going on by these
3 defendants in the actions as officers of ESM.

4 THE COURT: Can you address the offer by the
5 defendant to let you look at the books and to expand that
6 time horizon if that was necessary?

7 MR. KISER: I think the aspect is the capital
8 accounts, we need to go back to 2008, and it seemed clear
9 that that offer would not be accepted and reasonable to start
10 from the beginning to figure out how those capital accounts
11 built. What was reasonable is clearly not going to be back
12 to 2008, and the idea of seeing back to 2021, the idea is --
13 also, Your Honor, there are other entities involved in this
14 for which we would like to have the ability to see those
15 transactions. While my clients may not be specific members
16 of those, they are tied in with these defendants and their
17 movement and/or investments in those entities as it relates
18 and directly impacts ESM and Shoosmith.

19 For those reasons, Your Honor, we went ahead
20 and filed a TRO simply to say pause the status quote as ESM
21 is still a viable entity. We'd like that to not proceed any
22 further, should that be -- we deem it a (indecipherable) risk
23 of being shut down. We need that paused, and we'd like the
24 opportunity to look at the accounting records more
25 thoroughly, farther back than what was offered in our

1 request.

2 THE COURT: Okay. Thank you, sir.

3 MR. WALKER: May I, Your Honor?

4 THE COURT: Yes, sir.

5 Are you okay with letting him look at the
6 records back to 2008?

7 MR. WALKER: Yes, Your Honor, presuming it's
8 done pursuant to the ESM Management Group, LLC, agreement,
9 which would require that the cost associated with the audit,
10 whether it was done directly by the member or by an
11 accountant, the CPA retained by the member requesting the
12 audit would fund the expenses of the inspection.

13 THE COURT: And has there been argument about
14 that, or are you in agreement with that?

15 MR. KISER: We're in agreement with that, Your
16 Honor.

17 THE COURT: Okay. And it sounds like part of
18 what plaintiff is concerned about is a shutdown in the near
19 term. Is that going to happen?

20 MR. WALKER: Well, Your Honor, we were
21 planning it because the only remaining asset of any value
22 that this company has is the royalty stream from the methane
23 that will be gathered from the landfill. The landfill was
24 not able to secure a permit, so it never actually went into
25 operation pursuant to what we'd intended. So a methane

1 company that can extract the methane from the landfill has
2 been retained.

3 And the bonds that he's referencing, I
4 believe -- the only bonds that I'm aware of -- were bonds
5 that were necessary pursuant to the local governments up
6 there to secure that project. Those were actually undertaken
7 and have been issued and are in place to secure that so that
8 the mining of the methane may go forward.

9 If I may, Your Honor?

10 THE COURT: Yes, sir.

11 MR. WALKER: Okay. Your Honor, Jim Walker of
12 Cold Schotz. I'm here with Seokin Yeh this morning. It's my
13 first time to appear in the 352nd before you, and it's an
14 honor and a privilege, sir, to do so. Today I represent two
15 named individuals, Mr. Nichols and Mr. McGee. And I would
16 like to just dwell a little bit more on a couple of things
17 that have been alluded to.

18 We received two demands on April 6th, Your
19 Honor. One requested an audit of ESM, of the books and
20 records. One requested an audit of five other entities in
21 addition to ESM. We were given six business days to provide
22 the audit. The other demand, when you boil it down, included
23 a list of remedies that was breathtaking in its scope, and
24 the audacity of what they were asking, against the backdrop
25 of nothing at all by way of evidence or concern that they

1 could point to that there was any wrongdoing, but principally
2 the letter simply requested that, you know -- it was a
3 spoliation letter. They requested we preserve all
4 electronically stored information and records pertaining to
5 all of the entities, all six entities.

6 So on the 14th, a little over a week later, I
7 responded, and our response is in the record. And we agreed
8 to allow the inspection of the ESM records, consistent with
9 the provision in the agreement that Mr. Durham and
10 Mr. Collins had signed, as long as it was done at their cost.
11 And we did say that we were concerned about going back to
12 2008 because, obviously, that would require quite a bit of
13 records to be brought forward, but we also said, at the end,
14 that we were willing to negotiate a reasonable look-back
15 period for such an inspection of ESM's ledgers and related
16 records, commencing upon the date the litigation or any claim
17 brought by the claimants may be said to have been reasonably
18 foreseen. So the latchkey was out. Clearly, we were willing
19 to provide them an inspection. We had identified the period
20 that we thought was reasonable. We indicated a willingness
21 to negotiate from that position. And the next thing that I
22 knew was the following Friday, I had a call asking if I
23 wanted to be heard for a temporary restraining order hearing,
24 and approximately 30 minutes later, I was electronically
25 served with the pleading. So...

1 It was interesting as well in our response --
2 I just want to point the Court to this as well. In
3 connection with the initial causes of action that were
4 threatened in their demand, there were no facts provided that
5 they felt supported any of those causes of action, but they
6 were, in fact, identified by theory. And so with respect to
7 the breach of contract, I asked them, simply, could you point
8 me to the contractual provision that you contend was
9 breached? So it's notable to me that here we are today with
10 an actual lawsuit having been filed, and yet there's no
11 breach of contract cause of action. So clearly, I think it's
12 fair to conclude that they looked at it and realized that we
13 were correct, that there was no breach of contract here. The
14 only contract that Mr. Durham and Mr. Collins have executed
15 is the ESM Management Agreement, which, of course, they
16 didn't see fit to put into the record.

17 And with respect to that particular pleading
18 that they've now filed, I want to point out just a couple of
19 quick things. I think it's notable that they're suing two
20 individuals; they've identified that they are members of the
21 ESM Management Group, LLC, and that's true enough, but they
22 reference other entities -- Holdco, Acquisitions -- and the
23 only genuine reference to any particular position held in any
24 of those entities is the fact that Mr. Durham is identified
25 by them as an officer and director and outside counsel for

1 Holdco and Acquisitions -- or at least one of those two. So,
2 you know, he's actually deeply imbedded in all of these
3 entities, and it's my understanding that the evidence would
4 show that he drafted a good number, if not the entirety, of
5 all the documents and agreements that are at issue. So, you
6 know, this isn't a situation where anyone is pulling the wool
7 over a fellow member's eyes in the investment vehicle, the
8 company formed to pool the investments, ESM Management.

9 It's notable as well that they don't attribute
10 any of the conduct of these other entities to my clients.
11 They don't point out what the their role in the entities
12 might have been. They don't attach any agreements showing
13 why that is a concern to them or what authority was taken or
14 who undertook any of these actions that they're complaining
15 of. They just simply reference these entities, none of
16 which, I think is equally notable, are named as defendants in
17 the case. So, you know, I think that there's a real concern
18 that I have, just at first glance, with respect to the
19 susceptibility of this pleading to a motion to dismiss, to
20 some type of lack of standing argument with respect to
21 certain of the causes of action and that sort of thing.

22 Which brings me to the causes of action
23 themselves, Your Honor, because at the end of the day,
24 absent -- with respect to all these generalized allegations,
25 they're suing us for three claims, the first being breach of

1 fiduciary duty, which they allege arises solely by virtue of
2 the fact that my clients are members of an LLC. Now, the
3 body of law in Texas is not that well developed with respect
4 to fiduciary obligations owed by one member to the other,
5 although there are cases out there that do discuss it. One
6 could argue, as some commentators do, perhaps, that it's
7 analogous to the shareholder, you know, derivative type
8 actions, but this isn't a shareholder derivative case, nor is
9 it structured or styled or set up in any way as any kind of
10 derivative case even though their demand mentioned and
11 claimed that that was the kind of case that we could expect
12 if they filed suit on April 6th.

13 You know, they talk about how, for example, in
14 Paragraph 22 that the royalties generated by the new gas
15 plant are expected to be significant. Okay. Well, who set
16 that up? Was that my clients that set that up? I mean, who
17 is going to benefit from that? Would that be all the members
18 who -- respect to their proportionate share of the ownership
19 in ESM? I expect that the answer to both of those questions
20 is yes. So here, we actually take a landfill that we were
21 never able to secure a permit on, we post the appropriate
22 bonds that the government requires locally to be able to
23 retain the company that's competent, by all accounts, to
24 extract pipeline grade methane from the landfill to generate
25 a revenue stream over a period of multiple years for the

1 benefit of Mr. Durham and Mr. Collins, and yet somehow, my
2 clients are the only ones that are sued.

3 And then they say in January 22 -- this is
4 Paragraph 26 -- that in January 2022, Evergreen National
5 Indemnity Company issued Shoosmith the required bonds. Well,
6 who applied for those and who collateralized those bonds? I
7 mean, clearly, they were requisite bonds to be able to move
8 forward and generate this revenue stream. So they're
9 alluding to things that my clients did that they would
10 directly benefit from financially.

11 They never discussed the fact that over 15
12 years of this project and this investment that Mr. Durham
13 received a great deal, a great amount in distributions and
14 that there was never a complaint or a concern expressed about
15 the amount he was being paid or receiving, or from any other
16 member, for that matter. There's no allegation in this
17 complaint about a history of shorted distributions, a history
18 of audit requests, some kind of problem that would never go
19 away over the entirety of the investment and the history that
20 these gentlemen have together as members of ESM. It's all
21 something that arose just recently, just within the last year
22 or so, it appears, when this was the last thing to do and my
23 clients were suggesting that, perhaps, they should go ahead
24 and wind all of it down and then simply allow the royalties
25 to be distributed to each of the members, according to their

1 pro rata share of interest in ESM, for the period of time
2 that royalties are generated, and to be issued a K-1 so it
3 would be more simple, more streamline, and there wouldn't be
4 all this necessary tax accounting and everything else
5 involved in the entities.

6 So yes, that's certainly an option my client
7 has been considering. It's certainly an option that they
8 believe, just as a common sense business person and a
9 reasonable business person, makes sense for all the members,
10 but certainly not anything that would be actionable. But at
11 this point in time, given the pendency of the lawsuit, you
12 can understand, I think, Your Honor, why we would be
13 reluctant to pull the trigger on that just yet, not knowing
14 where this might go or how long it might last.

15 You know, finally, Your Honor, I'd like to go
16 to their causes of action. Breach of fiduciary duty, there
17 in Paragraph 39, they talked about the various damages and
18 injuries that they've suffered as a result of that breach.
19 All of it is compensable by monetary damages. And in fact,
20 they're seeking exclusively, with respect to that cause of
21 action, monetary damages.

22 And the fraud by nondisclosure, they identify,
23 for the benefit of the Court, in Paragraph 50, defendants
24 proximately caused injury to the plaintiffs, and they go on
25 to identify damages that are entirely compensable in monetary

1 form, and those are the only damages that they're seeking
2 with respect to that count. And, of course, the conspiracy
3 is a tagalong of that -- they added by virtue, I guess, of
4 one or two of the other tort claims.

5 And finally, it's interesting, Your Honor,
6 that ESM Management Group, which they didn't see fit to
7 attach as an exhibit, indemnifies my clients unless there's
8 some type of fraud or willful misconduct. So they would have
9 to first, I think, satisfy my attorney's fees for defending
10 this, until such time as they could actually prove willful
11 misconduct or fraud; so they're actually triggering ESM to
12 pay costs in the form of my fees by way of indemnity.

13 And there's also an explanation clause in the
14 agreement that takes my clients off the hook, as it does all
15 the members, and they're limited to the extent of their
16 investment as any kind of a loss. So, you know, there's a
17 reason, I think, that we don't see that contract -- that's a
18 pivotal part of these allegations and relate directly to what
19 they're claiming -- attached as an exhibit to the request for
20 injunctive or equitable relief.

21 With respect to Paragraph 60, where they're
22 suing for the accounting, it's interesting to me that
23 Mr. Collins and Mr. Durham are the only two members involved
24 that seem to have a complaint. So why would they turn around
25 and then expect the Court to order that the audit that

1 they're requesting, that they alone are requesting, that the
2 cost of that would be shared by all of the ESM members,
3 including those that don't see fit to join the lawsuit and
4 don't want to have anything to do with this? That doesn't
5 seem right, equitable, or just in my book, Your Honor.

6 With respect to the TRO itself, they're not
7 preserving the status quote. They're basically going to
8 destroy this business and make it impossible for us to
9 continue to collect any kind of wind down, any kind of
10 reasonable summation of these activities so that we can
11 simply receive the only remaining royalty stream left, which
12 would come from the methane. So this isn't maintaining the
13 status quote.

14 It looks almost vindictive in nature that
15 these two defendants alone can't receive any payments or
16 royalties or any type of funds from ESM, despite the fact
17 that whatever guarantees they might have outstanding on the
18 bonds or however they may have collateralized the bonds that
19 are necessary to secure all this, none of that is mentioned;
20 none of that has been looked at. This could very well
21 devastate the entire enterprise and make it impossible for us
22 to go forward even with the extraction of the methane gas.
23 They don't look into that. They don't care about it. This
24 looks to be something more vindictive, something a little bit
25 more retribution-like. It's difficult for me to understand

1 why the relief sought is so personal.

2 And with respect to Item C in the TRO, no
3 payment of any dividend or distributions from Shoosmith,
4 VWS Holdco Acquisitions, or ESM Management Group, none of
5 those entities are parties here. So they don't explain in
6 their pleading or in anything that's before the Court how it
7 is, legally, that this Court could restrain entities that
8 have no opportunity to appear or be heard with respect to
9 payments or other obligations they may have, not just to my
10 clients, but to the other members that didn't see fit to
11 joint this lawsuit.

12 Your Honor, what I would propose is really
13 fairly straightforward. And with all respect, my thought is
14 that the Court not grant the TRO, and certainly, we not waste
15 the Court's time with an injunction hearing, but that we
16 simply proceed in due course. Let us appear in the lawsuit.
17 Let us go ahead and have our scheduling order. Let's get a
18 protective order, given the financial nature of the
19 discovery, obviously, that's going to be have to be
20 exchanged.

21 To the extent that they want to conduct an
22 audit, we've already indicated our willingness to pull back
23 the kimono and let them see the records. We've had an
24 accountant look at this, and they didn't seem to think there
25 was any problem with it. You know, we've been filing tax

1 returns for almost 15 years on this. We've never had a
2 problem with any of the tax returns. We've never had a
3 problem with anyone complaining about any of the
4 distributions or any of the notations or transactions or
5 amounts that were set forth in any of the tax returns.
6 There's never been a peep of any problem until, all of
7 sudden, we're down to the last wire. All we've got left is
8 to distribute royalty payments on the extraction of methane
9 gas from a landfill we could never get permitted. And rather
10 than keep all these entities open and continue to file tax
11 returns and continue to go through all of that, it just made
12 sense to my guys, as reasonable business persons, to wind it
13 down and set it up and structured so that each of the members
14 would receive the royalty payments in accord with their
15 percentage of ownership of ESM and a K-1. But if that's
16 something that they're going to try to stop, if that's
17 something they're going to try to prevent, by which they
18 filed this lawsuit for whatever leverage they're trying to
19 purchase, I guess we'll find out what the ultimate game might
20 be.

21 But with respect to the equitable relief they
22 seek, it's outrageous and it's unnecessary. And we're
23 willing to work with them to provide the audit that they
24 seek, but now that we're in litigation, of course, I presume
25 that they would appoint a CPA or some other expert to conduct

1 the audit and that that would proceed at their cost. There's
2 no reason in the world that we should charge all the members,
3 or even my clients, for an obligation that the contract
4 itself places upon the party requesting the inspection.

5 So, Your Honor, that concludes my remarks. I
6 I'm available as a resource to the Court with any questions
7 you might have, and I appreciate your time.

8 THE COURT: Thank you, Counsel.

9 Mr. Kiser, anything further?

10 MR. KISER: Your Honor, would the Court permit
11 my actual client, Kent Durham, to address some of these
12 concerns?

13 THE COURT: I'm sorry. I couldn't hear you.

14 MR. KISER: Would the Court permit my client
15 to --

16 THE COURT: Sure. Yeah.

17 Are you having him testify?

18 MR. KISER: I'm going to have him rebut some
19 of the arguments.

20 THE COURT: Well, he's not counsel in this
21 case, so you can either call him as a witness or you can make
22 whatever arguments you want.

23 (Sotto voce discussion.)

24 THE COURT: Go ahead.

25 MR. KISER: It was only recently that my

1 client learned that Larry was not following the policy and
2 the agreement for the distribution accounting for the capital
3 accounts. Further, in trying to figure out what's going on
4 with the capital accounts -- and this is sort of a layered
5 problem we're facing -- the CPA said we can't just have the
6 tax returns that have been filed for 15 years. We need the
7 bank statements and the source documents, which my client's
8 been able to obtain to verify the capital accounts.

9 THE COURT: But it sounds like they're going
10 to let you review those; agreed?

11 MR. KISER: The idea is, as far as it includes
12 those type of statements, we can probably agree on that, yes,
13 Your Honor.

14 THE COURT: Okay.

15 MR. KISER: The third problem is those
16 bonds -- this landfill was open. It got full. They weren't
17 allowed to expand, so they have to shut the landfill down.
18 It's not the fact that the bonds were given and it never was
19 a landfill. It always was a landfill. It had to be shut
20 down because it got full.

21 So the problem, then, is those bonds are taken
22 out by a company called Evergreen. Those bonds are to help
23 Shoosmith close down and ensure they fulfill those
24 responsibilities. These two defendants moved and bought that
25 and put it in their name against ESM. They're now the

1 debtholders against the very entity for which they're also
2 members, president, vice president, officers. And what
3 happens then is they are continuing to deny -- you have a
4 written-off debt that you yourself paid because you are
5 members of ESM. That is a capital gains tax. They are
6 bluntly denying any type of capital gains tax impact on my
7 clients and the other members.

8 The other two members of this are widows of
9 the former members. That's how they're the other two members
10 of ESM. So no, they don't quite understand what's going on
11 yet. No, they don't want to jump in on this yet. So my
12 clients are jumping in at this time.

13 As far as the causes of action go, we are
14 planning on amending those. There are notice requirements
15 for breach of contract. There are notice requirements for
16 derivative actions. Admittedly, Your Honor, we have not met
17 those dates (indecipherable) petition to assert those causes
18 of action.

19 The biggest problem also is not only the
20 capital gains tax that they deny is out there, they have no
21 plan for paying that off. The K-1s my clients have been
22 receiving have been negative. They've not been in the
23 positive. And the aspect is now you've got millions in
24 capital gains tax of some amount, depending on what they do
25 with the remaining 10 million, that they have no plan as to

1 how to pay off what these wonderful royalties -- even their
2 response says we were going to give them the anticipated
3 royalties. How do you know what that is over a 25-year
4 period?

5 So really, our action on the status quote is
6 leave ESM alone for a temporary restraining order period.
7 Get us to the injunction to see if we can figure out what
8 exactly is going on, per our agreement to look at the
9 accounting documents, and stop them before they shut down ESM
10 so we can figure out the plan for what this is going to do to
11 all the members, much less what that amount is actually going
12 to be.

13 THE COURT: Thank you, sir.

14 MR. KISER: Thank you.

15 THE COURT: Mr. Walker, as it relates to ESM,
16 you referenced in your argument that because of litigation,
17 obviously, that kind of pauses everything. Is that your
18 position is that no action is going to be taken to wind down
19 ESM right now?

20 MR. WALKER: Yes, sir.

21 THE COURT: Okay.

22 MR. WALKER: I mean, I -- at that point -- as
23 you can imagine, it kind of tends to freeze things. I would
24 be willing to agree that if we felt that it was necessary to
25 move forward that we would provide them requisite notice of

1 some period of days so that they could come to the Court and
2 try to stop that if they saw fit to do that. But we have no
3 plans of doing it as I stand here today, Your Honor.

4 THE COURT: Okay. Thank you.

5 The TRO is denied.

6 The parties have, on the record, established
7 their agreement to allow for the review of the books, going
8 back to 2008, and the Court will anticipate and expect that
9 will take place.

10 As it relates to the potential wind down of
11 ESM, should the defendants' position change on that, I'd ask
12 that you give a minimum of 10 days' notice to plaintiff so
13 that he can re-urge a motion with this Court to address that
14 at that time.

15 MR. WALKER: Will do, Your Honor.

16 THE COURT: Okay. Anything else we need to
17 address?

18 MR. KISER: No, Your Honor.

19 THE COURT: Okay.

20 MR. WALKER: Your Honor, just very quickly,
21 could we -- would the court prefer that I work with Mr. Kiser
22 to prepare a scheduling order?

23 THE COURT: Yes, sir. Yes.

24 MR. WALKER: And does the Court have a trial
25 calendar? I apologize --

1 THE COURT: Yeah. If you'll contact my
2 coordinator, she can let you know potential dates once y'all
3 have had a discussion.

4 We can go off the record.

5 (End of Proceedings.)
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1 STATE OF TEXAS)

2 COUNTY OF TARRANT)

3 I, Michelle Ford Escobar, Official Court Reporter in and
4 for the 352nd Judicial District Court of Tarrant County,
5 State of Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription of all
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in this
9 volume of the Reporter's Record, in the above-styled and
10 numbered cause, all of which occurred in open court or in
11 chambers and were reported by me.

12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits, if
14 any, admitted by the respective parties.

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is \$168.50 and was paid
17 by Cole Schotz.

18 WITNESS MY OFFICIAL HAND this 24th day of May, 2023.

19

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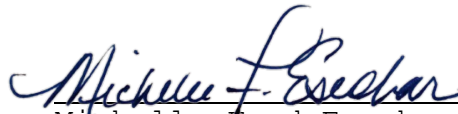
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Michelle Ford Escobar, CSR

Texas CSR No. 6888

Expiration Date: 01/31/2025

Official Court Reporter
352nd Judicial District Court
Tom Vandergriff Civil Courts Building
100 North Calhoun Street, Fourth Floor
Fort Worth, Texas 76196
(817)884-2732
MFescobar@TarrantCounty.com

Exhibit D

Sanctions Motion Transcript

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME(S)
CAUSE NO. 352-342125-23

WILLIAM KENT DURHAM, ET AL, § IN THE DISTRICT COURT
Plaintiff(s) §
§
VERSUS § 352ND JUDICIAL DISTRICT
§
PAUL LAWRENCE MCGEE, ET AL, §
Defendant(s) § TARRANT COUNTY, TEXAS

PLAINTIFFS' MOTION FOR SANCTIONS, LEAVE, AND TO COMPEL
AGAINST DEFENDANTS

On the 8th day of May, 2025, the following proceedings
came on to be heard in the above-entitled and numbered cause
before the Honorable Josh Burgess, Judge presiding, held in
Fort Worth, Tarrant County, Texas:

Proceedings reported by computerized stenotype machine;
Reporter's Record produced by computer-assisted
transcription.

MICHELLE FORD ESCOBAR, CSR
Official Court Reporter
(817)884-2732
mfescobar@tarrantcountytexas.gov

A P P E A R A N C E S

JAY K. WIESER

SBOT NO. 24060826

jay@wiesertaylor.com

EVAN M. BELL

SBOT NO. 24131249

evan@wiesertaylor.com

STEPHEN D. TAYLOR

SBOT NO. 24056414

stephen@wiesertaylor.com

WIESER TAYLOR PLLC

3732 Hulen Street, Suite 100

Fort Worth, Texas 76107

(817)242-8490

FOR THE PLAINTIFF(S)

AARON DAVIDSON

SBOT NO. 24007080

adavidson@coleschotz.com

COLE SCHOTZ P.C.

901 Main Street, Suite 4120

Dallas, Texas 75202

(469)557-9390

FOR THE DEFENDANT(S)

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CHRONOLOGICAL INDEX
VOLUME 1
(PLAINTIFFS' MOTION FOR SANCTIONS, LEAVE, AND TO COMPEL
AGAINST DEFENDANTS)

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EXHIBIT INDEX
NONE OFFERED

1 P R O C E E D I N G S

15:25:17 2 THE COURT: All right. We're here in Cause
15:25:18 3 No. 352-342125-23, Durham versus McGee. May I have counsel
15:25:25 4 make their appearances, please?

15:25:25 5 MR WIESER: Your Honor, Jay Wieser, Evan Bell,
15:25:29 6 and Stephen Taylor on behalf of plaintiffs.

15:25:32 7 THE COURT: Thank y'all.

15:25:33 8 MR. DAVIDSON: Good afternoon, Your Honor.
15:25:34 9 Aaron Davidson on behalf of defendants.

15:25:36 10 THE COURT: All right. Thank you both.

15:25:37 11 We're here on Plaintiffs' Motion for Sanctions
15:25:39 12 and Leave to Compel. I've read the motion; I've read the
15:25:43 13 response, so the parties can keep that in mind in making
15:25:45 14 their arguments. But with that, I'll turn it over to
15:25:48 15 Mr. Wieser.

15:25:48 16 MR. WIESER: Thank you. Your Honor. May it
15:25:50 17 please the Court.

15:25:50 18 THE COURT: Yes, sir.

15:25:53 19 MR WIESER: May I approach?

15:25:54 20 THE COURT: Yes, sir.

15:26:05 21 Thank you.

15:26:09 22 MR WIESER: Your Honor, while we wanted to
15:26:11 23 please the Court, we are not pleased to be here today. We
15:26:14 24 are not in the practice of filing motions for sanctions, at
15:26:18 25 least between counsel. This case has not been an acrimonious

15:26:23 1 one. I think Your Honor noted at the last hearing in January
15:26:26 2 that counsel seemed to get along, and that is the case. And
15:26:29 3 that remains true, and yet the issue we're here on today is
15:26:34 4 one that we see as a pretty serious violation of the
15:26:37 5 discovery obligations, and, frankly, a pretty brazen
15:26:44 6 furtherance of the scheme that has already been in place and
15:26:46 7 that needs to be addressed.

15:26:47 8 And so with that, just as a reminder, this
15:26:51 9 case is a partnership dispute. It arises out of a 2008
15:26:57 10 acquisition of a company called Shoosmith, Inc., and
15:27:04 11 Shoosmith owns a landfill and a quarry in Virginia. The
15:27:06 12 plaintiffs and the defendants acquired this quarry and
15:27:09 13 landfill through an investment entity called ESM Management,
15:27:13 14 and my clients are the four minority members of ESM
15:27:18 15 Management: two individuals -- one, Mr. Durham, is here
15:27:22 16 today, and then two widows whose husbands were in the
15:27:27 17 partnership but have since passed away. Mr. Davidson
15:27:31 18 represents the majority partnerships. They own 80 percent:
15:27:34 19 Mr. Larry McGee and Fred Nichols.

15:27:39 20 For all intents and purposes, the assets of
15:27:41 21 ESM, the only thing they had was an ownership interest,
15:27:45 22 indirect or a line of holding companies in the operating
15:27:48 23 company Shoosmith. So ESM is the holding company; it owns
15:27:55 24 Shoosmith which has the landfill. These parties expected the
15:27:58 25 payoff for this investment to come in three things. One is

15:28:00 1 the capital accounts and management fee. We talked about
15:28:03 2 that at the summary judgment hearing. As you'll recall, the
15:28:06 3 defendants admit that they have not paid the widows \$700,000
15:28:10 4 that is owed. That's in this lawsuit; that's one thing we're
15:28:13 5 suing for.

15:28:15 6 The second thing is the gas royalty issue.
15:28:18 7 These defendants implemented a scheme pursuant to which --
15:28:21 8 the landfill creates methane; that methane is produced like
15:28:26 9 an oil and gas operation with wells, and then it's paid
15:28:31 10 royalties. Originally, those royalties were supposed to go
15:28:35 11 up to ESM, to the holding company, and through a scheme in
15:28:39 12 which defendants, essentially, stole that opportunity and
15:28:42 13 took it over to Volunteer Enterprises, so that is in this
15:28:45 14 lawsuit. And we're suing for the net present value of the
15:28:49 15 future royalty income streams.

15:28:52 16 The third thing on which they were going to
15:28:54 17 recoup their investment and have a return is the ultimate
15:28:58 18 disposition of the real estate assets that they purchased.
15:29:01 19 That is not in this lawsuit because ESM, as far as we were
15:29:05 20 aware, still owned the real estate, still owned the landfill,
15:29:10 21 still owned the quarry, and that has been the case. And
15:29:16 22 we're talking about a significant amount; I mean, this is --
15:29:19 23 there are e-mails in this case throwing the value of those
15:29:21 24 real estate holdings around at \$150 million, so it's a big
15:29:25 25 deal.

15:29:26 1 At the beginning of this case -- and this was
15:29:31 2 before I was involved, before Mr. Davidson was involved --
15:29:35 3 the plaintiffs' lawyers that originally filed the case sought
15:29:37 4 a TRO.

15:29:38 5 May I approach, Your Honor?

15:29:41 6 THE COURT: Yes, sir.

15:29:56 7 MR. WIESER: What I've handed you is just the
15:29:57 8 front page of that petition to date and then the page where
15:30:00 9 they've requested what was to be enjoined. Behind that is a
15:30:03 10 short snippet of, essentially, the ruling that you gave on
15:30:06 11 the temporary restraining order. And so the plaintiffs asked
15:30:08 12 in this temporary restraining order that defendants, in any
15:30:11 13 of their entities or anyone acting in concert with them, be
15:30:16 14 enjoined from receiving any payments of any kind or nature,
15:30:19 15 including salary, management, fees, dividends, debt payments
15:30:23 16 from Shoosmith Brothers, Inc., or VWS Holdco. Essentially,
15:30:31 17 the defendants, being the majority, pushed us out, froze us
15:30:33 18 out of the company. We had no idea what was going on. They
15:30:38 19 fired Mr. Durham. They removed him as a director of
15:30:42 20 Shoosmith. And so it, essentially, became a black box. So,
15:30:45 21 when this lawsuit was originally filed, there was substantial
15:30:47 22 concern that the defendants would go off -- and we had no
15:30:49 23 visibility into the company anymore -- go off and renew the
15:30:52 24 corporation or transfer assets of the corporation out of the
15:30:54 25 corporation into their own pockets, and so they moved for

15:30:57 1 that.

15:30:58 2 Your Honor had a -- you denied the TRO, but I
15:31:02 3 think the discussion in which you denied the TRO is pretty
15:31:06 4 instructive on what everyone's mindset was at this time.
15:31:12 5 They were talking about winding ESM down and, of course, ESM
15:31:16 6 is just a holding company, and winding it down would
15:31:18 7 essentially mean selling off the assets that it owns, which
15:31:22 8 would mean Shoosmith or the material assets of Shoosmith.
15:31:27 9 And what the prior lawyer said was that -- for the
15:31:31 10 defendants -- was that when they were talking about these
15:31:34 11 wind down and transfers and all those issues, he said well,
15:31:38 12 because of this litigation -- and I'm on Page 23, Line 16 and
15:31:43 13 17. "You referenced in your argument that because of
15:31:46 14 litigation, obviously, that kind of pauses everything."
15:31:50 15 That's what the Court said; excuse me. "Is that your
15:31:53 16 position is that no action is going to be taken to wind down
15:31:56 17 out ESM right now?"

15:31:57 18 And their lawyer said "yes, sir." And then he
15:31:59 19 went on to say: I mean, at that point, as you can imagine,
15:32:03 20 it kind of tends to freeze things. But he agreed that if
15:32:06 21 that was going to change on the wind down of ESM that they
15:32:10 22 would give us notice, and then we could deal with it.

15:32:13 23 And Your Honor said, "Okay. Thank you. The
15:32:16 24 TRO is denied." And then you, on that second paragraph on
15:32:19 25 Page 24, starting at 10, you say: As it relates to a

15:32:23 1 potential wind down, should y'all's position change, give the
15:32:27 2 other side notice so that they can re-urge a motion. Okay.

15:32:30 3 THE COURT: What date was this hearing?

15:32:31 4 MR WIESER: This was in 2023 -- May 9, 2023.

15:32:36 5 THE COURT: When did the sale happen?

15:32:39 6 MR WIESER: April 2024; April 1, 2024, a
15:32:43 7 year -- not quite a year later.

15:32:44 8 THE COURT: And you were not given any notice
15:32:46 9 of that?

15:32:46 10 MR. WIESER: Not at all. It gets worse, Your
15:32:48 11 Honor.

15:32:48 12 THE COURT: I can't wait.

15:32:50 13 MR WIESER: And so we, frankly, given that
15:32:56 14 kind of protection and just, you know, when you consider the
15:33:00 15 discovery obligations that they had, the duties as
15:33:03 16 partners -- I mean, these guys are still partners -- the duty
15:33:06 17 of disclosure to that, and you couple that with the language
15:33:10 18 from that TRO hearing, there was not a lot of concern on our
15:33:13 19 end that Shoosmith was going to go out -- Shoosmith, now
15:33:17 20 directed by Fred and Larry only, was going to go out and
15:33:22 21 liquidate assets and then, essentially, divert the funds from
15:33:28 22 those assets, \$25 million in funds, to themselves. It just
15:33:30 23 didn't seem -- I have never seen anyone that brazen to do
15:33:33 24 that in the middle of a lawsuit, given all of these things.
15:33:37 25 But I guess we live and learn, and we are constantly

15:33:43 1 surprised. So here is what happened.

15:33:45 2 THE COURT: When did defense counsel leave
15:33:47 3 this case -- the previous defense counsel?

15:33:50 4 MR WIESER: Well, he was at Cole Schotz, same
15:33:54 5 firm, and I think it was probably six months in. I don't
15:33:59 6 know exactly.

15:33:59 7 THE COURT: Okay. Were you aware of this
15:34:00 8 hearing that took place?

15:34:01 9 MR. DAVIDSON: Your Honor, I was aware of the
15:34:02 10 transcript from it, yes.

15:34:03 11 THE COURT: Were you aware of that transcript
15:34:05 12 prior to the sale taking place?

15:34:07 13 MR. DAVIDSON: I was, Your Honor, but I did
15:34:09 14 not know about the sale transaction until after it occurred.

15:34:12 15 THE COURT: Okay. Thank you.

15:34:13 16 MR. WIESER: Okay.

15:34:14 17 So what they did in April of 2024, 11 months
15:34:18 18 into this lawsuit, is they went and secretly sold the quarry
15:34:22 19 part of the real estate for \$25 million to Vulcan, just a
15:34:28 20 third-party company. We don't know if there's appraisals.
15:34:32 21 We don't know if that's a good value on that. We don't know
15:34:35 22 about the sale at all. What they then do is take that \$25
15:34:40 23 million -- they leave, I think, 1.7 of it in Shoosmith, and
15:34:43 24 they transfer the other 23-million-plus out to an entity
15:34:47 25 called Volunteer Enterprises, which Larry and Fred own

15:34:51 1 fifty-fifty. Don't tell anybody; the money doesn't go up to
15:34:54 2 ESM. It goes over here to their entity, and God knows where
15:34:58 3 it is today.

15:35:00 4 So, April 1st -- Your Honor, if you would open
15:35:05 5 the binder to the front page, it's just a timeline that we
15:35:09 6 can walk through of this. So April -- I'm sorry --
15:35:14 7 August 15, 2023, we send a request for production, and it
15:35:18 8 asked for all documents and communications and ESI evidencing
15:35:24 9 or relating defendants' transfers of --

15:35:25 10 THE COURT: You're going to need to slow down
15:35:26 11 if you want a record.

15:35:27 12 MR WIESER: I'm sorry. Basically, give us all
15:35:28 13 the documents about any transfer of assets from Shoosmith to
15:35:34 14 Volunteer Enterprises. Okay? So, that request is out there
15:35:36 15 pending since August of 2023. April -- and they produce
15:35:44 16 documents; you know, we have arguments about documents, but
15:35:47 17 they're producing documents, and it's a rolling production.
15:35:50 18 There's been 23,000 pages of documents produced in this case.

15:35:53 19 THE COURT: When did they turn over the
15:35:55 20 spreadsheet that references the money?

15:35:57 21 MR WIESER: July 2024. So --

15:36:00 22 THE COURT: Okay.

15:36:00 23 MR WIESER: And we'll go through those.

15:36:03 24 And they sell the quarry, apparently, in April
15:36:05 25 of 2024 -- April 1, 2024. And we only know that because we

15:36:10 1 found the deed in the Virginia deed of records.

15:36:15 2 Twenty-four days later, we depose Mr. McGee;
15:36:19 3 full day deposition. He's the main man running this show,
15:36:23 4 and prior to that deposition, not a single document about any
15:36:26 5 quarry sale has been produced even though that sale just took
15:36:30 6 place within 24 days before. They just -- I mean, they just
15:36:33 7 took \$23 million out of this company 24 days before the
15:36:37 8 deposition, and there's not been one document disclosed about
15:36:42 9 it, so we have no idea that this has happened.

15:36:47 10 We then send a follow-up request on 4/26 for
15:36:52 11 all documents from the Volunteer side. Give us all documents
15:36:57 12 of any money coming from Shoosmith, so now you've got it
15:36:58 13 going both ways. We want all documents from Shoosmith to
15:36:59 14 Volunteer and Volunteer -- we've got both parties to the side
15:37:03 15 of this transaction.

15:37:03 16 The pleadings come and go. Defendants
15:37:06 17 continue to supplement production. We ask for another
15:37:10 18 request for production. Give us all the documents about the
15:37:11 19 operation of Shoosmith; still nothing has been produced about
15:37:14 20 the quarry sale. Then in July of 2024, they produce three
15:37:19 21 spreadsheets. We're going to go through those, but I just
15:37:22 22 want to lay out the timing here. Those spreadsheets do not
15:37:26 23 evidence a sale of the quarry. They encrypted --

15:37:30 24 THE COURT: They evidence something.

15:37:32 25 MR WIESER: They evidence something, yes, but

15:37:34 1 they're for a different entity. The purchase prices don't
15:37:38 2 matter. And this is a deal where you get to -- this is a
15:37:40 3 \$25 million transaction. Both parties were apparently
15:37:43 4 represented by big law firms; there's a data room, likely,
15:37:47 5 out there of documents on this sale, and we get three cryptic
15:37:51 6 spreadsheets that, as we'll walk through, don't give any
15:37:56 7 indication that a sale has actually happened.

15:37:58 8 So we depose the other defendant. We go
15:38:01 9 through expert discovery. Discovery closes. And then in
15:38:04 10 January, after discovery closed October 25, in January,
15:38:10 11 January 11th, they produce a whole other batch of documents
15:38:15 12 after discovery has closed. And buried within -- and a
15:38:18 13 thousand pages of documents were produced. Within that
15:38:20 14 production, there are two documents that evidence the
15:38:22 15 consummation of a sale of the quarry. One is an e-mail from
15:38:27 16 Mr. McGee to someone -- I think a title company person --
15:38:32 17 telling them to take the \$23 million and send it to Volunteer
15:38:36 18 Enterprises. The other is a letter from Mr. McGee, that is
15:38:39 19 responsive to probably 25 requests in this case, that details
15:38:44 20 out the whole scheme that they implemented.

15:38:46 21 But the next week, we come into this court for
15:38:49 22 a summary judgment hearing. Your Honor orders us to
15:38:52 23 mediation. We get in with John Brookman as soon as we can,
15:38:57 24 and so the case kind of sits for -- until March until we can
15:39:01 25 mediate. At mediation, and I won't get into the details, but

15:39:05 1 the mediation is terminated early by the defendants, before
15:39:08 2 we've eaten lunch, and it is clear to us that there is
15:39:12 3 something seriously wrong and that has not been disclosed
15:39:16 4 fully to us with something going on over there because we're
15:39:21 5 talking about things that just indicate that something big
15:39:26 6 has happened. And so we go back through -- as soon as we
15:39:28 7 learn that, we go back through this haystack, find the two
15:39:32 8 needles, do our own investigation, search the deed records in
15:39:36 9 Virginia, find a deed listing a \$25 million transfer from
15:39:40 10 Shoosmith to Volunteer Enterprises, confer with them, then
15:39:44 11 file this motion. So, that's where we're at. We're set for
15:39:58 12 trial in July.

15:39:59 13 If you would, turn to Tab 1. Your Honor,
15:40:01 14 we've isolated the discovery requests that clearly make these
15:40:04 15 documents relevant. I don't think that's a real response
15:40:07 16 that they somehow weren't responsive. I mean, they did
15:40:10 17 eventually produce some documents; I don't think they're in
15:40:11 18 the business of producing nonresponsive documents. The
15:40:13 19 document requests were just crystal clear; give us anything
15:40:17 20 about transfers between these two entities.

15:40:21 21 So this is -- if you'll go to Tab 2, this is
15:40:24 22 the e-mail that was produced in January of this year in which
15:40:29 23 we first learned that -- and it's, you know, pretty clear
15:40:34 24 that \$23 million went from Shoosmith to Volunteer
15:40:39 25 Enterprises. A one page e-mail; there's some statement

15:40:44 1 attached. So we found this. The only other document
15:40:49 2 evidencing the sale of this quarry is behind Tab 4 -- excuse
15:40:54 3 me -- Tab 3, and this is a letter dated March 22, 2024, that
15:41:04 4 details the entire scheme from start to finish. It's a
15:41:08 5 letter written by Mr. McGee, apparently; it's not signed, but
15:41:13 6 it appears to be from him to a valuation person, probably in
15:41:19 7 connection with some kind of tax deal.

15:41:20 8 These are the only two documents that actually
15:41:24 9 evidence the sale of a quarry in any kind of decipherable
15:41:28 10 terms that, you know -- who they sold it to, how much they
15:41:30 11 sold it for, when they sold it; these are the only two
15:41:33 12 documents that have been produced in this case.

15:41:35 13 If you'll go to Tab 4, this is the document
15:41:39 14 that we found ourselves. It still has not been produced.
15:41:42 15 This is the deed that was in the Virginia property records
15:41:44 16 evidencing the transfer of this quarry -- \$25 million from
15:41:52 17 Vulcan to Shoosmith.

15:41:57 18 And so you turn to Tab 5 and these are the
15:42:02 19 three spreadsheets. There's a slip sheet in there that, I
15:42:06 20 think, the defendants are taking the position of well, we
15:42:08 21 should have known about the sale of the quarry because of
15:42:11 22 these spreadsheets.

15:42:12 23 THE COURT: Why do I even care about that
15:42:14 24 since it appears that they violated my instruction?

15:42:16 25 MR WIESER: I don't know. They bring it up,

15:42:18 1 so I bring it up. To me, it's actually more damning because
15:42:21 2 if they say we should have known based on these spreadsheets
15:42:24 3 in July of 2024, then I think it's an even bigger problem
15:42:28 4 because if we should have known, then the people producing it
15:42:30 5 certainly should have known, and they should have not
15:42:32 6 withheld the rest of the documents until after discovery, and
15:42:34 7 they should have produced all the documents regarding the
15:42:36 8 quarry sale.

15:42:37 9 THE COURT: I don't understand how we get to
15:42:39 10 the quarry sale, though. That's the part I'm hung up on.

15:42:41 11 MR WIESER: I hear you.

15:42:43 12 THE COURT: Like, to me, that's more of a
15:42:43 13 contempt issue; it's not an issue of whether or not it's a
15:42:46 14 discovery violation. It's like we have a record where
15:42:49 15 counsel makes it clear, similar to what we would have in,
15:42:53 16 like, when the Rule is invoked that it's counsel that's
15:42:56 17 responsible for making sure that's communicated with their
15:42:58 18 client; we're going to address that with defense counsel in a
15:43:02 19 minute, but it's hard for me to focus once I see that I had a
15:43:05 20 clear instruction that was agreed to that, apparently, wasn't
15:43:09 21 followed.

15:43:09 22 MR WIESER: I hear that, and I get that. The
15:43:11 23 reason we're not here on a motion for contempt is because we
15:43:14 24 have about that much information (indicating) regarding this
15:43:19 25 quarry sale. All we're asking for is to amend our pleading

15:43:22 1 to include it in the court, and we don't even add the cause
15:43:25 2 of action. We're asking for our expert to have leave to
15:43:27 3 incorporate this \$5 million in damages into his numbers, and
15:43:33 4 we're asking to re-depose these defendants and have them pay
15:43:34 5 for it. And that's -- we could have come in with a motion
15:43:35 6 for contempt, and we may. We want to do discovery and see
15:43:38 7 what actually happened here, when people knew what, but I
15:43:41 8 don't have that yet, and so we thought this was the
15:43:45 9 appropriate first step to at least remedy the fact that these
15:43:49 10 folks have five million more dollars in damages that was
15:43:53 11 not -- they got close to getting away with --

15:43:55 12 (Simultaneous speaking.)

15:43:55 13 THE COURT: Do you believe the 5 million
15:43:58 14 number from the 20 percent of the 25?

15:43:59 15 MR WIESER: 25 million, 20 percent; yes, Your
15:44:01 16 Honor.

15:44:01 17 THE COURT: Got you.

15:44:02 18 MR WIESER: I mean, that's my rough math. Our
15:44:04 19 damage expert probably has something -- there's something
15:44:06 20 there, I'm sure, I'm not thinking of -- but me thinking
15:44:08 21 that's a \$5 million issue for our folks that they got that
15:44:12 22 close to getting away with, and so we've got to figure out --
15:44:16 23 it also scares the bejesus out of me because I don't know
15:44:20 24 what else they've gotten away with. And that's a major
15:44:23 25 concern.

15:44:24 1 They kind of, in a mocking paragraph at the
15:44:25 2 end of their response say, you know, what else could we
15:44:28 3 produce? We produced these documents. They haven't produced
15:44:31 4 a PSA, which I'm sure there is on a \$25 million transaction.
15:44:36 5 They haven't produced the communications leading up to this.
15:44:38 6 They didn't even produce the special warranty deed that
15:44:41 7 transferred the quarry to Vulcan. There's so much more out
15:44:45 8 there that we don't know.

15:44:47 9 And we need to get to the bottom of it and get
15:44:49 10 to the bottom of it quickly because, as we talked about in
15:44:53 11 January, we've got a July trial setting, and I've got two
15:44:56 12 widows who are pushing 80, and they want to be done with this
15:45:00 13 litigation. This has been going on, and although they're not
15:45:03 14 having to deal with it on a daily basis, it's a drain on
15:45:06 15 them. And so -- and they're all elderly, except for
15:45:10 16 Mr. Durham.

15:45:11 17 So I'm -- what I'm asking the Court is to
15:45:15 18 quickly and decisively be granted the right to go take
15:45:20 19 discovery about this issue on their dime, because they went
15:45:24 20 the whole discovery period without telling us, and have leave
15:45:28 21 to amend our petition, leave to supplement our expert report,
15:45:33 22 and I don't know what we're going to find when we take these
15:45:36 23 depositions again. There may be more there, but that's where
15:45:40 24 we stand today.

15:45:41 25 THE COURT: Okay. Thank you.

15:45:42 1 MR WIESER: Thank you.

15:45:48 2 THE COURT: Mr. Davidson, as a threshold
15:45:53 3 matter, you indicated that you were familiar with the
15:45:55 4 transcript of that hearing. Have you communicated that to
15:45:57 5 your clients, or do you view that as attorney-client
15:46:00 6 privilege?

15:46:04 7 MR. DAVIDSON: I think there is an
15:46:09 8 attorney-client privilege there, Your Honor, but I will say
15:46:12 9 this. I looked at the TRO as being denied, and so maybe it
15:46:17 10 wasn't on my radar that there was still continuing
15:46:20 11 obligations out of that. It seems that the order required
15:46:23 12 certain documents to be produced for books and records
15:46:26 13 inspection, and that eventually happened and that's where the
15:46:29 14 parties were. Candidly, it was not in my mind, the language
15:46:34 15 in the TRO transcript, when I learned that there had been a
15:46:36 16 sale.

15:46:37 17 THE COURT: Understandable. I know there's
15:46:38 18 been some debate in the news lately about whether or not a
15:46:38 19 court's oral admonition counts as an order or whether or not
15:46:44 20 it's required to be in writing, but here, this would appear,
15:46:46 21 at least on its face, to have been a Rule 11 Agreement
15:46:48 22 between the court and defense counsel and plaintiffs' counsel
15:46:53 23 of hey, you're going to let us know if anything happens;
15:46:56 24 right? And there was an agreement from your prior defense
15:46:59 25 counsel. Do you agree with that?

15:46:59 1 MR. DAVIDSON: Your Honor, what I see in that
15:47:01 2 language is an agreement that ESM is not going to be wound
15:47:04 3 down, and I don't think that's what happened here. That, I
15:47:16 4 think, was what the fight was about at that time was there
15:47:19 5 was concern that ESM, as an entity, was going to be wound
15:47:21 6 down and that --

15:47:21 7 THE COURT: Who owned the quarry?

15:47:23 8 MR. DAVIDSON: ESM, through two other
15:47:25 9 entities.

15:47:26 10 THE COURT: Okay. So, did ESM take action
15:47:28 11 through those other entities to remove those assets from
15:47:32 12 ESM's control?

15:47:33 13 MR. DAVIDSON: So, the directors of Shoosmith
15:47:36 14 are the ones who took that action, and that is Mr. McGee and
15:47:40 15 Mr. Nichols.

15:47:41 16 THE COURT: And are they the sole holders --
15:47:43 17 or the majority holders of ESM?

15:47:46 18 MR. DAVIDSON: They are.

15:47:46 19 THE COURT: Okay. Would you agree with me
15:47:47 20 that's kind of dancing on the head of a pin as to whether or
15:47:51 21 not that was action taken in contradiction to what the
15:47:56 22 Court's instructions were?

15:47:56 23 MR. DAVIDSON: Your Honor, I just don't know
15:47:58 24 that I could agree to that because I think the focus from the
15:48:00 25 hearing was on ESM being wound down, not anything about

15:48:03 1 assets. Obviously, there's a lot of other things that happen
15:48:06 2 with an operating landfill --

15:48:08 3 THE COURT: Was the purpose of the TRO
15:48:11 4 hearing -- I don't have the whole transcript and my memory is
15:48:12 5 not super -- I do actually remember that exchange. -- the
15:48:15 6 concern that assets were going to be dissipated and that's
15:48:18 7 why they were asking for the TRO?

15:48:21 8 MR. DAVIDSON: Your Honor, I can't remember,
15:48:22 9 and I was not involved.

15:48:23 10 THE COURT: Was that the point?

15:48:24 11 MR. WIESER: That's exactly what they asked
15:48:25 12 for in the TRO, this very thing: Shoosmith would not
15:48:29 13 transfer assets to his client, and that's exactly what
15:48:32 14 happened.

15:48:32 15 THE COURT: Okay.

15:48:33 16 MR. WIESER: When we talk about winding down,
15:48:36 17 I don't read that as a corporate wind down. I read it as
15:48:39 18 they're concerned about assets being removed from Shoosmith
15:48:45 19 where they don't and they can't --

15:48:47 20 THE COURT: Well, and that's my recollection.
15:48:49 21 And, obviously, part of the issue any time the Court is asked
15:48:52 22 to consider a TRO is is there a ripeness issue, and when one
15:48:55 23 party says we're not going to do it -- and there's all kinds
15:48:58 24 of case law on that -- that when they say they're not,
15:49:00 25 they've taken away the ripeness issue, but the Court has to

15:49:08 1 be able to believe them. And this isn't a show cause hearing
15:49:11 2 and this isn't a contempt hearing, and I realize you weren't
15:49:14 3 the guy here --

15:49:14 4 MR. DAVIDSON: Right.

15:49:15 5 THE COURT: -- but I have really substantive
15:49:17 6 concerns. So I'm happy to hear your argument as it relates
15:49:21 7 to these broader issues, but, you know, obviously, in terms
15:49:23 8 of where the courts get concerned, it's when our instructions
15:49:27 9 aren't followed, especially when those instructions were
15:49:30 10 agreed upon. So, with that, I'm happy to turn it over to
15:49:33 11 hear your response.

15:49:34 12 MR. DAVIDSON: I understand, Your Honor. And
15:49:36 13 again, we're not happy to be here either on this kind of
15:49:38 14 fight. What I'm trying to figure out is where we go from
15:49:42 15 here because we've got a trial date coming up --

15:49:42 16 THE COURT: Yeah, that's not going to happen.
15:49:43 17 I'm going to grant most, if not all, of this relief, but I'm
15:49:49 18 happy to hear any quibbling that you have on that relief.

15:49:51 19 MR. DAVIDSON: Your Honor, I just want to be
15:49:52 20 sure that our clients have time to respond to the allegations
15:49:55 21 of the claim. I think what they're talking about bringing is
15:49:57 22 a derivative cause of action on behalf of Shoosmith, and I
15:50:01 23 don't know what that claim is going to look like. And so
15:50:03 24 what I'm trying to figure out is what we are going to need to
15:50:06 25 do to respond to it because --

15:50:08 1 THE COURT: And maybe you're right.

15:50:09 2 My understanding was that that's not what you
15:50:10 3 were doing; you were expanding the damages model as it
15:50:13 4 relates to what's already filed. Is that --

15:50:14 5 MR WIESER: That's a hundred percent right.
15:50:16 6 We are already suing on behalf of Shoosmith derivatively and
15:50:18 7 ESM. We have claims for breach of fiduciary duty for them
15:50:23 8 stealing the gas royalties; it's the same claim. It's just
15:50:26 9 now they've stolen something else, so we're going to have
15:50:29 10 additional factual support for those claims that already
15:50:32 11 exist.

15:50:32 12 THE COURT: Okay. So, does that ameliorate
15:50:35 13 your concerns or exacerbate them?

15:50:37 14 MR. DAVIDSON: To some degree, Your Honor. I
15:50:39 15 think what we're trying to figure out is they've mentioned a
15:50:41 16 \$5 million damages claim. This is a transaction,
15:50:44 17 \$25 million, 20 million of which was used to pay down debt
15:50:48 18 that was acquired by Volunteer Enterprises, and that's the
15:50:50 19 transaction that they're challenging. And I presume what
15:50:53 20 they want to do is unwind that in some way or take some other
15:50:57 21 relief. But when they're talking about a claim for
15:51:00 22 5 million, what that sounds like is there should have been a
15:51:02 23 distribution up to ESM.

15:51:04 24 THE COURT: Well, but that's a fact issue at
15:51:06 25 trial; right? I mean, that's more of what, if anything --

15:51:09 1 are there those damages, and if so, how are they calculated?

15:51:13 2 But the question right now is can they make the claim?

15:51:16 3 MR. DAVIDSON: Your Honor, and what I was

15:51:17 4 going to propose is if we're not going to move the trial

15:51:20 5 date, that perhaps they bring these claims in a new cause of

15:51:22 6 action.

15:51:22 7 THE COURT: Oh, no. We're going to move the

15:51:23 8 trial date.

15:51:24 9 MR. DAVIDSON: Okay. So then that's, I think,

15:51:26 10 the fight that we're having. And I have to tell you this:

15:51:29 11 Shoosmith is not in good financial condition. They've heard

15:51:32 12 this from us as well. And so there's going to be competing

15:51:35 13 claims. So, what I'm trying to do is avoid a situation where

15:51:38 14 we're litigating this, potentially, twice, because we're in a

15:51:43 15 situation where the landfill is bringing in, last month,

15:51:47 16 \$36,000 on gas royalties and has obligations of more than

15:51:50 17 that.

15:51:50 18 THE COURT: Okay. So talk me through this

15:51:52 19 multi -- why we would end up with multiple cases of --

15:51:55 20 MR. DAVIDSON: There's a huge amount of

15:51:58 21 environmental issues at this landfill. When the gas plant

15:52:01 22 was put in place, they punctured a bunch of lining, and so

15:52:04 23 there's been a lot of water that's leaked in, and that water

15:52:04 24 has to be taken out. And so this isn't a situation where all

15:52:08 25 the money that comes into Shoosmith just gets distributed up

15:52:12 1 to the shareholders, which is what they've tended to --

15:52:15 2 THE COURT: Right. And I'm with you, and you
15:52:16 3 may well be right. But I guess my question is how does that
15:52:19 4 impact their ability to file this claim right now?

15:52:21 5 MR. DAVIDSON: Your Honor, it doesn't.

15:52:21 6 THE COURT: Okay.

15:52:22 7 MR. DAVIDSON: They can bring that claim. My
15:52:24 8 point is more that we're going -- this is more complicated
15:52:27 9 than just you had a sale and you should have distributed all
15:52:31 10 the money up. There should be a question about what
15:52:32 11 Shoosmith should have done.

15:52:33 12 THE COURT: A hundred percent, but that's a
15:52:35 13 trial issue, isn't it?

15:52:36 14 MR. DAVIDSON: I think so. I may have to
15:52:37 15 address it with special exceptions or some other way to plead
15:52:41 16 it out, but yeah.

15:52:41 17 THE COURT: Okay. So, anything else as it
15:52:43 18 relates to the relief that they're asking for?

15:52:45 19 MR. DAVIDSON: No, Your Honor. I think this
15:52:48 20 is one where I felt like we'd produced enough to put them on
15:52:50 21 notice to pursue and investigate this further --

15:52:50 22 THE COURT: I think it's close, but I think
15:52:53 23 that definitely it was a hiding of the needle. I mean,
15:52:57 24 whether intentionally or not, the needle was hidden. But
15:53:00 25 also, from the Court's perspective, what was an egregious

15:53:05 1 violation of the agreement that the parties all had. They
15:53:07 2 really had no reason to look for that needle because there
15:53:09 3 was an expectation that certainly they had and the Court had
15:53:12 4 that we're not selling assets. So that's the reason that
15:53:16 5 I'm --

15:53:16 6 MR. DAVIDSON: Okay. And I hear you, Your
15:53:17 7 Honor.

15:53:17 8 On the request for production, this is my
15:53:20 9 concern; those requests were incredibly broad. There were
15:53:24 10 well over a hundred of them, and so to be able to respond and
15:53:27 11 say that we have done this and done our job and collected
15:53:30 12 what's collected, that's why I was pushing for key word
15:53:33 13 terms, so that we could verify --

15:53:34 14 THE COURT: And have you not been able to work
15:53:36 15 those out at this point?

15:53:37 16 MR. DAVIDSON: We did, and that's why we
15:53:39 17 produced documents in January. It took, what, six weeks to
15:53:42 18 get agreement to do that and then run those search terms. So
15:53:46 19 what I'm concerned about is if I've got an order that says
15:53:47 20 produce everything about this, I want to be able to assure
15:53:49 21 that I've done that correctly.

15:53:49 22 THE COURT: Okay.

15:53:51 23 MR. DAVIDSON: And the only way I can do that
15:53:52 24 is --

15:53:52 25 THE COURT: Let me ask plaintiffs' counsel.

15:53:55 1 Is that something that you, you know, once
15:53:56 2 I've given the broad strokes of my order that you all can
15:53:59 3 work out? Because, obviously, counsel are able to work well
15:54:01 4 together.

15:54:01 5 MR WIESER: Yes.

15:54:02 6 THE COURT: Is that something that you guys
15:54:02 7 can figure out? Okay, what is this actually going to look
15:54:06 8 like where we can agree compliance has happened?

15:54:08 9 MR WIESER: Yes.

15:54:08 10 THE COURT: Fantastic. That's what we're
15:54:09 11 going to do then.

15:54:09 12 MR. DAVIDSON: Okay.

15:54:10 13 THE COURT: Anything else?

15:54:10 14 MR. DAVIDSON: No, Your Honor.

15:54:11 15 THE COURT: Okay. Great. Thank you.

15:54:12 16 MR WIESER: Your Honor, I've got two things I
15:54:13 17 want to say. Number 1 is --

15:54:14 18 THE COURT: You're winning. You want to keep
15:54:17 19 going?

15:54:17 20 MR. WIESER: I know.

15:54:18 21 The COURT: Okay.

15:54:18 22 MR WIESER: So, the way we set this up in the
15:54:19 23 motion that we've given is that -- on the sanctions part of
15:54:21 24 this and the cause part of this -- we would request that we
15:54:26 25 be -- we need to go take this discovery and see what's going

15:54:30 1 on, and then we'd be able to file a fee application, a motion
15:54:34 2 for fees on this deal --

15:54:34 3 THE COURT: Let's take up fees at the
15:54:35 4 conclusion of litigation.

15:54:37 5 MR. WIESER: Okay. The other thing I just
15:54:39 6 want to preface is if you look behind Tab 2, this has me very
15:54:46 7 concerned when we talk about Shoosmith's going broke. I
15:54:48 8 mean, they did just transfer \$23 million out of the bank
15:54:51 9 account last year, so if they hadn't done that, they might
15:54:55 10 not be going broke. The issue that I have is that they're
15:54:58 11 trying to couch this payment, this \$23 million payment, as a
15:55:02 12 payment of interest on the note that they bought --

15:55:04 13 THE COURT: Uh-huh. But it went to them.

15:55:04 14 MR. WIESER: Do what?

15:55:04 15 THE COURT: But it went to them.

15:55:07 16 MR. WIESER: It went to them, and the more
15:55:10 17 scary thing for us is that if you look on the back page of --
15:55:13 18 if you read the e-mail, this e-mail is from Larry McGee to
15:55:18 19 the title company, and it basically says: Note that
15:55:20 20 Volunteer Enterprises, LLC, bank account number has changed
15:55:24 21 and is reflected in the attached screenshot. The screenshot
15:55:27 22 is account information for yet another entity that they own,
15:55:31 23 VE Holdco, LLC, and so the \$23 million, while nominally went
15:55:37 24 to Volunteer and that's what they told everybody, including
15:55:41 25 the title company, when they actually gave the wire

15:55:43 1 instructions, it went to some other entity that's not a
15:55:46 2 defendant in this lawsuit, and I'm just concerned that
15:55:49 3 \$23 million has just vaporized. And I say all that to say
15:55:53 4 when we go take discovery and we find out where that money
15:55:56 5 has gone, there's a decent chance that we may need a
15:56:02 6 constructive trust, or we may just come in here and seek a
15:56:04 7 certified transfer claim or something like that.

15:56:05 8 THE COURT: Yeah, absolutely; bring what you
15:56:07 9 need. I think also, I think the Court probably has the
15:56:10 10 authority to do this sua sponte, but I'm concerned about any
15:56:14 11 further transactions taking place because, clearly, it wasn't
15:56:17 12 clear before. So if you feel the need to file an additional
15:56:20 13 TRO and for that to be heard, or if y'all can Rule 11 that, I
15:56:25 14 do not want to encounter this again. Okay.

15:56:28 15 So, as it relates to the relief, as I
15:56:34 16 indicated, I'm going to ask that you all work out the terms
15:56:36 17 of what it is that's going to be turned over and when it is
15:56:39 18 that the defendant will be in full compliance on that.

15:56:44 19 As it relates to the cost of that additional
15:56:47 20 discovery and the additional depositions, we'll address that
15:56:51 21 at the conclusion of litigation, although I -- for all
15:56:55 22 intents and purposes, I'm going to grant that. We're going
15:56:57 23 to need to see the numbers and see how that plays out.

15:57:00 24 You do have leave to amend and supplement and
15:57:04 25 the right to supplement your expert report.

15:57:17 1 The Court will take under advisement whether
15:57:20 2 or not it needs to issue a show cause order and what, if
15:57:24 3 anything, was understood by everybody at -- I mean, some of
15:57:28 4 that, I'm sure, is going to come out in depositions, but what
15:57:31 5 people understood and when they understood it. Certainly, on
15:57:35 6 first glance from that transcript, it seems pretty clear to
15:57:39 7 me what was agreed upon, and so I would ask Mr. Davidson that
15:57:48 8 you communicate to your clients the fact -- give them a copy
15:57:52 9 of that transcript and say that's still in effect. So, if
15:58:01 10 they -- if there are any further sales that occur, you know,
15:58:07 11 as of 3:58 on May the 8th, I'm being very clear that your
15:58:14 12 clients need to understand that, from the Court's
15:58:16 13 perspective, there will be no additional sales that occur, of
15:58:21 14 assets, without approval of the Court, without giving notice
15:58:24 15 to opposing counsel so they can raise the issue if they want
15:58:27 16 to.

15:58:28 17 Okay. Anything else that we need to address
15:58:31 18 today?

15:58:31 19 MR WIESER: No, Your Honor.

15:58:32 20 THE COURT: Anything from the defense?

15:58:33 21 MR. DAVIDSON: No, Your Honor.

15:58:34 22 THE COURT: Okay. Thank y'all.

23 (End of Proceedings.)

24

25

1 STATE OF TEXAS)

2 COUNTY OF TARRANT)

3 I, Michelle Ford Escobar, Official Court Reporter in and
4 for the 352nd Judicial District Court of Tarrant County,
5 State of Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription of all
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in this
9 volume of the Reporter's Record, in the above-styled and
10 numbered cause, all of which occurred in open court or in
11 chambers and were reported by me.

12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits, if
14 any, admitted by the respective parties.

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is \$209.00 and was paid
17 by Wieser Taylor, PLLC.

18 WITNESS MY OFFICIAL HAND this 20th day of May, 2025.

19

20

21

22

23

24

25



Michelle Ford Escobar, CSR

Texas CSR No. 6888

Expiration Date: 01/31/2027

Official Court Reporter
352nd Judicial District Court
Tom Vandergriff Civil Courts Building
100 North Calhoun Street, Fourth Floor
Fort Worth, Texas 76196
(817)884-2732
mfescobar@tarrantcountytexas.gov

Exhibit E

Excerpt from *Blink* Transcript

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No. 24-11686 (JKS)
BLINK HOLDINGS, INC.,
et al., (Jointly Administered)
Courtroom No. 6
824 Market Street
Debtors. Wilmington, Delaware 19801
Tuesday, September 10, 2024
2:30 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE J. KATE STICKLES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Michael R. Nestor, Esquire
Sean T. Greecher, Esquire
Allison S. Mielke, Esquire
YOUNG CONAWAY STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801

(APPEARANCES CONTINUED)

Audio Operator: Dana L. Moore, ECRO

Transcription Company: Reliable
The Nemours Building
1007 N. Orange Street, Suite 110
Wilmington, Delaware 19801
Telephone: (302) 654-8080
Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 APPEARANCES (CONTINUED):

2 For the U.S. Trustee: Benjamin A. Hackman, Esquire
3 UNITED STATES DEPARTMENT OF JUSTICE
4 OFFICE OF THE UNITED STATES TRUSTEE
5 J. Caleb Boggs Federal Building
6 844 North King Street
7 Suite 2207, Lockbox 35
8 Wilmington, Delaware 19801

6 For Varagon Capital
7 Partners Agent, LLC: Peter P. Knight, Esquire
8 KATTEN MUCHIN ROSENMAN, LLP
525 West Monroe Street
Chicago, Illinois 60661

9 For the Official
10 Committee of
11 Unsecured Creditors: Eric R. Wilson, Esquire
12 Kristin Elliott, Esquire
13 KELLEY DRYE & WARREN, LLP
14 3 World Trade Center
15 175 Greenwich Street
16 New York, New York 10007
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1 ask the Court and Your Honor to do, please.

2 THE COURT: Thank you.

3 MR. WILSON: Thank you.

4 THE COURT: Anyone else?

5 (No verbal response)

6 THE COURT: Okay. Could you give me one minute to
7 check on something and I will be right back.

8 (Recess taken at 4:11 p.m.)

9 (Proceedings resumed at 4:17 p.m.)

10 THE CLERK: All rise.

11 THE COURT: Please be seated. Thank you for that
12 quick break.

13 With respect -- oh, that was Mr. (Indiscernible),
14 I believe -- okay, with respect to the arguments raised
15 today, I'm going to overrule the Committee's objection with
16 respect to unencumbered assets, but I am going to sustain the
17 Committee's objection, with respect to the budget. I
18 appreciate that this financing is a multi-pronged negotiation
19 and that the Court cannot compel a lender to lend more money
20 for professional fees, but the budget is insufficient and
21 unfair, and potentially prejudices the Committee.

22 So what I'm going to do is require all estate
23 professionals to share *pro rata*. And I don't anticipate, as
24 a caveat, that the Committee's fees in this case are going to
25 exceed approximately 30 percent. And I'm going to caution

1 all parties here that I will review fees on a final basis. I
2 review them very thoroughly and I will look at the aggregate
3 number and the value-added by the various professionals in
4 the case.

5 So, with that, are you prepared to review the
6 order or --

7 MR. GREECHER: Your Honor, we are happy to walk
8 through the order. We did file the form of order on Monday.

9 THE COURT: I saw that.

10 MR. GREECHER: There are two or three changes that
11 we made in connection with the Committee, which I'm happy to
12 submit under cert of counsel or go through them with Your
13 Honor today.

14 THE COURT: What do they address?

15 MR. GREECHER: So as Ms. Elliott said, one is in
16 paragraph 8 --

17 THE COURT: Oh, the issues that Ms. Elliott
18 addressed on the record earlier?

19 MR. GREECHER: Correct.

20 THE COURT: Okay.

21 MR. GREECHER: Correct. So in paragraph 8,
22 there's a statement that the adequate protection is, you
23 know, on account of diminution in value resulting from
24 (indiscernible) possession of the priming liens. We're going
25 to revise that to say that it's a diminution in value that

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling

September 13, 2024

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable

/s/ Tracey J. Williams

September 13, 2024

Tracey J. Williams, CET-914

Certified Court Transcriptionist

For Reliable

Exhibit F

Excerpt from *Orchids* Transcript

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No. 19-10729 (MFW)
ORCHIDS PAPER PRODUCTS COMPANY, Courtroom No. 4
et al., 824 N. Market Street
Wilmington, Delaware 19801
Debtor. May 30, 2019
2:00 P.M.

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EXCERPT
TRANSCRIPT OF HEARING
BEFORE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Christopher Ward
Shanti Katona, Esquire
POL SINELLI PC
222 Delaware Avenue
Wilmington, Delaware 19801
- and -
Jerry Switzer, Jr., Esquire
150 N. Riverside Plaza
Chicago, Illinois 60606
Audio Operator: BRANDAN J. MCCARTHY
Transcription Service: Reliable
1007 N. Orange Street
Wilmington, Delaware 19801
Telephone: (302) 654-8080
E-Mail: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording:
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1 challenge before September 30, do you think?

2 MS. SEYMOUR: Well, there's the credit bid issue,
3 Your Honor, so we may be here asking for it to be addressed
4 before the closing, because they're asking to -- that's the
5 whole point of our credit bid reservation.

6 THE COURT: Uh-huh.

7 MS. SEYMOUR: So, that was our concern, Your
8 Honor. We don't want to have done what we're supposed to do
9 pursuant to the -- we didn't push for a longer period of time
10 because the debtor is trying to stick to the milestones that
11 we didn't push back on either, but we don't want that to be
12 declared an event of default.

13 MR. MCGUIRE: Your Honor, I think that's exactly
14 what I said the provision was. It's the filing by these guys
15 or the winning by them.

16 THE COURT: Yeah. No, I know.

17 Well, let me also give you my thoughts on one of
18 the other issues, and that is the committee. I have always
19 taken the position that I don't care what a line item is for
20 committee professionals or debtors' professionals. That if
21 there's not sufficient funds to pay professionals, generally,
22 that they will be paid *pro rata*, regardless of what limits
23 the DIP may place on that. I consider the line items for
24 professionals to be an aggregate and it's inappropriate to
25 have line items.