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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE CVR REFINING, LP : CONSOLIDATED
 UNITHOLDER LITIGATION : C.A. No. 2019-0062-KSJM

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Chancery Courtroom No. 12A
 Leonard L. Williams Justice Center
 500 North King Street
 Wilmington, Delaware
 Monday, July 26, 2021
 9:15 a.m.

- - -

BEFORE: HON. KATHALEEN St.J. McCORMICK, Chancellor

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TRIAL TRANSCRIPT - VOLUME I

 CHANCERY COURT REPORTERS
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THE COURT: Good morning, everyone.

VARIOUS COUNSEL: Good morning.

THE COURT: Congratulations on getting

here today. I know how difficult it is to arrive at

trial and all the hard work that goes into it.

It would benefit me if we could have

introductions for the record, please.

MR. GORRIS: Good morning, Your Honor.

Jeff Gorris of Friedlander & Gorris. With me is my

partner Joel Friedlander.

MR. FRIEDLANDER: Good morning, Your

Honor.

MR. GORRIS: And David Wales of

Bernstein Litowitz Berger & Grossman.

MR. WALES: Good morning, Your Honor.

MR. GORRIS: Larry Deutsch of Berger

and Montague.

MR. DEUTSCH: Good morning, Your

Honor.

MR. GORRIS: Michael Townsend from my

firm.

MR. TOWNSEND: Good morning, Your

Honor.

MR. GORRIS: Donnel Much from Berger

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1 APPEARANCES:

2 JOEL FRIEDLANDER, ESQ.
 3 JEFFREY M. GORRIS, ESQ.
 4 MICHAEL TOWNSEND, ESQ.
 5 Friedlander & Gorris, P.A.
 6 -and-
 7 DAVID WALES, ESQ.
 8 THOMAS G. JAMES, ESQ.
 9 of the New York Bar
 10 Bernstein, Litowitz, Berger & Grossman LLP
 11 -and-
 12 LAWRENCE DEUTSCH, ESQ.
 13 DONNEL MUCH, ESQ.
 14 of the Pennsylvania Bar
 15 Berger Montague PC
 16 for Plaintiffs
 17
 18 SRINIVAS M. RAJU, ESQ.
 19 BROCK E. CZESCHIN, ESQ.
 20 NICOLE M. HENRY, ESQ.
 21 Richards, Layton & Finger, PA
 22 -and-
 23 HERBERT BEIGEL, ESQ.
 24 of the Arizona Bar
 Law Offices of Herbert Beigel
 for Defendants

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1 and Montague, and Thomas James from Bernstein Litowitz
 2 Berger & Grossman.

THE COURT: Thank you, Mr. Grossman.

Mr. Raju.

MR. RAJU: Good morning, Your Honor.

Srinivas Raju of Richards, Layton & Finger on behalf

of the defendants. Also with me is my partner, Brock

Czeschin. My co-counsel is Herbert Beigel for the IEP

defendants, and my colleague Nicole Henry.

THE COURT: Thank you. So I received

your letter concerning the order of witnesses. Is the

plan to show the first witness by video?

MR. GORRIS: Yes, it is, Your Honor.

Should I start with that? Are you

ready?

THE COURT: Sure. Unless there are

housekeeping matters we should address.

Mr. Czeschin?

MR. CZESCHIN: Your Honor, we have one

housekeeping matter on the videos. Pursuant to the

pretrial order, the parties exchanged their

designations 48 hours in advance and then they

exchanged objections 24 hours later. And we do have

one objection to Mr. Jampel's -- a portion of

<p style="text-align: right;">5</p> <p>1 Mr. Jampel's testimony. I didn't know if you wanted</p> <p>2 to address it before it's played, while it's played,</p> <p>3 or post-trial.</p> <p>4 THE COURT: It would probably be</p> <p>5 easier for me to address in context, so while it's</p> <p>6 being played.</p> <p>7 MR. CZESCHIN: Okay.</p> <p>8 THE COURT: So raise the objection</p> <p>9 while it's being played. I'll probably resolve it</p> <p>10 post-trial, but at least I'll have it on the record in</p> <p>11 the context it's being presented.</p> <p>12 MR. CZESCHIN: Thank you, Your Honor.</p> <p>13 THE COURT: Thank you, Mr. Czeschin.</p> <p>14 Please call your first witness,</p> <p>15 Mr. Gorris.</p> <p>16 MR. GORRIS: Thank you, Your Honor.</p> <p>17 Plaintiffs call their first witness, James Jampel of</p> <p>18 HITE Asset Management. As Your Honor knows,</p> <p>19 Mr. Jampel will testify by video deposition.</p> <p>20 THE COURT: I must say it's a little</p> <p>21 disappointing to arrive live in trial and have our</p> <p>22 first witness be a video.</p> <p>23 MR. GORRIS: I'm sorry about that.</p> <p>24 The first two witnesses, we tried to get people here</p>	<p style="text-align: right;">7</p> <p>1 page 31, line 18.</p> <p>2 JAMES JAMPEL was examined and</p> <p>3 testified via video deposition as follows:</p> <p>4 DIRECT EXAMINATION</p> <p>5 (A video clip was played as follows:)</p> <p>6 Question: What was your reaction to</p> <p>7 it when you read it back in 2018?</p> <p>8 Answer: My reaction was -- I think</p> <p>9 maybe my first reaction was, like, really? And then</p> <p>10 after, you know, reading it a few times and -- and</p> <p>11 perhaps checking some other documents, I looked at</p> <p>12 that bold stuff and I said, they're probably --</p> <p>13 they're right.</p> <p>14 And then it came to me that this --</p> <p>15 they would probably be incented to exercise the call</p> <p>16 right at some time, even though they weren't going</p> <p>17 to -- they weren't planning to do it. You know, that</p> <p>18 last sentence, "However, there can be no assurance</p> <p>19 that the general partner ... will not exercise the</p> <p>20 call right in the future." You know, I can read that</p> <p>21 and I know what that means.</p> <p>22 Question: And what did you understand</p> <p>23 that to mean?</p> <p>24 Answer: That there was a good chance</p>
<p style="text-align: right;">6</p> <p>1 but were unable to do it.</p> <p>2 THE COURT: Baby steps, Mr. Gorris.</p> <p>3 We're back but, you know.</p> <p>4 MR. GORRIS: Your Honor ruled that we</p> <p>5 could use transitions. I'll try not to use it every</p> <p>6 time, but where I think it will be helpful to the</p> <p>7 Court, I'm going to use a short transition. It's</p> <p>8 intended to be factual and to set it up for Your</p> <p>9 Honor.</p> <p>10 There are a couple -- most of the</p> <p>11 clips are self-explanatory, but there are a couple</p> <p>12 clips where it might help Your Honor to have the</p> <p>13 document in front of you. And for that, I'll try and</p> <p>14 point that out and give you a chance, if you'd like to</p> <p>15 have the document before we play the clip.</p> <p>16 THE COURT: Thank you.</p> <p>17 MR. GORRIS: In the first video,</p> <p>18 Mr. Jampel describes his reaction to the bolded</p> <p>19 language in CVR Energy's S-4 concerning the call</p> <p>20 right. For the record, the language is in JX 298 at</p> <p>21 Barai923. It's also repeated a couple times in the</p> <p>22 pretrial order. Specifically, the version that</p> <p>23 Mr. Jampel is going to talk about is paragraph 57.</p> <p>24 Joe, can you play the clip starting at</p>	<p style="text-align: right;">8</p> <p>1 that there would be a call right later exercised.</p> <p>2 Question: Okay. And when you -- when</p> <p>3 you read the language that says they have no current</p> <p>4 plans to exercise the call right at this time or upon</p> <p>5 consummation of the exchange, did you read that to be</p> <p>6 time limited -- meaning at this time, the time of the</p> <p>7 filing -- and upon consummation of the exchange,</p> <p>8 meaning once the exchange offer was actually</p> <p>9 completed, but they weren't talking about at points in</p> <p>10 the future after that?</p> <p>11 Answer: Yeah. I mean, I thought this</p> <p>12 was pretty good lawyering, in that they said no</p> <p>13 current plans, and no -- and nor upon the</p> <p>14 consummation, which to me left open, like, shortly</p> <p>15 after the consummation, you could certainly make the</p> <p>16 case that conditions had changed and we had changed</p> <p>17 our mind and, therefore, we now do have plans.</p> <p>18 Question: And so as a sophisticated</p> <p>19 investor, when you read it, your first reaction is,</p> <p>20 really, they're telling me they're not going to</p> <p>21 exercise the call right. And then you read it more</p> <p>22 carefully and thought about it, and you said, oh, I</p> <p>23 get what's really happening, is they're telling me</p> <p>24 they're not going to exercise it right now or</p>

<p style="text-align: right;">9</p> <p>1 immediately upon consummation of the exchange, but</p> <p>2 they're leaving open the offer -- the opportunity to</p> <p>3 exit or to exercise shortly thereafter?</p> <p>4 Answer: Correct.</p> <p>5 Question: Okay. And then, once you</p> <p>6 came to that understanding, did that -- did that cause</p> <p>7 you to do any further analysis or think about a</p> <p>8 trading strategy in connection with the exchange offer</p> <p>9 and going forward after this?</p> <p>10 Answer: Yeah. Yeah. Absolutely.</p> <p>11 You know, after reading this, I don't know, quite a</p> <p>12 few times, and checking with other staff and HITE</p> <p>13 Hedge and jointly developing a strategy, we thought</p> <p>14 that, given the way this was structured, that it was</p> <p>15 probably -- post-exchange offer was probably not a</p> <p>16 good setup for CVRR. And because we saw that, we took</p> <p>17 a short position in CVRR.</p> <p>18 Question: And when you say "not a</p> <p>19 good setup," can you tell me what that means?</p> <p>20 Answer: Well, you know, it's just</p> <p>21 this -- this crazy provision in the partnership</p> <p>22 agreement that governs CVRR, that if you really think</p> <p>23 through the incentives for the general partner -- in</p> <p>24 this case CVR Energy, Inc -- that there could be --</p>	<p style="text-align: right;">11</p> <p>1 at this time. You may wish to reference it later. So</p> <p>2 for the record, it's JX 376.</p> <p>3 Joe, can you play the clip starting at</p> <p>4 page 43, line 2.</p> <p>5 (A video clip was played as follows:)</p> <p>6 Question: And you write, in the</p> <p>7 second email from the top, "Going to take CVRR up to</p> <p>8 15%."</p> <p>9 Do you see that?</p> <p>10 Answer: I do.</p> <p>11 Question: Do you know what that</p> <p>12 meant?</p> <p>13 Answer: That would mean that we were</p> <p>14 going to increase our short position in CVRR up to 15</p> <p>15 percent of our assets in the fund.</p> <p>16 (End of video clip.)</p> <p>17 MR. GORRIS: The next video is also</p> <p>18 self-explanatory.</p> <p>19 Joe, can you play the clip starting</p> <p>20 page 44, line 4.</p> <p>21 (A video clip was played as follows:)</p> <p>22 Question: And that was because of --</p> <p>23 what? Why was it that you thought that the CVR</p> <p>24 Refining price would go down?</p>
<p style="text-align: right;">10</p> <p>1 you know, a decline in the unit price could ensue,</p> <p>2 given the structure here, that they could call it</p> <p>3 based upon a, you know, historical price.</p> <p>4 (End of video clip.)</p> <p>5 MR. GORRIS: Your Honor, the next clip</p> <p>6 requires no introduction.</p> <p>7 Joe, can you play the clip starting at</p> <p>8 page 37 starting at line 22.</p> <p>9 (A video clip was played as follows:)</p> <p>10 Question: But you did think about how</p> <p>11 the CVR Refining units would trade once this exchange</p> <p>12 offer closed; right?</p> <p>13 Answer: Yes. Yes.</p> <p>14 Question: And what -- and what was</p> <p>15 your view on that?</p> <p>16 Answer: That they would likely trade</p> <p>17 down.</p> <p>18 (End of video clip.)</p> <p>19 MR. GORRIS: In the next clip, Your</p> <p>20 Honor, Mr. Jampel discusses a June 27, 2018, email</p> <p>21 concerning HITE's short position in CVR Refining. I</p> <p>22 don't think Your Honor needs to look at it, but I'm</p> <p>23 going to note it for the record. It's JX-- I</p> <p>24 shouldn't say -- Your Honor doesn't need to look at it</p>	<p style="text-align: right;">12</p> <p>1 Answer: Well, you know, we thought</p> <p>2 that it was going to go down because -- maybe I don't</p> <p>3 have my dates exactly right, but -- I don't remember</p> <p>4 when the exchange offer was consummated, but once it</p> <p>5 was consummated, certainly, my view was, is that CVRR</p> <p>6 was likely to go down.</p> <p>7 Question: Okay.</p> <p>8 (End of video clip.)</p> <p>9 MR. GORRIS: Your Honor, the next clip</p> <p>10 concerns JX 412. If you have it electronically or if</p> <p>11 you'd like to flip to it, it may be helpful to just</p> <p>12 have a quick understanding of what the document is.</p> <p>13 THE COURT: 412?</p> <p>14 MR. GORRIS: 412.</p> <p>15 And I'll describe that document, as I</p> <p>16 understand it, which is a series of emails in May</p> <p>17 through July of 2018 between HITE Hedge -- so</p> <p>18 Mr. Jampel and his colleague Mr. Shen -- and Jay</p> <p>19 Finks, who is CVR Refining's vice president of</p> <p>20 finance, and also its investor relations person, in</p> <p>21 which HITE is trying to understand and get</p> <p>22 clarification about the call right pricing mechanism.</p> <p>23 With that context, Joe, can you play</p> <p>24 the clip starting at page 55, line 3.</p>

<p style="text-align: right;">13</p> <p>1 (A video clip was played as follows:)</p> <p>2 Question: Okay. And -- and then you</p> <p>3 follow up the next day, saying to Mr. Finks, "Jay: To</p> <p>4 clarify, the call option becomes effective as soon as</p> <p>5 the tender is complete, because the tender does not</p> <p>6 count as a 'purchase' that sets up the 90-day waiting</p> <p>7 period.</p> <p>8 "Am I correct?"</p> <p>9 Do you see that?</p> <p>10 Answer: I do.</p> <p>11 Question: Do you know if you ever got</p> <p>12 an answer from Mr. Finks on that?</p> <p>13 Answer: No. I don't remember.</p> <p>14 Question: Can you tell me why you</p> <p>15 were focused on that issue?</p> <p>16 Answer: Not -- I mean, just in</p> <p>17 general, now that you're refreshing my memory, it</p> <p>18 would have to do with, like, you know, 90 days is a</p> <p>19 waiting period, and we wanted to know, you know,</p> <p>20 whether there would have to be a 90-day waiting period</p> <p>21 or not.</p> <p>22 Question: Right. So your</p> <p>23 understanding was that the call could actually be</p> <p>24 exercised, you know, within 90 days of the closing or</p>	<p style="text-align: right;">15</p> <p>1 into the exchange offer?</p> <p>2 Answer: Yeah. My reaction was, those</p> <p>3 poor people who didn't tender.</p> <p>4 Question: And did you have an</p> <p>5 understanding as to who those folks were that didn't</p> <p>6 tender, or why people wouldn't tender to this exchange</p> <p>7 offer?</p> <p>8 Answer: Well, I mean, again, I'm</p> <p>9 recalling without documents, but I remember reading a</p> <p>10 lot of very stupid things on the internet people were</p> <p>11 writing.</p> <p>12 Question: Do you recall anything</p> <p>13 about those?</p> <p>14 Answer: Other than that they were</p> <p>15 stupid, no. They -- the arguments -- they didn't --</p> <p>16 you know, it's like watching the defenders of Trump.</p> <p>17 It's all -- it doesn't make any sense in any way.</p> <p>18 Like --</p> <p>19 Question: Were they, you know, the</p> <p>20 more unsophisticated investors or retail investors on,</p> <p>21 you know, message boards or Seeking Alpha, or</p> <p>22 something like that, that they didn't really know what</p> <p>23 they were talking about? Is that --</p> <p>24 Answer: Well, yeah. Again, we</p>
<p style="text-align: right;">14</p> <p>1 consummation of the exchange offer, but then the call</p> <p>2 price would have to be the same price as the exchange</p> <p>3 offer; right?</p> <p>4 Answer: I don't -- I don't -- well,</p> <p>5 you know, what I wrote there is I guess we thought at</p> <p>6 the time the tender did not count, right? But, again,</p> <p>7 we're just asking, and I don't remember what he said.</p> <p>8 Question: Right. So but you're</p> <p>9 evaluating that issue, whether or not, if the -- if</p> <p>10 the call exercise happens within 90 days of the</p> <p>11 consummation of the exchange, whether or not it's</p> <p>12 going to be -- it has to be the exchange price or it</p> <p>13 could be the 20-day trailing average; right?</p> <p>14 Answer: Right, yeah.</p> <p>15 (End of video clip.)</p> <p>16 MR. GORRIS: Your Honor, the next clip</p> <p>17 requires no introduction.</p> <p>18 Joe, can you play the clip starting</p> <p>19 page 66, line 23, please.</p> <p>20 (A video clip was played as follows:)</p> <p>21 Question: Okay. And do you recall</p> <p>22 looking at it and -- and having a reaction one way or</p> <p>23 another that it looks like only about half of the</p> <p>24 eligible CVR Refining units were actually exchanged</p>	<p style="text-align: right;">16</p> <p>1 didn't, you know, probe their professional credentials</p> <p>2 or anything like that. But, you know, I've seen a lot</p> <p>3 of bad analysis in my day, and wherever it was coming</p> <p>4 from, this was, like -- you know, just, like, silly.</p> <p>5 (End of video clip.)</p> <p>6 MR. GORRIS: Your Honor, the next</p> <p>7 video concerns a July 31 email from Mr. Jampel to a</p> <p>8 hedge fund research firm called Hedgeye. And to that</p> <p>9 email, Mr. Jampel attaches a Tudor Pickering July 27,</p> <p>10 2018 analyst report on CVR Refining.</p> <p>11 On this one, I think it would be very,</p> <p>12 very helpful to the Court to pull up the document.</p> <p>13 It's JX 468. And I'll flag for Your Honor that there</p> <p>14 are various versions in the record. HITE produced it</p> <p>15 in color, unlike the other versions. So if you want</p> <p>16 to refer back to it later, it's a nice color version</p> <p>17 of that document.</p> <p>18 This clip and the next clip will</p> <p>19 discuss that exhibit.</p> <p>20 Joe, can you play the clip starting at</p> <p>21 page 79, line 3.</p> <p>22 (A video clip was played as follows:)</p> <p>23 Question: Got it. And so your email,</p> <p>24 you write, "This [is] pretty urgent. CVRR could go</p>

<p style="text-align: right;">17</p> <p>1 down really fast (already down 5% yesterday)."</p> <p>2 Answer: Yeah.</p> <p>3 Question: Why did you think that?</p> <p>4 Answer: Right. Because, you know,</p> <p>5 once this call option was done, you know, our</p> <p>6 analysis, you know, showed that there could be a</p> <p>7 downward spiral in the CVRR price, based just on the</p> <p>8 structure of this thing.</p> <p>9 Question: Did you think that most</p> <p>10 sophisticated investors that looked at this would</p> <p>11 reach the same conclusion?</p> <p>12 (End of video clip.)</p> <p>13 MR. CZESCHIN: Objection there, Your</p> <p>14 Honor.</p> <p>15 THE COURT: Thank you, Mr. Czeschin.</p> <p>16 Please state your objection. Let's pause the video.</p> <p>17 MR. CZESCHIN: Yes, Your Honor. The</p> <p>18 objection was that this is improper expert testimony</p> <p>19 that the plaintiffs are trying to get through this</p> <p>20 witness. The question that was asked the witness is:</p> <p>21 "[Do] you think that most sophisticated investors that</p> <p>22 looked at this would reach the same conclusion?"</p> <p>23 They're asking for his opinion as to</p> <p>24 what sophisticated investors would do in a specialized</p>	<p style="text-align: right;">19</p> <p>1 have the same objection for another question just a</p> <p>2 couple questions after this. I'll go ahead and just</p> <p>3 state that for the record now.</p> <p>4 THE COURT: Thank you. Actually, when</p> <p>5 the question is asked, could you just rise and say,</p> <p>6 "Objection," restate your objection.</p> <p>7 MR. CZESCHIN: Yes.</p> <p>8 MR. GORRIS: Your Honor, our</p> <p>9 bottom-line position is that it's a bench trial. Your</p> <p>10 Honor should admit it and consider it for the weight</p> <p>11 that you consider that it deserves.</p> <p>12 THE COURT: Thank you. Please</p> <p>13 continue.</p> <p>14 (A video clip was played as follows:)</p> <p>15 Answer: Yeah. I think so. I think</p> <p>16 that if you were -- thought about it at all, you would</p> <p>17 reach this conclusion. We're not geniuses here.</p> <p>18 Question: And that's reflected in</p> <p>19 your email, right? Because you say, "Weirdest</p> <p>20 structure ever, but obvious result once you accept the</p> <p>21 facts."</p> <p>22 Do you see that?</p> <p>23 Answer: Yeah.</p> <p>24 Question: And that -- that's because</p>
<p style="text-align: right;">18</p> <p>1 area. And that is, you know, we think, just the</p> <p>2 definition of expert testimony.</p> <p>3 And this witness, no foundation has</p> <p>4 been laid to have this witness as an expert. We don't</p> <p>5 know what his definition of "sophisticated" is, or</p> <p>6 anything else, and so we think that this is improper.</p> <p>7 MR. GORRIS: Your Honor, this is not</p> <p>8 an expert opinion. If you look at the document itself</p> <p>9 that Mr. Jampel is discussing, that's JX 468. As I</p> <p>10 mentioned earlier, what he's doing is he's</p> <p>11 communicating his views to another sophisticated</p> <p>12 investor -- in fact, a hedge fund research firm --</p> <p>13 that then communicates with other sophisticated</p> <p>14 investors.</p> <p>15 And what this testimony is about is</p> <p>16 Mr. Jampel's state of mind in context for the</p> <p>17 communication between Mr. Jampel and another</p> <p>18 sophisticated investor about how CVR Refining's units</p> <p>19 would trade, the market perception of that, and why</p> <p>20 he's reaching out to Hedgeye to express his views.</p> <p>21 THE COURT: Thank you. I will resolve</p> <p>22 this post-trial. I appreciate the presentation.</p> <p>23 Please continue.</p> <p>24 MR. CZESCHIN: Your Honor, we also</p>	<p style="text-align: right;">20</p> <p>1 if you're a sophisticated investor and you look at</p> <p>2 this, once the call -- the right to exercise the call</p> <p>3 right is -- is activated, you do end up with what you</p> <p>4 described as a downward spiral to the CVR Refining</p> <p>5 unit price; right?</p> <p>6 Answer: Yeah.</p> <p>7 (Video paused.)</p> <p>8 MR. CZESCHIN: Same objection, Your</p> <p>9 Honor.</p> <p>10 THE COURT: Thank you, Mr. Czeschin.</p> <p>11 (Video resumed.)</p> <p>12 Answer: Yeah, we thought it was, you</p> <p>13 know, just -- it was inevitable.</p> <p>14 Question: And then you say, "See</p> <p>15 attached for a start."</p> <p>16 Do you see that?</p> <p>17 Answer: Yeah.</p> <p>18 Question: And then you attached TPH</p> <p>19 Blair CVRR downgrade 072718.pdf.</p> <p>20 Do you see that?</p> <p>21 Answer: Yeah.</p> <p>22 Question: Do you know what that was?</p> <p>23 Answer: It was -- TPH is -- you know,</p> <p>24 was or still is a firm that published research.</p>

<p style="text-align: right;">21</p> <p>1 (End of video clip.)</p> <p>2 MR. GORRIS: Your Honor, the next</p> <p>3 video is about the -- the Tudor analyst report. The</p> <p>4 HITE version is JX 468. Just for the record, in case</p> <p>5 it comes up later, there's a stand-alone exhibit of</p> <p>6 that, too, that's JX 453.</p> <p>7 Joe, can you play the clip starting at</p> <p>8 page 83, line 10, please.</p> <p>9 (A video clip was played as follows:)</p> <p>10 Question: But to you, it's really the</p> <p>11 structure of the call right once it -- once it</p> <p>12 became activated; right?</p> <p>13 Answer: Yeah. Right. It had to do</p> <p>14 with, like -- it's based on a trailing price, right?</p> <p>15 That was the key to it, right?</p> <p>16 Question: And that's because with</p> <p>17 the -- the trailing price, you can end up in the</p> <p>18 downward spiral situation; right?</p> <p>19 Answer: Right.</p> <p>20 Question: And if you go to page 3 of</p> <p>21 the Tudor report, which is HITE 306 --</p> <p>22 Answer: Yes.</p> <p>23 Question: -- there's a section that</p> <p>24 says, "Negative implications of [the] call [right]."</p>	<p style="text-align: right;">23</p> <p>1 Question: And what do you recall</p> <p>2 about that?</p> <p>3 Answer: I recall that we missed that,</p> <p>4 and we weren't -- you know, we learned like, oh, yeah,</p> <p>5 this is a very bad structural thing. We saw it play</p> <p>6 out with BWP, and that gave us confidence that, you</p> <p>7 know, something similar could happen to CVRR.</p> <p>8 Question: And that's what Tudor</p> <p>9 Pickering is identifying, right, that there was --</p> <p>10 Answer: Yes.</p> <p>11 Question: -- a precedent that had</p> <p>12 occurred just shortly earlier with Boardwalk Pipeline</p> <p>13 and Loews, where a similar call option led to</p> <p>14 underperformance once that -- once it was announced</p> <p>15 that the parent entity was considering exercising the</p> <p>16 call right; right?</p> <p>17 Answer: Yeah. Again, actually, the</p> <p>18 business case, you know, and the way things went may</p> <p>19 not have been exactly the same, now that I think about</p> <p>20 it. So I don't want to draw too many parallels.</p> <p>21 (End of video clip.)</p> <p>22 MR. GORRIS: Your Honor, the next two</p> <p>23 videos discuss an August 10 email from Mr. Jampel to</p> <p>24 Hedgeye. This is another one where I think it would</p>
<p style="text-align: right;">22</p> <p>1 We view this call option as a negative for CVRR,</p> <p>2 because it significantly shortens the investment time</p> <p>3 horizon."</p> <p>4 Do you see that?</p> <p>5 Answer: Yeah.</p> <p>6 Question: And then the next two</p> <p>7 paragraphs talk about -- talk about what that means.</p> <p>8 Are you able to read those?</p> <p>9 Answer: Yeah.</p> <p>10 Question: Is that consistent with --</p> <p>11 with your views and your concerns about the -- the</p> <p>12 structure of the call right and what would happen once</p> <p>13 it was triggered?</p> <p>14 Answer: Yeah. Yeah. You're</p> <p>15 refreshing my memory. Yeah. That's certainly part of</p> <p>16 it. They sort of hit, you know, at least one of the</p> <p>17 nails right on the head there.</p> <p>18 Question: And then if you go to the</p> <p>19 next page, page 4, there's this reference to "Recent</p> <p>20 call option example: BWP and Loews."</p> <p>21 Do you see that?</p> <p>22 Answer: I do.</p> <p>23 Question: Do you recall that issue?</p> <p>24 Answer: I do.</p>	<p style="text-align: right;">24</p> <p>1 be very helpful to the Court to pull it up. It's</p> <p>2 JX 495.</p> <p>3 Okay. And when you've got JX 495</p> <p>4 open, if you go to page 2 of 10, about halfway down,</p> <p>5 what you'll see is Mr. Jampel writes to Alec Richards</p> <p>6 of Hedgeye, who we had talked about just a few minutes</p> <p>7 ago. And the subject is "Here are our top 5 reasons</p> <p>8 why CVRR might decline. Please let us know your</p> <p>9 thoughts."</p> <p>10 Joe, can you play the clip starting at</p> <p>11 page 98, line 21, please.</p> <p>12 (A video clip was played as follows:)</p> <p>13 Question: And so point one was, if</p> <p>14 I'm summarizing it correctly, that even if CVRR traded</p> <p>15 randomly, there would be points where it would trade</p> <p>16 down, where it would make sense to exercise the call;</p> <p>17 right?</p> <p>18 Answer: Yeah, that's true. I forgot</p> <p>19 about that. Yeah, that's right.</p> <p>20 Question: And then point two is -- is</p> <p>21 making the point that it's not really random. There's</p> <p>22 information asymmetry where Carl, Mr. Icahn, thinks --</p> <p>23 Answer: Yeah.</p> <p>24 Question -- this condition's much</p>

<p style="text-align: right;">25</p> <p>1 better; right?</p> <p>2 Answer: Right.</p> <p>3 Question: And so he can use that to</p> <p>4 time the exercise of the call; right?</p> <p>5 Answer: Right.</p> <p>6 Question: And then point three was --</p> <p>7 and there's another reference to Carl. Just to be</p> <p>8 clear, that's Carl Icahn; right?</p> <p>9 Answer: Indeed it is. I know the</p> <p>10 man. Yeah.</p> <p>11 Question: It says, "Carl controls</p> <p>12 CVRR - he can make the distributions smaller for any</p> <p>13 reason he likes, which might impact the unit price."</p> <p>14 (End of video clip.)</p> <p>15 MR. GORRIS: Joe, can you now play the</p> <p>16 clip starting at page 100, line 23, please.</p> <p>17 (A video clip was played as follows:)</p> <p>18 Question: Okay. And then point four</p> <p>19 was that if there was actually good news that hit,</p> <p>20 that you could exercise based upon a trailing average.</p> <p>21 In other words, you don't have any potential upside,</p> <p>22 right, if you're a holder of CVR Refining at this</p> <p>23 point?</p> <p>24 Answer: Yeah.</p>	<p style="text-align: right;">27</p> <p>1 record. I think we'll see it later in trial, so I</p> <p>2 don't think you need it right now.</p> <p>3 Joe, can you please play the clip</p> <p>4 starting at page 108, line 7, please.</p> <p>5 (A video clip was played as follows:)</p> <p>6 Question: Can you tell me what</p> <p>7 Mr. Shen was trying to convey to --</p> <p>8 Answer: Yeah.</p> <p>9 Question: -- Mr. Finks.</p> <p>10 Answer: Yeah. So, I mean, English</p> <p>11 isn't his first language, but -- you know, but I can</p> <p>12 translate for you. What he's saying is that -- that</p> <p>13 the complexity of having CVI and CVRR out there, you</p> <p>14 know, might be something which would cause the</p> <p>15 sell-side community to say this is too complicated to</p> <p>16 cover. So if it were a simpler entity where you</p> <p>17 didn't have to think about something like CVRR, it's</p> <p>18 possible that the investment in CVI would be more</p> <p>19 attractive.</p> <p>20 Question: Okay. And when he</p> <p>21 references a simplification transaction, is that a</p> <p>22 reference to the exercise of the call right?</p> <p>23 Answer: Probably.</p> <p>24 Question: And that's because exercise</p>
<p style="text-align: right;">26</p> <p>1 Question: And point five was, due to</p> <p>2 the decline in the float, CVR Refining might be</p> <p>3 removed from the AMZ index.</p> <p>4 Do you see that?</p> <p>5 Answer: Yeah.</p> <p>6 Question: And if it was removed from</p> <p>7 the Alerian AMZ Index, then it would be the case that</p> <p>8 it would be sort of forced or pressured selling</p> <p>9 from -- from that to drive down the CVR Refining</p> <p>10 price; right?</p> <p>11 Answer: Oh, yeah, right. I forgot</p> <p>12 about that. That's true.</p> <p>13 (End of video clip.)</p> <p>14 MR. GORRIS: Your Honor, in the next</p> <p>15 video, Mr. Jampel discusses a September 21, 2018,</p> <p>16 email from one of his colleagues to Jay Finks at CVR</p> <p>17 Refining.</p> <p>18 This is an email where Mr. Shen sends</p> <p>19 Mr. Finks an attachment called "CVI buy-in, CVRR</p> <p>20 valuation accretion." And he notes in the email that</p> <p>21 one topic that he wants to cover in a call with CVR</p> <p>22 Refining is the benefit for CVI to exercise the option</p> <p>23 to buy in CVRR at the market price.</p> <p>24 I -- that email is JX 538, for the</p>	<p style="text-align: right;">28</p> <p>1 of the call right would mean that there's no public</p> <p>2 stub outstanding for CVR Refining units and then CVR</p> <p>3 Energy and CVR Refining complex is simpler; right?</p> <p>4 Answer: Well, yeah. Because you</p> <p>5 remember, they had two MLPs hanging out there, right?</p> <p>6 They had this UAN thing, which I think they still</p> <p>7 have. Maybe it's gone. I can't remember. But they</p> <p>8 had two MLPs, so this thing was crazy complicated.</p> <p>9 And we're saying, guys, simplify. It will be better.</p> <p>10 Question: Right. And simplify just</p> <p>11 means buy in the rest of -- exercise the call, buy in</p> <p>12 the rest of CVR Refining so there's not this stub?</p> <p>13 Answer: Yeah. That's it. Yeah,</p> <p>14 exactly.</p> <p>15 Question: Okay.</p> <p>16 (End of video clip.)</p> <p>17 MR. GORRIS: Your Honor, the next</p> <p>18 video is relatively self-explanatory. What it's doing</p> <p>19 is discussing three days -- three days later,</p> <p>20 September 24, 2018, there's a holdings report that</p> <p>21 shows how Mr. Jampel is now positioning his fund. The</p> <p>22 underlying document, for the record, is JX 541.</p> <p>23 Joe, can you play the clip starting at</p> <p>24 page 110, line 6.</p>

<p style="text-align: right;">29</p> <p>1 (A video clip was played as follows:)</p> <p>2 Question: Mr. Jampel, if you're able</p> <p>3 to pull it up, this is another one of the Sumac</p> <p>4 Holding spreadsheets, this time for September 24,</p> <p>5 2018.</p> <p>6 Answer: Uh-huh. I see it.</p> <p>7 Question: And, again, I'd like to</p> <p>8 direct you to the "Short Book" tab, and line 12 is</p> <p>9 CVRR.</p> <p>10 Do you see that?</p> <p>11 Answer: Yeah.</p> <p>12 Question: And so the short position's</p> <p>13 increased, at this point, to 24.84 percent; right?</p> <p>14 Answer: Yes.</p> <p>15 Question: And was that because you're</p> <p>16 becoming increasingly convinced that, and bullish that</p> <p>17 CVR Refining units would -- would trade down?</p> <p>18 Answer: Yes.</p> <p>19 Question: And is having -- having a</p> <p>20 fund with almost 25 percent of the short position</p> <p>21 shorting one -- one particular publicly traded entity,</p> <p>22 does that show real conviction on your part that --</p> <p>23 that you're right, that -- in your short trade?</p> <p>24 Answer: Yeah, probably. In</p>	<p style="text-align: right;">31</p> <p>1 Question: And did you have any --</p> <p>2 have any expectation at that time about how -- how CVR</p> <p>3 Refining units would respond to the -- to the</p> <p>4 announcement that CVR Energy was considering</p> <p>5 exercising the call?</p> <p>6 Answer: Well, we thought they would</p> <p>7 go down.</p> <p>8 Question: And why is that?</p> <p>9 Answer: Because I think that, you</p> <p>10 know, those misguided folks, you know, who didn't read</p> <p>11 the documents and didn't think it through would</p> <p>12 finally understand what was going to happen.</p> <p>13 Question: And when you say, like,</p> <p>14 didn't read the documents and think it through, did</p> <p>15 the documents tell you this was going to happen? Or</p> <p>16 it was you were able to read the -- read between the</p> <p>17 lines of the documents and apply your -- your</p> <p>18 understanding and sophistication with the market --</p> <p>19 Answer: Yeah.</p> <p>20 Question -- hey, look, this is exactly</p> <p>21 what's going to happen?</p> <p>22 Answer: Yeah. I can't really say</p> <p>23 that. You know, I just encourage people to read the</p> <p>24 documents. And, you know, as I said in one of those</p>
<p style="text-align: right;">30</p> <p>1 retrospect, it shows I was a fool for taking such a</p> <p>2 risk. But that's another thing. After GameStop --</p> <p>3 after GameStop, you can short anybody. They could</p> <p>4 have carried me out on a stretcher. So, yeah, I got</p> <p>5 lucky there. That's the story of my whole life.</p> <p>6 Question: But it worked out for you;</p> <p>7 right?</p> <p>8 Answer: Oh, yeah. It definitely</p> <p>9 worked.</p> <p>10 (End of video clip.)</p> <p>11 MR. GORRIS: Your Honor, the next</p> <p>12 video is Mr. Jampel's reaction to the 8-K that gets</p> <p>13 filed in late November, 2018, saying that CVR Energy</p> <p>14 was now considering the call right.</p> <p>15 Joe, can you play the clip starting at</p> <p>16 page 128, line 22, please.</p> <p>17 (A video clip was played as follows:)</p> <p>18 Question: And then do you recall that</p> <p>19 in November, then, CVR Energy issued an 8-K saying</p> <p>20 that it was, in fact, considering the call?</p> <p>21 Answer: Now that you mention it, yup.</p> <p>22 Question: And what was your reaction</p> <p>23 to that?</p> <p>24 Answer: "My God."</p>	<p style="text-align: right;">32</p> <p>1 other emails, you know, once you understand the facts</p> <p>2 here, right?</p> <p>3 But there were just people that just</p> <p>4 were blind to the facts. They just were, like --</p> <p>5 that's how I remember it. They were saying all kinds</p> <p>6 of stupid stuff about, like, what could happen. It</p> <p>7 was just like -- they don't have facts, right?</p> <p>8 Question: And when you say "the</p> <p>9 facts," what facts are you referencing?</p> <p>10 Answer: The facts are is that this</p> <p>11 call option is on a 20-day trailing VWAP, or whatever</p> <p>12 it was, right?</p> <p>13 (End of video clip.)</p> <p>14 MR. GORRIS: Your Honor, the next</p> <p>15 video, which also happens to be our last video for</p> <p>16 Mr. Jampel for plaintiffs, Mr. Jampel discusses HITE's</p> <p>17 December 4, 2018, press release, which he forwarded to</p> <p>18 Keith Cozza and others at Icahn Enterprises.</p> <p>19 For the record, the email and attached</p> <p>20 press release is JX 799.</p> <p>21 Joe, can you play the clip starting at</p> <p>22 page 140, line 18, please.</p> <p>23 (A video clip was played as follows:)</p> <p>24 Question: And you're saying that "CVI</p>

<p style="text-align: right;">33</p> <p>1 Energy can save \$150 million should it wait to</p> <p>2 exercise the call until CVRR's unit price has reached</p> <p>3 \$10.00"</p> <p>4 Do you see that?</p> <p>5 Answer: Yeah.</p> <p>6 Question: And that's the downward</p> <p>7 spiral concept; right?</p> <p>8 Answer: Yes.</p> <p>9 Question: And so what you're saying</p> <p>10 is we want you to exercise the call, but don't do it</p> <p>11 yet. Wait until the CVR Refining unit price drops</p> <p>12 further; right?</p> <p>13 Answer: Correct. That is what we</p> <p>14 say.</p> <p>15 Question: And you were pretty sure</p> <p>16 that was going to happen just by pure -- pure math;</p> <p>17 that it was going to -- that it was going to drop, and</p> <p>18 that the -- that the unit price was essentially less;</p> <p>19 right?</p> <p>20 Answer: Yeah. Yeah. I mean, we laid</p> <p>21 out those five top reasons before.</p> <p>22 (End of video clip.)</p> <p>23 MR. GORRIS: Your Honor, that's all</p> <p>24 plaintiffs have for Mr. Jampel.</p>	<p style="text-align: right;">35</p> <p>1 been helpful to CVR Refining unitholders if, for</p> <p>2 example, the CVR Refining board had talked to you and</p> <p>3 obtained your analysis and explained to unitholders</p> <p>4 what the outcome here might be?</p> <p>5 Answer: I can't say. I can't say. I</p> <p>6 really can't.</p> <p>7 Question: And that's just because you</p> <p>8 know what you'd do, as a sophisticated investor, but</p> <p>9 you're uncomfortable speaking for other investors; is</p> <p>10 that right?</p> <p>11 Answer: Right. Right. I would</p> <p>12 encourage everyone to read the documents. That's what</p> <p>13 we always say.</p> <p>14 (End of video clip.)</p> <p>15 MR. CZESCHIN: Your Honor, in the next</p> <p>16 couple of clips, Mr. Jampel is discussing his</p> <p>17 communications with other market participants about</p> <p>18 his views. The first clip starts at page 76, and it</p> <p>19 concerns a document that I think we looked at or was</p> <p>20 referenced in plaintiffs' clips. It's JX 468.</p> <p>21 Scott, can you play that.</p> <p>22 (A video clip was played as follows:)</p> <p>23 Question: Why are you writing to</p> <p>24 Hedgeye on July 30, 2018?</p>
<p style="text-align: right;">34</p> <p>1 THE COURT: Thank you, Mr. Gorris.</p> <p>2 Mr. Czeschin.</p> <p>3 MR. CZESCHIN: Yes, Your Honor. We</p> <p>4 have a couple of clips, as well, of Mr. Jampel.</p> <p>5 THE COURT: Okay.</p> <p>6 MR. CZESCHIN: Scott, if you could</p> <p>7 pull up the first clip. I don't think it requires any</p> <p>8 introduction.</p> <p>9 CROSS-EXAMINATION</p> <p>10 (A video clip was played as follows:)</p> <p>11 Question: Do you recall that the CVR</p> <p>12 Refining board took no position with respect to the --</p> <p>13 to the exchange offer?</p> <p>14 Answer: I don't recall any position</p> <p>15 that the board would have taken.</p> <p>16 Question: Do you think it would have</p> <p>17 been helpful to you and to other CVR Refining</p> <p>18 unitholders to have the board obtain independent</p> <p>19 financial advice and present that to unitholders to</p> <p>20 assist them in making the decision whether or not to</p> <p>21 exchange in the exchange offer?</p> <p>22 Answer: It wouldn't have been helpful</p> <p>23 to us, no.</p> <p>24 Question: Do you think it would have</p>	<p style="text-align: right;">36</p> <p>1 Answer: Well, by that time, we had --</p> <p>2 by that time, you know, we had come to the conclusion</p> <p>3 than CVRR was a good short, and -- I think. As I</p> <p>4 recall. And so we were then, you know, trying to win</p> <p>5 over others to our conclusion.</p> <p>6 Question: Okay. And so you wanted to</p> <p>7 convince Mr. Richards, who others received his</p> <p>8 research as well, that -- that he should publish and</p> <p>9 be out there saying that folks should short CVR</p> <p>10 Refining, in light of the closing of the exchange</p> <p>11 offer and the existence of the call right that could</p> <p>12 now be exercised; right?</p> <p>13 Answer: Yes.</p> <p>14 Question: And using your</p> <p>15 sophistication and sort of the knowledge from your</p> <p>16 background and from finance and economics and</p> <p>17 whatever, you were able to anticipate that it was</p> <p>18 going to go down, but you still wanted to reach out</p> <p>19 and talk to other investors, talk to finance</p> <p>20 professors, to make sure you were right on that;</p> <p>21 right?</p> <p>22 Answer: Well, I mean, we were pretty</p> <p>23 sure we were right, but, you know, again, we want</p> <p>24 trades to come home quickly, right? So we feel that,</p>

<p style="text-align: right;">37</p> <p>1 like, if we have an insight and take a position, 2 right, we just want -- you know, like, we want -- 3 let's just say if you buy a stock, then you say 4 everyone that bought this stock and it's really great, 5 and getting behind me, that pushes the stock up, 6 right? There's nothing untruthful about that, right? 7 That's just, you know, we found it first, and then you 8 say, hey, this is really a good company. 9 And with something like CVRR, you say, 10 look, we're short. We found this terrible structure. 11 You know, we encourage other people to sell now before 12 it goes down. And if they sell it, then, you know, 13 then it goes down quicker, and we don't need the call 14 option to actually be used. 15 So we were pretty confident. But we 16 always want people to come to our same conclusion 17 after we've taken a position. And that's what, you 18 know, sort of shareholders do. 19 (End of video clip.) 20 MR. CZESCHIN: Your Honor, the next 21 clip is similar. It concerns the same topic of 22 Mr. Jampel reaching out, this time to various finance 23 professors. 24 Scott, if you could play that clip.</p>	<p style="text-align: right;">39</p> <p>1 me -- maybe there's an email contradicting that, but I 2 thought "These guys are zeroes." Like, I can't 3 believe they're not interested in this. 4 Question: Got it. So, okay. And 5 then if you go -- 6 Answer: "They're amazing." What a 7 joke. What an idiot. 8 Question: Do you know who he is? 9 Answer: No. I don't know why I sent 10 it to him. What school is he even at? I don't 11 remember. 12 Question: I don't know. You sent to 13 some Northwestern folks. 14 Answer: As an alum, I thought I might 15 get some attention, but it was like -- yeah. It's too 16 hard. Too much of a problem. 17 (End of video clip.) 18 MR. CZESCHIN: And, Your Honor, our 19 final clip is Mr. Jampel discussing an early November, 20 2018, call with Mr. Cozza. It starts on page 127. 21 (A video clip was played as follows:) 22 Question: What do you recall about 23 your call with Mr. Cozza at Icahn? 24 Answer: Yeah. Well, that call, you</p>
<p style="text-align: right;">38</p> <p>1 (A video clip was played as follows:) 2 Question: And do you see, "Below is a 3 letter I'm sending to various finance professors to 4 get their views." 5 Do you see that? 6 Answer: Yeah. 7 Question: Can you tell me about that. 8 Answer: Well, you know, I went to 9 business school, and I thought I knew something about 10 options pricing, you know, but I had never seen an 11 option like the one CVI Energy possessed. So I was 12 trying to get some guidance as to, like, what that 13 could actually be worth, like, if you're valuing an 14 option. 15 And I emailed some professors who I 16 thought might be intellectually interested in this 17 real-world example of a crazy option. 18 Question: And did you ever connect 19 with or get feedback from any of those professors? 20 Answer: You know, now that you jog my 21 memory, I don't remember anything, because I think it 22 was profoundly disappointing. Because what they said, 23 it was either nonsense or they didn't want to think 24 about it. And I was really disappointed. If you ask</p>	<p style="text-align: right;">40</p> <p>1 know, we just wanted to make sure that we had reached 2 the highest levels at management with our light. 3 That's all. So, you know, we had the call. We 4 talked, they listened, said "Uh-huh, uh-huh, uh-huh," 5 and then it ended. 6 Question: Okay. And so you just -- 7 you put forward your affirmative case to exercise the 8 call, and they just listened and didn't interact with 9 you? Is that your recollection? 10 Answer: Yeah, exactly. And we don't 11 want any material nonpublic information, right? You 12 know, we're very, very careful about that. So, you 13 know, what we did is we talked at them, right? And we 14 didn't really want to know what they were going to do. 15 (End of video clip.) 16 MR. CZESCHIN: No more clips for the 17 defendants, Your Honor. 18 THE COURT: Thank you, Mr. Czeschin. 19 MR. GORRIS: Your Honor, I apologize 20 for this. It's another set of videos. As you know, 21 we very much wanted Mr. Cozza here live, and -- but 22 that was not something that he or the defendants could 23 do. 24 Plaintiffs call their next witness,</p>

<p style="text-align: right;">41</p> <p>1 Keith Cozza. At all relevant times, Mr. Cozza was the 2 chief executive officer of defendant Icahn 3 Enterprises. 4 Again, I'll do transitions. I'll try 5 and skip them where the videos are self-explanatory so 6 we can get through this. 7 Joe, can you play the clip starting at 8 page 17, line 4, please. 9 KEITH COZZA, was examined and 10 testified via video as follows: 11 DIRECT EXAMINATION 12 (A video clip was played as follows:) 13 Question: And can you skip -- give me 14 briefly an overview of what positions you've held 15 during your time at Icahn Enterprises. 16 Answer: I was -- I started as 17 assistant controller in 2004, to approximately 2000 -- 18 mid-2005. I was controller from 2005 to some point in 19 2006. I was CFO from 2006 through 2011-ish. I held 20 various executive positions, from 2012, '13, I'm 21 recalling executive vice president, chief operating 22 officer. 23 I became chief executive officer in 24 February of 2014, and I remain in that role today.</p>	<p style="text-align: right;">43</p> <p>1 clip starting at page 26, line 6, please. 2 (A video clip was played as follows:) 3 Question: So -- so fair enough, in 4 your position, that there's a -- that there's a fair 5 amount of chatter that you hear about what's going on 6 from -- from brokers or bankers or -- or your own 7 investors or other folks you speak to, and that helps 8 you form a -- form a perception; is that right? 9 Answer: Yes. That's correct. 10 (End of video clip.) 11 MR. GORRIS: Joe, can you play the 12 clip starting at page 33, line 15, please. 13 (A video clip was played as follows:) 14 Question: Fair to say that one of the 15 things on -- on Mr. Lamp's agenda as the CEO of CVR 16 Energy was to get the company ready for and 17 potentially sell the company? 18 Answer: I think we incentivized him 19 to ultimately do that. 20 Question: Now, did you have 21 discussions with Mr. Lamp about how to prepare the 22 company for a potential sale? 23 Answer: Not -- no. Not that I 24 remember.</p>
<p style="text-align: right;">42</p> <p>1 (End of video clip.) 2 MR. GORRIS: Joe, can you play the 3 clip starting at page 20, line 10, please. 4 (A video clip was played as follows:) 5 Question: Mr. Cozza, are you aware 6 that in August 2016, that -- that Icahn Enterprises 7 sold 250,000 common units of CVR Refining? 8 Answer: I am. 9 Question: What was the rationale for 10 that -- that sale of the 250,000 units? 11 Answer: Well, my recollection is that 12 we -- in the partnership agreement, we had a 13 particular call right that activated at a certain 14 percentage of ownership. And my understanding or 15 recollection of the contract was that that percentage 16 threshold changed if we went below a certain 17 threshold. And at some point, we realized we were at 18 a -- slightly over the threshold in order to change 19 the contract. And so for -- we sold a handful of 20 shares, 250,000, that you referred to, in order to 21 change that threshold. And kind of option out of it. 22 Question: Okay. 23 (End of video clip.) 24 MR. GORRIS: Joe, can you play the</p>	<p style="text-align: right;">44</p> <p>1 (End of video clip.) 2 MR. GORRIS: The next clip also plays 3 in order and should be understandable without context, 4 or additional context. 5 Joe, can you play the clip starting at 6 page 34, line 2, please. 7 (A video clip was played as follows:) 8 Question: Now, going back to what you 9 were talking about in connection with the exchange 10 offer, that the idea of potentially acquiring more 11 units of CVR Refining at the CVR Energy level, you 12 said that -- that you were looking at the idea of if 13 he wanted to sell CVR Energy at some point, was the -- 14 would the structure be viewed as an optimal structure 15 by buyers; right? 16 Answer: Yes. 17 Question: And can you tell me what 18 went into that -- that analysis of how buyers would 19 look at the CVR Energy structure and what they would 20 view as optimal. 21 Answer: Well, I obviously can't speak 22 for how a buyer would look at it. But my views and my 23 experience of 17 years of buying and selling companies 24 was that I personally, again, thought that having</p>

<p style="text-align: right;">45</p> <p>1 multiple layers, meaning CVI, CVR, cash flows, where 2 there is leakage outside the system, created 3 inefficiencies, made it, you know, over -- made it 4 overly complicated, over -- versus a simple single 5 entity with -- owning 100 percent of their operations. 6 And on top of that, a couple of things 7 had, in my mind, changed, one of the things being 8 where they -- they passed tax reform, meaning "they," 9 the U.S. government, Congress passed tax reform, 10 changing the tax rates, that actually made the tax 11 advantage aspect of MLPs less advantageous to certain 12 investors -- or maybe all investors, frankly. And so 13 the structure was a little bit diminished from that 14 perspective. 15 And on -- so it was almost like a 16 discussion of tax reforms happen, MLPs seem like, you 17 know, depending on the type -- variable MLPs seem to 18 be potentially falling out of favor. And this would 19 be a good way to consolidate the structure with 20 their -- now, there was pros and cons to an MLP, of 21 course, but there was still one pro that I really 22 liked, and optionality is everything in life. 23 And keeping the ability to -- I wanted 24 to still keep our MLP out there, because I ultimately</p>	<p style="text-align: right;">47</p> <p>1 would potentially be attractive to an acquiror. 2 (End of video clip.) 3 MR. GORRIS: Your Honor, the next clip 4 follows up on this issue of variable-rate MLPs versus 5 fixed-rate MLPs. 6 Joe, can you play the clip starting at 7 page 59, line 19, please. 8 (A video clip was played as follows:) 9 Question: Did you give any 10 consideration as to whether it was possible to convert 11 CVRR from a variable-rate MLP to a -- to a logistics 12 MLP, and how that would work? 13 Answer: I didn't. 14 Question: So, then, how is it that 15 you're creating optionality for folks to drop down and 16 create a logistics MLP through CVR Refining if you 17 didn't really have any understanding whether it was 18 possible and what would be involved to use the CVRR 19 structure for a logistics MLP? 20 Answer: Well, I -- I assumed that it 21 would be manageable. If you have an MLP that's 22 publicly traded that already exists, that has certain 23 qualifying energy assets. Like I said, it was an 24 assumption that it would be a valuable tool for</p>
<p style="text-align: right;">46</p> <p>1 thought some day -- and, again, my perception of what 2 a buyer would perceive is there is a lot -- there's 3 potential to buyers throughout that have assets that 4 qualify for MLPs -- maybe not for variable MLPs, but 5 for what I would refer to as steady-state midstream 6 MLPs, that they would -- which were still potentially 7 in favor because of their -- because of their, you 8 know, steady interest rate decline -- steady interest 9 rate appeal to investors, that it would give the 10 optionality for a buyer to drop down; if they had 11 logistical assets or other things, they wouldn't have 12 to go through the rigmarole of the -- or the brain 13 damage of creating a new MLP, IPO'ing it, et cetera. 14 I wanted to give them the optionality 15 to have a ready-made MLP, reducing the leakage, 16 potentially, down to 95 percent, as I described to you 17 previously on the leakage aspect, but still give them 18 an option where they may want to actually use this 19 vehicle to fund a potential acquisition. 20 So I know that's a bit of a ramble, 21 but there's still a lot of financing available to 22 these what I refer to as "steady MLPs," nonvariable 23 MLPs. And so we thought having that potential 24 availability built in was still -- was worthwhile,</p>	<p style="text-align: right;">48</p> <p>1 somebody to potentially figure out how to drop that 2 sub down into it. 3 Question: Okay. But you didn't 4 investigate whether that was actually true with buyers 5 or whether it was possible, and what would it entail 6 with converting that structure into the CVR Refining 7 variable structure into a logistics MLP structure; 8 right? 9 Answer: No. I didn't look into that. 10 (End of video clip.) 11 MR. GORRIS: Joe, can you play the 12 next clip, starting at page 45, line 21, please. 13 (A video clip was played as follows:) 14 Question: Now, did you have 15 consideration or discussion of the call right in 16 connection with this evaluation of CVR capital 17 structure that was going on in April 2018? 18 Mr. Gorris: Mr. Cozza, are you able 19 to answer that question? 20 Answer: Yeah. So in April, in April 21 of 2018, it was discussed at some point when we 22 ultimately decided to move forward. Because we said, 23 as we -- when we ultimately decided to do this, to try 24 to go up to 95 percent, we set the minimum at 80</p>

<p style="text-align: right;">49</p> <p>1 percent, clearly, for two reasons: One, we were at 2 just under 70 percent, as you flagged, and this 3 exchange offer -- exchange offers are -- they cost 4 money. There's lawyers involved, there's printing 5 materials involved, et cetera, et cetera. 6 For it to be worthwhile, I wanted to 7 get at least 10 percent, if we're going to go through 8 all this, okay? So just to get a reasonable amount of 9 economics to increase the cash flow that goes from 10 CVRR, at least 10 percent up to CVI. I wanted to get 11 a maximum 95 percent. 12 The secondary reason was, of course, 13 like, we knew we had this call option that was 14 activated when we went below 70, so why not trigger 15 it? Again, optionality. We had the option. 16 Question: Okay. And who were the -- 17 who was involved in those discussions about the -- 18 about the interplay between the exchange offer, 19 potential exchange offer and the call right? 20 Answer: Would be myself, Jesse Lynn, 21 and Carl Icahn. 22 (End of video clip.) 23 MR. GORRIS: Your Honor, the next 24 video concerns an email, and I think this is one where</p>	<p style="text-align: right;">51</p> <p>1 Answer: Yes. 2 Question: Okay. And the bottom of 3 the chain of the email is an investor relations alert 4 from CF Industries about -- CF Industries exercising 5 its call right on Terra Nitrogen, and the email is 6 sent on February 7, 2018. 7 Do you see that? 8 Answer: I do. 9 Question: And then that goes to 10 Mr. Finks at CVR, who then forwards it to the 11 executive team there, including Mr. Lamp, who then 12 forwards it to you. It says, "In case you did not see 13 this." 14 Do you see that? 15 Answer: Yeah, I do. 16 Question: Okay. And then -- then you 17 forward it to Mr. Lynn, "Some day," and a series of 18 ellipses. 19 What did you mean by that? 20 Answer: I don't know. I don't have 21 any recollection of this email. 22 (End of video clip.) 23 MR. GORRIS: Joe, can you play the 24 next clip, which is -- starts at page 51, line 22,</p>
<p style="text-align: right;">50</p> <p>1 it would be helpful for Your Honor to have some 2 context from the email. It's JX 157, if you're able 3 to pull that up. 4 Okay. And if you go to the bottom of 5 the first page, what you'll see is this is an investor 6 relations alert from CF Industries to Mr. Finks at CVR 7 on February 7, 2018. Mr. Finks forwards that to the 8 internal management team at CVR. 9 The press release is about CF 10 Industries exercising its call right on -- or having 11 one of its subsidiaries exercise a call right to take 12 out an MLP in February 2018. 13 So Mr. Finks forwards that internally, 14 and then Mr. Lamp, CVR's CFO, forwards it to 15 Mr. Cozza, just says, "In case you did not see this." 16 And then Mr. Cozza forwards it to 17 Mr. Lynn, who you just heard Mr. Cozza speaking about, 18 and what he writes in the email at the top is "Some 19 day," and then a series of ellipses. 20 With that context, Joe, can you play 21 the clip starting at page 50, line 12, please. 22 (A video clip was played as follows:) 23 Question: Mr. Cozza, are you able to 24 pull up what's Cozza Exhibit No. 1?</p>	<p style="text-align: right;">52</p> <p>1 please. 2 (A video clip was played as follows:) 3 Question: Did you have any 4 discussions in connection with the exchange offer 5 about when or what circumstances under which it might 6 make sense to exercise the call right? 7 Answer: No, not that I recall. 8 Question: Do you recall thinking 9 about that issue? 10 Answer: No. I -- my recollection is 11 the call right, like I've previously testified here, 12 the call right was sort of secondary or third to my 13 ultimate business goals for the exchange offer. Like 14 I said, it -- I was aware of it, and if we're doing 15 all this, I wanted to get a bunch of -- I wanted to 16 get up to 95 percent of the economics flowing back to 17 CVI, and it was also, like, obviously, we have this 18 contractual ability to go to -- I guess the right term 19 would be activate this call option, so might as well 20 do it for optionality. Optionality is everything. 21 Question: Okay. 22 (End of video clip.) 23 MR. GORRIS: Your Honor, the next 24 video clip concerns Mr. Cozza's discussion with</p>

<p style="text-align: right;">53</p> <p>1 Mr. Lamp, who is CVR's chief executive officer, about 2 the exchange offer. 3 Joe, can you play the clip starting at 4 page 54, line 6, please. 5 (A video clip was played as follows:) 6 Question: Okay. And was there 7 discussion with Mr. Lamp about what that might mean 8 for a potential sale of the company down the line? 9 Answer: Well, I -- I definitely would 10 have -- you know, I suggested to him that I think it, 11 you know, makes -- simplifies the capital structure, 12 which makes the story easier for a potential acquiror 13 to understand. 14 Question: Okay. 15 (End of video clip.) 16 MR. GORRIS: The next clip is 17 self-explanatory. 18 Joe, can you play the clip starting at 19 page 58, line 25, please. 20 (A video clip was played as follows:) 21 Question: Okay. Now, the publicly 22 traded stub, did you give any consideration as to how 23 units of that stub would trade and/or be perceived by 24 the market?</p>	<p style="text-align: right;">55</p> <p>1 Boardwalk Pipeline Partners never came up in this time 2 period before or during when the exchange offer was 3 pending? 4 Mr. Beigel: Objection -- 5 The Witness: No. 6 Mr. Beigel: -- to the form of the 7 question. 8 Answer: I don't recall it coming up 9 with me. 10 Question: Do you recall CF Industries 11 coming up during this time, either before or during 12 the pendency of the exchange offers, as -- as a 13 precedent for a call right exercise? 14 Answer: No. 15 (End of video clip.) 16 MR. GORRIS: Your Honor, in the next 17 clip, I asked Mr. Cozza about the minutes and 18 discussion at the May 24 CVR Energy board meeting. 19 This is where the exchange offer comes up for the 20 first time, and CVR Energy, as Your Honor knows, is 21 the parent board. The meetings happen in succession. 22 This is the parent board meeting. 23 Your Honor will look at them later, 24 I'm sure, throughout trial, so I don't think you need</p>
<p style="text-align: right;">54</p> <p>1 Answer: I didn't. 2 Question: So you didn't think at all 3 about, hey, this is what's going to happen post the 4 exchange offer to the CVR Refining structure that you 5 were leaving outstanding? 6 Answer: No, I didn't. 7 (End of video clip.) 8 MR. GORRIS: Your Honor, the next clip 9 concerns Mr. Cozza's testimony about his knowledge of 10 the Boardwalk Pipeline-Loews transaction. 11 Joe, can you play the clip starting at 12 page 65, line 2, please. 13 (A video clip was played as follows:) 14 Question: Did there come a point in 15 time when you became aware of the Boardwalk Pipeline 16 call right situation? 17 Answer: The -- my recollection of the 18 first time hearing that name was yesterday on the 19 phone with my counsel. 20 Question: Okay. And so -- so 21 notwithstanding that you hired a bunch of lawyers 22 to -- to look at this exchange offer, which 23 prominently features the call right, and you hear the 24 market chatter that you do, it never came up that --</p>	<p style="text-align: right;">56</p> <p>1 to look at them now. But for your reference and for 2 the record, those minutes are JX 270. 3 MR. GORRIS: Joe, can you play the 4 clip starting at page 80, line 15, please. 5 (A video clip was played as follows:) 6 Question: And then, if you look at 7 the minutes, it says that you noted that "the general 8 partner and its affiliates have no current plans to 9 exercise such call right at this time or upon 10 consummation of the exchange." 11 Do you see that? 12 Answer: I do. 13 Question: Is that -- is that how you 14 worded it at the meeting, or what -- what do you 15 recall actually saying? 16 Answer: I don't recall the 17 word-by-word of what I said. You know, I -- I have no 18 reason to believe these minutes are inaccurate. 19 Question: Okay. And so but when you 20 say, "no current plans to exercise [the] call right at 21 this time ...," the general partner couldn't actually 22 exercise the call right at this time; right? 23 Answer: Well, at that second in time, 24 I guess you would say we technically didn't know the</p>

<p style="text-align: right;">57</p> <p>1 exchange offer was still open. So I suppose I was</p> <p>2 shorthanding to the board in connection with the fact</p> <p>3 that if this offer closes, due to the minimum</p> <p>4 condition, that there is no current intention.</p> <p>5 Question: Okay. And then it</p> <p>6 continues on, "no current plans ... at this time or</p> <p>7 upon consummation of the exchange." Right? That's</p> <p>8 the --</p> <p>9 Answer: Yeah.</p> <p>10 Question: That's what you're</p> <p>11 referencing, which is upon the closing of the</p> <p>12 exchange, there was no intent to exercise the call</p> <p>13 right; is that right?</p> <p>14 Answer: That would be technically</p> <p>15 correct, yes.</p> <p>16 Question: Okay. But was there any</p> <p>17 discussion as to whether there was any intent to</p> <p>18 exercise the call right at any point after the closing</p> <p>19 of the exchange?</p> <p>20 Answer: Not that I recall, no.</p> <p>21 Question: So no discussion one way or</p> <p>22 the other?</p> <p>23 Answer: I don't recall any</p> <p>24 discussion.</p>	<p style="text-align: right;">59</p> <p>1 lower than -- for example, if you look at a -- at a</p> <p>2 midstream MLP, their cost of eight or ten-year debt is</p> <p>3 4 percent. A refinery's cost of debt -- a refinery's</p> <p>4 cost of debt could be 7 or 8 percent, and you can't</p> <p>5 even get -- raise nearly as much capital against just</p> <p>6 refining operations; right?</p> <p>7 So I viewed the potential option value</p> <p>8 of that, to have that structure in place, could</p> <p>9 ultimately be worth billions in a sale price, versus 5</p> <p>10 percent more cash flow. So to me -- and, again, it's</p> <p>11 a judgment call. But to me, it was not -- my head</p> <p>12 wasn't at getting 100 percent. I didn't want to lose</p> <p>13 that piece of -- that structure.</p> <p>14 Question: Now, you're aware that MLPs</p> <p>15 have fallen out of favor during this time period;</p> <p>16 right?</p> <p>17 Answer: Well, I -- variable MLPs for</p> <p>18 sure.</p> <p>19 Question: Are you aware that there</p> <p>20 were a substantial number of companies that -- that</p> <p>21 rolled up, that eliminated their MLPs in the 2018 time</p> <p>22 period?</p> <p>23 Answer: I was not aware of that</p> <p>24 specifically.</p>
<p style="text-align: right;">58</p> <p>1 (End of video clip.)</p> <p>2 MR. GORRIS: Your Honor, the next clip</p> <p>3 is -- is a clip where Mr. Cozza returns to this theme</p> <p>4 of optionality, option value. I think that's enough</p> <p>5 of an introduction.</p> <p>6 Joe, can you play the clip, starting</p> <p>7 at page 102, line 15, please.</p> <p>8 (A video clip was played as follows:)</p> <p>9 Question: So -- so did you have an</p> <p>10 understanding as to whether it was possible to -- to</p> <p>11 acquire 100 percent of the CVR Refining units?</p> <p>12 Answer: Again, I -- it's -- it's -- I</p> <p>13 don't recall my understanding of is it possible to</p> <p>14 acquire 100 percent. I mean, I'm not aware of</p> <p>15 anything that would make it impossible. But it's not</p> <p>16 where the strategy was, from a business perspective</p> <p>17 of -- I viewed the option value of having -- and I</p> <p>18 apologize for keep saying the same thing, but I don't</p> <p>19 know, maybe I'm not getting it through.</p> <p>20 I viewed the option value of having</p> <p>21 this MLP -- it could have been the difference of -- it</p> <p>22 could have been the difference of, like, several turns</p> <p>23 of multiple if we sold it in the future and the cost</p> <p>24 of buying -- and the cost of capital was 3 percent</p>	<p style="text-align: right;">60</p> <p>1 Question: Were you aware of that</p> <p>2 generally?</p> <p>3 Answer: Generally, I have -- I have</p> <p>4 knowledge of or have read in general that certain</p> <p>5 energy companies, whether it's refining, whether it's</p> <p>6 oil and gas, whether it's pipeline companies, have --</p> <p>7 some of them have -- I have read stories about some of</p> <p>8 them have decided to roll up their MLPs.</p> <p>9 Question: Were you aware that that</p> <p>10 was a phenomenon that was going on at this time period</p> <p>11 in 2018?</p> <p>12 Answer: I was not.</p> <p>13 Question: So you had no knowledge</p> <p>14 that there was -- there's this phenomenon in the</p> <p>15 marketplace where many of the largest MLPs were</p> <p>16 being -- being rolled up and eliminated the MLP</p> <p>17 structure?</p> <p>18 Answer: No. I'm -- not only am I not</p> <p>19 aware of that, I'm not even sure that's accurate, what</p> <p>20 you're saying.</p> <p>21 (End of video clip.)</p> <p>22 MR. GORRIS: Your Honor, in the -- the</p> <p>23 next video, I'm going to ask about language and ask</p> <p>24 for, I don't know if you happen to have the pretrial</p>

<p style="text-align: right;">61</p> <p>1 order with you. Okay.</p> <p>2 THE COURT: I have a version of it</p> <p>3 that doesn't have the JXs.</p> <p>4 MR. GORRIS: That's fine. Because</p> <p>5 what I'm going to refer to is some language -- there's</p> <p>6 a document S-4 that's officially in the record, but</p> <p>7 the pretrial order is, frankly, 14-point font, and</p> <p>8 much easier to read.</p> <p>9 So if Your Honor could turn to</p> <p>10 paragraph 61 of the pretrial order. This is under the</p> <p>11 heading of "Reasons for the Offer" in the S-4, and</p> <p>12 there's a disclosure that includes a full, bolded</p> <p>13 paragraph about the call right. And I'm going to ask</p> <p>14 Mr. Cozza about this in this next clip.</p> <p>15 Joe, can you play the clip starting at</p> <p>16 page 119, line 22, please.</p> <p>17 (A video clip was played as follows:)</p> <p>18 Question: But that's only half of the</p> <p>19 pricing mechanism; right? Because we talked about</p> <p>20 before, there's a -- there's a concept that the price</p> <p>21 would either be -- that the 20-day volume-weighted</p> <p>22 market price, which is this current market price, or</p> <p>23 the price at which the general partner or any of its</p> <p>24 affiliates had purchased or acquired any CVR Refining</p>	<p style="text-align: right;">63</p> <p>1 the exchange."</p> <p>2 Do you see that?</p> <p>3 Answer: I do.</p> <p>4 Question: Did you -- do you have any</p> <p>5 input into that statement?</p> <p>6 Answer: No.</p> <p>7 Question: Do you know why it only</p> <p>8 references "at this time or upon the consummation of</p> <p>9 the exchange," instead of, you know, what the plans</p> <p>10 were in the future?</p> <p>11 Answer: I don't.</p> <p>12 (End of video clip.)</p> <p>13 MR. GORRIS: Your Honor, the next clip</p> <p>14 introduces a new concept that we haven't covered this</p> <p>15 morning, which is CVR Refining had LTIPs, which is a</p> <p>16 compensation plan for their employees. Those LTIPs</p> <p>17 were tied to CVR Refining unit price.</p> <p>18 This is -- I'm asking Mr. Cozza about</p> <p>19 a May 30 email. So that's -- that's the --</p> <p>20 effectively, the same time the exchange offer is being</p> <p>21 announced, about these LTIPs.</p> <p>22 It may be helpful, just when the clip</p> <p>23 is playing, to pull up JX 321, which is -- which is</p> <p>24 this email. But it's a -- it's a couple minutes of</p>
<p style="text-align: right;">62</p> <p>1 units in the last 90 days?</p> <p>2 Answer: I -- you'll have to repeat --</p> <p>3 let me just say this: I don't even know what this</p> <p>4 says, because I've never read this document before.</p> <p>5 So I -- I agree that my understanding that I told you</p> <p>6 before is I understood it. It was the 90-day</p> <p>7 look-back period, or whatever. This is -- this is</p> <p>8 legal gibberish to me.</p> <p>9 Question: Okay. But it doesn't</p> <p>10 reference in any way that 90-day look-back period;</p> <p>11 right? Instead, it only references the other portion</p> <p>12 of the pricing mechanism; correct?</p> <p>13 Answer: Yeah. Again, I don't even</p> <p>14 know what this says. I'm not going to try to</p> <p>15 interpret it. But, you know -- so the answer is I</p> <p>16 don't know. I know -- I agree, I can read the words</p> <p>17 back to you what this says, but I have no idea what</p> <p>18 it's saying.</p> <p>19 Question: And then if you continue to</p> <p>20 the next bolded paragraph. The conclusion of that</p> <p>21 paragraph says, "The general partner and its</p> <p>22 affiliates (including CVR Energy and Icahn Enterprises</p> <p>23 and its affiliates) have no current plans to exercise</p> <p>24 the call right at this time or upon consummation of</p>	<p style="text-align: right;">64</p> <p>1 clips, so Your Honor will have time to -- to reference</p> <p>2 that, if you'd like, during the clip.</p> <p>3 Okay. So JX 321.</p> <p>4 Joe, can you play the clip starting at</p> <p>5 page 129, line 8.</p> <p>6 (A video clip was played as follows:)</p> <p>7 Question: Okay. And -- and this is</p> <p>8 the day after the announcement of the exchange offer,</p> <p>9 and it's internal to CVR Energy. But what the email</p> <p>10 says is that the controller is raising a question to</p> <p>11 the CFO about the incentive units being tied to the</p> <p>12 CVRR unit performance, and that with the exchange and</p> <p>13 the expected significant decrease in public float,</p> <p>14 that perhaps management should reconsider if the</p> <p>15 employee incentive units should be tied to CVI stock;</p> <p>16 right?</p> <p>17 Answer: That's what this says.</p> <p>18 Question: Okay. And do you remember</p> <p>19 that issue coming up at the time?</p> <p>20 Answer: I don't recall it coming up</p> <p>21 to -- to me at -- in this time period. I recall the</p> <p>22 issue coming up at a later date.</p> <p>23 Question: Okay. But Mr. Lamp</p> <p>24 responds that -- that he had been thinking about it,</p>

<p style="text-align: right;">65</p> <p>1 and he had discussed it with you and the comp 2 committee. 3 Do you see that? 4 Answer: I do. 5 Question: Do you -- does that refresh 6 your recollection of any discussion with Mr. Lamp 7 about it? 8 Answer: No. 9 Question: Any reason to disagree and 10 think that Mr. Lamp is -- is lying here in his email 11 about having discussed this issue with you? 12 Answer: No. I have no reason to 13 think that Dave would lie about anything. I just have 14 no recollection of this. 15 Question: Okay. And do you recall, 16 ultimately, what happened with the -- with the 17 incentive units or LTIPs? 18 Answer: Yeah. So that -- which is 19 what I referred to as far as my recollection. I do 20 recall having a conversation, you know, sometime in Q1 21 of 2019, when they raised the point to me or they 22 flagged to me that, well, hey, we have an LTIP plan 23 and it now refers to a private security. And, you 24 know, we should -- we should fix that.</p>	<p style="text-align: right;">67</p> <p>1 Question: Okay. And -- and Mr. Lamp 2 is informing you that he and Mr. Damaris have a 3 meeting in Washington, D.C. in late June 2018 and 4 asking if you're available to meet with them. 5 Do you see that? 6 Answer: I do. 7 Question: And then he writes, "Maybe 8 a good time to get together with him and discuss a 9 path forward now that the exchange offer is out 10 there." 11 Do you see that? 12 Answer: I do. 13 Question: What does -- do you have 14 any understanding as to what Mr. Lamp is referencing 15 when he's talking about a path forward -- 16 Answer: I don't. 17 Question: -- in this email? 18 Answer: No, I don't. 19 Question: But you seemed to response 20 to say you understand it in realtime, right? Because 21 you just asked where the meeting would occur? 22 Answer: Well, I would disagree with 23 that characterization. Generally -- I get emails like 24 this all the time. I don't know what the hell they're</p>
<p style="text-align: right;">66</p> <p>1 Or -- when I say "fix that," we 2 should -- the intention of the Refining LTIP plan was 3 to refer to, I guess, CVR Refining's performance. And 4 since CVR Refining now got fully rolled up into CVI, 5 you know, the substantial majority of CVR -- or an 6 even bigger portion of Refining was now at CVI, and 7 Refining effectively became the same thing, with the 8 small exception of a -- of a fertilizer company we 9 own. 10 And so they said seems like we 11 should -- you know, these are my words -- redo the 12 LTIP plan going forward to reference the CVI stock 13 price. 14 (End of video clip.) 15 MR. GORRIS: Your Honor, the next clip 16 is on a different topic. It's about a week later. 17 It's an email on June 7, 2018, from Mr. Lamp to 18 Mr. Cozza about a potential meeting with George 19 Damiris, who is -- or was then the chief executive 20 officer of HollyFrontier. 21 For the record, that email is JX 351. 22 Joe, can you play the clip starting at 23 page 132, line 20, please. 24 (A video clip was played as follows:)</p>	<p style="text-align: right;">68</p> <p>1 talking about, but what I do know is that they want to 2 have a meeting. First thing is I'm not traveling 3 anywhere, so I wanted to -- I'm always happy to meet, 4 but my CEO is in town, so I replied, "in New York?" 5 Question: Okay. And do you recall 6 meeting with Mr. Lamp and Mr. Demiris? 7 Answer: No. To my recollection, I 8 don't believe this meeting ever occurred. 9 (End of video clip.) 10 MR. GORRIS: Your Honor, the next clip 11 concerns JX 383, which is a letter from Butler Hall 12 Capital. It may be helpful to the Court to pull that 13 up. The particular Exhibit, JX 383, is an email from 14 John Walter, then the GC, sending it to the board of 15 CVR Refining. 16 And in particular, what we're going to 17 talk about in the letter is, if you go to what's been 18 marked as page 5 of 6 of JX 383, Butler Hall has a 19 section of their letter that's titled "Squeeze Out 20 Concerns." 21 Joe, can you play the clip starting at 22 page 137, line 7, please. 23 (A video clip was played as follows:) 24 Question: If you go to the -- the</p>

<p style="text-align: right;">69</p> <p>1 last page of the letter, Butler Hall raises</p> <p>2 "squeeze-out concerns," includes a full section in it</p> <p>3 on their letter.</p> <p>4 Do you see that?</p> <p>5 Answer: I do.</p> <p>6 Question: And their concern is that</p> <p>7 the risk of a squeeze-out would severely short-change</p> <p>8 the remaining CVRR unitholders.</p> <p>9 Do you see that?</p> <p>10 Answer: I do.</p> <p>11 Question: Do you recall any</p> <p>12 discussions about that issue?</p> <p>13 Answer: No.</p> <p>14 Question: Butler Hall continues, "The</p> <p>15 notion that unitholders who do not tender their units</p> <p>16 into CVI stock may find themselves forced out of their</p> <p>17 ownership at a grossly undervalued price is a material</p> <p>18 negative and one that the Board should seek to</p> <p>19 prevent."</p> <p>20 Do you see that?</p> <p>21 Answer: I do see that.</p> <p>22 Question: Ever discuss that issue?</p> <p>23 Answer: No. Not -- not personally,</p> <p>24 no.</p>	<p style="text-align: right;">71</p> <p>1 understand that a buyer -- you know, in an exchange</p> <p>2 offer, there's an acquiror and an acquiree. So by</p> <p>3 definition, there is some different interests, but</p> <p>4 that goes with, you know, almost any exchange/tender</p> <p>5 type offer, right, at least that I do.</p> <p>6 (End of video clip.)</p> <p>7 MR. GORRIS: Joe, can you now play the</p> <p>8 clip starting at page 146, line 2, please.</p> <p>9 (A video clip was played as follows:)</p> <p>10 Question: And my question is, like,</p> <p>11 how does -- how is someone like Mr. Cho, who is on</p> <p>12 both boards, how is he supposed to respond when there</p> <p>13 are differing interests?</p> <p>14 Answer: I don't know.</p> <p>15 Question: Did you ever think about</p> <p>16 that issue as to whether or not there should be</p> <p>17 someone specifically who didn't have divided interests</p> <p>18 that was looking out for the interests of CVRR and the</p> <p>19 CVRR unitholders?</p> <p>20 Answer: Sorry. Can you just repeat</p> <p>21 the first part again?</p> <p>22 Question: Yeah, sure. Did you ever</p> <p>23 think about the issue when there's a conflicting</p> <p>24 interest between CVR Energy and CVRR and its -- and</p>
<p style="text-align: right;">70</p> <p>1 Question: Do you know if the CVRR</p> <p>2 board discussed that issue?</p> <p>3 Answer: I don't.</p> <p>4 (End of video clip.)</p> <p>5 MR. GORRIS: Your Honor, the next</p> <p>6 video clip concerns the July 9, 2018, board meeting of</p> <p>7 CVR Refining's general partner to discuss the Butler</p> <p>8 Hall Capital letter.</p> <p>9 For the record, the minutes of this</p> <p>10 meeting are JX 403.</p> <p>11 Joe, can you play the clip starting at</p> <p>12 page 144, line 20, please.</p> <p>13 (A video clip was played as follows:)</p> <p>14 Question: Do you think it's odd</p> <p>15 that -- that you would be there and Mr. Icahn would be</p> <p>16 there and Mr. Lynn would be there, and Mr. Nevin, and</p> <p>17 there wouldn't be any -- wouldn't be any separate or</p> <p>18 executives session where it just involved the</p> <p>19 independent directors of CVRR?</p> <p>20 Answer: I don't think that's odd.</p> <p>21 Question: Did you understand that --</p> <p>22 that CVR Energy and the CVRR unitholders had differing</p> <p>23 interests with respect to the exchange offer?</p> <p>24 Answer: I guess I would say I</p>	<p style="text-align: right;">72</p> <p>1 the CVRR unitholders, whether or not there should be</p> <p>2 specific folks who were unconflicted and looking out</p> <p>3 for the interests of CVRR and CVRR unitholders?</p> <p>4 Answer: No, no. I -- not only did I</p> <p>5 not think about it, I -- as a business person, I don't</p> <p>6 think of those type of issues. That's why we have all</p> <p>7 these lawyers. Like, these lawyers are at these</p> <p>8 meetings, and they give advice. You know, they advise</p> <p>9 us as operators. They advise the board of what</p> <p>10 issues -- you're asking me very technical legal</p> <p>11 questions that I have no view on, that -- that lawyers</p> <p>12 handle. This is a blanket statement I'm giving you.</p> <p>13 (End of video clip.)</p> <p>14 MR. GORRIS: Your Honor, the next</p> <p>15 video, I asked Mr. Cozza about a July 23, 2018, email</p> <p>16 from Mr. Lamp concerning a question in a J.P. Morgan</p> <p>17 analyst report. This analyst report is one of the</p> <p>18 preview reports that comes out after the initial press</p> <p>19 release but before the earnings call.</p> <p>20 For the record, the email is JX 422.</p> <p>21 Joe, can you play the clip starting at</p> <p>22 page 150, line 8.</p> <p>23 (A video clip was played as follows:)</p> <p>24 Question: Okay. What's been marked</p>

<p style="text-align: right;">73</p> <p>1 as Cozza Exhibit 13, the bottom email of the chain is</p> <p>2 a J.P. Morgan second-quarter 2018 preview report for</p> <p>3 CVR Refining, which got sent to Mr. Finks at CVR</p> <p>4 Energy and then distributed to a number of other</p> <p>5 executives, including Mr. Lamp.</p> <p>6 And Mr. Lamp then forwards the email</p> <p>7 to you on July 23, 2018.</p> <p>8 Do you see that?</p> <p>9 Answer: I do.</p> <p>10 Question: And Mr. Lamp is quoting one</p> <p>11 of the -- what J.P. Morgan has identified as key topic</p> <p>12 areas for the conference call, but specifically, the</p> <p>13 item called "exchange offer update."</p> <p>14 Do you see that?</p> <p>15 Answer: I do.</p> <p>16 Question: And there's a question from</p> <p>17 J.P. Morgan: "Is there any strategic update regarding</p> <p>18 leaving 5% float outstanding?"</p> <p>19 Do you see that?</p> <p>20 Answer: I do.</p> <p>21 Question: And then Mr. Lamp's asking:</p> <p>22 "Keith, what is your answer to the strategic part of</p> <p>23 this question?"</p> <p>24 Do you see that?</p>	<p style="text-align: right;">75</p> <p>1 to stock up on and we can all stock up on some coffee.</p> <p>2 THE COURT: Yeah. Let's take a</p> <p>3 15-minute break.</p> <p>4 Before we do, I find, actually, the</p> <p>5 factual statements in between clips very helpful.</p> <p>6 Mr. Czeschin, do you have any concerns</p> <p>7 so far about the kind of transition statements made by</p> <p>8 Mr. Gorris?</p> <p>9 MR. CZESCHIN: No. So far, I think as</p> <p>10 long as they're kept short and factual, they seem to</p> <p>11 be working.</p> <p>12 THE COURT: Excellent. Thank you.</p> <p>13 We'll break for 15 minutes.</p> <p>14 (Recess taken, 10:44 a.m.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">74</p> <p>1 Answer: I do.</p> <p>2 Question: Do you remember discussing</p> <p>3 that issue with Mr. Lamp?</p> <p>4 Answer: I don't.</p> <p>5 Question: Do you -- do you know what</p> <p>6 the answer was as to the -- the strategic reason for</p> <p>7 leaving the 5 percent float outstanding?</p> <p>8 Objection. Asked and answered.</p> <p>9 Answer: I don't. Yeah, I don't.</p> <p>10 Question: So you don't -- you don't</p> <p>11 have an answer for the strategic rationale for leaving</p> <p>12 the 5 percent of the float of CVR Refining</p> <p>13 outstanding?</p> <p>14 Answer: I don't have a recollection</p> <p>15 of answering him. Unless you're going to tell me --</p> <p>16 unless you're going to show me that I did respond. I</p> <p>17 just don't remember it.</p> <p>18 (End of video clip.)</p> <p>19 MR. GORRIS: Your Honor, by my clock,</p> <p>20 it's 10:43. I know the Court normally likes to take a</p> <p>21 break at 10:45.</p> <p>22 I have a series of clips that's about</p> <p>23 four minutes that I think would be helpful to play</p> <p>24 together. I give Your Honor the choice if you'd like</p>	<p style="text-align: right;">76</p> <p>1 (Resumed at 11:00 a.m.)</p> <p>2 THE COURT: Please continue,</p> <p>3 Mr. Gorris.</p> <p>4 MR. GORRIS: Your Honor, the next</p> <p>5 series of clips, I asked Mr. Cozza about the July 27,</p> <p>6 2018, Tudor Pickering report, which we looked at with</p> <p>7 Mr. Jampel earlier. For the record -- and the series</p> <p>8 of internal email about that report as well. For the</p> <p>9 record, those documents are JX 455, JX 453, and</p> <p>10 JX 458.</p> <p>11 Joe, could you play the clip starting</p> <p>12 at page 156, line 13, please.</p> <p>13 (A video clip was played as follows:)</p> <p>14 Question: What's been marked as Cozza</p> <p>15 Exhibit 15, the bottom email in the chain is from</p> <p>16 Michael Blair to Tudor Pickering on July 27, 2018, to</p> <p>17 David Lamp, with the summary of his analyst report for</p> <p>18 Q2 2018 for CVRR. Do you see that?</p> <p>19 Answer: I do.</p> <p>20 Question: And Mr. Blair is</p> <p>21 downgrading CVRR to hold on concerns of depressed</p> <p>22 valuation resulting from CVI's pending exchange offer.</p> <p>23 Do you see that?</p> <p>24 Answer: I do.</p>

<p style="text-align: right;">77</p> <p>1 Question: And then Mr. Lamp forwarded 2 this to you. Do you see that? 3 Answer: Yeah, I do. 4 Question: Do you recall either 5 looking at this email or looking at the underlying 6 Tudor Pickering report? 7 Answer: No, I don't recall. 8 (End of video clip.) 9 MR. GORRIS: Joe, can you play the 10 clip starting at page 157, line 19. 11 (A video clip was played as follows:) 12 Question: Mr. Cozza, what's been 13 marked as Cozza Exhibit 16 is the Tudor Pickering 14 report on CVR Refining from July 27, 2018. Do you see 15 that? 16 Answer: I do. 17 Question: Looking at this, does this 18 refresh your recollection that you saw this report? 19 Answer: No. I definitely have never 20 seen this report. I don't have access to it. 21 (End of video clip.) 22 MR. GORRIS: Joe, can you play the 23 clip starting at page 159, line 5, please. 24 (A video clip was played as follows:)</p>	<p style="text-align: right;">79</p> <p>1 recollection that I never heard of it before talking 2 to the lawyers, and I've never seen this report. 3 Question: And when you say when you 4 confirmed your recollection that you never heard of it 5 before talking to the lawyers, what point in time are 6 you referencing that you spoke to lawyers about the 7 Boardwalk Pipeline and Loews? 8 Answer: Yesterday at 5:00. 9 Question: Do you recall discussing it 10 or being aware of the Boardwalk Pipeline-Loews 11 situation at any time prior to yesterday at 5:00? 12 Answer: I don't recall having heard 13 of it. 14 (End of video clip.) 15 MR. GORRIS: Joe, can you now play the 16 clip starting at page 163, line 7, please. 17 (A video clip was played as follows:) 18 Question: Mr. Cozza, you're able to 19 pull up what's been marked as Cozza Exhibit 17? 20 Answer: It's pulling up right now. 21 One second. Okay. 22 Question: If you look at what's been 23 marked as Cozza Exhibit 17, it's an email from you to 24 Jesse Lynn on July 27, 2018, with an attachment that's</p>
<p style="text-align: right;">78</p> <p>1 Question: Did you ever discuss the 2 issue of how the lower float at CVRR might impact 3 the -- impact CVRR or the CVRR units post the exchange 4 offer? 5 Answer: No. 6 Question: Did you ever discuss or 7 evaluate the issue that post the exchange offer CVRR 8 might lose its position in the Alerian Index? 9 Answer: Not only did I not evaluate 10 it, I don't even know what the Alerian Index is. 11 (End of video clip.) 12 MR. GORRIS: Joe, can you play the 13 clip starting at page 161, line 18, next. 14 (A video clip was played as follows:) 15 Question: If you flip to page 4 of 16 this Tudor Pickering report, you'll see a reference to 17 "Recent call option example BWP and Loews." Do you 18 see that? 19 Answer: I see it. Yes, I see it on 20 page 4. 21 Question: Does this refresh your 22 recollection that you were aware of the Boardwalk 23 Pipeline-Loews call right situation? 24 Answer: No. No. It confirms my</p>	<p style="text-align: right;">80</p> <p>1 got some sort of unintelligible PDF name. Do you see 2 that? 3 Answer: I do. 4 Question: And what the attachment is 5 is the Tudor Pickering report that we had just been 6 looking at. Do you see that? 7 Answer: I do. 8 Question: Do you know why you were 9 forwarding this Tudor Pickering report to Mr. Lynn on 10 July 27, 2018? 11 Answer: I don't know why. 12 Question: Does this refresh your 13 recollection that you had a copy of the Tudor 14 Pickering report on July 27, 2018? 15 Answer: It doesn't refresh my 16 recollection. I question how I would get a copy of 17 it. But, anyway, I don't remember ever seeing this 18 report. 19 (End of video clip.) 20 MR. GORRIS: Your Honor, the next two 21 videos may be familiar from a bit earlier this 22 morning. They concern the September 21, 2018, email 23 from HITE about their analysis concerning the call 24 right. And what it is, it's Mr. Lamp forwarding that</p>

<p style="text-align: right;">81</p> <p>1 analysis to Mr. Cozza. For the record, that email is</p> <p>2 JX 539.</p> <p>3 Joe, can you play the clip starting at</p> <p>4 page 189, line 3, please.</p> <p>5 (A video clip was played as follows:)</p> <p>6 Question: The top email in the chain</p> <p>7 is from Dave Lamp to you on September 21st, 2018. And</p> <p>8 he's forwarding -- well, it's an email chain and an</p> <p>9 analysis from HITE Hedge saying, "We have a conference</p> <p>10 call with this guy today. I think his math is right.</p> <p>11 Any thoughts?" Do you see that?</p> <p>12 Answer: I do.</p> <p>13 Question: Now, was this -- had you</p> <p>14 talked to Mr. Lamp or anyone else about HITE prior to</p> <p>15 receiving this email message?</p> <p>16 Answer: Not that I recall.</p> <p>17 Question: Do you recall looking at</p> <p>18 HITE's analysis at this time?</p> <p>19 Answer: I don't remember seeing it.</p> <p>20 Is it in this email? Because I don't see anything</p> <p>21 here.</p> <p>22 Question: I can give you -- I mean,</p> <p>23 it's attached. I can give you the underlying</p> <p>24 analysis, if that would help.</p>	<p style="text-align: right;">83</p> <p>1 (End of video clip.)</p> <p>2 MR. GORRIS: Your Honor, the next</p> <p>3 video concerns -- this is also, I think, something we</p> <p>4 talked about with Mr. Jampel, or covered with</p> <p>5 Mr. Jampel -- an October 4, 2018, email and attached</p> <p>6 letter from HITE concerning the call right. That</p> <p>7 email is JX 550. And I think it would be helpful for</p> <p>8 Your Honor to pull that up, if you're able to.</p> <p>9 What you see when you look at JX 550,</p> <p>10 on the first page is an email from Mr. Jampel to</p> <p>11 Mr. Lamp and Mr. Finks at CVR. What I'm going to ask</p> <p>12 Mr. Cozza about is the item that starts with</p> <p>13 "First"</p> <p>14 But what you see in the email chain is</p> <p>15 that after receiving this, Mr. Finks forwards it,</p> <p>16 mainly internally to CVR, to Tracy Jackson, who's the</p> <p>17 CFO, to Melissa Buhrig, who's the general counsel, but</p> <p>18 he also copies Mr. Cozza. And then Mr. Cozza forwards</p> <p>19 it to Jesse Lynn, who's general counsel at Icahn</p> <p>20 Enterprises.</p> <p>21 With that background, Joe, can you</p> <p>22 play the clip starting at page 206. That's KC42.</p> <p>23 (A video clip was played as follows:)</p> <p>24 Question: But it is the case that,</p>
<p style="text-align: right;">82</p> <p>1 Answer: I don't remember looking at</p> <p>2 it.</p> <p>3 (End of video clip.)</p> <p>4 MR. GORRIS: Joe, can you now play the</p> <p>5 clip starting at page 191, line 7 [sic], please.</p> <p>6 (A video clip was played as follows:)</p> <p>7 Question: Now, this was during the</p> <p>8 time period when the -- it was still less than 90 days</p> <p>9 out from when the exchange offer closed; right?</p> <p>10 Answer: I accidentally just closed</p> <p>11 the document. The date is September 19th the exchange</p> <p>12 offer closed. The date on this is September 21st. I</p> <p>13 remember the exchange offer ending in July sometime.</p> <p>14 So it would be approximately two months, two and a</p> <p>15 half months, I don't know.</p> <p>16 Question: Right. So if CVI had</p> <p>17 exercised the call right at this time, it would have</p> <p>18 had to pay the consideration that was paid in the</p> <p>19 exchange offer, right, rather than the -- rather than</p> <p>20 the market price, as HITE is suggesting; correct?</p> <p>21 Answer: I was not aware of that. I</p> <p>22 understand you're saying that, but I was not aware of</p> <p>23 that. And I'm not aware of it, unless what you're</p> <p>24 saying is deemed fact.</p>	<p style="text-align: right;">84</p> <p>1 for example, looking at Cozza Exhibit 21, "We believe</p> <p>2 your upcoming capital projects would be best funded by</p> <p>3 retaining cash at CVRR in the short-term." That's on</p> <p>4 October 4th, 2018. And then less than three weeks</p> <p>5 later, you are retaining cash for upcoming capital</p> <p>6 projects; right?</p> <p>7 Answer: We -- we did retain some cash</p> <p>8 for operating projects or capital projects, that is</p> <p>9 correct.</p> <p>10 (End of video clip.)</p> <p>11 MR. GORRIS: Your Honor, the next</p> <p>12 video goes back to this topic of the LTIPs. And the</p> <p>13 timing for this is November 26th, 2018, which is the</p> <p>14 same day as the board meeting about the call right</p> <p>15 exercise and three days before the 8-K to the market</p> <p>16 about considering the call right exercise. For the</p> <p>17 record, the email that's getting talked about is</p> <p>18 JX 684.</p> <p>19 Joe, can you play the clip starting at</p> <p>20 page 215, line 15, please.</p> <p>21 (A video clip was played as follows:)</p> <p>22 Question: Okay. And I think what you</p> <p>23 testified earlier today was a proposal related to the</p> <p>24 LTIP following the call exercise when CVRR was no</p>

<p style="text-align: right;">85</p> <p>1 longer publicly traded; right?</p> <p>2 Answer: That's correct.</p> <p>3 Question: Okay. And this looks to be</p> <p>4 something different, at least to me, which is a</p> <p>5 proposal to adjust the LTIP payout for purposes of the</p> <p>6 payment that was going to be paid in December 2018 on</p> <p>7 the LTIPs.</p> <p>8 Is that consistent with your</p> <p>9 understanding of this document and recollection of</p> <p>10 this issue?</p> <p>11 Answer: I mean, I honestly don't have</p> <p>12 an understanding of this document, unless I went</p> <p>13 through it in detail and tried to remember specifics.</p> <p>14 I don't remember specifically. But generally it looks</p> <p>15 like some sort of analysis, I mean, based on what I'm</p> <p>16 looking at, to adjust the LTIPs because of some</p> <p>17 divergence in market caps.</p> <p>18 (End of video clip.)</p> <p>19 MR. GORRIS: Your Honor, I'm going to</p> <p>20 apologize. In my transition, I said the email was</p> <p>21 November 26th. It's actually November 20, so it's a</p> <p>22 week ahead of time. I'm sorry about that.</p> <p>23 But the next series of videos is about</p> <p>24 that November 26, 2018, CVR Energy board meeting</p>	<p style="text-align: right;">87</p> <p>1 specific meetings themselves, or which was a board</p> <p>2 meeting and which wasn't, related to exercising the</p> <p>3 call option or what that would entail.</p> <p>4 (End of video clip.)</p> <p>5 MR. GORRIS: Joe, can you now play the</p> <p>6 clip starting at page 227, line 17, please.</p> <p>7 (A video clip was played as follows:)</p> <p>8 Question: Okay. And this issue of</p> <p>9 determining who -- determining what to disclose about</p> <p>10 the call right, do you recall when that first came up?</p> <p>11 Answer: I don't. I don't recall the</p> <p>12 exact date.</p> <p>13 Question: Now, what's your</p> <p>14 recollection about the process by which the general</p> <p>15 partner decided to start considering exercise of the</p> <p>16 call?</p> <p>17 Answer: I don't really have a good</p> <p>18 recollection of the process related to that.</p> <p>19 Question: Do you recall who came up</p> <p>20 with the idea to start considering exercising the call</p> <p>21 right?</p> <p>22 Answer: I don't.</p> <p>23 Question: Was it something that you</p> <p>24 were involved in, or was it something that CVR Energy</p>
<p style="text-align: right;">86</p> <p>1 concerning the call right and related matters. On</p> <p>2 this one, I think it would be helpful for the Court to</p> <p>3 have the minutes of that meeting up. That's JX 722.</p> <p>4 Joe, can you play the clip starting at</p> <p>5 page 226, line 12, please.</p> <p>6 (A video clip was played as follows:)</p> <p>7 Question: Do you recall a board</p> <p>8 meeting to discuss whether or not to exercise or</p> <p>9 consider exercising the call right?</p> <p>10 Answer: My general recollection --</p> <p>11 and I apologize, I can't be more specific -- is I</p> <p>12 remember a meeting to discuss updated disclosure when</p> <p>13 the board did ultimately decide that they were at</p> <p>14 least looking into this call right, updated disclosure</p> <p>15 to correct -- well, I wouldn't even describe it as</p> <p>16 correct -- to update the market that we were actually</p> <p>17 looking at it, given that Dave Lamp in at least two</p> <p>18 earnings calls, the way I recollect it, answered</p> <p>19 specific questions related to it and gave the truth</p> <p>20 and said, no, we're not considering it at this time.</p> <p>21 And so the information in the</p> <p>22 marketplace was we're not, and it appeared that now</p> <p>23 the board was considering it. So I do remember a</p> <p>24 meeting related to that. I don't remember the</p>	<p style="text-align: right;">88</p> <p>1 management reached out to you and said, "Hey, we've</p> <p>2 decided to start considering exercise of the call</p> <p>3 right"?</p> <p>4 Answer: I just don't remember where</p> <p>5 it originated.</p> <p>6 Question: So you don't -- you don't</p> <p>7 recall if this initiation of the consideration of the</p> <p>8 call right occurred at the CVR Energy level or</p> <p>9 occurred up the Icahn Enterprises level?</p> <p>10 Answer: No, I don't.</p> <p>11 (End of video clip.)</p> <p>12 MR. GORRIS: Your Honor, I'm next</p> <p>13 going to ask about the minutes themselves, if you've</p> <p>14 got them up. It's JX 722. And in particular, if you</p> <p>15 go to the second page of the minutes, there's bullet</p> <p>16 point 2, "Introductory Comments." And that's what I'm</p> <p>17 going to ask Mr. Cozza about in the next clip.</p> <p>18 Joe, can you play the clip starting at</p> <p>19 page 231, line 16, please.</p> <p>20 (A video clip was played as follows:)</p> <p>21 Question: Do you see this</p> <p>22 introductory comment section of these board minutes</p> <p>23 for November 26, 2018?</p> <p>24 Answer: I do. No. 2?</p>

<p style="text-align: right;">89</p> <p>1 Question: Yeah, No. 2. And it says,</p> <p>2 "The Board affirmed that, neither the Company nor the</p> <p>3 Board has previously considered, evaluated or</p> <p>4 contemplated the exercise of the call right"</p> <p>5 Do you see that?</p> <p>6 Answer: I do.</p> <p>7 Question: Do you recall anything</p> <p>8 about how -- how this actually took place at the board</p> <p>9 meeting, that there was an affirmation by the board</p> <p>10 that neither the company or the board had previously</p> <p>11 considered, evaluated, or contemplated the exercise of</p> <p>12 the call right?</p> <p>13 Answer: I don't.</p> <p>14 Question: I mean, it's a very strange</p> <p>15 thing to me. I'm just trying to understand how -- how</p> <p>16 it happened that the full board makes this affirmation</p> <p>17 at the start of the meeting. Was there -- do you</p> <p>18 recall if people went around and called on folks or</p> <p>19 asked people to raise their hand, how that happened?</p> <p>20 Answer: I don't. I don't even</p> <p>21 remember this meeting, let alone something of that</p> <p>22 level of detail.</p> <p>23 Question: Can you think of other</p> <p>24 situations where you started a board meeting by making</p>	<p style="text-align: right;">91</p> <p>1 (A video clip was played as follows:)</p> <p>2 Question: Now, but do you recall who</p> <p>3 made the decision of whether or not to exercise the</p> <p>4 call right?</p> <p>5 Answer: I don't specifically.</p> <p>6 Question: Do you recall generally who</p> <p>7 made the decision to exercise the call right?</p> <p>8 Answer: No. The only reason I said</p> <p>9 "specifically" is because you said the CVR board</p> <p>10 obviously did it, right? So I don't know if there was</p> <p>11 one board member or collectively as a board. My</p> <p>12 recollection was it was unanimous.</p> <p>13 (End of video clip.)</p> <p>14 MR. GORRIS: Joe, can you now play the</p> <p>15 clip starting at page 236, line 6, please.</p> <p>16 (A video clip was played as follows:)</p> <p>17 Question: Did you have any role in</p> <p>18 evaluating whether to exercise the call right?</p> <p>19 Answer: Not that I recall.</p> <p>20 (End of video clip.)</p> <p>21 MR. GORRIS: Joe, can you play the</p> <p>22 clip starting at page 237, line 2.</p> <p>23 (A video clip was played as follows:)</p> <p>24 Question: Generally, do you recall</p>
<p style="text-align: right;">90</p> <p>1 an affirmation?</p> <p>2 Answer: I don't even know -- I can't,</p> <p>3 because this is all technical board legal mumbo-jumbo</p> <p>4 to me, no offense to the lawyers. But -- so I don't</p> <p>5 know if this is normal or not normal. I wouldn't</p> <p>6 know. It's not something I think about. I don't</p> <p>7 attend half these board meetings, let alone understand</p> <p>8 the technical legal aspects of what these processes</p> <p>9 are.</p> <p>10 Question: Okay. But I'm just -- you</p> <p>11 attend a lot of board meetings, right. And so I'm</p> <p>12 just asking if you've ever encountered a situation</p> <p>13 where at the start of the board meeting the board</p> <p>14 makes an affirmation that something has or has not</p> <p>15 occurred and then proceeds into discussion.</p> <p>16 Answer: Yeah, I can't think of any</p> <p>17 off the top of my head.</p> <p>18 (End of video clip.)</p> <p>19 MR. GORRIS: Your Honor, in the next</p> <p>20 series of clips, we're going to play them relatively</p> <p>21 straight through, I ask Mr. Cozza about the out</p> <p>22 evaluation and decision to exercise the call right.</p> <p>23 Joe, can you play the clip starting at</p> <p>24 page 235, line 7, please.</p>	<p style="text-align: right;">92</p> <p>1 anything about when you learned about this decision to</p> <p>2 exercise the call right?</p> <p>3 Answer: No.</p> <p>4 (End of video clip.)</p> <p>5 MR. GORRIS: Can you play the clip</p> <p>6 starting at page 238, line 14, please.</p> <p>7 (A video clip was played as follows:)</p> <p>8 Question: Okay. And then you know</p> <p>9 this disclosure in November said it's -- there can be</p> <p>10 no assurance that CVI will exercise the call right?</p> <p>11 Answer: Okay. That sounds like 8-K</p> <p>12 language.</p> <p>13 Question: Okay. But once the</p> <p>14 decision was made to exercise the call right, were you</p> <p>15 equally concerned about announcing that the</p> <p>16 determination had been made and you were just working</p> <p>17 through timing?</p> <p>18 Answer: Yeah. I mean, when you say</p> <p>19 "concerned," the only -- let me just clarify your</p> <p>20 question earlier. You asked me when we made this --</p> <p>21 when the decision was made, did we make it public.</p> <p>22 I'm just not sure of the exact 8-K rules; was it made</p> <p>23 that day or was it made three days later. But</p> <p>24 obviously it was disclosed. I just don't know the</p>

<p style="text-align: right;">93</p> <p>1 exact date.</p> <p>2 Question: Okay. And -- but your</p> <p>3 recollection is there was a decision made to exercise</p> <p>4 the call right, and then you worked on it with folks</p> <p>5 on determining the exact timing of the exercise;</p> <p>6 right?</p> <p>7 Answer: Yeah, of tracking the</p> <p>8 calculation.</p> <p>9 Question: Was there -- post this</p> <p>10 November 26th board meeting, was there ever any</p> <p>11 consideration of not exercising the call right?</p> <p>12 Answer: I don't know.</p> <p>13 (End of video clip.)</p> <p>14 MR. GORRIS: Can you now play the clip</p> <p>15 starting -- the next clip starting at page 241, line</p> <p>16 13, please.</p> <p>17 (A video clip was played as follows:)</p> <p>18 Question: Did you have, yourself, a</p> <p>19 view as to whether or not CVR Energy should exercise</p> <p>20 the call right?</p> <p>21 Answer: Well, I mean, I think it</p> <p>22 depends. My view, the lower the stock price goes, if</p> <p>23 there's not underlying fundamental significant</p> <p>24 long-term fundamental changes in the business,</p>	<p style="text-align: right;">95</p> <p>1 analysis?</p> <p>2 Answer: Well, generally, I would have</p> <p>3 thought and continued to think and evaluate the</p> <p>4 perceived value of MLPs in the marketplace at the</p> <p>5 time.</p> <p>6 (End of video clip.)</p> <p>7 MR. GORRIS: Your Honor, the next</p> <p>8 clip, same broad topic, but talking about the press</p> <p>9 release from HITE Hedge in early December.</p> <p>10 Joe, can you play the clip starting at</p> <p>11 page 256, line 25, please.</p> <p>12 (A video clip was played as follows:)</p> <p>13 Question: You see in point 5, he's</p> <p>14 saying the call right for the remaining units is based</p> <p>15 upon the 20 days preceding the three days prior to</p> <p>16 your exercise of the call right. "The price is</p> <p>17 currently about 16.74, which is far above today's</p> <p>18 price of 14.36. Given the recent downward trajectory</p> <p>19 of the CVRR unit price, we believe that the call price</p> <p>20 will decline as time passes, especially if CVRR's unit</p> <p>21 price continues declining. Per the exhibit, CVI</p> <p>22 Energy can save over \$150 million should it wait to</p> <p>23 exercise the call until CVRR's unit price has reached</p> <p>24 \$10."</p>
<p style="text-align: right;">94</p> <p>1 obviously, the -- and what our -- you know, what we</p> <p>2 have as an obligation to CVI owners, to those</p> <p>3 shareholders, you know, it's all -- it's relevant. So</p> <p>4 at a lower price, depending on what our obligations</p> <p>5 are to maximize value for CVI's shareholders, it could</p> <p>6 be good to do it. On the other hand, it also could be</p> <p>7 good to keep that optionality of having an MLP</p> <p>8 outstanding.</p> <p>9 Question: Okay. And what did you do</p> <p>10 to balance those considerations in this time period?</p> <p>11 Answer: I don't think I did anything,</p> <p>12 frankly, other than, you know, thought about, thought</p> <p>13 about, tried to think about various sides of the</p> <p>14 issue.</p> <p>15 Question: Did you try and think about</p> <p>16 the -- this potential optionality value that you</p> <p>17 talked about keeping the MLP open?</p> <p>18 Answer: I did. I did. That would</p> <p>19 have been a pro and/or a con of something we'd be</p> <p>20 giving up.</p> <p>21 Question: And what type of analysis</p> <p>22 did you do in connection with that?</p> <p>23 Answer: I couldn't say specifically.</p> <p>24 Question: Generally, did you do any</p>	<p style="text-align: right;">96</p> <p>1 Do you see that?</p> <p>2 Answer: I do.</p> <p>3 Question: What was the call exercise</p> <p>4 price?</p> <p>5 Answer: Generally speaking, somewhere</p> <p>6 between 10 and \$11 is my recollection.</p> <p>7 Question: Okay. And do you recall</p> <p>8 thinking about this issue or analyzing this issue</p> <p>9 about how the call exercise price would drop over time</p> <p>10 in light of CVR unit price and its trajectory?</p> <p>11 Answer: No, I don't.</p> <p>12 Question: So Mr. Jampel is sending</p> <p>13 you a letter saying that CVR Energy can save</p> <p>14 \$150 million if it times the call exercise, and you</p> <p>15 don't recall evaluating that issue, how and whether</p> <p>16 and when to time the call exercise?</p> <p>17 Answer: No. I actually don't even</p> <p>18 remember seeing this letter that you say is a public</p> <p>19 press release. So obviously I couldn't have -- well,</p> <p>20 I don't remember evaluating it if I don't remember the</p> <p>21 letter. So -- but just reading it now, it's just --</p> <p>22 this is just one guy's opinion with a fund.</p> <p>23 Question: Yeah. But did you -- you</p> <p>24 didn't think about this, you didn't evaluate, like,</p>

<p style="text-align: right;">97</p> <p>1 how the call exercise price would move over time?</p> <p>2 Answer: I didn't evaluate it in that</p> <p>3 sense. You know, we tracked it and calculated it, you</p> <p>4 know, pursuant to the way the calculation worked. But</p> <p>5 I don't recall -- I don't have a recollection of</p> <p>6 thinking about will it go higher or will it go lower.</p> <p>7 You know, that's an opinion of value on top of other</p> <p>8 technical factors, such as people buying it, people</p> <p>9 selling it, could it go higher. I didn't spend a lot</p> <p>10 of time thinking about it.</p> <p>11 Question: But, look, somebody has to</p> <p>12 make the decision about when to actually exercise the</p> <p>13 call right; right?</p> <p>14 Answer: Yeah. At some point somebody</p> <p>15 has to make the decision.</p> <p>16 Question: And, look, it was in Icahn</p> <p>17 Enterprises' interest to time it to be the lowest</p> <p>18 possible call exercise price; right?</p> <p>19 Answer: Yeah, it was in CVI's</p> <p>20 interest to purchase the units at the lowest possible</p> <p>21 price. That's a mathematical fact.</p> <p>22 Question: Okay. And notwithstanding</p> <p>23 that, you're testifying you never actually analyzed</p> <p>24 and looked at that, thought about the trajectory for</p>	<p style="text-align: right;">99</p> <p>1 Question: No, Mr. Finks prepared some</p> <p>2 notes for the business of making his presentation to</p> <p>3 the board.</p> <p>4 Answer: Oh, not in the minutes.</p> <p>5 You're saying this is somebody else's notes related to</p> <p>6 the meeting?</p> <p>7 Question: Yeah. Because --</p> <p>8 Answer: All right. Yeah, I have no</p> <p>9 idea what his notes are.</p> <p>10 Question: I'm not asking what his</p> <p>11 notes are. I'm asking do you recall this issue of --</p> <p>12 Answer: No. No.</p> <p>13 Question: Do you recall discussing</p> <p>14 that many of the investors were mentioning the</p> <p>15 Boardwalk transaction?</p> <p>16 Answer: No.</p> <p>17 Question: That Fidelity was fixated</p> <p>18 on the 8-K filing and mentioned the Boardwalk</p> <p>19 transaction?</p> <p>20 Mr. Beigel: Object to the form of the</p> <p>21 question.</p> <p>22 Answer: Yeah. No, I don't remember</p> <p>23 any of this.</p> <p>24 Question: So a bunch of the</p>
<p style="text-align: right;">98</p> <p>1 the unit price and how to -- how and when to time the</p> <p>2 call exercise?</p> <p>3 Answer: Yeah. I just don't really</p> <p>4 recall thinking about it.</p> <p>5 (End of video clip.)</p> <p>6 MR. GORRIS: Your Honor, the next</p> <p>7 video concerns a presentation by Jay Finks who was the</p> <p>8 VP of finance investor relations person at CVR Energy</p> <p>9 at the December 21st, 2018, CVR Energy board meeting</p> <p>10 which Mr. Cozza attended. For the record, the board</p> <p>11 minutes are JX 853, and the reference notes are</p> <p>12 JX 1158 as well as JX 1164.</p> <p>13 Joe, can you play the clip starting at</p> <p>14 page 267, line 9, please.</p> <p>15 (A video clip was played as follows:)</p> <p>16 Question: Now, Mr. Finks notes that</p> <p>17 he prepared for this meeting, references that the</p> <p>18 overall sentiment was negative, the majority of the</p> <p>19 inbound calls have been from retail.</p> <p>20 Do you remember discussing this issue</p> <p>21 of how retail investors responded to the announcement</p> <p>22 of the consideration of the call?</p> <p>23 Answer: I don't. But where does it</p> <p>24 say that?</p>	<p style="text-align: right;">100</p> <p>1 institutional investors are calling in, Fidelity is</p> <p>2 focused on the Boardwalk transaction, and yet your</p> <p>3 testimony is that at this time you had no knowledge of</p> <p>4 Boardwalk transaction?</p> <p>5 Mr. Beigel: He just answered the</p> <p>6 question. You're asking him again.</p> <p>7 Answer: I am testifying to that.</p> <p>8 (End of video clip.)</p> <p>9 MR. GORRIS: Your Honor, the next</p> <p>10 video goes back to the CVR Refining LTIP issue. For</p> <p>11 the record, the document that's referenced in the</p> <p>12 video is JX 961.</p> <p>13 Joe, can you play the clip starting at</p> <p>14 page 290, line 16, please.</p> <p>15 (A video clip was played as follows:)</p> <p>16 Question: Okay. I understand that</p> <p>17 issue. But I believe what this presentation and email</p> <p>18 is about is about the outstanding unvested CVRR LTIPs</p> <p>19 and how to deal with those in the light of the call</p> <p>20 exercise.</p> <p>21 Answer: Okay. So this is -- this</p> <p>22 looks similar to what they propose -- you asked me a</p> <p>23 line of questioning a few hours ago, or maybe this is</p> <p>24 the same deck, frankly, it looks like a very similar</p>

<p style="text-align: right;">101</p> <p>1 deck. So I understand the management was proposing</p> <p>2 something. I don't recall ever agreeing to their</p> <p>3 proposal, which actually, if I'm correct, I think I</p> <p>4 asked you: Did we actually do this? Because I don't</p> <p>5 remember that.</p> <p>6 Question: Okay. And I think the</p> <p>7 distinction between what we were talking about and</p> <p>8 looking at earlier and this issue is there was a</p> <p>9 payment on some LTIPs that was due in December 2018,</p> <p>10 and so there was an adjustment made to those LTIPs, to</p> <p>11 the payment made in connection with those LTIPs. And</p> <p>12 then this is talking about LTIPs that were not paid</p> <p>13 out in December 2018 but were instead going forward to</p> <p>14 the future that were still tied to CVRR.</p> <p>15 Answer: Okay. So the legacy LTIPs</p> <p>16 that still had one or two years remaining on them is</p> <p>17 what you're suggesting?</p> <p>18 Question: That's my understanding.</p> <p>19 So I'm just asking you: Do you recall this issue at</p> <p>20 all?</p> <p>21 Answer: I remember them. I remember</p> <p>22 them raising the issue saying we no longer have a</p> <p>23 public company outstanding, probably with the benefit</p> <p>24 of hindsight saying we never even thought of it, we</p>	<p style="text-align: right;">103</p> <p>1 So I think that my testimony here is</p> <p>2 just that with perfect hindsight, it probably would</p> <p>3 have been better to adjust all this in connection with</p> <p>4 the launch.</p> <p>5 Question: Okay. Right. So, but</p> <p>6 actually, it was raised the same day as the launch;</p> <p>7 right? That's what we saw earlier; right?</p> <p>8 Answer: Well, presumably the launch</p> <p>9 occurred at 8:00 a.m. in the morning. So was the</p> <p>10 email raised at 8:00 a.m. in the morning? I'm</p> <p>11 assuming it was after the fact.</p> <p>12 Question: Right. But so not so much</p> <p>13 hindsight that this would play out the way it did,</p> <p>14 right, and we're focusing --</p> <p>15 Answer: Well, actually, no, no. I</p> <p>16 think it's complete hindsight, frankly. Not so much,</p> <p>17 because, again, at the time, we didn't have the</p> <p>18 benefit of knowing the percentage of people that would</p> <p>19 ultimately take up the offer. We certainly didn't</p> <p>20 think about dislocations between trading prices or</p> <p>21 anything like that and had no way of knowing that CVRR</p> <p>22 wouldn't be a public company.</p> <p>23 At the time of the offer, CVRR is a</p> <p>24 public company. I mean, we had no reason to believe</p>
<p style="text-align: right;">102</p> <p>1 never thought of it at the time of the exchange offer,</p> <p>2 probably should have converted the plans. But at the</p> <p>3 time of the exchange offer, we didn't know ultimately</p> <p>4 how many people would ultimately take it up. And we</p> <p>5 certainly didn't know that six, seven months later we</p> <p>6 were going to exercise the call option. So we never</p> <p>7 thought of it.</p> <p>8 And so they were saying obviously we</p> <p>9 have the benefit of hindsight now. Looks to me like</p> <p>10 they're proposing -- my recollection is they were</p> <p>11 proposing -- this sort of looks -- ties to my</p> <p>12 recollection, some sort of mechanism that would adjust</p> <p>13 the math as if the plan was exchanged at the time of</p> <p>14 the exchange offer.</p> <p>15 Question: Okay. And what you just</p> <p>16 said is that no one ever thought of this. But if you</p> <p>17 recall back earlier this morning, we looked at what</p> <p>18 was Cozza Exhibit 9, which was the day after the</p> <p>19 announcement of the exchange offer, this was actually</p> <p>20 raised, right, redoing and tying the incentive units</p> <p>21 to CVI instead of CVRR. Do you recall that?</p> <p>22 Answer: I recall that exhibit, but I</p> <p>23 also recall that question being raised post-launch, if</p> <p>24 I'm not mistaken.</p>	<p style="text-align: right;">104</p> <p>1 it wouldn't trade to its fundamentals.</p> <p>2 (End of video clip.)</p> <p>3 MR. GORRIS: Your Honor, the next</p> <p>4 video follows up on that, and in it Mr. Cozza</p> <p>5 addresses his view on analyst reports.</p> <p>6 For the record, in the transcription</p> <p>7 of the deposition, there's an error, where my question</p> <p>8 was about analysts who thought that CVR wouldn't trade</p> <p>9 to its fundamentals. That comes through in the video,</p> <p>10 but if you look at the transcript later, you'll see</p> <p>11 that instead of "wouldn't" it says "would," but if you</p> <p>12 look to the prior question, it will make sense. I</p> <p>13 just note that for the record.</p> <p>14 Joe, can you play the clip starting at</p> <p>15 page 294, line 16, please.</p> <p>16 (A video clip was played as follows:)</p> <p>17 Question: But you're aware that there</p> <p>18 were numerous analyst that raised that question and</p> <p>19 thought that CVRR wouldn't trade to its fundamentals</p> <p>20 as opposed to the exchange offer; right?</p> <p>21 Answer: I wasn't aware of that other</p> <p>22 than you showing it to me. But, frankly, even if I</p> <p>23 was aware of it, I wouldn't care. Analysts work where</p> <p>24 they work because they -- they're inherently wrong</p>

<p style="text-align: right;">105</p> <p>1 very often. So it wouldn't -- it wouldn't mean</p> <p>2 anything to me. But I wasn't even aware of it, other</p> <p>3 than you showing it to me five times today.</p> <p>4 (End of video clip.)</p> <p>5 MR. GORRIS: Your Honor, that's the</p> <p>6 plaintiffs' presentation for Mr. Cozza.</p> <p>7 THE COURT: Thank you, Mr. Gorris.</p> <p>8 MR. CZESCHIN: Hello, Your Honor.</p> <p>9 Defendants also have some clips of Mr. Cozza.</p> <p>10 THE COURT: Is that how it's</p> <p>11 pronounced, Cozza?</p> <p>12 MR. CZESCHIN: I believe it's Cozza.</p> <p>13 Mr. Beigel can correct me if I'm wrong.</p> <p>14 MR. BEIGEL: It's Cozza, but he isn't</p> <p>15 here so -- to be offended, so it's okay.</p> <p>16 CROSS-EXAMINATION</p> <p>17 MR. CZESCHIN: Your Honor, in these</p> <p>18 first few clips, Mr. Cozza is being questioned about</p> <p>19 the origin of the exchange offer and the rationales</p> <p>20 underlying the structure of the exchange offer.</p> <p>21 Scott?</p> <p>22 (A video clip was played as follows:)</p> <p>23 Question: Now, what prompted that</p> <p>24 conversation in April 2018 about potentially acquiring</p>	<p style="text-align: right;">107</p> <p>1 Now, ancillary to that as well is your</p> <p>2 line of questioning relating to, yes, it also</p> <p>3 secondarily would activate the call option if we were</p> <p>4 to go over 80 percent.</p> <p>5 Question: Do you recall any</p> <p>6 conversations with anyone on that issue of whether or</p> <p>7 not it would be a pro or a con to potential acquirers</p> <p>8 to have the stub outstanding?</p> <p>9 Answer: Not that I recall.</p> <p>10 Question: Did you discuss that issue</p> <p>11 with Mr. Icahn?</p> <p>12 Answer: Yes. I definitely discussed</p> <p>13 the rationale of leaving 5 percent outstanding.</p> <p>14 Question: What do you recall about</p> <p>15 your discussions with Mr. Icahn on the issue of</p> <p>16 leaving the 5 percent of CVRR outstanding?</p> <p>17 Answer: I recall the same thing we've</p> <p>18 been saying here, that there are a number -- like,</p> <p>19 when you look at the downstream energy land --</p> <p>20 competitive landscape, a number of competitors have</p> <p>21 meaningful, meaningful logistic -- meaningful MLP-able</p> <p>22 assets, meaning that would qualify to be MLP eligible.</p> <p>23 And that some competitors already have meaningful</p> <p>24 logistical midstream MLPs, such as HollyFrontier, and</p>
<p style="text-align: right;">106</p> <p>1 enough CVRR Refining units that Icahn and the general</p> <p>2 partner would be in the position to exercise the call</p> <p>3 right?</p> <p>4 Answer: Well, what prompted the --</p> <p>5 what prompted the start of the discussions of the</p> <p>6 exchange offer in general was not driven by</p> <p>7 what you're -- the way you're characterizing the</p> <p>8 question, but I will give you the background.</p> <p>9 What prompted it was we viewed our</p> <p>10 capital structure as overly complicated. And I'll</p> <p>11 elaborate on that, given that CVI only owned, as you</p> <p>12 referred to, 70 percent of the CVRR. And so what was</p> <p>13 occurring, from a business perspective and from an</p> <p>14 economic perspective was CVRR was making money, cash</p> <p>15 flow, et cetera, and distributing it out to</p> <p>16 shareholders, and CVI was getting 70 percent of it.</p> <p>17 And obviously 30 percent was going to other holders.</p> <p>18 And, in general, the perception on</p> <p>19 Wall Street was you have this, you know, this</p> <p>20 complicated structure. It has a lot of cash flow</p> <p>21 leakage through various levels. And, you know, we</p> <p>22 ultimately viewed this exchange offer as a way to</p> <p>23 simplify the structure and consolidate the economics,</p> <p>24 majority of the economics at CVI.</p>	<p style="text-align: right;">108</p> <p>1 they've shown amazing resilience in the capital market</p> <p>2 to raise a lot of capital, so -- against those</p> <p>3 assets -- against that steady stream of cash flow.</p> <p>4 They're a very cheap and efficient way to raise</p> <p>5 capital.</p> <p>6 And so I said here's my thinking on</p> <p>7 why we leave -- why we leave 5 percent outstanding.</p> <p>8 Because it could -- having that option value of not</p> <p>9 having to start -- reinvent the wheel and start from</p> <p>10 scratch, which took us, again, over a year from start</p> <p>11 to finish to create an MLP and get the right tax</p> <p>12 certifications and take it public and marketing and</p> <p>13 all that, could be a very valuable option.</p> <p>14 Question: But the concept was if CVR</p> <p>15 Refining generated a lot of cash flow as a business,</p> <p>16 the cash would generally be distributed out from CVR</p> <p>17 Refining; right?</p> <p>18 Answer: Yeah, the excess, yes.</p> <p>19 Question: Okay. And then, but at the</p> <p>20 CVR Energy level, if that CVR Refining cash was</p> <p>21 distributed up, it may be that that cash would</p> <p>22 accumulate because there was sort of a more</p> <p>23 steady-state dividend, so to speak. Is that the</p> <p>24 concept?</p>

<p style="text-align: right;">109</p> <p>1 Answer: Yes. I described it, the</p> <p>2 concept was the dividend was flat for many quarters,</p> <p>3 maybe many years, I don't remember specifically. But,</p> <p>4 you know, maybe it was raised here or there -- you</p> <p>5 know, raised but it didn't -- the CVI was not managed</p> <p>6 like an MLP where the dividend was a dollar and then</p> <p>7 it was 10 cents, then there was no dividend, then it</p> <p>8 was \$2. It was basically treated more like any C Corp</p> <p>9 dividend-paying company that you would see in, let's</p> <p>10 say, the S&P 500.</p> <p>11 Question: Do you remember who had the</p> <p>12 initial idea to start this discussion about whether to</p> <p>13 make a change in the structure of CVR Energy?</p> <p>14 Answer: Well, I recall it being me.</p> <p>15 I mean, this is what I do. I try to come up with</p> <p>16 ideas to continue to try to create value for our</p> <p>17 company.</p> <p>18 Question: Okay. And do you recall</p> <p>19 the general terms of the exchange offer?</p> <p>20 Answer: Yes. My recollection was we</p> <p>21 were offering, you know, approximately \$27 worth of</p> <p>22 CVI stock or roughly .53 CVI units or CVI shares for</p> <p>23 every share of CVRR exchange. Which, again, my</p> <p>24 recollection at the time was a pretty meaningful</p>	<p style="text-align: right;">111</p> <p>1 wanted to get the most possible, but at the same time</p> <p>2 preserving the optionality to leave -- it took me a</p> <p>3 year, or a year and a half to ultimately create CVRR</p> <p>4 ten years ago -- or however long ago it was -- into a</p> <p>5 public company. And a lot of work went into that and</p> <p>6 a lot of structure went into that.</p> <p>7 And so I wanted to leave that</p> <p>8 structure in place in a reasonable fashion for</p> <p>9 somebody to -- somebody may like having that</p> <p>10 ready-made structure available within CVRR if they</p> <p>11 wanted to buy the whole thing. Specifically, as</p> <p>12 previously described, related to financing options,</p> <p>13 related to dropping down logistical assets or a lot of</p> <p>14 potential -- lots of other refineries have logistical</p> <p>15 assets.</p> <p>16 So I had this intention of wanting to</p> <p>17 maximize cash flow leakage but, at the same time,</p> <p>18 preserving the structure for an optionality point of</p> <p>19 view. So 95 is where the lawyers landed on what I</p> <p>20 could do.</p> <p>21 Question: Okay. And I'm not asking</p> <p>22 for particular legal advice. But when you say "95 is</p> <p>23 where the lawyers landed," you explained your business</p> <p>24 rationale to the lawyers and then they came back and</p>
<p style="text-align: right;">110</p> <p>1 premium. I want to say it was \$27 of value versus a</p> <p>2 closing price of, you know, approximately 21 or \$22.</p> <p>3 Question: So about a 25 percent</p> <p>4 premium?</p> <p>5 Answer: Yes.</p> <p>6 Question: And who decided how much</p> <p>7 premium to offer?</p> <p>8 Answer: I don't remember,</p> <p>9 specifically.</p> <p>10 Question: Do you recall the rationale</p> <p>11 for offering a premium?</p> <p>12 Answer: Well, yes. The rationale for</p> <p>13 offering a premium was to induce -- to make somebody</p> <p>14 say, "Hey, this seems like a pretty good deal," to</p> <p>15 make them want to do it, to ultimately get the</p> <p>16 95 percent.</p> <p>17 Question. Okay. And can you explain</p> <p>18 to me the rationale for the 95 percent maximum?</p> <p>19 Answer: Yeah. Well, again, I said I</p> <p>20 wanted to keep a -- I wanted to -- I had basically two</p> <p>21 conflicting agendas, right? I wanted to maximize</p> <p>22 leakage of cash flow going from CVRR, which was</p> <p>23 currently 30 percent. I wanted to get -- I wanted --</p> <p>24 so you would say so why not make that 100 percent? I</p>	<p style="text-align: right;">112</p> <p>1 told you the number is 95? Or how did that work?</p> <p>2 Answer: I just tell them what I want</p> <p>3 to do, I want to maintain this -- a lot of this is</p> <p>4 going to be redundant.</p> <p>5 I tell them I want to get a very high</p> <p>6 percentage to the extent shareholders want to do it.</p> <p>7 If everybody loves this offer, I want to take as much</p> <p>8 as possible, but I want to leave a publicly traded</p> <p>9 stub in place for optionality purposes. And, you</p> <p>10 know, you have to ask them how they determined what</p> <p>11 they determined.</p> <p>12 Question: Okay. And you've</p> <p>13 repeatedly referenced that you wanted to get</p> <p>14 95 percent. Did you have any expectation as to what</p> <p>15 percentage of folks would exchange in the exchange</p> <p>16 offer?</p> <p>17 Answer: I didn't have any</p> <p>18 expectation, other than my own opinion that it was a</p> <p>19 good offer at a sizable premium, cleaned up the</p> <p>20 capital structure. You know, some shareholders like</p> <p>21 -- the general perceptions of some shareholders like</p> <p>22 CVRR as an MLP; others complained a lot that getting a</p> <p>23 K1 for tax purposes was very annoying.</p> <p>24 So I wouldn't describe it as having</p>

<p style="text-align: right;">113</p> <p>1 expectations as much as I hoped to get the full</p> <p>2 amount, and I tried to structure it in a way that</p> <p>3 would entice that to happen.</p> <p>4 Question: But if the idea was to</p> <p>5 simplify the structure, why not simplify it all the</p> <p>6 way?</p> <p>7 Answer: Well, again, because the</p> <p>8 incremental 5 percent simplification to me was</p> <p>9 completely dwarfed by the potential value creation of</p> <p>10 leaving that structure in place.</p> <p>11 Question: Were you aware at this</p> <p>12 time -- meaning this time back in May 2018 -- that</p> <p>13 because CVR Energy was requiring the units in the</p> <p>14 exchange offer, that if the call was exercised within</p> <p>15 90 days, that would mean that the price for the call</p> <p>16 exercise would be the same price, the same premium</p> <p>17 price as the exchange offer?</p> <p>18 Answer: I was not aware of that, or I</p> <p>19 didn't even think of it, I should say. Not only was I</p> <p>20 not aware of it, but I didn't think about it.</p> <p>21 (End of video clip.)</p> <p>22 MR. CZESCHIN: Your Honor, in the next</p> <p>23 clip, Mr. Cozza is being questioned about the May 24,</p> <p>24 2018, meeting of CVR Energy. And those minutes are at</p>	<p style="text-align: right;">115</p> <p>1 view is the optionality and potential value or the</p> <p>2 optionality value -- option value of having that</p> <p>3 structure in place far outweighed, you know, dealing</p> <p>4 with it.</p> <p>5 (End of video clip.)</p> <p>6 MR. CZESCHIN: Your Honor, in the next</p> <p>7 few clips, Mr. Cozza is being questioned about when</p> <p>8 IEP or CVR Energy first considered a potential</p> <p>9 exercise of the call right.</p> <p>10 (A video clip was played as follows:)</p> <p>11 Question: When did you first start</p> <p>12 thinking about the possibility of exercising the call</p> <p>13 right?</p> <p>14 Answer: I can't say, I can't pinpoint</p> <p>15 a specific date, other than to say that a number of</p> <p>16 events started to occur in what I would generally</p> <p>17 describe as the middle of the fourth quarter that made</p> <p>18 me think about it.</p> <p>19 Question: When you say "middle of the</p> <p>20 fourth quarter," what do you mean?</p> <p>21 Answer: I would say November time</p> <p>22 frame, based on my recollection.</p> <p>23 Question: And when you say there were</p> <p>24 events that occurred that caused you to start thinking</p>
<p style="text-align: right;">114</p> <p>1 JX 270 for the record.</p> <p>2 (A video clip was played as follows:)</p> <p>3 Question: And do you recall</p> <p>4 discussing that if CVR Energy was sold, that, you</p> <p>5 know, absent getting to the point where you could</p> <p>6 exercise the call right, there would be some</p> <p>7 indefinite amount of CVR Refining outstanding which</p> <p>8 might not be attractive to a buyer?</p> <p>9 Answer: Can you -- I misunderstood</p> <p>10 the question. "Indefinite amount" meaning?</p> <p>11 Question: Meaning like there would be</p> <p>12 this 5 percent stub sitting out there that someone</p> <p>13 else would have to deal with.</p> <p>14 Answer: Well, again, I viewed -- I</p> <p>15 mean, so you're describing pros and cons. You're</p> <p>16 taking this negative view that you would have to "deal</p> <p>17 with it." But I certainly thought the benefits of</p> <p>18 potentially having that public vehicle there to drop</p> <p>19 down assets and expand and use it as a source of</p> <p>20 financing and funding and having this large sort of</p> <p>21 MLP was a pro that more than offset this, you know,</p> <p>22 your words, "deal with it."</p> <p>23 So, you know, obviously, I'm aware</p> <p>24 there would be a 5 percent stub. But, you know, my</p>	<p style="text-align: right;">116</p> <p>1 about it, what were those events?</p> <p>2 Answer: Well, I recall a</p> <p>3 communication or a chain of events where our</p> <p>4 management team was -- they have an investor relations</p> <p>5 department and they have regular communications with</p> <p>6 shareholders that I'm frankly not even aware of unless</p> <p>7 it was something so -- you know, so sort of meaningful</p> <p>8 or impactful that they would make me aware of.</p> <p>9 But I became aware a shareholder fund</p> <p>10 of some sort, or a hedge fund or some investing firm</p> <p>11 that management reached out to me to say, "Hey, these</p> <p>12 guys are recommending all kinds of things and</p> <p>13 demanding we exercise the call option and saying we</p> <p>14 have fiduciary duties to exercise the call option,"</p> <p>15 and, you know, something somewhere along the lines of</p> <p>16 demanding to speak with the Icahn management team.</p> <p>17 And so that would be the starting point, I would say,</p> <p>18 of the thought process, frankly.</p> <p>19 Question: Okay. And that investor</p> <p>20 fund you're referring to, is that HITE Hedge?</p> <p>21 Answer: That sounds correct.</p> <p>22 Question: What did they say?</p> <p>23 Answer: They said they wanted us</p> <p>24 to -- you know, they wanted us to -- you know, they</p>

<p style="text-align: right;">117</p> <p>1 seemed to claim on a call to me that, you know, our --</p> <p>2 several people that worked for me that are board</p> <p>3 members of CVR have a fiduciary duty to call in the</p> <p>4 remainder of the partnership. And they were basically</p> <p>5 saying something along the lines of why are you not</p> <p>6 doing it? Why are you continuing to communicate to</p> <p>7 the market that you have no plans to do it?</p> <p>8 I recall telling them, "Well, you</p> <p>9 know, our guys, when they communicate to the market,</p> <p>10 they tell the truth. So, I mean, we're not really</p> <p>11 thinking about it. It's not really on our radar right</p> <p>12 this second or whatever."</p> <p>13 And I remember them suggesting some</p> <p>14 other things that were inconsistent with how we run</p> <p>15 the business in general. So, I mean, that's my</p> <p>16 general recollection.</p> <p>17 Question: When you say HITE was</p> <p>18 suggesting some general things that were inconsistent</p> <p>19 with how you run the business, can you tell me what</p> <p>20 those things were?</p> <p>21 Answer: Well, one that comes to mind</p> <p>22 is, you know, we had a variable -- as we've discussed,</p> <p>23 a variable rate MLP, variable MLP that generally</p> <p>24 distributes, you know, excess cash flow above reserves</p>	<p style="text-align: right;">119</p> <p>1 conference call with him. And I recall, yeah -- you</p> <p>2 know, look, when investors call, I generally go into</p> <p>3 listening mode, for a couple of reasons. One, I'm --</p> <p>4 you know, I have perfect -- I have better information</p> <p>5 than them, and I've generally found investors don't</p> <p>6 want to be restricted. And I don't want to be in a</p> <p>7 position to provide any nonpublic or MNP -- or</p> <p>8 material nonpublic information and inadvertently</p> <p>9 restricting somebody. So listening is always better</p> <p>10 than speaking, first of all, with these things.</p> <p>11 And I remember, generally, he was</p> <p>12 moderately -- much less aggressive with me than he was</p> <p>13 with Dave Lamp, with that team, which was not</p> <p>14 surprising. As you go up the chain, you know, you get</p> <p>15 less aggressive. But their general thesis was to, you</p> <p>16 know, significantly alter the way we run the business,</p> <p>17 and to -- and then to take the results of that and</p> <p>18 call in the partnership.</p> <p>19 Question: Okay. And did you say</p> <p>20 anything to HITE in the conversation that you recall</p> <p>21 having with them?</p> <p>22 Answer: Again, just listening and</p> <p>23 saying, you know, thanks for the information. We hear</p> <p>24 you -- you know, they were sprinkling -- as a side</p>
<p style="text-align: right;">118</p> <p>1 for a number of items.</p> <p>2 So shareholders -- I recall them</p> <p>3 demanding to stop doing that, and just hold the cash</p> <p>4 and stop giving, you know, shareholders excess cash</p> <p>5 flow. And then, see what happens from that and call</p> <p>6 the -- exercise the call right, and having some sort</p> <p>7 of theory or analysis on why this will create tons of</p> <p>8 value.</p> <p>9 Question: And you mentioned that, you</p> <p>10 know, that there were things that happened that -- in</p> <p>11 the time frame that you recall of Q4 that caused you</p> <p>12 to start thinking about the call right. Anything</p> <p>13 beyond the communications with and from HITE Hedge?</p> <p>14 Answer: Well, at some point I do</p> <p>15 remember the CVI and CVRR stock prices start to sort</p> <p>16 of dislocate, at around the same time HITE started</p> <p>17 saying things and recommending things and all that.</p> <p>18 Question: Generally, do you recall</p> <p>19 the nature of the communications that HITE was wanting</p> <p>20 to have CVI exercise the call option and do so after</p> <p>21 having CVRR retain its cash?</p> <p>22 Answer: Again, I don't recall from</p> <p>23 this specific email, but I recall generally from the</p> <p>24 conversation that -- I, at some point, had a</p>	<p style="text-align: right;">120</p> <p>1 note, they were sprinkling in claims of fiduciary</p> <p>2 duties and maybe they'll sue us, whatever, you know,</p> <p>3 sue the board or whatever. So when someone is saying</p> <p>4 that, you just listen and say, "We'll take it under</p> <p>5 advisement."</p> <p>6 (End of video clip.)</p> <p>7 MR. CZESCHIN: Your Honor, in the next</p> <p>8 couple of clips, Mr. Cozza is asked about the</p> <p>9 November 26, 2018, board meeting of CVR Energy and the</p> <p>10 public disclosure that followed that, that meeting.</p> <p>11 (A video clip was played as follows:)</p> <p>12 Question: Mr. Cozza, what's been</p> <p>13 marked as Cozza Exhibit 31 is the minutes of the CVR</p> <p>14 Energy board meeting on November 26, 2018. Do you see</p> <p>15 that?</p> <p>16 Answer: I do.</p> <p>17 Question: And it lists you as an</p> <p>18 invited guest present. Do you see that?</p> <p>19 Answer: I do.</p> <p>20 Question: Do you recall this board</p> <p>21 meeting?</p> <p>22 Answer: No.</p> <p>23 Question: Do you recall a board</p> <p>24 meeting to discuss whether or not to exercise or</p>

<p style="text-align: right;">121</p> <p>1 consider exercising the call right?</p> <p>2 Answer: My general recollection --</p> <p>3 and I apologize, I can't be more specific -- is I</p> <p>4 remember a meeting to discuss updated disclosure when</p> <p>5 the board did ultimately decide that they were at</p> <p>6 least looking into this call right, updated disclosure</p> <p>7 to correct -- well, I wouldn't even describe it as</p> <p>8 correct. To update the market that we were actually</p> <p>9 looking at it, given that Dave Lamp in at least two</p> <p>10 earnings calls, the way I recollect it, answered</p> <p>11 specific questions related to it and gave the truth</p> <p>12 and said, no, we're not considering it at this time.</p> <p>13 And so the information in the marketplace was we're</p> <p>14 not, and it appeared that now the board was</p> <p>15 considering it.</p> <p>16 So I do remember a meeting related to</p> <p>17 that. I don't remember the specific meetings</p> <p>18 themselves or which was a board meeting, which wasn't,</p> <p>19 related to exercising the call option or what that</p> <p>20 would entail.</p> <p>21 Question: Now, the idea of updating</p> <p>22 the disclosure, do you know who came up with that</p> <p>23 idea?</p> <p>24 Answer: Well, my recollection of</p>	<p style="text-align: right;">123</p> <p>1 DIRECT EXAMINATION</p> <p>2 BY MR. FRIEDLANDER:</p> <p>3 Q. Good morning, Mr. Atkins.</p> <p>4 A. Good morning, Mr. Friedlander.</p> <p>5 Q. What is your profession?</p> <p>6 A. I am an investor banker.</p> <p>7 Q. Can you briefly describe for the Court</p> <p>8 your education after high school?</p> <p>9 A. Sure. I attended the University of</p> <p>10 Virginia and graduated with highest honors, and then</p> <p>11 matriculated to Harvard Law School, where I graduated</p> <p>12 cum laude.</p> <p>13 Q. And can you briefly describe for the</p> <p>14 Court your employment history after law school?</p> <p>15 A. Yes. I started at Skadden Arps in New</p> <p>16 York, in the merger and acquisition department. I was</p> <p>17 there for two and a half years, until the end of 1984.</p> <p>18 I then transitioned completely in careers from</p> <p>19 attorney to investor banker with Paine Webber in their</p> <p>20 merger and acquisition department. I was at Paine</p> <p>21 Webber from 1985 until 1991, at which 2time, with the</p> <p>22 economy tanking, I transitioned to a firm called</p> <p>23 Houlihan Lokey Howard & Zukin and did -- at Houlihan,</p> <p>24 I went in as managing director. And I was there from</p>
<p style="text-align: right;">122</p> <p>1 that, it's not really an idea. My recollection was it</p> <p>2 was the law, from a securities filing point of view.</p> <p>3 That's the way I remember it.</p> <p>4 I mean, I remember pretty crystal</p> <p>5 clear from reading the earnings call transcripts of</p> <p>6 Dave Lamp's responses to specific questions about</p> <p>7 this, which made clear what we were considering at the</p> <p>8 time he was answering those questions.</p> <p>9 And at some point when it was being</p> <p>10 discussed as an idea, as a consideration -- whatever</p> <p>11 term you want to use -- it rang a bell that we may</p> <p>12 need to do something here. And so that's my</p> <p>13 recollection, from an SEC disclosure point of view.</p> <p>14 Because it's pretty crystal clear our on-the-record</p> <p>15 message in an earnings call.</p> <p>16 (End of video clip.)</p> <p>17 MR. CZESCHIN: Your Honor, we don't</p> <p>18 have any more video clips from Mr. Cozza.</p> <p>19 THE COURT: Thank you, Mr. Czeschin.</p> <p>20 MR. FRIEDLANDER: Your Honor,</p> <p>21 plaintiffs call our next witness is J.T. Atkins.</p> <p>22 THE COURT: Thank you.</p> <p>23 J.T. ATKINS, having first been duly</p> <p>24 affirmed, was examined and testified as follows:</p>	<p style="text-align: right;">124</p> <p>1 1991 until 1995.</p> <p>2 As the economy recovered, I went back</p> <p>3 to doing more traditional M&A, as well as</p> <p>4 restructuring of bankruptcy, for Oppenheimer &</p> <p>5 Company. And stayed at Oppenheimer until it was</p> <p>6 acquired by CIBC in 1997, and then I stayed at CIBC</p> <p>7 Oppenheimer from 1997 to 2001. And at that point, I</p> <p>8 left and formed Cypress Associates, and we've been at</p> <p>9 Cypress now for 20 years.</p> <p>10 Q. And can you describe for the Court</p> <p>11 what Cypress Associates does?</p> <p>12 A. Yes. Cypress Associates is a boutique</p> <p>13 investment banking firm. We do mergers and</p> <p>14 acquisitions. We do restructuring and bankruptcy</p> <p>15 advisory. We do capital raising for private</p> <p>16 companies, both debt and equity. We do litigation</p> <p>17 consulting, which is expert witness work.</p> <p>18 Q. Okay. To what extent do you have</p> <p>19 transactional experience respecting MLPs?</p> <p>20 A. Transactional experience. I started</p> <p>21 doing MLP transaction deals back in 1993, and between</p> <p>22 1993 and as recently as two years ago, I think we've</p> <p>23 done 11 MLP deals.</p> <p>24 Q. Okay. To what extent have you dealt</p>

<p style="text-align: right;">125</p> <p>1 with MLPs in your litigation consulting role?</p> <p>2 A. We've worked on 14 different</p> <p>3 litigations involving MLPs.</p> <p>4 Q. Do you have any MLP experience outside</p> <p>5 of your employment at any of the firms you've already</p> <p>6 mentioned?</p> <p>7 A. I do. I was -- one of the</p> <p>8 transactions I worked on was taking a company called</p> <p>9 Heritage Propane Partners public back in 1995. I was</p> <p>10 invited to be on the board of Heritage, and I was on</p> <p>11 the board of Heritage from 1995 until 2000. At which</p> <p>12 time, the general partner was sold to another group</p> <p>13 and I went off the board.</p> <p>14 Q. Okay. Now, you've tendered an opening</p> <p>15 expert report in this matter; correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Now, the version -- we recently</p> <p>18 substituted for the Court a version of the expert</p> <p>19 report that adds JX cites to all the footnotes, so</p> <p>20 that version is JX 1234.</p> <p>21 Mr. Atkins, testifying here today, do</p> <p>22 you maintain the opinions and analyses that are</p> <p>23 expressed in your opening report?</p> <p>24 A. Yes, I do.</p>	<p style="text-align: right;">127</p> <p>1 report; correct?</p> <p>2 A. Yes, I was.</p> <p>3 Q. All right. Now, you've heard a lot of</p> <p>4 mention then of leaving a public stub outstanding in</p> <p>5 CVRR would create option value for a potential future</p> <p>6 acquirer of CVR Energy to set up a logistics or</p> <p>7 midstream MLP. And that it was potentially worth, in</p> <p>8 Mr. Cozza's words, billions of dollars. You heard</p> <p>9 that testimony; correct?</p> <p>10 A. Yes, I did.</p> <p>11 Q. Is that rationale well-founded from a</p> <p>12 finance and business perspective?</p> <p>13 A. No, it is not.</p> <p>14 Q. Why not, sir?</p> <p>15 A. Well, let's start off with the fact</p> <p>16 that CVI was a variable-rate MLP. It was a refiner.</p> <p>17 And variable-rate MLPs do not mix well with midstream</p> <p>18 MLPs, which have steady-state cash flows. And the</p> <p>19 market will not accord a variable-rate MLP with great</p> <p>20 value with respect to taking -- dropping into it</p> <p>21 midstream-type assets.</p> <p>22 Q. Why is that?</p> <p>23 A. Well, variable-rate refining MLPs,</p> <p>24 those are what are referred to as downstream MLPs.</p>
<p style="text-align: right;">126</p> <p>1 Q. Now, your opening report cites</p> <p>2 testimony from representatives of defendants about</p> <p>3 their stated rationales for a partial exchange offer</p> <p>4 by CVR Energy for units of CVR Refining. That would</p> <p>5 leave some units of CVR Refining outstanding publicly;</p> <p>6 correct?</p> <p>7 A. That is correct.</p> <p>8 Q. Okay. Do you have an opinion about</p> <p>9 whether any of defendants' testimony or rationales for</p> <p>10 such a partial exchange offer are well-founded from a</p> <p>11 finance and business perspective?</p> <p>12 A. Yes, I do. My opinion is that the</p> <p>13 explanations that were provided are not well-founded</p> <p>14 with respect to explaining the structure of the</p> <p>15 transaction from a financial and business point of</p> <p>16 view.</p> <p>17 Q. Okay. Now I'd like to turn to each of</p> <p>18 the rationales tendered by the defendants.</p> <p>19 Now, you were in the courtroom this</p> <p>20 morning, and you heard the clips from Mr. Cozza;</p> <p>21 correct?</p> <p>22 A. Mr. Cozza, yes, I did.</p> <p>23 Q. And you were familiar with his</p> <p>24 deposition testimony before submitting your own</p>	<p style="text-align: right;">128</p> <p>1 They take commodity risk. They take risk with respect</p> <p>2 to what are called "crack spreads," which is the</p> <p>3 spread between the price of oil and the price of</p> <p>4 refined products like gasoline.</p> <p>5 And the market, when it looks at MLPs,</p> <p>6 looks at midstream MLPs, is looking for steady state,</p> <p>7 steady growth, predictable. And that's what happens</p> <p>8 with midstream MLPs, which are primarily pipeline</p> <p>9 driven and storage driven. And because those assets</p> <p>10 are not taking -- those MLPs are not taking commodity</p> <p>11 risk, they tend to be accorded a very good valuation</p> <p>12 by the market. That is to say, a lower yield than</p> <p>13 what you would see in the variable-rate refining MLPs.</p> <p>14 Q. Can you describe the difference</p> <p>15 between these two types of MLPs in terms of cash flows</p> <p>16 or expected projected future cash flows?</p> <p>17 A. Sure. The variable rate cash flows,</p> <p>18 they came onto the scene, I think, around 2013.</p> <p>19 Because the belief was -- because that was sort of the</p> <p>20 heyday of the MLP. And the people, namely investors,</p> <p>21 bankers like me, were saying, "Well, if we could take</p> <p>22 pipelines public, why can't we take -- we've taken E&P</p> <p>23 companies, which are the upstream companies, public;</p> <p>24 why not take some of these refiners public and take</p>

<p style="text-align: right;">129</p> <p>1 advantage of the MLP structure, which is a very</p> <p>2 tax-efficient structure."</p> <p>3 The problem is is that, just like the</p> <p>4 E&P companies that are head end of the well, they're</p> <p>5 pumping the oil and gas out of the ground, owning the</p> <p>6 commodity itself, owning the oil, owning the gas, is</p> <p>7 not without substantial risk. And whereas owning a</p> <p>8 pipeline, it was believed, up until about three years</p> <p>9 ago, was a very steady-state thing.</p> <p>10 So trying to drop a midstream MLP into</p> <p>11 a fairly large -- I mean, we're talking about over</p> <p>12 \$3 million market cap company, CVRR, is not going to</p> <p>13 get the same kind of reward from the marketplace that</p> <p>14 simply keeping -- making that midstream MLP, that</p> <p>15 logistics MLP, is taking the public separately.</p> <p>16 And, in fact, here, it was the</p> <p>17 intention of management of CVRR, it could gather</p> <p>18 enough -- it had some midstream assets, fairly small</p> <p>19 percentage. The ultimate goal was to get them out of</p> <p>20 CVRR into their own separate MLP.</p> <p>21 Q. Okay. Maybe we should clear up some</p> <p>22 acronyms. When you said "E&P," what does that refer</p> <p>23 to?</p> <p>24 A. That means -- E&P means the guys who</p>	<p style="text-align: right;">131</p> <p>1 contemplated using CVRR as a vehicle for its own</p> <p>2 logistics assets.</p> <p>3 A. Correct. The hope was, at the CVI</p> <p>4 level and the CVRR level, was that to -- be able to</p> <p>5 get greater value by taking its -- growing its</p> <p>6 midstream assets and taking the existing ones and</p> <p>7 potentially newly acquired ones, putting them into its</p> <p>8 own third MLP.</p> <p>9 Q. Now, do you have an opinion about how</p> <p>10 an acquiror would view a mix of midstream assets and</p> <p>11 refining assets?</p> <p>12 A. I do think. I think an acquiror would</p> <p>13 find it to be something that would be not -- it would</p> <p>14 be harder to raise capital inexpensively if you took</p> <p>15 those midstream assets and dropped them into a</p> <p>16 variable-rate refining MLP.</p> <p>17 So I think most acquirors, potential</p> <p>18 acquirors, would not look at CVRR and that 5 percent</p> <p>19 stub as something that would be appealing in order to</p> <p>20 get -- to be able to use that vehicle as a means to --</p> <p>21 into which to put midstream assets.</p> <p>22 Q. Now, have you done -- did you do any</p> <p>23 analysis or review of potential acquirors of the</p> <p>24 CVI-CVRR complex?</p>
<p style="text-align: right;">130</p> <p>1 pump the oil. Production, energy production.</p> <p>2 Q. And you're saying --</p> <p>3 A. Sorry, exploration and production.</p> <p>4 Excuse me.</p> <p>5 Q. And those are upstream assets?</p> <p>6 A. Upstream assets, yes, sir.</p> <p>7 Q. And which entity is CVRR?</p> <p>8 A. CVRR is a downstream asset. It's a</p> <p>9 refiner. You have upstream, the guys who are pumping</p> <p>10 it. Midstream, the guys who are carrying it from the</p> <p>11 well down to the -- basically, well, if it's oil, to</p> <p>12 Cushing, Oklahoma. And they're being pumped to</p> <p>13 somebody's refining business, where they turn it from</p> <p>14 oil into finished products, refined products.</p> <p>15 Q. Okay. And sort of separate from that,</p> <p>16 but another acronym we've heard is CVI. What is CVI?</p> <p>17 A. CVI is CVR Energy, which is a C</p> <p>18 corporation, which owned both CVRR and owned UAN,</p> <p>19 which is a fertilizer business.</p> <p>20 Q. And those are both MLPs with some</p> <p>21 publicly traded units; correct?</p> <p>22 A. Correct.</p> <p>23 Q. So I believe where we left off in your</p> <p>24 narrative, you were saying that CVI had not</p>	<p style="text-align: right;">132</p> <p>1 A. Yes, we did. We had -- the company</p> <p>2 itself, when it was -- because I think the long-term</p> <p>3 plan of the organization was to be sold to a strategic</p> <p>4 partner in the refining area -- had looked at five</p> <p>5 potential buyers and had done what's called</p> <p>6 accretion/dilution analysis with these five potential</p> <p>7 buyers. And we also found four other refining</p> <p>8 companies that also could have been prospective buyers</p> <p>9 of CVRR.</p> <p>10 The problem was that all nine of them</p> <p>11 already owned midstream -- already owned midstream MLP</p> <p>12 subsidiaries. And they had no -- there was -- CVRR</p> <p>13 would not serve -- and they would actually be worse,</p> <p>14 because the ones they had were pure midstream</p> <p>15 subsidiaries that were in the MLP space, and that the</p> <p>16 refiners themselves continued to maintain their</p> <p>17 businesses as C corporations.</p> <p>18 Q. So what's the conclusion you draw from</p> <p>19 the fact that these nine potential acquirors already</p> <p>20 had logistics or midstream MLPs?</p> <p>21 A. Yes. In contrast to what Mr. Cozza</p> <p>22 thought, there would be -- none of these guys would</p> <p>23 have been potentially good acquirors of CVRR, at least</p> <p>24 not in its context as an MLP.</p>

<p style="text-align: right;">133</p> <p>1 Q. Okay. In your opening report, you</p> <p>2 discuss whether MLPs, when they were in and out of</p> <p>3 favor.</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Can you summarize for the Court</p> <p>6 your analysis of that?</p> <p>7 A. Yes. MLPs became out of favor</p> <p>8 starting in 2017 with the change in the tax laws that</p> <p>9 were alluded to by some of the prior witnesses. And</p> <p>10 what we began to see was in the years preceding 2017</p> <p>11 and 2018, we'd see one or two general partners</p> <p>12 bringing in their limited partners.</p> <p>13 Starting in 2017, and really into</p> <p>14 2018, this trend dramatically increased, and we saw</p> <p>15 MLPs buying in their -- sorry, we saw the C</p> <p>16 corporation general partners buying in their MLPs,</p> <p>17 primarily for simplification.</p> <p>18 The market, it had run its course.</p> <p>19 You know, the MLP, as we knew it back in the '90s and</p> <p>20 first part of the 2000s, the tax benefits were good.</p> <p>21 The retail investors and other investors liked the</p> <p>22 yields that they were receiving. These were vehicles</p> <p>23 that were fairly steady-state cash allowables.</p> <p>24 And by 2017, 2018, the price of oil</p>	<p style="text-align: right;">135</p> <p>1 buy-ins by their general partner since 2011.</p> <p>2 Q. And they're basically, what, organized</p> <p>3 by year; is that right?</p> <p>4 A. Yes, '11, '12, '13. There were two in</p> <p>5 '13. One in '11, one in '12, two in '13, three in --</p> <p>6 Q. Wait a minute, I think the small print</p> <p>7 is --</p> <p>8 THE WITNESS: Your Honor, my eyes are</p> <p>9 getting old, and I apologize.</p> <p>10 Q. Would it be more accurate to say that</p> <p>11 the years on the top, Mr. Atkins, are that there's one</p> <p>12 in 2011, one in 2013, two in 2014, three in 2015, and</p> <p>13 then two in 2016?</p> <p>14 A. Yes. Three in 2017, and there were 18</p> <p>15 in 2018. So, as we can see, the feeling was -- and at</p> <p>16 the same time, going the other direction, there were</p> <p>17 no IPOs in 2018. There was only one IPO, I believe,</p> <p>18 in 2017. And I don't remember what the result was in</p> <p>19 2019.</p> <p>20 Q. Okay. And then the last two pages of</p> <p>21 Exhibit C is a synopsis of the transaction, the buy-in</p> <p>22 transactions that happened in the first half of 2018.</p> <p>23 Is that correct?</p> <p>24 A. Yes. There were six of them in the</p>
<p style="text-align: right;">134</p> <p>1 had come down, and that had caused MLPs that were</p> <p>2 midstream also to feel -- have negative returns. And</p> <p>3 the thinking was: We don't want to keep paying all</p> <p>4 this cash out in a down marketplace, where midstream</p> <p>5 assets, volumes were actually starting to go down. We</p> <p>6 wanted to be able to reinvest in these businesses and</p> <p>7 not have to pay all the cash out to the MLP holders.</p> <p>8 Q. Now, in your opening report, JX 1234,</p> <p>9 did you graphically depict this trend in buy-ins of</p> <p>10 MLPs?</p> <p>11 A. Yes, we did. In Exhibit C.</p> <p>12 Q. So that would be -- so Exhibit C to</p> <p>13 JX 1234, which is about the last five pages of the</p> <p>14 document, do you have that in front of you?</p> <p>15 A. I do, yes.</p> <p>16 Q. Okay.</p> <p>17 THE WITNESS: Does Your Honor have it</p> <p>18 in front of --</p> <p>19 THE COURT: I do, thank you.</p> <p>20 BY MR. FRIEDLANDER:</p> <p>21 Q. And are the first -- basically, the</p> <p>22 first three pages, is that sort of that -- can you</p> <p>23 just describe what they are?</p> <p>24 A. These are the buy-ins, the MLPs</p>	<p style="text-align: right;">136</p> <p>1 first half, prior to the announcement of the exercise</p> <p>2 of the tender offer, excuse me, by CVI.</p> <p>3 Q. Okay. But on May 17, 2018, there were</p> <p>4 six separate transactions announced on that date?</p> <p>5 A. Yes, four by Enbridge and two by other</p> <p>6 entities.</p> <p>7 One of the reasons we put this</p> <p>8 information in here is that one of the underlying</p> <p>9 themes that we see in these is simplification. These</p> <p>10 are -- the complexity of this business, which started</p> <p>11 off pretty straightforward, it got so complicated when</p> <p>12 you had public MLPs, you had public general partners,</p> <p>13 you were spinning stuff out left and right.</p> <p>14 And the market began to move away</p> <p>15 from -- like I said, the equity markets didn't like</p> <p>16 the complexity and began to show that by having the</p> <p>17 price of these entities go down. And in response to</p> <p>18 that, these entities, the C corp. parents in</p> <p>19 particular, began to bring in their MLPs.</p> <p>20 Q. Right. So, basically, you're looking</p> <p>21 at the public filings and the language they're using</p> <p>22 in the public filings to describe the rationale of the</p> <p>23 transactions?</p> <p>24 A. That's correct.</p>

<p style="text-align: right;">137</p> <p>1 Q. Okay. So, for the first one listed on</p> <p>2 that page of the narrative, the CF Industries</p> <p>3 transaction has that phrase "simplif[ies] its</p> <p>4 corporate structure"; correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And then the next paragraph, there's</p> <p>7 the Tallgrass Energy transaction, and there's a quote</p> <p>8 from the CEO about how the "public entity will be more</p> <p>9 streamlined [and] simplified." Is that right?</p> <p>10 A. That's correct.</p> <p>11 Q. And then in terms of the six</p> <p>12 transactions and the four by Enbridge, the first</p> <p>13 bullet point refers to "Simplifies and streamlines</p> <p>14 Enbridge's corporate and capital structure" Is</p> <p>15 that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. So what's the significance of MLPs</p> <p>18 falling out of favor in terms of your assessment of</p> <p>19 Mr. Cozza's rationale about the option value of having</p> <p>20 a publicly traded refining MLP?</p> <p>21 A. I would disagree that there is any</p> <p>22 real option value with a public MLP by the middle of</p> <p>23 2018 about the future. I mean, you can argue that</p> <p>24 it's a long time, maybe two, three, five, ten years,</p>	<p style="text-align: right;">139</p> <p>1 20 percent; correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Does the 20 percent at the upper end</p> <p>4 of the range, does that affect your opinion?</p> <p>5 A. It does not affect my opinion, no.</p> <p>6 Q. Now, is there anything about the</p> <p>7 public stub, the existence of this public stub of,</p> <p>8 say, a 5 to 20 percent that you think would either</p> <p>9 have appeal or not have appeal to buyers?</p> <p>10 A. I think that having a public stub is</p> <p>11 irrelevant to buyers. I think that if the public stub</p> <p>12 does, in fact, as I believe was relatively</p> <p>13 predictable, trade down, that would make it harder for</p> <p>14 a buyer to come in and pay CVI what it thought CVRR</p> <p>15 might be worth, because clearly any buyer is going to</p> <p>16 look at the trading price when it's negotiating a</p> <p>17 purchase. If that trading price is below fundamental</p> <p>18 value, that's going to make it harder for CVI to</p> <p>19 realize the fundamental value of CVRR.</p> <p>20 Q. Okay. Now, if we can turn to your</p> <p>21 witness binder to JX 740, an exhibit referenced in</p> <p>22 your report.</p> <p>23 This is the -- these are minutes of</p> <p>24 the board meeting of Icahn Enterprises on November 28,</p>
<p style="text-align: right;">138</p> <p>1 things will swing. But that's generally not how</p> <p>2 companies -- if it's bad now, that's sort of what you</p> <p>3 expect, what is in existence today, that's what the</p> <p>4 market is telling you is going to exist going forward.</p> <p>5 And, in my view, that comment that</p> <p>6 Mr. Cozza made is not correct, not reflective of the</p> <p>7 economic reality at the time of the exchange offer.</p> <p>8 Q. Now, did you look at factors relating</p> <p>9 to the nature of the public stub in CVRR for purposes</p> <p>10 of your opinion?</p> <p>11 A. Yes. It was -- you know, it's a -- it</p> <p>12 was 5 percent outstanding. It was an MLP. I mean, it</p> <p>13 was -- I mean, it just -- it didn't really -- it</p> <p>14 didn't really lend itself to being used -- 5 percent</p> <p>15 doesn't lend itself to be utilized, to then become</p> <p>16 a -- to have great value.</p> <p>17 In fact, the trading dynamics, which</p> <p>18 were fairly predictable, would indicate that that</p> <p>19 5 percent would go the other direction, away from</p> <p>20 billions and more towards a much smaller number.</p> <p>21 Q. Okay. Now, you referred to 5 percent.</p> <p>22 But the minimum and maximum condition was such that</p> <p>23 the public stub that's remaining if the exchange offer</p> <p>24 was successful was anywhere between 5 percent and</p>	<p style="text-align: right;">140</p> <p>1 2018. And, in particular, I'd like to direct your</p> <p>2 attention to the top of page 2 of the document.</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. Where it says, "Mr. Icahn then</p> <p>5 explained his view that a sale of the Company's CVRR</p> <p>6 units to CVI in connection with an exercise of CVI's</p> <p>7 call right would be beneficial to the Company because</p> <p>8 it would simplify CVI's capital structure, which would</p> <p>9 make CVI more valuable to potential acquirors."</p> <p>10 Do you have an opinion about whether</p> <p>11 the statement attributed to Mr. Icahn is well-founded</p> <p>12 from a business and financial perspective?</p> <p>13 A. I would agree with this, but I would</p> <p>14 also go one step further. The simplification does not</p> <p>15 simply require that the Icahn units be sold to CVI,</p> <p>16 but also would require the remaining public units, the</p> <p>17 option being called. That's the way you simplify it.</p> <p>18 Q. And, therefore, in turn make it more</p> <p>19 valuable, make CVI more valuable to potential</p> <p>20 acquirors?</p> <p>21 A. Absolutely. You don't have -- the</p> <p>22 5 percent stub, actually, in my view, makes CVI less</p> <p>23 valuable to potential acquirors, if CVI is the one</p> <p>24 we're talking about putting up for sale.</p>

<p style="text-align: right;">141</p> <p>1 Q. Okay. Now, are you familiar with Bank 2 of America/Merrill Lynch having looked at this 3 question? 4 A. Yes. 5 Q. Can you turn to JX 846, please. 6 A. Okay. 7 Q. So that's an email string, and behind 8 it is a presentation book from Bank of America/Merrill 9 Lynch to CVI on December 13, 2018; correct? 10 A. Yes, sir. 11 Q. Can you describe the subject matter of 12 this presentation book? 13 A. This is a book which is, oftentimes we 14 investment bankers will do with clients, which is go 15 in and just give them our view, in general, of what 16 various options might be, what the state of the market 17 is. 18 We do it because eventually we want to 19 get business from these guys to be honest if it's an 20 M&A assignment, a financing assignment. But this is 21 just to be able to keep these -- keep our clients up 22 to date on how we, the bankers, see the financing and 23 M&A markets. 24 Q. Okay. And do you understand at this</p>	<p style="text-align: right;">143</p> <p>1 reason. 2 Q. Okay. What do you understand 3 "structural issues in the MLP market" to refer to? 4 A. My view, that's what we're talking 5 about now, this concept of moving towards 6 simplification and that being penalized by the 7 marketplace when you have a complex structure. 8 Q. On the second page, the next page, the 9 second page of the executive summary, under the 10 heading "Potential Investor Relations 11 Recommendations," there's a bullet point at the end, 12 "Some investors may naturally migrate to the story 13 post-CVRR buy-in." 14 Do you have a view about that 15 statement? 16 A. I think it's absolutely correct. I 17 think what this is saying is that once the entirety of 18 the CVRR is repurchased, the CVI story gets a lot 19 better because CVI is a single C corporation at that 20 point for purposes of public market valuation. 21 THE COURT: Mr. Friedlander, I'll note 22 that it's 12:30. Shall we take our lunch break for an 23 hour? Thank you. 24 (Luncheon recess taken at 12:30 p.m.)</p>
<p style="text-align: right;">142</p> <p>1 point in time, there was some effort to look at the 2 potential sale of CVI? 3 A. Yes, sir. 4 Q. Now, if you can turn to the "Executive 5 Summary" which is page 8. It's actually two pages, 6 pages 8 and 9 of JX 846. There's a bullet point under 7 "Situation Overview," it's the final bullet point in 8 that section. 9 A. Yes, sir, I see it. 10 Q. Where it says, "Not surprisingly, CVRR 11 units have been depressed given CVI's call right at 12 market and structural issues in the MLP market." 13 Do you have an opinion about whether 14 that's a well-founded statement? 15 A. I think that's absolutely correct. 16 The fact that the call right exists, it acts as a cap 17 on the potential trading price of CVRR. 18 Q. Okay. 19 A. And because of that cap, holders will 20 say, "I've lost any equity upside, why am I sitting 21 holding this piece of paper? I'll sell it." And 22 that, of course, causes the price of CVRR to go down. 23 The cap will not go above the cap because you run the 24 risk of CVI calling you out and losing money for that</p>	<p style="text-align: right;">144</p> <p>1 (Resumed at 1:30 p.m.) 2 THE COURT: Thank you. Please be 3 seated. 4 Please resume, Mr. Friedlander. 5 MR. FRIEDLANDER: Thank you, Your 6 Honor. 7 BY MR. FRIEDLANDER: 8 Q. Mr. Atkins, when we left off, we were 9 just looking at the final version of the BAML book 10 that was presented. 11 I'd like to direct your attention now 12 to JX 821. 13 And I guess my first question is do 14 you recognize what this document is, Mr. Atkins? 15 A. Your first question is what, Counsel? 16 Q. Do you recognize what this document 17 is, JX 821? 18 A. Yes, I do. This is a series of 19 emails, followed by some draft pages of the 20 presentation that we looked at before lunch. 21 Q. Okay. So and the last email in the 22 chain, the furthest-up document on the first page, 23 it's a cover email from Mr. Chaudhuri from Bank of 24 America Merrill Lynch; correct?</p>

<p style="text-align: right;">145</p> <p>1 A. Yes, sir.</p> <p>2 Q. And he's saying, "Here are my</p> <p>3 comments" on a draft presentation deck; correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And do you understand who</p> <p>6 Mr. Chaudhuri is?</p> <p>7 A. Yeah. He's a director in the -- in</p> <p>8 the energy M&A department.</p> <p>9 Q. At Bank of America Merrill Lynch?</p> <p>10 A. At BAML, yeah.</p> <p>11 Q. Okay. Now, in this draft presentation</p> <p>12 book, there's a slide that did not make its way into</p> <p>13 the final presentation book. That's on page 7 of 10,</p> <p>14 which has the title, "Structure/Process</p> <p>15 Considerations." Correct?</p> <p>16 A. I see it.</p> <p>17 Q. Okay. And below that, in smaller</p> <p>18 print, "CVRR Buy-in Considerations."</p> <p>19 A. Yes, sir.</p> <p>20 Q. I know it's small print. It might be</p> <p>21 easier to look at it on the screen, if that helps you.</p> <p>22 A. That would be a lot easier. Thank you</p> <p>23 for the screen.</p> <p>24 Q. From your review of the record,</p>	<p style="text-align: right;">147</p> <p>1 the documents. Obviously, they were produced by BAML,</p> <p>2 but there's been no deposition of BAML. We have no</p> <p>3 context other than the fact that these happened to be</p> <p>4 in a document production from a third party, with no</p> <p>5 other information.</p> <p>6 THE COURT: Thank you. I'm going to</p> <p>7 resolve this post-trial. I am inclined to allow you</p> <p>8 to pursue a custodial record of BAML to investigate</p> <p>9 further these documents. Without prejudging any</p> <p>10 pending motion, that is my current thinking. So for</p> <p>11 now, we'll let the questions come in.</p> <p>12 MR. RAJU: Thank you, Your Honor.</p> <p>13 BY MR. FRIEDLANDER:</p> <p>14 Q. Now, Mr. Atkins, did you have an</p> <p>15 understanding of correspondence between the company</p> <p>16 and BAML about what was happening at this time</p> <p>17 regarding the buy-in?</p> <p>18 A. Yes. The day before this, there was</p> <p>19 an email that indicated -- from the coverage officer,</p> <p>20 whose name is Alex something, the coverage officers</p> <p>21 are responsible for maintaining the direct</p> <p>22 relationships with the clients, that informed the M&A</p> <p>23 guys that the -- that CVI was, in fact, going to</p> <p>24 execute -- going to execute the call.</p>
<p style="text-align: right;">146</p> <p>1 Mr. Atkins, did you have an understanding of what was</p> <p>2 happening at this point in time in terms of what BAML</p> <p>3 understood about the company's intentions respecting</p> <p>4 the call of the CVRR units?</p> <p>5 A. Right.</p> <p>6 MR. RAJU: Your Honor, objection.</p> <p>7 Your Honor, I think we previewed this in connection</p> <p>8 with the pretrial conference. These are a series of</p> <p>9 documents that we object -- have objected to on the</p> <p>10 basis of hearsay. So I just want to note that again</p> <p>11 for the record.</p> <p>12 THE COURT: Thank you.</p> <p>13 And do you want to respond for the</p> <p>14 record, Mr. Friedlander?</p> <p>15 MR. FRIEDLANDER: Yeah, sure. Your</p> <p>16 Honor, well, first of all, I'm trying to elicit</p> <p>17 Mr. Atkins' testimony about these documents, which</p> <p>18 came from BAML's files. They're referenced in his</p> <p>19 report and he's relied upon them as an expert to --</p> <p>20 for his understanding of not just the chronology, but</p> <p>21 what's going on and, ultimately, his view on the</p> <p>22 subject matter.</p> <p>23 MR. RAJU: Your Honor, the only other</p> <p>24 thing we would add is there's no real foundation to</p>	<p style="text-align: right;">148</p> <p>1 Q. Okay. And, actually, can you turn</p> <p>2 back -- wait. Keep that on the screen for</p> <p>3 convenience.</p> <p>4 But if you just turn to page 39 of</p> <p>5 your report, JX 1234. Do you block-quote the email</p> <p>6 you just referred to in your report?</p> <p>7 A. Yes. It's the -- it's the first block</p> <p>8 quote -- first full block quote on page 39. It says,</p> <p>9 "On December 12, 2018"</p> <p>10 Q. So Mr. Chaudhuri emailed someone else</p> <p>11 at BAML saying he talked to someone else at BAML, and</p> <p>12 then what's bolded in the language you block-quoted,</p> <p>13 with emphasis added, "We also discussed putting buy-in</p> <p>14 of CVRR behind us as he said that client mentioned</p> <p>15 that they would complete it in January during the last</p> <p>16 meeting."</p> <p>17 Right? That's what's in your report;</p> <p>18 correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. So Mr. Chaudhuri having sent</p> <p>21 that email on December 12, he's marking up a slide on</p> <p>22 the morning of December 13, and that's what's in front</p> <p>23 of you on the screen as JX 821; correct?</p> <p>24 A. Yes, it is.</p>

<p style="text-align: right;">149</p> <p>1 Q. Okay. So this slide in the draft</p> <p>2 deck, it has the heading -- it says, "We would like to</p> <p>3 consider the benefits and considerations regarding the</p> <p>4 execution of the limited call right to acquire the</p> <p>5 balance of the CVRR units as it relates to a potential</p> <p>6 sale process for CVI."</p> <p>7 Do you see that, sir?</p> <p>8 A. I see that.</p> <p>9 Q. Okay. And then, under "Benefits," the</p> <p>10 first bullet point, it says, "Buyer could be" -- I'm</p> <p>11 sorry. "Buyer could be deterred by outstanding public</p> <p>12 stub and additional process to complete buy-in."</p> <p>13 Do you have an opinion about whether</p> <p>14 that statement is well-founded from a financial and</p> <p>15 business perspective, in your opinion, sir?</p> <p>16 A. I agree with it 100 percent.</p> <p>17 Q. And could you explain.</p> <p>18 A. Yes. When you have the stub out -- we</p> <p>19 touched on it a little bit earlier, but when you have</p> <p>20 that 5 percent, 15 percent stub outstanding, it is a</p> <p>21 negative to a potential buyer of CVI or CVRR.</p> <p>22 Q. Okay. And there's an additional step</p> <p>23 that would have to take place and --</p> <p>24 A. Nobody -- when you're buying a</p>	<p style="text-align: right;">151</p> <p>1 exercising the call option. And so I would agree that</p> <p>2 these are, in fact, benefits. Getting rid of the</p> <p>3 additional public entity and getting -- and creating</p> <p>4 simplification are benefits to selling CVI or CVRR.</p> <p>5 Q. Okay. And what does simplification</p> <p>6 mean in this context, as you understand it, sir?</p> <p>7 A. In the context in the MLP space, it</p> <p>8 means going from more entities to less entities.</p> <p>9 Q. Now, you're aware that, several weeks</p> <p>10 after this, the call right was, in fact, exercised by</p> <p>11 CVR Energy; correct?</p> <p>12 A. Yes, I am.</p> <p>13 Q. In what respect, if any, does the fact</p> <p>14 of the exercise of the call bear on your analysis and</p> <p>15 your opinion about whether Mr. Cozza's testimony about</p> <p>16 the option value of the public stub to a potential</p> <p>17 acquiror fit into it?</p> <p>18 A. Well, it goes to what I'm saying, that</p> <p>19 that explanation that Mr. Cozza provided was one that</p> <p>20 I did not think was -- I did not agree that it was a</p> <p>21 good reason to keep the stub outstanding. In fact, it</p> <p>22 got -- that the exercise of the call occurred very</p> <p>23 shortly after the stub was created, I think, shows</p> <p>24 that it was not worth billions. They brought it in</p>
<p style="text-align: right;">150</p> <p>1 company, having these little stubs outstanding,</p> <p>2 they're annoying. They need to be -- they're minority</p> <p>3 interest, and you have to deal with them, and there's</p> <p>4 time it takes having to provide information, if you</p> <p>5 have a stub outstanding that's public. So to</p> <p>6 eliminate them, again, goes towards this concept that</p> <p>7 we discussed earlier, simplification.</p> <p>8 Q. Okay. Now, in Mr. Chaudhuri's markup</p> <p>9 of this slide, he -- you see he has a couple of</p> <p>10 provisions with arrows where he's -- he's circling</p> <p>11 them and putting them under the benefits category.</p> <p>12 And I know the print is small, so I'll</p> <p>13 just -- I'll just read them. The second-to-last</p> <p>14 bullet on the page with his handwriting added to it,</p> <p>15 removes "an additional public entity/board</p> <p>16 outstanding," and then below that, "Many buyers have</p> <p>17 been focused on market concern about</p> <p>18 'Simplification' -- reluctant to add more structural</p> <p>19 complexity."</p> <p>20 Do you have a view about the financial</p> <p>21 and economic basis for those statements?</p> <p>22 A. Yes. And the other thing he does is</p> <p>23 he's moving these two from "considerations" up to</p> <p>24 "benefits" because he knows that the company is</p>	<p style="text-align: right;">152</p> <p>1 for a couple hundred million. And if it was worth</p> <p>2 billions, why would you do that?</p> <p>3 Q. And when you refer to a couple hundred</p> <p>4 million, what are you referring to?</p> <p>5 A. The cost of taking out the remaining</p> <p>6 15 percent of the -- that was outstanding, public</p> <p>7 units that were outstanding.</p> <p>8 Q. Is that the total cost or the marginal</p> <p>9 cost relative to the exchange offer?</p> <p>10 A. I think it was -- it was 22 million</p> <p>11 units times -- times \$10 a unit is \$220 million.</p> <p>12 Q. Okay. Now, let's turn to other</p> <p>13 claimed rationales for leaving the public stub</p> <p>14 outstanding as part of the partial exchange offer.</p> <p>15 On -- you don't need to turn to it,</p> <p>16 but do you recall, on page 53 of your opening report,</p> <p>17 you quote Mr. Icahn's testimony that it would be very</p> <p>18 hard to reconstitute CVRR as an MLP if all its units</p> <p>19 were purchased?</p> <p>20 Do you remember that, sir?</p> <p>21 A. I do.</p> <p>22 Q. And I believe you heard, this morning,</p> <p>23 Mr. Cozza refer to the rigmarole or brain damage</p> <p>24 associated with turning CVRR back into a public</p>

<p style="text-align: right;">153</p> <p>1 entity; correct?</p> <p>2 A. I did.</p> <p>3 Q. Do you agree with those sentiments?</p> <p>4 A. No, I do not.</p> <p>5 Q. Why not?</p> <p>6 A. Well, when you don't have -- when you</p> <p>7 bring -- when you buy the remaining units in, you're</p> <p>8 not eliminating the stub. It's just now a -- you're</p> <p>9 not eliminating the MLP. It's now the MLP is a wholly</p> <p>10 owned subsidiary of CVI. It's still an MLP. It's</p> <p>11 still a limited partnership. And in other contexts</p> <p>12 I've seen, I've seen these companies continue in</p> <p>13 existence. I've seen parent companies continue to</p> <p>14 file the public -- the documentations to keep the --</p> <p>15 with the SEC to keep information fresh and available</p> <p>16 for the public. And so --</p> <p>17 Q. Can I have you explain, what is the</p> <p>18 business rationale of buying out all the units of an</p> <p>19 MLP, buying it in, but then continuing to file</p> <p>20 financial information with the SEC?</p> <p>21 A. It's two things. One is it is -- if</p> <p>22 you want to go public again, it speeds that process</p> <p>23 dramatically. You don't go through the brain damage</p> <p>24 that Mr. Icahn and Mr. -- hope I didn't do that --</p>	<p style="text-align: right;">155</p> <p>1 report, you quote testimony from Mr. Cozza about how</p> <p>2 the exchange offer was a way to simplify the</p> <p>3 structure; is that right?</p> <p>4 A. That's what I quote Mr. Cozza saying,</p> <p>5 yes.</p> <p>6 Q. And I don't know how many times we</p> <p>7 heard that word "simplify" this morning, but he</p> <p>8 referenced that in his deposition testimony that was</p> <p>9 played live; correct?</p> <p>10 A. Yes, he did.</p> <p>11 Q. Now, have you seen in the record any</p> <p>12 other references to simplifying the structure as a</p> <p>13 rationale for the transaction?</p> <p>14 A. Well, yeah. We talked this morning</p> <p>15 about what I have in Exhibit C, where we -- we</p> <p>16 actually look at actual buy-ins by general partners of</p> <p>17 their MLPs. And the rationale is simplification.</p> <p>18 Simplification means elimination of public entities.</p> <p>19 They're either going from 3 to 2 or 2 to 1, but not</p> <p>20 having -- none of them having stubs outstanding.</p> <p>21 Q. Now, in your report, do you recall</p> <p>22 referring to notes of Jonathan Frates that were taken</p> <p>23 at a board meeting?</p> <p>24 A. Yes, sir.</p>
<p style="text-align: right;">154</p> <p>1 that Mr. Icahn and Mr. Cozza had referenced. You</p> <p>2 actually have a basically on-the-shelf, ready-to-go</p> <p>3 IPO.</p> <p>4 In addition, if you wanted to sell the</p> <p>5 business, having publicly filed SEC documents is a</p> <p>6 really good thing for potential buyers, because they</p> <p>7 know that you put your -- your best efforts, you've</p> <p>8 done some -- the right kind of thinking to get this</p> <p>9 information publicly available and subject to the</p> <p>10 scrutiny of the SEC.</p> <p>11 So that -- that goes a long way, from</p> <p>12 a buyer's perspective, which is why buying and selling</p> <p>13 public companies happens at a much faster rate than</p> <p>14 private companies.</p> <p>15 Q. Do you -- do you have a view about the</p> <p>16 relative benefits to a potential acquiror between</p> <p>17 having a bought-in -- fully bought-in MLP that has</p> <p>18 public information on file versus buying an entity</p> <p>19 with a -- with a 15 percent or 5 to 20 percent stub</p> <p>20 with a call right attached to it?</p> <p>21 A. Yes. It's much, much cleaner to have</p> <p>22 no stub outstanding.</p> <p>23 We talked about this earlier.</p> <p>24 Q. Now, on page 54 of your opening</p>	<p style="text-align: right;">156</p> <p>1 Q. Okay. And can you turn to JX 273,</p> <p>2 please.</p> <p>3 A. Would someone make those bigger for me</p> <p>4 on my screen. Thank you.</p> <p>5 Q. Right. Well, first of all, let's just</p> <p>6 start, do you have understanding what these notes</p> <p>7 represent, from your --</p> <p>8 A. They were notes from a board meeting,</p> <p>9 and Mr. Frates was not sure which one, whether it was</p> <p>10 the CVI board meeting or the CVRR board meeting, about</p> <p>11 the time when they were considering doing the -- the</p> <p>12 exchange offer.</p> <p>13 Q. And so this is from -- both meetings</p> <p>14 were on May 24, 2018. Do you understand that?</p> <p>15 A. That's my understanding.</p> <p>16 Q. Okay. I'd like to direct you, if we</p> <p>17 go down the bullet points under "Rationale," the final</p> <p>18 bullet point is "Rationale."</p> <p>19 And then the second bullet point under</p> <p>20 that says, "Simplifies structure."</p> <p>21 Now, I know we've talked about the</p> <p>22 word "simplifies," but does -- well, first of all, is</p> <p>23 it your view that this partial exchange offer, by</p> <p>24 itself, simplifies the structure?</p>

<p style="text-align: right;">157</p> <p>1 A. No. My view would be a -- if a 2 purchase of the entirety of the outstanding units that 3 are publicly held, that would be a simplification. 4 And you could have one less publicly traded company 5 outstanding. 6 Q. Now, if we skip down two bullet 7 points, the second bullet point from the bottom, it 8 states, "Also If we sell CVI, as incentivized through 9 D Lamps contract, there could be some indefinite CVRR 10 ownership outstanding indefinitely if we don't buy it 11 up." 12 Just based on your understanding as an 13 investment banker, what -- what is the concept that -- 14 that seems to be referred to that would make sense to 15 you as a -- in a finance and business perspective? 16 A. What it says on its face. We have to 17 buy it up to be able to accomplish the sale of CVI in 18 a way that makes sense. 19 Q. So the way to simplify it would be 20 how? 21 A. Buy all the -- all of the remaining 22 outstanding 30 percent of the CVRR units through an 23 exchange offer and, if they don't tender, then through 24 an exercise of the call.</p>	<p style="text-align: right;">159</p> <p>1 70 percent, you have 30 percent of these -- of the 2 money generated at the CVRR level is flowing to third 3 parties, not up to CVI. By buying more in, you reduce 4 the cash leakage. But if you really want to eliminate 5 the cash leakage, you need to buy in 100 percent. 6 Q. And so, generally speaking, when there 7 are references to cash leakage, is it better to 8 eliminate it or to minimize it? 9 A. I mean, if you're trying to -- if it's 10 a goal to not have cash leakage, then, obviously, you 11 want to buy it all up. 12 Q. Now, on page 55 of your opening 13 report, you quote testimony from Mr. Lamp that -- and 14 I'm quoting, "The Icahns liked to mark-to-market their 15 investments" And leaving a public stub of CVRR 16 outstanding allowed them to do that. 17 Do you have a view, from a financial 18 and business perspective, whether there was utility to 19 leaving the public stub outstanding to allow for 20 mark-to-market valuation? 21 A. Here, the answer is no. There is no 22 utility in leaving this out, for two reasons. One is 23 that you can value CVRR by looking at CVI, which is a 24 public company, looking at UAN, which is a public</p>
<p style="text-align: right;">158</p> <p>1 Q. You said 30 percent. Do you mean 2 20 percent or less? 3 A. No. When they started the call -- 4 when they started the exchange offer, I believe it was 5 30 percent outstanding. 6 Q. Oh, I see. Now, looking to the shaded 7 bullet points the second from the -- the second from 8 the bottom, it says, "If got over 80% CVI could call 9 in the rest of it, there is contractual call right." 10 Do you see that? 11 A. Yes, I see that. 12 Q. Okay. So do you understand this to be 13 a reference to the buying the rest of it up would be 14 pursuant to the call? 15 A. Yes. Once they got over 80 percent, 16 anything that was not tendered, they could use -- the 17 call option would become exercisable, and then they 18 could do that at whenever -- whenever they wanted to. 19 Q. Now, there's a reference -- Mr. Cozza 20 referred to cash leakage, to the extent units are not 21 purchased. 22 Can you explain -- do you have a view 23 about what that concept means and how it applies? 24 A. Yes. Cash leakage is if you own</p>	<p style="text-align: right;">160</p> <p>1 company, which is the sister company of CVRR, and 2 subtracting the public market value of UAN from CVI. 3 That gives you plenty, if you're a -- in the business 4 of running investment funds, to mark to market. 5 The other problem you have is that, as 6 was foreseeable here, mind you, that the -- the stub 7 would trade down in value because of lack of liquidity 8 and other elements. It was off the Alerian, and the 9 overhang of the call right, then you're going to, in 10 all likely, see a deviation from fundamental value of 11 CVRR to trading value. And that would not be a good 12 thing for Mr. Icahn. 13 Q. Can you explain that? 14 A. Sure. If the -- let's say the 15 fundamental value was \$22 a share -- \$22 a unit, 16 excuse me. And because of the dynamic of leaving the 17 what turned out to be 15 percent outstanding, and with 18 this call right that is based upon the 20-day trading 19 price of CVRR, you end up seeing a decline in value, 20 which we -- guess what, we did see here, which there 21 was another precedent, which we haven't talked about, 22 where you had the same dynamic. 23 So it was very likely, in my view, 24 very predictable in my view that the CVRR 15 percent</p>

<p style="text-align: right;">161</p> <p>1 remaining outstanding would trade down below its</p> <p>2 fundamental value. And if Mr. Icahn were marking to</p> <p>3 market off of that, that would not give him a good</p> <p>4 mark, when, in fact, the fundamental value was a lot</p> <p>5 higher.</p> <p>6 Q. So, essentially, you'd be marking,</p> <p>7 like, the value of CVRR based on the trading of the</p> <p>8 stub in this depressed way; is that what you're</p> <p>9 saying?</p> <p>10 A. Correct.</p> <p>11 Q. Now, you very briefly mentioned a</p> <p>12 couple, but, generally speaking, why, in your opinion,</p> <p>13 was it predictable that a public stub of CVRR would</p> <p>14 trade below fundamental value?</p> <p>15 A. Three things. First is you have a --</p> <p>16 you're going to a fairly illiquid scenario, situation</p> <p>17 here -- which liquidity, as we all know who do</p> <p>18 valuation work in investment banking, illiquidity is a</p> <p>19 negative, and stuff which is illiquid trades at a</p> <p>20 discount to its fair market value. That's number one.</p> <p>21 Number two, because of this</p> <p>22 illiquidity, it was -- the expectation was, by many of</p> <p>23 the market professionals, that these units would no</p> <p>24 longer be included in the Alerian Index. And if</p>	<p style="text-align: right;">163</p> <p>1 more people to sell. Stock price comes down. Oops.</p> <p>2 The call price itself continues downward.</p> <p>3 So stock's going down. The call price</p> <p>4 is following it downward, and you get this downward</p> <p>5 spiral.</p> <p>6 Q. Okay. Well, before hitting each of</p> <p>7 those specifically, could you turn to JX 442, which is</p> <p>8 a transcript of the Q2 2018 earnings call which took</p> <p>9 place on July 26, 2018.</p> <p>10 And, in particular, on page 8 of the</p> <p>11 exhibit, are you aware that, at the top of the page, a</p> <p>12 Mr. Blair from Tudor Pickering asked these questions</p> <p>13 of Mr. Lamp.</p> <p>14 Actually, maybe it's easier if I just</p> <p>15 read it.</p> <p>16 In response to some statement by</p> <p>17 Mr. Lamp he says: "Great, great. And then finally,</p> <p>18 so looking at the S-4, it says that CVR Refining is</p> <p>19 not making a recommendation here. If the exchange</p> <p>20 offer is successful, though, are you worried about how</p> <p>21 the remaining units of ever will trade? You are</p> <p>22 looking at a stock with potentially very low float,</p> <p>23 this call option from CVI. We're not quite sure if it</p> <p>24 would stay in the Alerian. Do you have any concerns</p>
<p style="text-align: right;">162</p> <p>1 that's the case, you have certain holders of units who</p> <p>2 are what are called index funds, and they want to hold</p> <p>3 on to funds that are in indexes because they're</p> <p>4 mimicking an index by owning the same group of stocks,</p> <p>5 same group of units. Once that happens, they would</p> <p>6 have to exit that. So that's further downward</p> <p>7 pressure on units.</p> <p>8 Thirdly, you have this -- this call</p> <p>9 option, which acts as a cap on value on the upside.</p> <p>10 And so when you have a cap on your upside and you're a</p> <p>11 holder of equity securities, if you can't get the</p> <p>12 upside, why are you holding the units?</p> <p>13 And so people start saying if I can't</p> <p>14 get more than, let's say -- when the 90-day period</p> <p>15 ended, that was about \$18. If I can't get more than</p> <p>16 \$18 as of -- you know, that would have been</p> <p>17 approximately October 1 -- oh, sorry, November 1, why</p> <p>18 am I -- if I want to own an equity, I don't want an</p> <p>19 equity that caps me. So I sell.</p> <p>20 And that sale price lowers the price.</p> <p>21 And then the 20-day trading value starts coming down,</p> <p>22 and you get this downward spiral, which is completely</p> <p>23 predictable, based upon stock price falls, call price</p> <p>24 comes down a little bit. Oops. That causes people --</p>	<p style="text-align: right;">164</p> <p>1 on just how CVR would trade going forward?"</p> <p>2 Firstly, do you have a view about the</p> <p>3 appropriateness of those questions from a finance and</p> <p>4 business perspective?</p> <p>5 A. Extremely appropriate questions.</p> <p>6 Mr. Blair has extremely good instincts on what the</p> <p>7 downside was going to be. And this is as of end of</p> <p>8 July, I believe, right when the -- right when this was</p> <p>9 closing, so ...</p> <p>10 Q. And do you see Mr. Lamp's response,</p> <p>11 where he says: "Matt, I really can't say anything</p> <p>12 more than what's in the S-4 today. And that's kind of</p> <p>13 our just no comment position."</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Now, is there anything in the S-4</p> <p>17 about the prospects of how CVR public units would</p> <p>18 trade post-exchange offer?</p> <p>19 A. No, there's not.</p> <p>20 Q. I'd like to direct you now to JX 453.</p> <p>21 Actually, I'm going to change it up. I just learned</p> <p>22 this morning that there's a color version. So if we</p> <p>23 could go to JX 468, there's the color version of the</p> <p>24 Tudor Pickering report that's --</p>

<p style="text-align: right;">165</p> <p>1 A. Yeah. That's not in my book, so --</p> <p>2 Q. Well, actually, you can look at 453.</p> <p>3 But I think we'll have a color version up on the</p> <p>4 screen if we can.</p> <p>5 A. Happy to look at the screen. If you</p> <p>6 can make it bigger.</p> <p>7 Q. But for purposes of 468, the first</p> <p>8 page of the report, I believe, is page 7 of the</p> <p>9 exhibit.</p> <p>10 And do you see, at the top of the</p> <p>11 page, off to the right, the author of this research</p> <p>12 report is Matthew Blair. And that's the same</p> <p>13 individual from Tudor Pickering who asked a question</p> <p>14 of Mr. Lamp --</p> <p>15 A. That's correct.</p> <p>16 Q. -- the day before; right?</p> <p>17 A. Yes.</p> <p>18 Q. And looking at the second bullet point</p> <p>19 on that page, it says, "However, our bigger concern is</p> <p>20 with the pending exchange offer from CVI, which is set</p> <p>21 to expire after market close today. If the offer is</p> <p>22 successful, CVI will obtain the right to take out the</p> <p>23 remaining stub at CVRR at any time for no premium. In</p> <p>24 addition, the exchange offer will also (1) lower the</p>	<p style="text-align: right;">167</p> <p>1 Q. Okay. So on page 9 of JX 468, there</p> <p>2 is a heading, "Negative implications of call option."</p> <p>3 A. Yes.</p> <p>4 Q. And I won't read the whole thing, but</p> <p>5 just the beginning of it says, "We view this call</p> <p>6 option as a negative for CVRR, because it</p> <p>7 significantly shortens the investment time horizon."</p> <p>8 I was wondering if you can put in your</p> <p>9 own words, one, what you think of -- well, first of</p> <p>10 all, what do you think of Mr. Blair's analysis of this</p> <p>11 issue? Can you describe for the Court.</p> <p>12 A. Yeah. I mean, I think he's getting it</p> <p>13 right. I mean, it took all these guys a while to get</p> <p>14 it, but they were getting it right. They're seeing</p> <p>15 that this is -- and they're not getting any help from</p> <p>16 the company, when Mr. Lamp gives them a "no comment."</p> <p>17 And what they're getting is they're</p> <p>18 starting to see that the fact that this call option is</p> <p>19 out there, it creates a cap on the units. And because</p> <p>20 the call option is there, it's also going to</p> <p>21 significantly shorten the time horizon; meaning there</p> <p>22 was not upside in holding these units because they're</p> <p>23 going to get called, in all likelihood, in the</p> <p>24 not-too-distant future.</p>
<p style="text-align: right;">166</p> <p>1 float to as low as 5%, (2) potentially jeopardize</p> <p>2 CVRR's position in the Alerian Index, and (3) make it</p> <p>3 less likely in our view that the company monetizes its</p> <p>4 midstream assets. We believe that all of these</p> <p>5 factors will lead to a depressed valuation for CVRR</p> <p>6 relative to peers."</p> <p>7 Now, I believe, in your report, you</p> <p>8 didn't refer to about the monetization of the</p> <p>9 midstream assets or the probability of that. But what</p> <p>10 would -- do you have an assessment about the other</p> <p>11 items that Mr. Blair's mentioned?</p> <p>12 A. Yes. This is what we just touched on.</p> <p>13 This -- lower liquidity means lower value. Less</p> <p>14 likely that -- potentially jeopardize the Alerian.</p> <p>15 That's going to potentially lower the value of the</p> <p>16 units.</p> <p>17 And then he -- the conclusion he</p> <p>18 reaches, which is -- which I agree with, it's going to</p> <p>19 depress the value of CVRR relative to its peers.</p> <p>20 Q. Okay. Now, if we can turn two pages</p> <p>21 later in the report. You understand that, in the</p> <p>22 report, Mr. Blair elaborates at length upon each of</p> <p>23 these factors; correct?</p> <p>24 A. That's correct.</p>	<p style="text-align: right;">168</p> <p>1 Q. And, specifically, so what is --</p> <p>2 what's the perspective, like, an investor should have,</p> <p>3 in light of the -- in light of the existence of the</p> <p>4 call option -- well, in your view, in terms of</p> <p>5 interpreting this phenomenon?</p> <p>6 A. I would -- I would start with the flip</p> <p>7 side first, is most people want investors to have --</p> <p>8 when it comes to equity securities, long time</p> <p>9 horizons, because markets go up and down. And what</p> <p>10 you need is to be patient.</p> <p>11 When you have this call option</p> <p>12 outstanding, you're essentially telling the</p> <p>13 unitholders that there is no upside, they're going to</p> <p>14 have -- they're going to get called out sooner or</p> <p>15 later, because why else would you go above your sell</p> <p>16 position? Why else would you put yourself in a</p> <p>17 position to exercise the call if you didn't plan to</p> <p>18 exercise the call at some stage? And, therefore, this</p> <p>19 no longer is going to act like an equity security with</p> <p>20 upside. It's going to start acting like, okay, when</p> <p>21 are they going to exercise the call? What's the price</p> <p>22 going to be? And I have to start looking at the</p> <p>23 trading dynamics, as opposed to fundamental value.</p> <p>24 And then, inevitably, this one and another one that</p>

<p style="text-align: right;">169</p> <p>1 was just before this, the trading dynamic, you get</p> <p>2 this downward spiral. Because the upside is capped.</p> <p>3 That's the problem with the call option.</p> <p>4 Q. Okay. Now, sticking on the same page,</p> <p>5 the next heading, there's a heading "higher volatility</p> <p>6 ahead," and he talks about CVRR's float. So it's</p> <p>7 like, "One, CVRR's float" It says, "may fall to</p> <p>8 [] 12-17% and possibly as low as 5%"</p> <p>9 Do you have an understanding that</p> <p>10 Mr. Blair had a view about the likelihood of how</p> <p>11 much -- what percentage of the units would get taken</p> <p>12 in by the exchange offer?</p> <p>13 A. Yes. Well, what Mr. Blair is saying</p> <p>14 is that 12 to 17 percent represents the remaining</p> <p>15 retail holders who were not going to be as</p> <p>16 sophisticated and as able to follow the exchange offer</p> <p>17 procedures and exchange their units the way the</p> <p>18 institutional holders can and, in fact, did.</p> <p>19 So he's saying, okay, you're going to</p> <p>20 get some kind of float, 12, 17 percent, maybe as low</p> <p>21 as 5 percent. And what that's going to do is that's</p> <p>22 going to -- every buy and sell transaction, when you</p> <p>23 have a low float, is going to exacerbate the price</p> <p>24 movement of the units.</p>	<p style="text-align: right;">171</p> <p>1 Q. Okay. So on the page before me in</p> <p>2 this exhibit, Mr. Blair talks about the projected --</p> <p>3 what percentage of the shares he thinks will be taken</p> <p>4 in. And it's the last paragraph before the Figure 1</p> <p>5 and Figure 2, where he says, "We believe it's unlikely</p> <p>6 that CVI will get the full 25% target given that</p> <p>7 non-institutional shareholders make up almost half of</p> <p>8 CVRR's current 30% float."</p> <p>9 And then, skipping down a couple</p> <p>10 sentences, "As a rough guess, we estimate that CVI</p> <p>11 will receive 13-18% of the remaining shares in the</p> <p>12 exchange"</p> <p>13 And it's your opinion that you have no</p> <p>14 reason to disagree with that, or you do agree with it?</p> <p>15 A. It was prescient. I mean, he got it</p> <p>16 right.</p> <p>17 Q. How much -- what percent was taken in?</p> <p>18 A. I believe it was 14.5 or 15.5 percent.</p> <p>19 So smack in the middle of this range.</p> <p>20 Q. Okay. Now, actually, the next page in</p> <p>21 the exhibit, Mr. Blair is talking about the Alerian</p> <p>22 Index. And the last sentence on that page, "removal</p> <p>23 from the index would likely prompt selling and</p> <p>24 additional volatility for an MLP that has averaged</p>
<p style="text-align: right;">170</p> <p>1 Q. Okay. Now, do you have a view about</p> <p>2 the likelihood of institutional investors tendering</p> <p>3 versus retail investors tendering into this partial</p> <p>4 exchange offer?</p> <p>5 A. I do. I think I agree with Mr. Blair</p> <p>6 here that there is a much greater likelihood that</p> <p>7 those who do not tender will be your -- your retail</p> <p>8 investors, which people understood it to be around</p> <p>9 15 percent. I mean, obviously, some institutional</p> <p>10 holders didn't tender, but I think that may have been</p> <p>11 a function of them being index funds.</p> <p>12 There's some other discussion of index</p> <p>13 funds. And index funds will hold as long as you're in</p> <p>14 the Alerian. But, yes, mostly retail holders that are</p> <p>15 left over here, and I agree with Mr. Blair in that</p> <p>16 regard.</p> <p>17 Q. Okay. I hesitate to make this</p> <p>18 suggestion, but if it's beneficial for the Court and</p> <p>19 the court reporter, I was wondering, if you move the</p> <p>20 microphone closer to your mouth, it might be a little</p> <p>21 easier to hear you.</p> <p>22 THE WITNESS: Sorry, Your Honor. The</p> <p>23 biggest problem is this glass in front of me. There's</p> <p>24 no glass between me and Her Honor.</p>	<p style="text-align: right;">172</p> <p>1 just \$10mm in daily volume over the past year."</p> <p>2 Do you agree about whether removal</p> <p>3 from the index would prompt selling in the shares?</p> <p>4 A. Yes. If you have index funds in the</p> <p>5 shares, and you're no longer in that index, they will</p> <p>6 sell.</p> <p>7 Q. Now, in the next -- on the next page</p> <p>8 of the exhibit, Mr. Blair -- the paragraph begins,</p> <p>9 "Conclusion: Downgrade to Hold."</p> <p>10 Oh, I'm sorry. I'm sorry. I skipped</p> <p>11 a page ahead.</p> <p>12 On the next page, the heading "Recent</p> <p>13 call option example: BWP and Loews."</p> <p>14 And I believe you've referred to this,</p> <p>15 where he talks -- says in the first sentence of that</p> <p>16 paragraph, "We have a recent example where a similar</p> <p>17 call option led to underperformance of an MLP." And</p> <p>18 then that's graphically depicted below in that</p> <p>19 Figure 5.</p> <p>20 Could you tell the Court your</p> <p>21 understanding of what happened in the Boardwalk-Loews</p> <p>22 situation?</p> <p>23 A. I was involved in it, at least in the</p> <p>24 litigation. What happened was that on April 30, Loews</p>

<p style="text-align: right;">173</p> <p>1 announced that it was seriously considering, subject</p> <p>2 to getting an opinion of counsel, exercising its --</p> <p>3 its option to purchase the remaining outstanding units</p> <p>4 of Boardwalk Pipeline Partners. And that caused a lot</p> <p>5 of confusion in the market at first, because this was</p> <p>6 something which came out of the blue.</p> <p>7 But once the market figured it out,</p> <p>8 you started having this same kind of selloff, where</p> <p>9 your call price became your cap, and if people didn't</p> <p>10 see upside, they started selling. That brought the</p> <p>11 average price down, which -- of the call option, which</p> <p>12 caused more selling, which caused a lower -- and so</p> <p>13 you had this spiral downward or, in the words of</p> <p>14 one -- I think it was a fabulous expression -- one</p> <p>15 J.P. Morgan analyst, it was called the fear of</p> <p>16 feedback loop; which is -- which is it's feeding on</p> <p>17 itself.</p> <p>18 And so I think we saw the same thing</p> <p>19 happen. And it's predictable that if it happened</p> <p>20 there, it would happen here. And it did happen here.</p> <p>21 Q. Well, just taking you back to the</p> <p>22 Boardwalk example. If we could turn to JX 219, which</p> <p>23 is a Barclays report dated May 10, 2018. So right in</p> <p>24 the immediate aftermath of the Boardwalk announcement</p>	<p style="text-align: right;">175</p> <p>1 what's called ADIT, which is some kind of tax, and how</p> <p>2 they were going to treat it for purposes of recovery</p> <p>3 of what you could get on your pipeline -- your</p> <p>4 pipeline charges.</p> <p>5 And at the time, Boardwalk announced</p> <p>6 that they did not expect it to have any material</p> <p>7 effect whatsoever. So when this announcement came</p> <p>8 out, it did catch the market by surprise, because they</p> <p>9 thought that Boardwalk was not going to have a problem</p> <p>10 with the -- with any issues with the FERC's changes of</p> <p>11 the ADIT rules.</p> <p>12 Q. Was there another respect that it</p> <p>13 caught the market by surprise?</p> <p>14 A. Sorry?</p> <p>15 Q. Was there another respect that it</p> <p>16 caught the market by surprise?</p> <p>17 A. The fact that they were taking it out</p> <p>18 altogether. I mean, this is -- it was not expected</p> <p>19 that they would want to -- "they" being Loews, who at</p> <p>20 that time had not expressed an interest in bringing</p> <p>21 this in heretofore.</p> <p>22 Q. But the idea of preannouncing</p> <p>23 that -- the serious consideration of a prospective</p> <p>24 exercise of a call right, did that happen before?</p>
<p style="text-align: right;">174</p> <p>1 we talked about.</p> <p>2 If we could turn to the second page of</p> <p>3 that document, under the heading "Digging deeper into</p> <p>4 call rights." The very first sentence of it.</p> <p>5 Just blow that up.</p> <p>6 "In light of [Boardwalk's]</p> <p>7 announcement that certain call right clauses may</p> <p>8 enable its GP to exercise its option to buy in the LP,</p> <p>9 which caught the market off-guard, we have gone</p> <p>10 through and looked at the call right details for each</p> <p>11 of the MLPs under our coverage"</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. Now, do you have an understanding</p> <p>15 about this concept of catching the market off guard?</p> <p>16 A. I certainly do. It was a big surprise</p> <p>17 to the market.</p> <p>18 Q. Now, what was it about it that was a</p> <p>19 surprise?</p> <p>20 A. Well, there's two things that were a</p> <p>21 surprise. One is that no one at that -- there was an</p> <p>22 announcement two weeks prior to -- or maybe it was the</p> <p>23 month before, in March, that the FERC was</p> <p>24 reconsidering its -- the way it was going to calculate</p>	<p style="text-align: right;">176</p> <p>1 A. Yes. That happened -- no, that had</p> <p>2 not happened before. I'm sorry. The -- yes. That</p> <p>3 was the -- the so-called preannouncement, so-called</p> <p>4 "seriously considering," was -- that came out of</p> <p>5 nowhere, as opposed to just simply saying we got the</p> <p>6 opinion; now we're exercising the -- our call option.</p> <p>7 Q. Okay. And in this report that --</p> <p>8 Barclays is trying to evaluate whether any other --</p> <p>9 whether there are any other MLPs that are in a</p> <p>10 situation where the controller could -- would be in a</p> <p>11 position to exercise the call right; correct?</p> <p>12 A. Yes. That's correct.</p> <p>13 Q. Okay. And how is that relevant to the</p> <p>14 situation at CVRR?</p> <p>15 A. CVRR, the -- the price was already</p> <p>16 coming down throughout the month of November, prior to</p> <p>17 CVI announcing that its board should consider --</p> <p>18 again, using the same word, "consider" -- exercising</p> <p>19 the option. And, of course, that had the same impact</p> <p>20 as it had in Boardwalk, which it caused the price,</p> <p>21 which was already coming down, to come down at an</p> <p>22 even -- at a slightly faster rate.</p> <p>23 Q. And in what respect is it relevant as</p> <p>24 of the time of the Tudor report on July 27, 2018?</p>

<p style="text-align: right;">177</p> <p>1 A. Well, it's out there. It can 2 certainly be -- it's one of these things where you 3 would not expect, if somebody wanted to buy in, that 4 they would go through the -- through these 5 machinations, this "should consider" kind of analysis, 6 if they were really seriously not trying to drag the 7 price down. 8 Q. But -- so the concept of what caught 9 the market by surprise is Mr. Blair saying -- now, 10 he's aware of it and he can put that in his report for 11 purposes of Boardwalk? 12 A. Yes. That -- 13 Q. I'm sorry, for purposes of CVRR. 14 A. And that's what he's saying. He's 15 saying, look, we had this bad dynamic that was started 16 with Boardwalk and Loews, and -- and that he was 17 concerned that the same impact, the same actions could 18 be taken here to -- not push the price down, but to 19 cause a bad leaking trading value for CVRR. 20 Q. Now, your report discusses an email by 21 HITE, the hedge fund -- it was reviewed earlier 22 today -- to Hedgeye.com. It's JX 495. And there 23 are -- this is Mr. Jampel calls the top five reasons 24 why CVRR might decline. And that starts on page 2 of</p>	<p style="text-align: right;">179</p> <p>1 worth of good news and 19 prior trading -- 2 A. Nineteen preceding trading days, yeah. 3 So -- and because of this -- I don't think -- 4 normally, but for this world of living in a call, if 5 you get good news, and the good news is really good 6 news, there's an expectation that this company will 7 have a great distribution that quarter. The concern 8 would be of any holder going, wait a minute, I can't 9 really buy as much as I want, because I only got 10 called out of this based on the prior 19 trading days. 11 Q. Okay. Point number 3 on the same 12 page, right above it, says, "Carl controls CVRR - he 13 can make the distribution smaller for any reason he 14 likes, which might impact the unit price." 15 Do you have an assessment of that 16 statement from a finance or business perspective? 17 A. Well, it's a true statement. The -- 18 we saw eventually that's -- this is sort of what 19 happened, in part. Later, this did, in fact, come 20 true. But if you do this, if the controller is in the 21 position to arbitrarily change this, yeah, that would 22 have a huge negative impact if the distribution is 23 less than it should be. 24 Q. Okay. And I think twice you've used</p>
<p style="text-align: right;">178</p> <p>1 the exhibit and continues on to page 3. 2 I'd like to just ask you about two of 3 the five points. But one is what's numbered number 4, 4 on the top of page 3. "If good news hits CVRR or the 5 industry in general from outside, the intrinsic value 6 might jump overnight. But because the call price is 7 based on 20-day history, the call price will still be 8 low even after the news, again, inenting the call." 9 Do you believe that that's a 10 well-founded view from a finance or business 11 perspective? 12 A. Yes, I do. It absolutely is 13 well-founded. You have a -- I mean, any good news is 14 going to be dampened by the other 20 days of trading. 15 So the -- and in the end, the call price will 16 continue, as it says at the end. The inenting the 17 cap is if it were to trade above, get close to trading 18 at that call price. You're not going to trade above 19 that call price, because if you do, you have a risk of 20 having CVI call you out of your -- your units at a 21 loss. 22 Q. So in terms of inenting the call, if 23 there's some super-good news on day one, the call can 24 get exercised on day one, and there will be one day</p>	<p style="text-align: right;">180</p> <p>1 the word "this" in your prior answer. Would you mind 2 spelling out what "this" is? 3 A. This would be a reduction in the 4 distribution relative to what the calculated 5 distribution would otherwise be. 6 Q. And why would that be expected to 7 impact the unit price if it was lower than otherwise 8 expected? 9 A. The variable-rate refiner MLPs are 10 highly dependent upon -- we saw Ms. Jackson and 11 Mr. Finks talk about this -- are highly dependent upon 12 all the cash that's available from that quarter being 13 distributed, other than some minor reserves and some 14 maintenance capital. 15 And if, in fact, a variable-rate MLP 16 does not do this, people are going to say that's not 17 the way this -- that's not what I signed up for, and 18 they're going to sell their units. 19 Q. Okay. Can you turn to JX 440, please. 20 And this is a short report by Citi, followed up by an 21 email exchange after it. And I was wondering if you 22 could tell the Court what you understand about this 23 Citi report by Mr. Rao on July 25, 2018, which would 24 be just two days before the close of the exchange</p>

<p style="text-align: right;">181</p> <p>1 offer.</p> <p>2 THE COURT: And before you respond,</p> <p>3 there's an objection.</p> <p>4 MR. RAJU: Nothing, Your Honor.</p> <p>5 THE COURT: Just kidding.</p> <p>6 BY MR. FRIEDLANDER:</p> <p>7 Q. Okay. Well, so -- so in the middle of</p> <p>8 page 2 of the exhibit, there's a paragraph -- or a</p> <p>9 little point, a bullet point, called "Citi's Take."</p> <p>10 MR. FRIEDLANDER: If you could just</p> <p>11 blow that up.</p> <p>12 Q. It starts off by saying, "CVRR</p> <p>13 reported strong 2Q performance" And then it</p> <p>14 says -- it refers to "close of ... [the] tender offer</p> <p>15 coming up" And it refers to -- I'll refer you to</p> <p>16 the next sentence after that. "Our checks over the</p> <p>17 past week indicate a relatively quiet and supportive</p> <p>18 environment for the tender."</p> <p>19 I was wondering, first, if we just</p> <p>20 focused on that statement in there, do you have an</p> <p>21 understanding, for being in this area, what kind of</p> <p>22 checks Mr. Rao from Citi would be referring to when</p> <p>23 he's talking about having checks about whether the</p> <p>24 tender would go through?</p>	<p style="text-align: right;">183</p> <p>1 assessment of what Mr. Rao is saying in that -- in</p> <p>2 that statement there?</p> <p>3 A. Well, Mr. Rao was one of the many</p> <p>4 analysts who covered this who looked in terms of</p> <p>5 fundamental value. What he's saying is that the</p> <p>6 fundamental value of CVRR is, in his view, \$25. On</p> <p>7 the other hand, he's starting to emphasize that there</p> <p>8 is downside because of everything we talked about</p> <p>9 previously -- the illiquidity, the lack of being on</p> <p>10 the Alerian, this cap that the -- that the call price</p> <p>11 is going to create.</p> <p>12 So -- and it says "risk/reward skews</p> <p>13 more downward" So he's saying that this call</p> <p>14 price is going to limit the upside and then provide a</p> <p>15 potential downside from some of the other factors that</p> <p>16 we're talking about.</p> <p>17 Q. Now, a factor that's pointed out by</p> <p>18 Mr. Rao is at the bottom of that first shaded</p> <p>19 paragraph, the last sentence, where it says, "Applying</p> <p>20 a loose form of inductive rollback equilibrium to how</p> <p>21 CVRR ownership may play out after Friday, we think</p> <p>22 holders' best point of profit-taking may be on the</p> <p>23 tender offer."</p> <p>24 Now, let's take that in two parts.</p>
<p style="text-align: right;">182</p> <p>1 A. He's having calls with his</p> <p>2 institutional clients.</p> <p>3 Q. So what type of people are those</p> <p>4 within the realm of different types of unitholders in</p> <p>5 CVRR?</p> <p>6 A. They're going to be the types that</p> <p>7 hold CVRR, and they hold it for whatever reason that</p> <p>8 they hold it. They're going to be mostly funds, and</p> <p>9 they're going to say -- so they're going to make a</p> <p>10 decision that they -- the unit that was trading at 21,</p> <p>11 22, and they get an offer of 26, 27, and that seemed</p> <p>12 to them to be sufficient for them to go ahead and</p> <p>13 tender their units. And that's approximately -- these</p> <p>14 people represent approximately -- these institutions</p> <p>15 represent approximately half of the 30 percent</p> <p>16 outstanding.</p> <p>17 Q. Okay. Now, if we skip down to the</p> <p>18 bottom bullet point in that short report,</p> <p>19 "Implications -- Strong results, but risk/reward skews</p> <p>20 more downward after tender offer's close, which we</p> <p>21 believe will be successful and relatively quiet.</p> <p>22 Reiterate \$25/unit target price while emphasizing</p> <p>23 potential downside starting next week."</p> <p>24 I was wondering, what's your</p>	<p style="text-align: right;">184</p> <p>1 When it says, "we think holders' best point of</p> <p>2 profit-taking may be on the tender offer," what does</p> <p>3 that refer to?</p> <p>4 A. Put your shares in. You're not -- the</p> <p>5 downside -- the upside of not putting your shares in</p> <p>6 is greater than putting your shares in. Take the</p> <p>7 money and run, is what that's saying.</p> <p>8 Q. All right. Now, the -- now disregard</p> <p>9 what's on the screen there. I want to go back to the</p> <p>10 next paragraph.</p> <p>11 By the way, does Mr. Rao, is he</p> <p>12 correctly describing how the call right works in that</p> <p>13 "Citi's Take" paragraph, that there's a sentence</p> <p>14 saying -- it refers to "CVI's call option for an</p> <p>15 incremental 15% of [the] units at market upon hitting</p> <p>16 an 80% ownership threshold ..."?</p> <p>17 A. No. Like a lot of the analysts, you</p> <p>18 know, these poor guys cover 10, 15 names, and they</p> <p>19 make mistakes all the time. This did not exist. You</p> <p>20 couldn't just call 15 percent of the remaining</p> <p>21 ownership. You'd have -- it's an all-or-nothing call.</p> <p>22 So he got that wrong. But that's</p> <p>23 mechanics. And that -- I don't fault him for that. I</p> <p>24 think his instincts about everything else are correct.</p>

<p style="text-align: right;">185</p> <p>1 Q. Okay. Now, I take it, standing alone, 2 and applying a loose form of inductive rollback 3 equilibrium, does that make a lot of sense to you, 4 just standing by itself?</p> <p>5 A. That's jibber-jabber. It's analyst 6 jibber-jabber. And he admitted it was jibber-jabber 7 in the email that we're going to see next that was 8 just flashed up there.</p> <p>9 Q. Okay. You're anticipating my next 10 question.</p> <p>11 So he receives an email from a Steven 12 Gambuzza. You can see it's from him, and it carries 13 over onto the second page. He's saying, "What does 14 this mean?" And he quotes that sentence.</p> <p>15 Do you have any idea who Steven 16 Gambuzza is?</p> <p>17 A. Yeah. Mr. Gambuzza is a member of 18 Millennium Partners, which is a very large hedge fund.</p> <p>19 Q. How large?</p> <p>20 A. \$50 billion.</p> <p>21 Q. Okay. So he asked for an explanation 22 from Mr. Rao, and then Mr. Rao responds in an email 23 that's on the first page of the exhibit; correct?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">187</p> <p>1 paragraph, there's a sentence that says, "Particularly 2 so when what CVI/Icahn are incentivized to do as 3 rational actors is own as little over the 80% mark as 4 possible at the close of the tender"</p> <p>5 Can you explain -- well, first of all, 6 whether you agree with that and what you think it 7 means.</p> <p>8 A. That's what the incentives are. I 9 mean, Mr. Cozza said it when he broadcast his -- his 10 testimony. He said that, yes, they do want to -- to 11 buy the remaining portion for as little as possible. 12 That's a natural thing. It's totally understandable. 13 That's what's -- that's what they're in business for 14 is to make money, make the most money they can.</p> <p>15 And Mr. Rao here is saying that's -- 16 you know, that's -- that's what the incentives are. 17 And do holders really not want to tender and become 18 potentially subject to being -- being on the other 19 side of a person who holds a call option on their 20 units.</p> <p>21 Q. Now, can you explain, what would it 22 mean to have -- why, as an economic principle, would 23 it be the case that CVI or Mr. Icahn would want a 24 smaller percentage of people to tender and a larger</p>
<p style="text-align: right;">186</p> <p>1 Q. And Mr. Rao refers to this as "Game 2 theory jargon as shorthand" Right?</p> <p>3 A. If you could scroll down, yes. There 4 it is. Yeah. A guy my age, that's jibber-jabber.</p> <p>5 Q. Okay. But explains it then, and he 6 says here's a longer form of it, right, that 7 paragraph?</p> <p>8 A. Yeah.</p> <p>9 Q. "Start at an endpoint where Carl Icahn 10 owns the whole thing and work backwards to get to 11 what's an optimal strategy for a current minority 12 holder."</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Now, do you have an understanding 16 about basically what Mr. Rao is setting out, like, 17 from a game theory perspective here?</p> <p>18 A. Yeah. What he's saying is that the -- 19 you're on the other side from Mr. Icahn in this case, 20 and Mr. Icahn is -- you know, he'll play his game and 21 you have to play your game. And do you really want to 22 be on the other side of Mr. Icahn, which is one of the 23 reasons he suggested tendering.</p> <p>24 Q. Right. And about halfway down that</p>	<p style="text-align: right;">188</p> <p>1 float left over?</p> <p>2 A. Well, I -- I can't read their minds, 3 but if I'm sitting where we're -- where they are, if I 4 got 80 percent and if I know -- if I've seen the -- if 5 I know the dynamic on these things, once you put 6 the -- you put this cap on, once people's upside is 7 limited, once you start having less liquidity, once 8 you get delisted by the Alerian, and the price is 9 going to start coming down, and with it will come down 10 the call price, then the -- the bigger the amount that 11 I haven't purchased -- you know, 20 percent versus it 12 turned out to be 15 percent -- the more upside there 13 is for me, the buyer, the holder of the option.</p> <p>14 Q. Okay. Now, in a prior sentence, 15 Mr. Rao writes, "Lot[s] of questions on how to put a 16 fundamental valuation on a variable rate MLP with an 17 at-the-market call option [hanging over] it" -- 18 "overhanging it, but the question itself indicates 19 trouble realizing meaningful further upside."</p> <p>20 How do you interpret that, about 21 whatever point Mr. Rao is making?</p> <p>22 A. Mr. Rao likes to use lots of words. 23 What he's saying is, he said so you really can't put a 24 fundamental valuation on the remaining CVRR units</p>

<p style="text-align: right;">189</p> <p>1 because you have this -- you can't realize any 2 meaningful upside -- i.e., the fundamental value -- 3 because you have this call option. And this call 4 option is a dynamic call option, because if people 5 start getting out and the market starts going down, 6 since it can't go above the call option, the place 7 where it's going to go is probably down, especially as 8 people recognize the lack of liquidity, as the company 9 is removed from the Alerian. So you're going to have 10 a deviation, a big deviation, from fundamental value 11 and market price.</p> <p>12 Q. Okay. Now, the last substantive 13 paragraph of the email says, "All-in, not saying units 14 crater quickly post-close on the tender, but the risk 15 profile skews to the downside on a fairly limited 16 upside probability."</p> <p>17 I was wondering, one, can you comment 18 on your view of it? Like, how a sell-side analyst 19 like Mr. Rao is expressing himself in this -- what's 20 the sentiment being expressed, as you understand it?</p> <p>21 A. You see the difference between the 22 sell-side analysts like Mr. Rao and then the more 23 aggressive buy-side guys like Mr. Jampel of HITE, who 24 wants to push the price down as best he can. The</p>	<p style="text-align: right;">191</p> <p>1 paragraph of his email says, "we believe your upcoming 2 capital projects would be best funded by retaining 3 cash at CVRR in the short term, and not paying it out 4 to outside unitholders."</p> <p>5 And I think you've already touched on 6 this, but do you understand, from Mr. Jampel's 7 perspective, what's the economic -- why would he be 8 saying that, from an economic perspective?</p> <p>9 A. Because he wants the price of CVRR to 10 go down because he's got a short position in CVRR. So 11 as we spoke about before, you reduce the cash 12 distribution below what it normally would be and 13 you'll see unitholders heading for the door.</p> <p>14 Q. Now, Mr. Jampel's email gets forwarded 15 to Tracy Jackson, who writes in an email, in the 16 second part of her email, "Assuming you and Dave have 17 discussed and that you've emphasized our view that the 18 retention of operating cash flow in the short term to 19 fund long term capital initiatives is a mismatch of 20 yield versus expected return."</p> <p>21 Now, can you explain to the Court, 22 from an economic perspective, what is this concept of 23 why using operating cash flow to fund capital projects 24 would be a mismatch of yield versus expected return?</p>
<p style="text-align: right;">190</p> <p>1 sell-side guys are always polite because they have to 2 get access to companies, so they understate things.</p> <p>3 And this is a very nice example of an 4 understatement, saying it's not going to crater 5 quickly, but the risk profile skews the downside, with 6 limited upside -- i.e., it's going to go down. May 7 not happen right after the tender, you do have that 8 90-day period, but it's going to -- it's probably 9 going to go down. And he called it correctly.</p> <p>10 Q. Now, I'd like to turn back to the 11 question about the distributions. If you could turn 12 to JX 549, which is an email exchange. The bottom 13 email on the chain is a cover email from Mr. Jampel 14 from HITE.</p> <p>15 A. No. 549?</p> <p>16 Q. Yes.</p> <p>17 A. Oh, 549. I'm sorry. I was looking at 18 the -- okay.</p> <p>19 Q. So do you see the bottom of the chain 20 is an email from Mr. Jampel of HITE to David Lamp and 21 Jay Finks at CVR Energy? And this was a cover email 22 to a letter he sent on October 4. And then there's 23 internal emails by CVR Energy above it.</p> <p>24 And Mr. Jampel, in the second</p>	<p style="text-align: right;">192</p> <p>1 A. Sure. What -- what Ms. Jackson is 2 saying here is that current cash that is generated 3 from the existing asset base is what you pay out to 4 your unitholders. That's the word "yield."</p> <p>5 The -- the long-term capital 6 initiatives create future yield, and those normally, 7 historically, are funded by debt and equity that is -- 8 that you're raising to create future growth in the 9 business.</p> <p>10 Current cash flow, you pay out. 11 Future cash flow, you generate through financing it.</p> <p>12 Q. And they do that through equity or 13 debt financing to support their capital projects? 14 That's how -- you match up the financing yield with 15 the projected yield from the investment itself?</p> <p>16 A. Yeah. If you think that the 17 investment you're investing in some kind of project 18 that is going to create a yield over the next five 19 years, you do your debt for five years and then you 20 match up -- equity is not five years, but you're 21 matching your equity up based upon what's the right 22 leverage ratio, the debt-to-total capitalization, 23 right coverage ratio, debt-to-EBITDA you have.</p> <p>24 So you do some debt, match that up</p>

<p style="text-align: right;">193</p> <p>1 with the life of the asset, do some equity to fill in 2 the hole that you need to maintain your ratings with 3 the rating agencies. 4 Q. Okay. Now, Ms. Jackson is writing to 5 Mr. Finks, among others. Mr. Finks responds to 6 Ms. Jackson, "We discussed that point last time we 7 talked to them -- the goal of the MLP is to pay out 8 all distributable cash, which is [probably] why they 9 are" -- "why they are probably pushing their point of 10 view." 11 Can you speak to this concept of the 12 goal of the MLP is to pay out all distributable cash? 13 A. Sure. Again, the goal -- if you have 14 current cash flow that was generated by a prior year's 15 investment, you pay it out currently. And that's what 16 your unitholders in variable-rate refining MLPs 17 expect. They expect to get the upside from the 18 refining, which sometimes it goes up and down a little 19 bit, but it can be a big hit. 20 Q. Okay. Now, in your report, you 21 discuss how there was a nonboard approved \$38 million 22 reserve for projects taken -- that reduced the Q3 23 distribution; correct? 24 A. Yes, I did.</p>	<p style="text-align: right;">195</p> <p>1 the headline "Negative," with the heading, "Negative." 2 And the second bullet point, "Opted to record a \$38mm 3 million reserve and reduce the payout accordingly in 4 the quarter." 5 Can you interpret what that means for 6 that to be listed as a negative? 7 A. I kind of jumped ahead there in my 8 last answer, but, yes, this is what I was talking 9 about. This is something that was not expected, 10 because historically, CVRR, as well as other refining 11 MLPs, in any variable-rate MLP, will pay out what they 12 have on hand. And this was a deviation from that 13 approach. 14 And this is sort of what our friends 15 at HITE had been urging them to do, although HITE was 16 saying bring it down to zero. 17 Q. Okay. And the other negative that's 18 listed is the privatization risk, which they say 19 operates as an overhang. 20 Do you understand, is that such a leak 21 you've been testifying to earlier? 22 A. Yeah. That's the cap. The 23 privatization risk comes from the exercise of the call 24 right, and that creates the overhang -- same thing</p>
<p style="text-align: right;">194</p> <p>1 Q. And how was that received, as you 2 understood it? 3 A. Well, it was -- first of all, we just 4 looked at what Ms. Jackson and Mr. Finks were saying. 5 And the company then did a flip-a-roo -- I don't know 6 if that's a word or not -- but flip-a-roo, and instead 7 of distributing the 1.20, which would have been the 8 full distribution, it distributed 90 cents. And 9 that -- that delta, the 32 cents, is the \$38 million. 10 When this was announced to the market 11 at the -- in the call with analysts post -- after the 12 earnings were announced, there was a negative reaction 13 from some of the analysts. 14 Q. Okay. Now, you're talking about in 15 the Q & A itself, or are you talking about afterwards, 16 in -- 17 A. No. The -- the sell side rarely 18 reacts negatively. It's in the publications 19 afterwards. 20 Q. Okay. Can you turn to JX 605. And 21 this is a Barclays report dated October 26, 2018, that 22 I believe is the day after the earnings call. 23 And, in particular, on page 13 of the 24 exhibit, there's some text at the top of the page with</p>	<p style="text-align: right;">196</p> <p>1 that all these analysts have been saying. 2 Q. If you go to the prior page of the 3 exhibit, page 12, there's a little heading right 4 before "positive." It says, "We remain UW on CVRR." 5 Do you understand UW is underweight? 6 A. Underweight, yes. 7 Q. And it continues, "We are skeptical 8 that the shares will be able to sustainably outperform 9 so long as the aforementioned call option risk 10 lingers." 11 How do you describe that language? 12 A. That makes sense, which is why invest 13 in CVRR -- i.e., why weight it equally or overweight 14 it -- when it won't be able to outperform on a -- 15 because of the call risk, the risk associated with the 16 call option. 17 Q. Okay. In your opening report, you 18 discuss an investor relations memo that was created on 19 December 20, 2018. And that's JX 1164. 20 Do you have an understanding what this 21 memo is? 22 A. Yes. This was a memo prepared 23 sometime on or after December 20, because there's 24 reference to December 20 on the second page. And this</p>

<p style="text-align: right;">197</p> <p>1 was a -- this picked up a lot of the commentary that 2 the investor relations division of CVRR was getting 3 from unitholders. 4 Q. Okay. Now, it begins by saying, "The 5 overall sentiment is negative. The majority of the 6 inbound calls have been retail and they can't 7 comprehend why a company with a distribution yield in 8 the mid 20's would" -- I'll add the word "be" -- 9 "would [be] trading down." 10 Can you tell me, what's the 11 significance of that statement, as you understand it, 12 given, say, the state of the world around December 20, 13 2018? 14 A. I think you have to blow this up for 15 me a little bit. This is the very first -- 16 Q. Yeah. It's the very first paragraph 17 in the -- 18 A. 1(a). Thank you. 19 And could you repeat your question for 20 me, Mr. Friedlander? 21 Q. Yeah. Sure. You know, at this time 22 frame, December 20, or thereabouts, 2018, what's the 23 significance of inbound retail callers -- saying the 24 majority are retail -- who can't comprehend why the</p>	<p style="text-align: right;">199</p> <p>1 A. Yeah. The -- what you should have is 2 the distribution is in the 20s because the unit price 3 has come down so high. And so what these people are 4 saying is that we think the unit price should be 5 higher because being in the mid-20s makes no sense. 6 We're used to having a distribution yield, say, of 7 around 12 percent. 8 Q. Now, maybe it would be a good point in 9 time if we switch back to your opening report, 10 JX 1234, to page 57, where you have a stock price 11 chart. 12 A. That was page? 13 Q. Page 57 of JX 1234. 14 A. Yes. There we go. Thank you. 15 MR. FRIEDLANDER: Maybe if we can just 16 blow up the chart. 17 A. Thank you. 18 Q. Mr. Atkins, can you tell the Court, 19 like, in the aftermath of December 20, 2018, where -- 20 where the units are trading, given where they'd been 21 earlier? 22 A. Well, unit price, Your Honor, is on 23 the right axis. And then we did an index, and we put 24 a bunch of things in here to see. One was the -- was</p>
<p style="text-align: right;">198</p> <p>1 stock is trading down? 2 A. Well, these are the same people who 3 didn't tender. And they were just -- and they're used 4 to getting really nice dividends, and that's probably 5 why they purchased CVRR in the first place. 6 And they watched -- they've been 7 watching their unit price fall and fall and fall and 8 fall. And at this point, it's gone from, you know, 9 when the -- after the tender expired -- and I have a 10 graph somewhere in my book, that the -- from the high 11 teens, and now it's traded down, by the end of this 12 point, December, closer to 10 than 20. And that's 13 despite the fact that the distribution yield was -- is 14 so high. 15 And it's just -- it's just baffling, 16 these people who don't understand the trading dynamic 17 that was created by the call option acting as a 18 ceiling and then the lack of liquidity causing all the 19 institutional support to tender and not remain in the 20 stock. 21 Q. So if the distribution yield is high, 22 in the 20s, that should -- in sort of the ordinary 23 state of the MLP world, should that apply a high unit 24 price?</p>	<p style="text-align: right;">200</p> <p>1 CVI, the other was an index of other -- of other 2 refiners. 3 And then we have a dashed line, which 4 is the price for the -- the call price. And so what 5 we see is that, generally speaking, CVI trades pretty 6 nicely with -- CVRR, excuse me, CVRR trades pretty 7 nicely with CVI up until the call protection ends on 8 October 31. And at that point, we see the CVI, which 9 has been wandering around. It's come down a little 10 bit, starting pretty much when it came off the 11 Alerian. So we started seeing some weakness. That 12 was September 12, which we didn't put the line in 13 there for that. 14 So there's been a little bit of 15 weakness, but not a huge amount of weakness for CVRR. 16 But once this protection period ends, in general, 17 investors who are still there start saying, "My upside 18 is capped. I'm going to get out." What I described 19 earlier is the fear of feedback, when it starts taking 20 over. 21 So you see the blue line starts 22 wandering downward, and it pulls down with it -- and 23 I'm colorblind. I think that's a green dashed line. 24 Correct me if I'm wrong.</p>

<p style="text-align: right;">201</p> <p>1 And so, finally, once it gets to a</p> <p>2 point right around Christmas, where it gets really</p> <p>3 low, and there's a fairly wide gap between the price</p> <p>4 of CVRR and the call price, there is some buying. And</p> <p>5 then, quickly thereafter, the price of -- the call is</p> <p>6 exercised in early January of 2019.</p> <p>7 Q. Okay. So maybe just to recapitulate</p> <p>8 some of these elements, to the extent they're not</p> <p>9 clear.</p> <p>10 So the blue line is the CVRR unit</p> <p>11 price; correct?</p> <p>12 A. Yes.</p> <p>13 Q. And, again, the prices is the axis on</p> <p>14 the right-hand column of the graph; right?</p> <p>15 A. Yes.</p> <p>16 Q. And the green dashed line is -- is</p> <p>17 applying the call right formula to what the call right</p> <p>18 exercise price would be on any given date, based on</p> <p>19 the formula and the trading price; correct?</p> <p>20 A. Based on the formula and the last 20</p> <p>21 trading days, correct.</p> <p>22 Q. Right. But for the first 90 days,</p> <p>23 it's based on the formula for the 90-day protection</p> <p>24 period; correct?</p>	<p style="text-align: right;">203</p> <p>1 of your report, you say it was September 14, 2018?</p> <p>2 A. That's correct.</p> <p>3 Q. So that's not in particular depicted,</p> <p>4 but it can be, you know, sort of handwritten in or you</p> <p>5 can sort of eyeball that?</p> <p>6 A. Yeah. It would be sort of halfway</p> <p>7 between the 8/1 and the 10/31.</p> <p>8 Q. And then you note the expiration of</p> <p>9 the 90-day period. And then you note, on November 29,</p> <p>10 2018, the issuance of the press release about CVI is</p> <p>11 considering exercising the call; right?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Now, so going back to that</p> <p>14 memo, at the time of the memo, unitholders may or may</p> <p>15 not have read any of the analyst reports, or the like,</p> <p>16 or internal documents, or might not be made aware of</p> <p>17 anything being said about the stock, but they're</p> <p>18 seeing that the unit price has gone down to about 10;</p> <p>19 right?</p> <p>20 A. It was below 10 at one point, yes.</p> <p>21 Q. Okay. So by that point, they know</p> <p>22 enough to call in. Like, whether or not they</p> <p>23 understand the dynamics, they understand the price has</p> <p>24 gone down; right?</p>
<p style="text-align: right;">202</p> <p>1 A. Right. They cannot call it at less</p> <p>2 than what they paid for in the exchange offer.</p> <p>3 Q. Right. So that's why that dashed line</p> <p>4 is parallel for 90 days from the closing of the</p> <p>5 exchange offer; correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And then, for comparison purposes, the</p> <p>8 orange is the -- what is the refiner index?</p> <p>9 A. Refiner index was an index of other</p> <p>10 refiners, not necessarily MLP refiners. There were no</p> <p>11 MLP refiners. So it was the group that we talked</p> <p>12 about earlier who were potential acquirors of CVRR.</p> <p>13 Q. Okay. And then the dotted line, the</p> <p>14 gray dotted line is CVI's price; correct?</p> <p>15 A. Correct.</p> <p>16 Q. And you've indexed the CVR price and</p> <p>17 the refiner index and the CVI. You've all indexed</p> <p>18 them to make them the same as of the start point of</p> <p>19 the graph, when the exchange offer is launched; right?</p> <p>20 A. Right.</p> <p>21 Q. Okay. And then you were talking about</p> <p>22 events that happened at certain points. You mentioned</p> <p>23 the -- when CVRR left the Alerian Index, it was</p> <p>24 dropped by the Alerian Index. I believe, on page 28</p>	<p style="text-align: right;">204</p> <p>1 A. Yeah. What's going on? Why is the</p> <p>2 price so low? Why is my yield so high?</p> <p>3 Q. Okay. Now, on this page, going back</p> <p>4 to JX 1164, which was that investor relations memo,</p> <p>5 under heading 1(a)(v), where it says, "A handful of</p> <p>6 investors, mainly institutional, mentioned the</p> <p>7 Boardwalk transaction."</p> <p>8 And then below that, where it says,</p> <p>9 "Other notable investor calls," at the bottom of the</p> <p>10 page, number 1, "Fidelity - they were fixated on the</p> <p>11 8K filing and mentioned the Boardwalk transaction."</p> <p>12 Does it make sense to you that</p> <p>13 institutional investors would be bringing up</p> <p>14 Boardwalk?</p> <p>15 A. Yeah. They're still in the stock.</p> <p>16 For reasons that I -- that we can't know, they did not</p> <p>17 tender. I assume some of them were index funds.</p> <p>18 They're still in the stock.</p> <p>19 And they see -- this 8-K, this "should</p> <p>20 consider" language which mirrored the language that</p> <p>21 was used by Loews back in April, and they're obviously</p> <p>22 fixated on -- on the relationship, at least Fidelity</p> <p>23 is, between what happened in Boardwalk and what</p> <p>24 happened in November here.</p>

<p style="text-align: right;">205</p> <p>1 Q. So they're seeing the aftereffects of</p> <p>2 what Tudor, back on July 27, had sort of previewed</p> <p>3 for -- you know, as a potential outcome right before</p> <p>4 the exchange offer closed; right?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Now, do you have an opinion, from a</p> <p>7 finance and business perspective, about whether there</p> <p>8 is a reason, a well-founded reason, to pursue a</p> <p>9 partial exchange offer that leaves CVRR units</p> <p>10 outstanding?</p> <p>11 A. Well, you know, given that I was</p> <p>12 unable to see what the -- to find that the</p> <p>13 explanations that were provided by Mr. Cozza,</p> <p>14 Mr. Lamp, and Mr. Icahn made sense from a business and</p> <p>15 financial perspective, my conclusion is that this was</p> <p>16 done this way, this partial tender structure was done</p> <p>17 as a way of buying all the units less expensively than</p> <p>18 if they'd done it a full tender with a back-end that</p> <p>19 was the same as the tender price.</p> <p>20 Q. So that's somewhat like the incentive</p> <p>21 identified by Mr. Rao of Citi, that that's what the</p> <p>22 offeror -- that's what their economic incentives would</p> <p>23 be?</p> <p>24 A. It's just -- it's a logical thing.</p>	<p style="text-align: right;">207</p> <p>1 Q. And what would make it valuable? What</p> <p>2 makes it pay off?</p> <p>3 A. What makes it pay off is if the price</p> <p>4 of CVRR goes down.</p> <p>5 MR. FRIEDLANDER: Thank you. I have</p> <p>6 no more questions at this time.</p> <p>7 THE COURT: Thank you,</p> <p>8 Mr. Friedlander.</p> <p>9 Mr. Raju.</p> <p>10 MR. RAJU: Thank you, Your Honor.</p> <p>11 THE COURT: We have ten minutes before</p> <p>12 the afternoon break.</p> <p>13 MR. RAJU: Okay.</p> <p>14 CROSS-EXAMINATION</p> <p>15 BY MR. RAJU:</p> <p>16 Q. Good afternoon, Mr. Atkins.</p> <p>17 A. Hello, Mr. Raju.</p> <p>18 Q. Mr. Atkins, I believe you testified --</p> <p>19 let me ask you a question. If the economic principle</p> <p>20 and the goal here was to maximize -- for CVI to</p> <p>21 maximize gains from the call right, then CVI would be</p> <p>22 incentivized to own as little over 80 percent of the</p> <p>23 CVI common units; correct?</p> <p>24 A. That's what I think Mr. Rao said.</p>
<p style="text-align: right;">206</p> <p>1 They were going to be -- they liked making money, and</p> <p>2 if they can make more money by structuring it this</p> <p>3 way, then, you know, that's -- that's my conclusion.</p> <p>4 It's a default conclusion.</p> <p>5 Q. Now, you heard Mr. Cozza testify this</p> <p>6 morning by video. He said, at one point, he said</p> <p>7 optionality is everything in life. And at another</p> <p>8 point he said optionality is everything.</p> <p>9 Are you familiar with the concept of</p> <p>10 optionality from a finance perspective?</p> <p>11 A. Absolutely.</p> <p>12 Q. Does it apply here?</p> <p>13 A. It certainly does.</p> <p>14 Q. And what's your opinion? How does it</p> <p>15 apply?</p> <p>16 A. Well, my opinion is the optionality is</p> <p>17 not with respect to the stub being worth billions.</p> <p>18 The optionality is with respect to potentially being</p> <p>19 able to purchase a remaining portion that's not</p> <p>20 tendered, and for less than what was paid to do the</p> <p>21 tender offer.</p> <p>22 Q. And in, like, finance precise terms,</p> <p>23 the call right is an option, isn't it?</p> <p>24 A. It's totally an option.</p>	<p style="text-align: right;">208</p> <p>1 Q. Yeah. And you would agree with that;</p> <p>2 right? That would be the incentives. If the intent</p> <p>3 was to maximize the gains pursuant to a call right,</p> <p>4 you would agree that CVI would be economically</p> <p>5 incentivized to own as little over 80 percent of the</p> <p>6 CVRR common units; correct?</p> <p>7 A. If they can accomplish that and still</p> <p>8 get the 80 percent, then yes.</p> <p>9 Q. Sure. Now, if CVI wanted to acquire</p> <p>10 just enough CVRR units to trigger the call right,</p> <p>11 there was no obligation for it to launch an exchange</p> <p>12 offer, was there?</p> <p>13 A. You mean going on the open market and</p> <p>14 making open-market purchases? That would be correct.</p> <p>15 Q. Right. And it's not just open-market</p> <p>16 purchases, though. You can negotiate private</p> <p>17 transactions with institutional investors; correct?</p> <p>18 A. Yes. I VIEW those -- okay. I view</p> <p>19 those as market purchases. You're right. Same thing.</p> <p>20 Q. Sure. And, in fact, there are</p> <p>21 situations that are contained in what you consider to</p> <p>22 be precedent transactions where that very thing</p> <p>23 occurred; isn't there?</p> <p>24 A. Sorry. Can you repeat that?</p>

<p style="text-align: right;">209</p> <p>1 Q. Sure. You had in your rebuttal report</p> <p>2 six precedent transactions. Several of those</p> <p>3 precedent transactions involved a sponsor going and</p> <p>4 negotiating private acquisitions with institutional</p> <p>5 investors before exercising a call right; didn't it?</p> <p>6 MR. FRIEDLANDER: Your Honor, can I</p> <p>7 interject here? Maybe this is -- always been some</p> <p>8 uncertainty about how the trial would unfold. But I</p> <p>9 did not ask Mr. Atkins about his rebuttal report. So,</p> <p>10 now, I understand we have this concept of the cross</p> <p>11 can exceed the direct, but on the other hand, we do</p> <p>12 anticipate, if they tender Mr. Skinner, Professor</p> <p>13 Skinner, and Rock, then we would call Mr. Atkins on</p> <p>14 rebuttal to testify about his rebuttal report. And I</p> <p>15 just wanted to note, that's -- so I would intend to</p> <p>16 question Mr. Atkins at the end of the trial about</p> <p>17 that.</p> <p>18 THE COURT: I believe it was</p> <p>19 plaintiffs' proposal that we have -- we waive</p> <p>20 objections based on the scope of the immediately</p> <p>21 preceding examination. But I understand your point,</p> <p>22 and it would probably make more sense to ask these</p> <p>23 questions in connection with rebuttal examination.</p> <p>24 But I'll let it proceed.</p>	<p style="text-align: right;">211</p> <p>1 A. Yes, that's correct.</p> <p>2 Q. And Cheniere also involved that with</p> <p>3 respect to the acquisition of CPH. They engaged in a</p> <p>4 series of private-market transactions; correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And there was nothing, to your</p> <p>7 knowledge here, and you would -- wouldn't you agree,</p> <p>8 preventing CVI from engaging in such private</p> <p>9 transactions to get above the 80 percent threshold to</p> <p>10 trigger the call right here; correct?</p> <p>11 A. I'm sorry. There's nothing -- one</p> <p>12 more time. I'm sorry.</p> <p>13 Q. Was there any reason CVI could not</p> <p>14 have engaged in private-market transactions to get</p> <p>15 above the 80 percent, instead of doing an exchange</p> <p>16 offer?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay. And the market and the analyst</p> <p>19 community recognized that CVI had the ability to get</p> <p>20 above 80 percent through private transactions;</p> <p>21 correct?</p> <p>22 A. I don't recall, but I'm sure that --</p> <p>23 I'm sure that's true. I don't remember seeing an</p> <p>24 analyst -- I've seen so many analyst reports in this</p>
<p style="text-align: right;">210</p> <p>1 MR. FRIEDLANDER: Okay.</p> <p>2 MR. RAJU: Thank you, Your Honor.</p> <p>3 BY MR. RAJU:</p> <p>4 Q. Several of the precedent transactions</p> <p>5 that are listed in your rebuttal report involve the</p> <p>6 sponsor engaging in private negotiations to acquire</p> <p>7 units prior to exercising a call right; isn't that</p> <p>8 true?</p> <p>9 A. Yes. What happened was the -- those</p> <p>10 sponsors were able to obtain shares that got them to</p> <p>11 the threshold on which they could exercise the call</p> <p>12 right. Yes.</p> <p>13 Q. Yeah. For example, ETRM, with respect</p> <p>14 to EQGP, they went and negotiated shares from private</p> <p>15 holders and got to the 95 percent call right trigger;</p> <p>16 correct?</p> <p>17 A. Yes. They did it with Goldman Sachs</p> <p>18 and some others who then protected the back-end and</p> <p>19 made sure that the back-end was not purchased for less</p> <p>20 than the front-end --</p> <p>21 Q. And in OCI, OCI acquired 7 million</p> <p>22 units to get to 88.25 percent, just less than</p> <p>23 2 percent below the call right, before launching an</p> <p>24 exchange offer; correct?</p>	<p style="text-align: right;">212</p> <p>1 case, I can't remember the specific one to which you</p> <p>2 refer, but I'm sure they're out there.</p> <p>3 Q. Well, in fact, it was viewed as a</p> <p>4 positive by analysts that CVI had launched publicly an</p> <p>5 exchange offer, instead of doing surreptitious market</p> <p>6 purchases to get above the 80 percent threshold;</p> <p>7 correct?</p> <p>8 A. I don't remember what report you're</p> <p>9 referring to. I mean, it wouldn't surprise me if it's</p> <p>10 there.</p> <p>11 Q. Okay. Let's turn to -- I do not have</p> <p>12 a witness binder, Mr. Atkins, so I'm going to have to</p> <p>13 test your ability to swivel and grab an exhibit from</p> <p>14 the binder.</p> <p>15 If you could get JX 314.</p> <p>16 And we'll put it up on the screen, as</p> <p>17 well.</p> <p>18 A. If that's the case, I shouldn't have</p> <p>19 to strain my back.</p> <p>20 Yes, the Barclays. If you throw it up</p> <p>21 there and blow it up for me, I'd appreciate it.</p> <p>22 THE WITNESS: When I was doing this 20</p> <p>23 years ago, Your Honor, I didn't have to have it blown</p> <p>24 up so much.</p>

<p style="text-align: right;">213</p> <p>1 Q. Okay. Let's start with the top part.</p> <p>2 Do you see this is a Barclays analyst</p> <p>3 report? Do you see the date on the upper right that</p> <p>4 says May 29, 2018?</p> <p>5 A. I do.</p> <p>6 Q. Okay. Do you see the title, it says,</p> <p>7 "CVI Exchange Offer Sets Up for a Call Right</p> <p>8 Exercise"?</p> <p>9 A. I do.</p> <p>10 Q. Let's go to the third paragraph, the</p> <p>11 one that begins, "CVI's stated purpose"</p> <p>12 Do you see in that paragraph, about</p> <p>13 four lines down -- or the first sentence says, "CVI's</p> <p>14 stated purpose for the exchange offer is to increase</p> <p>15 its stake in CVRR, specifically above 80%."</p> <p>16 And then it goes on to say, "According</p> <p>17 to the partnership agreement, once [it] and its</p> <p>18 affiliates own more than 80% ... CVI can call the</p> <p>19 remaining units"</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. And then it continues, "We had viewed</p> <p>23 this as an ongoing overhang for the CVRR unitholders -</p> <p>24 given that if CVI increases to 80%+ surreptitiously,</p>	<p style="text-align: right;">215</p> <p>1 price performance chart, you see that on the</p> <p>2 right-hand side, the little graph, you see that CVRR</p> <p>3 has performed very well in the lead-up to the exchange</p> <p>4 offer; correct?</p> <p>5 A. Yes. They've done very well, yes,</p> <p>6 sir.</p> <p>7 Q. Yeah. In the 52-week range, it goes</p> <p>8 from \$6.70 to \$23.65; correct?</p> <p>9 A. That -- that -- oh, yes. That's \$6.70</p> <p>10 to 23.65. Yes, sir.</p> <p>11 Q. And at this point, the current price</p> <p>12 before this report was \$22.10. It was near the end --</p> <p>13 near the high point of the 52-week range; correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. There's nothing about the timing of</p> <p>16 the exchange offer that, to you, suggests a schemed</p> <p>17 expropriate value from the minority unitholders, does</p> <p>18 it?</p> <p>19 A. I hadn't thought about that, but I</p> <p>20 don't see anything that jumps out at me, no.</p> <p>21 Q. And there's nothing about doing an</p> <p>22 exchange offer, as opposed to engaging in</p> <p>23 private-market transactions to acquire CVRR units,</p> <p>24 that suggests a scheme to expropriate value from the</p>
<p style="text-align: right;">214</p> <p>1 the remaining unitholders would be at risk of a sudden</p> <p>2 call at market price"</p> <p>3 Do you see that?</p> <p>4 A. Yes, sir.</p> <p>5 Q. "However, with the announced</p> <p>6 transparent exchange offer, we note that the</p> <p>7 conditions seem relatively fair (/positive) for CVRR</p> <p>8 unitholders, specially considering the recent unit</p> <p>9 price performance."</p> <p>10 Do you see that?</p> <p>11 A. I do. I also see one thing you</p> <p>12 skipped over, which is back in the fourth line down,</p> <p>13 which is the phrase "would effectively fully buy in</p> <p>14 [to] CVRR." So Barclays was under the impression that</p> <p>15 this was a first step towards a 100 percent</p> <p>16 acquisition, partially through the tender offer and,</p> <p>17 most likely, through the remaining call.</p> <p>18 MR. FRIEDLANDER: Can I ask Mr. Atkins</p> <p>19 to move his microphone so I can hear him.</p> <p>20 THE WITNESS: Can I ask the Court to</p> <p>21 remove these things from in front of me? I'm</p> <p>22 vaccinated.</p> <p>23 BY MR. RAJU:</p> <p>24 Q. And, Mr. Atkins, if you look at the</p>	<p style="text-align: right;">216</p> <p>1 minority unitholders, does it?</p> <p>2 A. Let me just think about that. I -- I</p> <p>3 mean, I think I'd have to kind of qualify one thing,</p> <p>4 which is the -- this was a partial, so the intention</p> <p>5 was never to go above 95 percent. And since -- I</p> <p>6 don't think I've seen a partial tender in any context</p> <p>7 for many, many years. I -- I've got to be careful --</p> <p>8 I can't say 100 percent unequivocally yes, Mr. Raju,</p> <p>9 because that was not the -- that's not what I saw</p> <p>10 here.</p> <p>11 Also, there also was no recommendation</p> <p>12 done by the -- by the board. So --</p> <p>13 Q. Mr. Atkins, I'm comparing an exchange</p> <p>14 offer versus private transaction. By definition, if</p> <p>15 CVI had gone out and done private transactions, it</p> <p>16 couldn't have acquired 100 percent through private</p> <p>17 transactions, could it have?</p> <p>18 A. That would be absolutely correct.</p> <p>19 Q. Okay. So there's nothing --</p> <p>20 A. Can you read the question before that</p> <p>21 for me?</p> <p>22 Q. Sure. There is nothing about doing an</p> <p>23 exchange offer, as opposed to engaging in private</p> <p>24 transactions to acquire CVRR units, that suggests a</p>

<p style="text-align: right;">217</p> <p>1 scheme to expropriate value from the CVRR minority 2 unitholders; correct?</p> <p>3 A. And I would disagree with that. And 4 that answer is, no, I disagree, because this was not 5 an offer -- an any-and-all offer. This was an offer 6 for up to 95 percent. In that sense, that 95 percent 7 limitation sets off a -- a bell in my head that there 8 could be something down the road that might not be 9 so -- so innocent.</p> <p>10 Q. Well, if CVRR had engaged in 11 private-market transactions to get to 80 percent plus 12 one unit, wouldn't it set off those same -- it would 13 set off those same bells, wouldn't it, Mr. Atkins?</p> <p>14 A. It could have, yes. Conceivably. But 15 then you said if they -- if it went to 80 percent and 16 immediately exercised the call. In that case, the 17 exercise price would have been in the 20s.</p> <p>18 THE COURT: Mr. Raju, let us know, can 19 we break for 15?</p> <p>20 MR. RAJU: Of course, Your Honor.</p> <p>21 THE COURT: Thank you. Let's break. 22 (Recess taken at 3:00 p.m.) 23 24</p>	<p style="text-align: right;">219</p> <p>1 done to buy lots of units to get above -- to get a 2 much higher percentage without moving the market. 3 Isn't that true?</p> <p>4 A. You're going to find people that -- 5 when you start doing this, especially if you're filing 6 the appropriate 13Ds and disclosing your ownership 7 position, the price is going to get a lot higher very 8 quickly. Irrespective of whether you're doing it 9 private or negotiated, the market is going to know 10 that Mr. Icahn and his organization are accumulating 11 shares, and that's going to push the price up.</p> <p>12 Q. We'll come back to that. Let's turn 13 to the exchange offer structure. Here, you're aware 14 that the exchange offer had a 95 percent maximum 15 tender cap; correct?</p> <p>16 A. Yes, I am.</p> <p>17 Q. And you did not analyze what effect, 18 if any, the 95 percent cap had on the number of units 19 actually tendered, did you?</p> <p>20 A. No, other than what we talked about at 21 our deposition. Other than to being unusual, and in 22 some ways, you know, for an institutional holder, 23 obviously not the retail holders, but might think it 24 was strange. And the word "hinky" comes to mind.</p>
<p style="text-align: right;">218</p> <p>1 (Resumed at 3:15 p.m.) 2 THE COURT: Continue, Mr. Raju. Thank 3 you.</p> <p>4 MR. RAJU: Thank you, Your Honor.</p> <p>5 BY MR. RAJU:</p> <p>6 Q. Mr. Atkins, right before the break, I 7 believe I asked you if CVI had gotten up to 80 percent 8 plus 1 units in private-market transactions, wouldn't 9 it raise the same bells or alarm bells as the exchange 10 offer. And I believe you said conceivably, but if CVI 11 were to exercise the call right immediately, the price 12 would be in the 20s. Is that right?</p> <p>13 A. I'm not sure about that, since I 14 thought about that on the break. I mean, to get from 15 70 percent to 80 percent, that's \$300 million of stock 16 that they had to buy, with a float of \$10 million a 17 day. So it's quite conceivable that the stock price 18 would have been pushing in the 30s and maybe higher, 19 which is generally why people do tender offers to get 20 to certain levels. The open-market purchases 21 oftentimes will push that price up.</p> <p>22 Q. Sure. That's open-market purchases if 23 you're buying it for cash. But in private 24 negotiations with institutional holders, that can be</p>	<p style="text-align: right;">220</p> <p>1 Q. But --</p> <p>2 A. Let me just finish, Mr. Raju. No, we 3 did not analyze the 5 percent by itself.</p> <p>4 Q. At your deposition, you said -- you 5 testified that you believe having that cap may make 6 tenders more likely, particularly among sophisticated 7 or institutional holders; correct?</p> <p>8 A. Yes, I did.</p> <p>9 Q. And that's because institutional 10 holders wouldn't want to be left holding the bag post 11 exchange offer; correct?</p> <p>12 A. By my expression "holding the bag," 13 yeah.</p> <p>14 Q. Mr. Atkins, a 95 percent maximum 15 tender cap makes no sense here if there were a scheme 16 to exercise the call right on the maximum number of 17 units, does it?</p> <p>18 A. I'm not following.</p> <p>19 Q. Well, a cap at 80.1 percent, let's 20 say, would have made a lot more sense, correct, if the 21 goal was to -- consistent with your economic 22 incentives of exercising the call right on the maximum 23 number of units, wouldn't a cap of 80.1 percent made a 24 lot more sense than a cap at 95 percent?</p>

<p style="text-align: right;">221</p> <p>1 A. You know, if I'm looking at this from</p> <p>2 the big picture, and I'm saying, "Okay, how do I avoid</p> <p>3 litigation, how do I do something, how do I get --</p> <p>4 accomplish X, Y, Z," and if I did know, and I'm not</p> <p>5 saying Mr. Icahn knew or didn't know, but Mr. Blair at</p> <p>6 THP knew, that there was approximately 15 percent</p> <p>7 retail holders out there who are likely to tender</p> <p>8 than, you know -- the difference between 80.1 percent</p> <p>9 and 85 percent, and maybe I give that up because I</p> <p>10 want to have a company with -- that I can still get</p> <p>11 85 percent.</p> <p>12 I'm speculating, because I don't know.</p> <p>13 But I don't think it makes any difference between the</p> <p>14 80.1 percent cap, which would be pretty obviously</p> <p>15 ugly, and a cap at 95 percent. If I were to know that</p> <p>16 it was -- that, as Mr. Blair knew, that it would be</p> <p>17 15 percent still outstanding.</p> <p>18 Q. You know, you would agree, Mr. Atkins,</p> <p>19 that if, in fact, an 80.1 percent cap, a lower cap,</p> <p>20 would have made it even more likely that investors,</p> <p>21 particularly institutional investors, would have</p> <p>22 tendered; correct?</p> <p>23 A. If they believed that, yes, that it</p> <p>24 would be -- it depends, of course, what the price is.</p>	<p style="text-align: right;">223</p> <p>1 could always top up with private-market transactions;</p> <p>2 correct?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. So -- and he didn't need more</p> <p>5 than 80 percent in one unit, did he, for purposes of</p> <p>6 the call right?</p> <p>7 A. That is correct.</p> <p>8 Q. Now, the exchange offer was priced at</p> <p>9 a 25 percent premium to the CVRR unit price; correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And you presumed that the reason a</p> <p>12 25 percent premium was offered is that is what</p> <p>13 Mr. Icahn must have believed he needed to get over the</p> <p>14 80 percent; correct?</p> <p>15 A. I think that the way that the offer</p> <p>16 was structured with the 95 percent total cap, I think</p> <p>17 that that would incent the smart money, the</p> <p>18 institutional money, to tender, that he would get at,</p> <p>19 whatever, 27, then it came down a little bit because</p> <p>20 CVI traded down, let's say \$25 a share, that would be</p> <p>21 sufficient to get the -- over 80 percent, as well as</p> <p>22 probably going to get a little bit more than that,</p> <p>23 yes.</p> <p>24 Q. Correct. Because the premium suggests</p>
<p style="text-align: right;">222</p> <p>1 But assuming it's the same price, yeah, I think people</p> <p>2 would have got a little nervous about that, yes.</p> <p>3 Q. Right. So if Mr. Icahn had a scheme</p> <p>4 here, he set the cap far too high, didn't he?</p> <p>5 95 percent was far too high, wasn't it?</p> <p>6 A. 95 was far too high?</p> <p>7 Q. Yes. An 80.1 percent cap would have</p> <p>8 made a lot more sense if the purpose was to exercise</p> <p>9 the call right on the maximum number of units per the</p> <p>10 economic incentives you testified to; correct?</p> <p>11 A. I think that if I were well-advised</p> <p>12 and I knew that there was -- the likely tender was not</p> <p>13 going to hit 95 percent because of all the retail</p> <p>14 holders, and I knew that if I did it for 80.1 percent</p> <p>15 I'd have a lot of pissed-off institutional holders who</p> <p>16 I might not want to piss off because I might be</p> <p>17 raising money with them in my next deal, I think what</p> <p>18 Mr. Icahn did was -- you know, he did a smart thing at</p> <p>19 doing 80 percent minimum, 95 percent maximum. It</p> <p>20 creates a -- you have to hit 80, and you don't want to</p> <p>21 go over 95 in case he's wrong about the numbers, the</p> <p>22 retail holders who do tender.</p> <p>23 Q. But, Mr. Atkins, he didn't need to get</p> <p>24 to 80, did he? He just needed to get close to 80. He</p>	<p style="text-align: right;">224</p> <p>1 it was likely to yield more than 80 percent; correct?</p> <p>2 A. Yes, that is correct.</p> <p>3 Q. And you did no analysis as to the</p> <p>4 number of CVRR units that you believe would have been</p> <p>5 tendered if a lower premium had been offered; correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And ultimately the exchange offer</p> <p>8 resulted in approximately -- CVI owning approximately</p> <p>9 84.5 percent of the outstanding CVRR units; correct?</p> <p>10 A. That's what I said earlier today, yes.</p> <p>11 Q. And you believed the fact that the</p> <p>12 exchange offer would yield between 83 percent and</p> <p>13 88 percent of the outstanding units was an easily</p> <p>14 anticipated outcome; correct?</p> <p>15 A. I think if Mr. Blair could get that</p> <p>16 number, then it was probably relatively simple to see,</p> <p>17 to look at the ownership and figure it out.</p> <p>18 Q. And you believe that Mr. Icahn could</p> <p>19 have easily anticipated this outcome as well; right?</p> <p>20 A. I think if Mr. Blair could have</p> <p>21 figured it out, then I think that, you know, other</p> <p>22 people, including Mr. Icahn, his organization, could</p> <p>23 have figured it out.</p> <p>24 Q. So it would make -- it made no sense</p>

<p style="text-align: right;">225</p> <p>1 for CVI to pay this high a premium in the exchange 2 offer if there were a scheme to maximize the gains 3 from a call right on the maximum number of units; 4 correct?</p> <p>5 A. I don't know. I mean, I can't say 6 that that's correct. Because it was done differently. 7 We talked a little bit about my rebuttal report, but 8 in my rebuttal report I do address some of the other, 9 what I call precedent transactions. And none of them 10 had a 95 percent, and all of them had some kind of 11 intention to take out everybody at the same price. 12 That was neither. So I can't agree with your 13 question.</p> <p>14 Q. The fact that CVI got 84.5 percent of 15 the CVRR units when it would only need to get 16 80 percent if there were a scheme means CVI 17 unnecessarily purchased too many CVRR units, correct, 18 in the exchange offer?</p> <p>19 A. They purchased probably the right 20 amount to get them to where they can make some more 21 money by not having to take people out of the tender 22 price. I mean, is it 81 percent? Is it 85 percent? 23 I mean, let's say Mr. Blair is correct 24 that it could be as high as 18 percent outstanding,</p>	<p style="text-align: right;">227</p> <p>1 A. Yes. 2 Q. That means the exchange offer resulted 3 by CVI in the purchase of 6.6 million extra and wholly 4 unnecessary CVRR units if the goal was to maximize 5 gains on the call right; correct?</p> <p>6 A. You know, I refer to one of my 7 favorite expressions: Pigs get fat; hogs get 8 slaughtered.</p> <p>9 I mean, I don't think that the -- I 10 don't think that the -- you want to take a chance, 11 on -- because, you know, it would be a lot harder for 12 Your Honor to -- if we went that route, that would be 13 a lot easier a case for Mr. Friedlander to pursue.</p> <p>14 Q. I'm sorry. What would -- so if there 15 was an 80.1 percent -- if there was an 80.1 percent 16 cap, okay, maximum cap, with a 5 percent premium, what 17 do you believe the GP should have done in response to 18 that exchange offer?</p> <p>19 A. Well, we talked about this at my 20 deposition. I really believe that just given the 21 dynamic of the whole situation, the way the proposal 22 was structured, that there should have been a 23 conflicts committee constituted here.</p> <p>24 Q. Okay. And the conflicts committee</p>
<p style="text-align: right;">226</p> <p>1 well, that would have been 82 percent, or as low as 82 2 outstanding. You know, there's a range in here 3 that -- or, sorry, 12 percent to 18 percent. So 4 somewhere between 82 percent and 88 percent would be 5 owned post thing.</p> <p>6 So I don't know what the right answer 7 is, but I do know that that's enough to get you to the 8 point where you get the call option and, yeah, if you 9 get more, you get more. It means potentially less 10 profit down the road.</p> <p>11 Q. For purposes of maximizing the gains 12 for a scheme, CVI badly misjudged the structuring of 13 this exchange offer, didn't it, based on the results?</p> <p>14 A. No, I disagree with that.</p> <p>15 Q. Okay. Well, let's talk about it. The 16 minimum tender condition here would have been met at 17 approximately 15 million units; correct?</p> <p>18 I'll represent to you that the 19 minimum --</p> <p>20 A. Yeah, that's 10 percent. That's 21 correct. 150 million units, that's correct.</p> <p>22 Q. Okay. And the actual results of the 23 exchange offer was approximately 21.6 million units 24 tendered; correct?</p>	<p style="text-align: right;">228</p> <p>1 should have hired a financial advisor; correct?</p> <p>2 A. Yes, and a lawyer. 3 Q. And the conflicts committee, with 4 independent counsel and an independent financial 5 advisor, should have then, according to your 6 deposition testimony, recommended in favor of folks 7 tendering into that exchange offer, correct, with an 8 80.1 percent cap and a 5 percent premium because the 9 risks of the call right are too great; correct?</p> <p>10 A. Well, we had -- this is going to get 11 very complex very quickly. But the answer is is that 12 the -- if the tender offer were to get to over 13 80 percent, and in that case, you would -- the 14 conflicts committee should have -- and I'll tell you 15 what I said in my deposition.</p> <p>16 If the conflicts committee believed 17 that it could not negotiate a back end that was fair 18 to the holders, could not protect them, then, yeah, 19 they wouldn't have had a lot of choice but to 20 recommend to do this. However, my feeling is that 21 the -- based on those other precedents that we 22 talked -- and we'll probably talk about later on this 23 week -- that the conflicts committee would have 24 assessed, number one, what's the likelihood of getting</p>

<p style="text-align: right;">229</p> <p>1 to 80.1 percent; and, two, whether or not it would</p> <p>2 have been possible to get some other protections for</p> <p>3 the remaining, you know, 19.9 percent.</p> <p>4 But, yeah, if that was going to be the</p> <p>5 best that they could do, yeah, that would be the best</p> <p>6 they could do. But it still should have -- there</p> <p>7 should have been a negotiation. There should have</p> <p>8 been an attempt to get back-end protections for those</p> <p>9 who were not -- who were not tendered for. And there</p> <p>10 should have been an attempt by the conflicts committee</p> <p>11 to get the Icahn organization to pay the same for</p> <p>12 everybody to -- like all the other precedents did.</p> <p>13 Q. CVI was under no obligation to agree</p> <p>14 to any protections in connection with its exchange</p> <p>15 offer that it was free to structure however it wanted;</p> <p>16 correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And in that scenario, if the</p> <p>19 negotiations failed and CVI was unwilling to agree, in</p> <p>20 that scenario, after getting advice, you would have --</p> <p>21 your belief is that the conflicts committee should</p> <p>22 have recommended that unitholders tender into such an</p> <p>23 exchange offer; correct?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">231</p> <p>1 Q. Now, apart from the excess units</p> <p>2 purchased, the fact that the exchange offer yielded or</p> <p>3 was sufficiently attractive to that many more units</p> <p>4 suggests that the premium -- CVI offered far too high</p> <p>5 a premium, correct, if the goal was just simply to get</p> <p>6 80 percent? Isn't that right?</p> <p>7 A. If the goal was to be a hog and not a</p> <p>8 pig, the answer is yes, that's correct. If the goal</p> <p>9 was to get something done and be efficient about it</p> <p>10 and not take a chance and not run the risk of getting</p> <p>11 less than 80 percent, then this is what -- this made</p> <p>12 sense. Yes, they paid a premium to the price. They</p> <p>13 got all these -- most of the institutions tendered.</p> <p>14 They were left with 15 percent outstanding.</p> <p>15 Q. So IEP -- you're also aware that IEP</p> <p>16 held 5.75 million CVRR units directly; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And IEP not tendering its CVRR units</p> <p>19 in the exchange offer is wholly inconsistent if there</p> <p>20 were a scheme to drive the CVRR unit price down;</p> <p>21 correct?</p> <p>22 A. No. That's not correct.</p> <p>23 Q. Well, if -- IEP not tendering its CVRR</p> <p>24 units is wholly inconsistent with an expectation that</p>
<p style="text-align: right;">230</p> <p>1 Q. Now, with respect to the 6.6 million</p> <p>2 extra units, do you know how much CVI paid for those</p> <p>3 units?</p> <p>4 A. About \$120 million.</p> <p>5 Q. Do you know what the difference</p> <p>6 between that and the call right price is on those</p> <p>7 units? It's almost \$90 million, isn't it?</p> <p>8 A. I always bring a calculator. 6.6</p> <p>9 times 24. Is it okay if I use 24?</p> <p>10 Q. Yeah. I'm talking about the</p> <p>11 difference between the -- in terms of -- yes. 6.6</p> <p>12 times 24 is what?</p> <p>13 A. 6.6? It was higher than 120 million.</p> <p>14 158 million.</p> <p>15 Q. Okay. And those 6.6 million units in</p> <p>16 the call right got about 70 million, right, \$10.50 a</p> <p>17 unit?</p> <p>18 A. Why is my calculator malfunctioning?</p> <p>19 6.6, it's not that hard, times 10.</p> <p>20 About 90 million, correct.</p> <p>21 Q. So there's about a \$90 million</p> <p>22 difference in terms of the excess units purchased;</p> <p>23 correct?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">232</p> <p>1 the stock price would collapse and a call right would</p> <p>2 be exercised on those units; correct?</p> <p>3 A. The answer is -- and I made a mistake</p> <p>4 in my deposition, which I want to correct right now,</p> <p>5 if that's possible. I said that they were purchased</p> <p>6 at the deal price. I confused it with the LTIP. And</p> <p>7 so they were actually purchased -- you're right, they</p> <p>8 were purchased at the call price.</p> <p>9 However, that -- because Icahn owns</p> <p>10 82 percent of CVI, the benefit that CVI received for</p> <p>11 the lower purchase, 82 percent of that was realized by</p> <p>12 the Icahn organization.</p> <p>13 Q. That's not true, though, is it?</p> <p>14 A. It is true.</p> <p>15 Q. You haven't done that math, have you,</p> <p>16 Mr. Atkins?</p> <p>17 A. I think I just did.</p> <p>18 Q. Well, IEP started out with an</p> <p>19 82 percent interest in CVI; correct?</p> <p>20 A. I guess that's right.</p> <p>21 Q. And what was the consideration in the</p> <p>22 exchange offer? It was CVI units; correct?</p> <p>23 A. Yes, correct.</p> <p>24 Q. And by issuing CVI units, IEP was</p>

<p style="text-align: right;">233</p> <p>1 diluted; correct?</p> <p>2 A. I'm trying to think about how much</p> <p>3 they issued. I mean, there was 6 million --</p> <p>4 5.7 million units of CVRR that they owned. And they</p> <p>5 were purchased for -- want me to do the math real</p> <p>6 fast?</p> <p>7 Q. Well, IEP went from 82 percent</p> <p>8 ownership to an under 71 percent ownership of CVI post</p> <p>9 exchange offer; correct?</p> <p>10 A. So they still got 70 percent of the</p> <p>11 benefit of the lower purchase.</p> <p>12 Q. Okay. And with respect to the</p> <p>13 5.75 million units, if IEP believed those units --</p> <p>14 CVRR would materially underperform CVI, there was no</p> <p>15 reason, no reason whatsoever for IEP not to exchange</p> <p>16 its CVRR units for CVI units; right?</p> <p>17 A. Can you repeat the question again?</p> <p>18 Q. Sure. If IEP believed CVRR units</p> <p>19 would materially underperform CVI shares, there was no</p> <p>20 reason for IEP not to exchange its CVRR units as part</p> <p>21 of the exchange offer; correct?</p> <p>22 A. I'm just -- the word I'm having a</p> <p>23 problem with is "underperform." What's</p> <p>24 underperforming what?</p>	<p style="text-align: right;">235</p> <p>1 marketplace that other CVRR unitholders should also</p> <p>2 tender, wouldn't it have?</p> <p>3 A. Yes.</p> <p>4 Q. Correct. So if you wanted to maximize</p> <p>5 the gains for a call right, you would set a lower cap</p> <p>6 and you would publicly disclose that IEP was also</p> <p>7 tendering its 6 million -- nearly 6 million CVRR units</p> <p>8 to further incentivize everyone to tender, but protect</p> <p>9 yourself with a 80.1 percent cap. Isn't that right?</p> <p>10 A. Well, we talked about it being -- it's</p> <p>11 actually -- it was a 95 percent cap. And so -- and</p> <p>12 I'm just talking about the reality of what happened,</p> <p>13 which is that you had a 95 percent maximum, you only</p> <p>14 got in 15 percent, so you still had another 10 percent</p> <p>15 above that maximum, above that maximum cap.</p> <p>16 And if I wanted to keep -- if I were</p> <p>17 thinking along those lines, which I have no idea if</p> <p>18 they were, I would -- if I tendered that 10 percent</p> <p>19 excess, we might go all the way to the 5 percent cap.</p> <p>20 In which you'd lose the opportunity to take the</p> <p>21 10 percent at a discount following the closing of the</p> <p>22 tender.</p> <p>23 Q. So if there was an 80.1 percent cap,</p> <p>24 are you saying that the conflicts committee should not</p>
<p style="text-align: right;">234</p> <p>1 Q. If IEP thought CVRR unit price was not</p> <p>2 sustainable, would not trade on its fundamentals,</p> <p>3 would -- the call right would be a ceiling -- they had</p> <p>4 no incentive not to exchange their CVRR units for CVI</p> <p>5 shares; correct?</p> <p>6 A. No, because they got the benefit -- I</p> <p>7 just said, they get the benefit of the other side.</p> <p>8 Q. Well, IEP was going to get the benefit</p> <p>9 of that anyway, wasn't it?</p> <p>10 A. That's the point.</p> <p>11 Q. So it made sense for them to at least</p> <p>12 exchange the nearly 6 million units they had; correct?</p> <p>13 A. Makes no difference when they exchange</p> <p>14 it or don't exchange it. If I'm trying to not have --</p> <p>15 just trying to minimize the tender into my -- I'm not</p> <p>16 saying they were doing this; I'm not reading anybody's</p> <p>17 mind.</p> <p>18 But if I were to try to make sure I</p> <p>19 cap the retail units outstanding, I would not -- not</p> <p>20 tendering is a nice way of making the unitholders, the</p> <p>21 retail unitholders, feel they're in the same boat as</p> <p>22 the Icahn organization.</p> <p>23 Q. Right. Because if IEP tendered its</p> <p>24 units, it would have been a further signal to the</p>	<p style="text-align: right;">236</p> <p>1 have recommended that unitholders tender?</p> <p>2 A. It depends on the circumstances again.</p> <p>3 Q. Let's do 5 percent tender, 5 percent</p> <p>4 premium, IEP publicly disclosed its tendering,</p> <p>5 80.1 percent cap, conflicts committee, financial</p> <p>6 advisor. What's the recommendation, Mr. Atkins?</p> <p>7 A. And there's no other protections, then</p> <p>8 they refuse to negotiate?</p> <p>9 Q. CVI doesn't have to do anything, not</p> <p>10 willing to do anything it doesn't have to do.</p> <p>11 A. But it's an 80.1 percent cap now, not</p> <p>12 a 95 percent cap.</p> <p>13 First, I'd want to know what the -- I</p> <p>14 would need to make sure, if I could, that there's some</p> <p>15 back-end protections. Otherwise, you know, it's one</p> <p>16 of these things where you throw your hands up in the</p> <p>17 air and say, "Well, for 5 percent" -- I'm not sure I</p> <p>18 would recommend that people tender in that scenario.</p> <p>19 Because if you -- if you're still</p> <p>20 leaving -- you know, if you're taking 10 percent,</p> <p>21 you're still leaving 20 percent outstanding and that</p> <p>22 20 percent is sitting naked to the potential problems</p> <p>23 that we saw that occurred here. I'm not sure I</p> <p>24 would -- on balance, I'm not sure, at 80.1 percent I</p>

<p style="text-align: right;">237</p> <p>1 would recommend that. If I said that at my depo, I 2 probably made a mistake. 3 Q. Irrespective of what the conflicts 4 committee recommended or the general partner 5 recommended, under that structure institutional 6 investors would have tendered, wouldn't they have? 7 A. At 24 versus having a big downside, 8 yeah, you would have gotten institutional tenders, 9 yes. 10 Q. And you would have gotten -- you would 11 have gotten to the 80.1 percent; correct? 12 A. Yeah. But if I'm the investment 13 banker and I rep the conflicts committee, I might have 14 done something that you don't see too often, which is 15 say no and then see if Mr. Icahn was still willing to 16 do that deal if I and the conflicts committee -- if I 17 represented the conflicts committee in this and that 18 was a really bad deal for the remaining 20 percent. 19 Q. Well, there's examples of -- 20 A. If he's going to go forward, then he's 21 going to be sitting right here where he is now. 22 Q. Right. If CVI went forward, conflicts 23 committee could recommend no. If CVI goes forward 24 with the exchange offer, they would have gotten that</p>	<p style="text-align: right;">239</p> <p>1 tendered, you would have hit the 95 percent. 2 Q. We'll turn to OCI in a bit. 3 At your deposition, I believe you said 4 you're not aware of a situation where a sponsor moved 5 forward with a deal where a conflicts committee had 6 said no. 7 Do you recall that? 8 A. Yeah, I do -- I think I recall that. 9 I'm sure that's right because I don't recall anywhere 10 people went over the conflicts committee's heads. 11 Q. Do you remember one of your precedent 12 transactions being the Cheniere acquisition of CQH? 13 A. Yes. 14 Q. Do you recall in Cheniere, there was 15 an original proposal by Cheniere to acquire CQH? The 16 conflicts committee and Cheniere didn't reach a deal. 17 Cheniere then went out in the market and engaged in a 18 series of private negotiations to acquire sufficient 19 units to get above the call right and then came back 20 and did the deal anyway. 21 Do you recall that? 22 A. I recall that, yeah, because they did 23 not do a tender. Yes, I do recall that. 24 Q. And the reason --</p>
<p style="text-align: right;">238</p> <p>1 80.1 percent, wouldn't they have? 2 A. I think they probably would have, but 3 I think we'd be sitting here in an entirely different 4 type of discussion. 5 Q. Mr. Atkins, you did no analysis as to 6 the number of units you believe would have been 7 tendered if a lower premium had been offered; correct? 8 A. That's correct. 9 Q. And you haven't analyzed how many 10 additional units or different units would have been 11 tendered if there had been a positive recommendation; 12 correct? 13 A. I was drinking some water, Mr. Raju. 14 Can you repeat the question? I'm sorry. 15 Q. Sure. And you haven't analyzed how 16 many units would have been tendered if there had been 17 a positive recommendation; correct? 18 A. I think -- I did not do the analysis, 19 but we did talk about this in the OCI case, where 20 there was not a guaranteed take-out at the back end, 21 but there was a recommendation to tender. And then 22 they got to 99 percent, as opposed to 85 percent here. 23 I think clearly if there was a positive recommendation 24 and there was a solicitor hired to get the units</p>	<p style="text-align: right;">240</p> <p>1 A. But that's different than a committee 2 saying no. That's basically not reaching a deal and 3 then Cheniere going and basically doing an end run -- 4 which is fine, nothing wrong, they're allowed to do 5 that. "End run" sounds bad. Cheniere doing what it 6 wanted to do and coming back and being able to acquire 7 the units. 8 I'd have to go back and refresh my 9 recollection, which I will between now when I do my 10 rebuttal as to what the dynamic of the Cheniere 11 situation was. 12 Q. So all the precedent transactions, you 13 acknowledge that there was an intent by the sponsor to 14 take the MLP private, correct? 15 A. That was what the intent, yes. I 16 guess "intent" is an okay word, yes. 17 Q. Now, if the intent is to take a 18 company private, you know, in a going private 19 transaction, either the transaction happens or it 20 doesn't and all the unitholders get the same thing; 21 right? Isn't that what a going private transaction 22 means? 23 A. Well, if it's -- if the intention is 24 to acquire 100 percent and then, generally speaking,</p>

<p style="text-align: right;">241</p> <p>1 unless there's some purchases in the market at below</p> <p>2 the deal price, yes, that's correct.</p> <p>3 Q. So if the deal is approved and meets</p> <p>4 the requisite conditions, everyone, all the</p> <p>5 unitholders get the same deal; right?</p> <p>6 A. In those deals they did, yes.</p> <p>7 Q. Correct. And if the deal is not</p> <p>8 approved, then none of the unitholders get the deal;</p> <p>9 right?</p> <p>10 A. If the deal doesn't happen, the deal</p> <p>11 doesn't happen, yes.</p> <p>12 Q. Right. And an exchange offer is</p> <p>13 different because each unitholder controls their own</p> <p>14 destiny in terms of the security they want to keep</p> <p>15 post-transaction; correct?</p> <p>16 A. Well, I think if we're talking about</p> <p>17 this situation, I think that it came as a huge</p> <p>18 surprise to the nontendering retail holders that they</p> <p>19 didn't get a better deal. So they may have made the</p> <p>20 decision not to tender, but I think my view is that it</p> <p>21 was based upon a misinformed group of holders who were</p> <p>22 not guided by a recommendation by the board and a</p> <p>23 conflicts committee to tender.</p> <p>24 Because when there was -- in the OCI</p>	<p style="text-align: right;">243</p> <p>1 A. Yep, they did.</p> <p>2 Q. Got to 88.25 percent on the doorstep</p> <p>3 of the 90 percent trigger for the call right; correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And then they proposed a deal to the</p> <p>6 conflicts committee; right?</p> <p>7 A. Yes.</p> <p>8 Q. And with that in hand, OCI was going</p> <p>9 to get above the 90 percent call right threshold;</p> <p>10 correct? It only needed less than 2 percent of the</p> <p>11 remaining 12 percent outstanding; correct?</p> <p>12 A. In my view, they worked with the</p> <p>13 conflicts committee. They did the right thing. They</p> <p>14 put a number on the table that the committee said,</p> <p>15 yeah, you can support that number. And because of the</p> <p>16 risk of bad things happening to those who didn't</p> <p>17 tender, they went out and they solicited and they got</p> <p>18 it up to 99 percent.</p> <p>19 Q. If the sponsor has already stated its</p> <p>20 intent to exercise the call right upon getting above</p> <p>21 the 90 percent for which it has already made a maximum</p> <p>22 tender, then, as a practical matter, all the minority</p> <p>23 unitholders are going to get the money. It's just</p> <p>24 whether you get it sooner in the tender or the same</p>
<p style="text-align: right;">242</p> <p>1 case, when there was a recommendation to tender, they</p> <p>2 got -- and it was very similar circumstances in terms</p> <p>3 of percentages -- 95, 99 percent were tendered.</p> <p>4 Q. But OCI -- let's talk about OCI. OCI</p> <p>5 was -- announced its intent and was clearly interested</p> <p>6 from the outset in acquiring the entirety of OCI</p> <p>7 Partners; correct?</p> <p>8 A. Yes. But if people didn't tender --</p> <p>9 and this was a very important point to the conflicts</p> <p>10 committee there and to the solicitation -- the risk</p> <p>11 factors were you run the risk of getting a much lower</p> <p>12 price in the future. It didn't happen. But there was</p> <p>13 no guarantee of a takeout in OCI. And that was one of</p> <p>14 the driving forces in causing the conflicts committee</p> <p>15 to recommend and strongly support people tendering.</p> <p>16 And they got to, with retail holders, 99 percent</p> <p>17 versus 85 percent.</p> <p>18 Q. OCI had initially proposed to acquire</p> <p>19 OCI Partners a year and a half earlier before the</p> <p>20 tender in December of 2016; right?</p> <p>21 A. Yeah, '16 took a long time, closed in</p> <p>22 '18.</p> <p>23 Q. And then they acquired 7 million units</p> <p>24 in private transactions?</p>	<p style="text-align: right;">244</p> <p>1 money later when the call occurs; isn't that right?</p> <p>2 A. There was no same money later. That</p> <p>3 was the issue. There was no guarantee in OCI that</p> <p>4 they get the same money.</p> <p>5 Q. Mr. Atkins, in your review of the</p> <p>6 materials in connection with this engagement, you've</p> <p>7 not seen anything that would suggest that CVI or IEP</p> <p>8 had an intent to take CVRR private at the time of the</p> <p>9 exchange offer; correct?</p> <p>10 A. I have seen nothing that -- no smoking</p> <p>11 guns in that regard, no, you're correct.</p> <p>12 Q. And in your review of the materials in</p> <p>13 connection with this engagement, you've not seen</p> <p>14 anything that would suggest that CVI or IEP believed</p> <p>15 that the price of CVRR would not continue to trade on</p> <p>16 its business fundamentals post-exchange offer;</p> <p>17 correct?</p> <p>18 A. I have not seen any documents to that</p> <p>19 effect, but I think it's pretty obvious, having looked</p> <p>20 at the Boardwalk transaction and looked at the</p> <p>21 structure of this transaction and the dynamic of this</p> <p>22 transaction, that that was not going to be the case.</p> <p>23 It was going to not trade on fundamentals shortly</p> <p>24 after the 90 days expired.</p>

<p style="text-align: right;">245</p> <p>1 Q. Right. You're talking about your 2 expert view as to how you would have assessed the 3 situation. But you've not seen anything that suggests 4 to you that CVI or IEP shared that belief during the 5 pendency of the exchange offer; correct? 6 A. Yes. I've not seen any smoking guns, 7 correct. 8 Q. I'm not talking about smoking guns. 9 You can characterize it however you want, Mr. Atkins. 10 My question is not about smoking guns. My question 11 is: Have you seen anything at all to suggest to you 12 that CVI or IEP believed that CVRR post-exchange offer 13 would not continue to trade on its business 14 fundamentals? 15 A. If I saw something that said that that 16 was the case, then that would be what I would define 17 as a smoking gun. But -- you and I can disagree on 18 semantics, but the answer is, no, I have not seen 19 anything that would suggest that. 20 Q. Now, you've testified at your 21 deposition, and I believe you also testified earlier 22 on direct with Mr. Friedlander, that once the call 23 right is triggered, there is no upside and the call 24 right acts as a cap; correct?</p>	<p style="text-align: right;">247</p> <p>1 your -- either your opening or rebuttal report; 2 correct? 3 A. We talked about why -- we did discuss 4 it. And we said we excluded Terra from the analysis 5 as cons because it had been subject so long to this 6 call right and it traded out there, that the call 7 right was presumed -- my view was the call right was 8 presumed to be something that was not going to be 9 exercised during the holders' time that they wanted to 10 own the equity security. 11 Q. At the time of your deposition, you 12 thought there was a second condition associated with 13 Terra, and it was not an unfettered call right; 14 correct? 15 A. That's correct. 16 Q. So the only example you can think of 17 is an example where there was 18 years of trading, 18 where the 20-day moving average did not act as a cap 19 or as a ceiling on the underlying security; correct? 20 A. That is -- that is the only one that 21 we saw. And it did not surprise me when I talked to 22 my colleagues to find out why we -- I was incorrect as 23 to why, and I said to you I didn't know for sure, but 24 maybe this. It turned out to be excluded because it</p>
<p style="text-align: right;">246</p> <p>1 A. Yes. 2 Q. Now, at your deposition, I asked you 3 if you're aware of any situation of a public equity 4 trading while subject to an unfettered call right. 5 And the only example you gave me was OCI Partners; is 6 that correct? 7 A. I don't remember. I'm sorry, 8 Mr. Raju, I'm sorry. 9 Q. Okay. Well, do you recall any example 10 of a public equity trading while subject to an 11 unfettered call right? 12 A. Trading above that call right price? 13 Q. No, no, trading at any price. I 14 understand you have a view that this is a cap. But do 15 you have any actual examples of a public equity 16 trading while subject to an unfettered call right that 17 can be exercised at any time? 18 A. Well, Terra was that way. And Terra 19 traded for 19 years, or about 18 years, subject to a 20 call right. 21 Q. Right. And you weren't aware of that 22 at your deposition, were you? 23 A. No. 24 Q. And you did not discuss that at all in</p>	<p style="text-align: right;">248</p> <p>1 had been trading for so many years with this call 2 right available. And nobody -- you know, it was not 3 part of a series of transactions like the other 4 precedents where they got to a call right and then 5 they decided to try to bring everything else in. 6 Q. So the call right in Terra Nitrogen 7 was the same exact call right pricing mechanic that we 8 have here in CVR Refining? 9 A. Yes. 10 Q. It's a 20-day moving average; correct? 11 A. I think it's 28 closing average, yeah. 12 Q. Yeah, a 20-day historic moving 13 average; correct? 14 A. Yes, sir. 15 Q. Subject to a 90-day price protection 16 if there's a higher purchase by an affiliate; correct? 17 A. I don't know about that latter part, 18 but the former part is correct. 19 Q. And CF Industries announced in 2001 20 that it had crossed the threshold and now owned enough 21 units to exercise the call at any time; correct? 22 A. I don't know if they announced it, but 23 I presume they did. 24 Q. And from the time in 2002 to 2018 when</p>

<p style="text-align: right;">249</p> <p>1 the call right was exercised, Terra Nitrogen stock 2 went up more than 12 times; correct? 3 A. It wouldn't surprise me. They did -- 4 good company, good business. 5 Q. Do you know how much it went up? 6 A. No, I didn't know that, but I know 7 that those gases, that kind of business has been a 8 good business. 9 Q. Let's look at how much Terra Nitrogen 10 went up. 11 First of all, let's go to -- if you 12 can go to Exhibit 160. We'll try to pull it up on the 13 screen, but, Mr. Atkins, if you can get that. 14 A. 160? 15 Q. Yeah, and we're pulling it up on the 16 screen. 17 A. What you're telling me, Mr. Raju, is 18 I'm better off not pulling the book out? 19 Q. So if you look at the heading, you see 20 it's a February 7th press release. 21 Do you see that? 22 A. Yes, I do. 23 Q. Okay. And it says, "CF Industries ... 24 to Exercise Right to Purchase All Publicly Traded</p>	<p style="text-align: right;">251</p> <p>1 A. Yes, that's correct. 2 Q. Okay. Now, if we go to JX 1188 -- 3 we'll pull that up on the screen. This is a Form 10-K 4 filed for the fiscal year ended December 31, 2001, for 5 Terra Nitrogen. 6 Let's go to page 3 of 28. And under 7 the column "General," the second paragraph under the 8 heading "General" the one that begins "Ownership." 9 MR. RAJU: Second paragraph. 10 Q. It says, "Ownership of TNCLP is 11 comprised of the general partner interests and the 12 limited partner interests," and it says, "The limited 13 partner interests consists of [18.5 million] units. 14 Terra and its subsidiaries owned 13.[approximately 15 9 million] common units." 16 Do you see that? 17 A. Let me just look at it real fast. 18 Q. Sure. I think your calculations will 19 confirm it's the same 4.6 million units that were 20 called 17 years later. 21 A. I'm just looking at this now. Yep. 22 Okay. I see that. 23 Q. Same number of units that were called 24 17 years later; correct?</p>
<p style="text-align: right;">250</p> <p>1 Units of Terra Nitrogen Company []." 2 Do you see that? 3 A. Blow it up for me. 4 Q. It's the heading. 5 A. Yeah, I see it. Yes, I can. 6 Q. One second. Let's wait until it's 7 blown up. Perfect. 8 And it says that "CF Industries ... 9 announced today that its wholly owned subsidiary Terra 10 Nitrogen GP ... has elected to exercise its right to 11 purchase all of the [4.6 million] publicly traded 12 common units of Terra Nitrogen Company []." 13 Do you see that? 14 A. I do. 15 MR. RAJU: Okay. And then if we can 16 highlight the third paragraph, Scott, the one that 17 begins "The purchase" 18 Q. It says, "The purchase price of 19 \$84.033 per unit was determined under the ... 20 partnership agreement as the average of the daily 21 closing prices per common unit for the 20 consecutive 22 trading days" 23 And you can tell from the dates used 24 that's a historical 20 average days; correct?</p>	<p style="text-align: right;">252</p> <p>1 A. It was 25 percent outstanding, so. 2 Q. Right. 3 A. As opposed to 15 percent held by 4 retail. 5 Q. So let's go to page 9 of 28. 6 MR. RAJU: Scott, and if you can blow 7 up the "Limited Call Right" section. Okay. 8 Q. It says, "Since less than 25% of the 9 issued and outstanding units are held by 10 non-affiliates of the General Partner, the 11 Partnership, at the General Partner's sole discretion, 12 may call, or assign to the General Partner ... the 13 right to acquire, all such outstanding units held by 14 non-affiliated persons." 15 Do you see that? 16 A. Yes. 17 Q. "The General Partner and its 18 affiliates owned 75.1% of the common units at 19 December 31, 2001." 20 Do you see that? 21 A. Yes. 22 Q. The last part of the paragraph sets 23 forth the pricing formula which is substantively 24 identical to the pricing formula in the CVRR</p>

<p style="text-align: right;">253</p> <p>1 partnership agreement; correct?</p> <p>2 A. I see it.</p> <p>3 Q. So this, Mr. Atkins, you would</p> <p>4 acknowledge is a real-world example of the call right</p> <p>5 of the effects and dynamic of the call right; right?</p> <p>6 A. Yep. Sure is.</p> <p>7 Q. Let's go to page 2 of 28.</p> <p>8 MR. RAJU: Page 2 of 28, Scott. I'm</p> <p>9 sorry. Can you highlight the first full paragraph at</p> <p>10 the top, Scott.</p> <p>11 Q. Do you see it says, "The aggregate</p> <p>12 market value of the registrant's common units held by</p> <p>13 nonaffiliates as of the close of business on</p> <p>14 January 31, 2002 was [approximately \$32 million]"?</p> <p>15 A. I see that.</p> <p>16 Q. Which means that the average price per</p> <p>17 unit is under \$7; correct?</p> <p>18 A. Yes.</p> <p>19 Q. And 17 years later it was taken out at</p> <p>20 \$84; right?</p> <p>21 A. Yes.</p> <p>22 Q. So that's 12 times; correct?</p> <p>23 A. Yeah.</p> <p>24 Q. So this identical call right, the only</p>	<p style="text-align: right;">255</p> <p>1 never any talk about bringing the thing in until they</p> <p>2 actually brought it in.</p> <p>3 It wasn't like our situation here,</p> <p>4 where we have a tender offer that leaves outstanding</p> <p>5 15 percent and people wake up and say, "Wait, a</p> <p>6 minute, I wanted to participate in the tender offer</p> <p>7 and I can't." And when you look at the chart that's</p> <p>8 in my book that we talked about before, and we look</p> <p>9 at -- which I've also done -- the Boardwalk trading</p> <p>10 post-announcement, it never crossed those numbers.</p> <p>11 And in the end, they were taken out.</p> <p>12 And if, in fact, this was going to be</p> <p>13 the case for us, then we should have -- maybe we</p> <p>14 should have listened -- maybe Mr. Cozza should have</p> <p>15 followed his own advice, let it stand, and maybe it</p> <p>16 would have been worth billions of dollars. But in the</p> <p>17 end, it got called in.</p> <p>18 Q. Do you believe it was reasonable --</p> <p>19 given that the only real-world example is Terra</p> <p>20 Nitrogen, do you believe it would have been reasonable</p> <p>21 for someone during the pendency of the exchange offer</p> <p>22 to believe that CVRR would trade on its business</p> <p>23 fundamentals post exchange offer?</p> <p>24 A. I don't think so, because I think that</p>
<p style="text-align: right;">254</p> <p>1 real-world example we have, the only real-world</p> <p>2 example we have, showed that the call right did not</p> <p>3 operate as a ceiling or a cap on the trading price of</p> <p>4 a public security; correct?</p> <p>5 A. It did not in this case. This case</p> <p>6 was outstanding forever. And I don't think people in</p> <p>7 2001 looked at things the same way they looked at</p> <p>8 things in 2018 when all these were being called -- all</p> <p>9 these other guys were being called in.</p> <p>10 Q. What do you believe is different about</p> <p>11 the CVRR situation than the Terra Nitrogen situation,</p> <p>12 Mr. Atkins?</p> <p>13 A. Well, I cannot tell. I don't know the</p> <p>14 stockholder composition of Terra. I don't know how</p> <p>15 much was institutional. I know that because it wasn't</p> <p>16 called in for one, two, three, four, 18 years, I think</p> <p>17 that the holders of Terra were not thinking about the</p> <p>18 call right because it hadn't been exercised.</p> <p>19 May I finish, Mr. Raju?</p> <p>20 So I think that that's why we don't</p> <p>21 think it -- that's why we did not think it was -- why</p> <p>22 John told me, my colleague, excluded it and I found</p> <p>23 out after our deposition what was going on. We still</p> <p>24 think it's not a good precedent because there was</p>	<p style="text-align: right;">256</p> <p>1 we have another real-world example, which is</p> <p>2 Boardwalk. And Boardwalk did not trade on its</p> <p>3 fundamentals; it traded with the expectation it was</p> <p>4 going to be called. If you look at every one of these</p> <p>5 analysts that's out there that were covering this,</p> <p>6 every one of them said, you know, it makes no sense to</p> <p>7 leave this stub out.</p> <p>8 So if it's going to get called -- here</p> <p>9 in Terra, there was no expectation at any time until</p> <p>10 it got called. 18 years of trading. In all the other</p> <p>11 examples that we've talked about -- and especially</p> <p>12 here, in our situation, CVRR -- there was an</p> <p>13 expectation, a market expectation that it was going to</p> <p>14 get called.</p> <p>15 And until it stays outstanding for --</p> <p>16 if it was left outstanding for one, two, three, five</p> <p>17 years, we'll never know because it was called. And</p> <p>18 the early thinking was based upon the belief that this</p> <p>19 was a great -- not a stable situation to have a</p> <p>20 15 percent stub of a company that they wanted to get</p> <p>21 sold. It's a totally different dynamic than Terra.</p> <p>22 And the dynamic was: It makes no sense to leave this</p> <p>23 outstanding. It's going to get called. And, guess</p> <p>24 what, it was.</p>

<p style="text-align: right;">257</p> <p>1 Q. In your direct with Mr. Friedlander,</p> <p>2 you recall discussing the Tudor Pickering report, the</p> <p>3 July 27th report?</p> <p>4 A. Yeah, Mr. Blair's report, yes.</p> <p>5 Q. And at your deposition, you</p> <p>6 acknowledged that Tudor Pickering and Mr. Blair took</p> <p>7 into account the call right in determining to reduce</p> <p>8 its price target for CVRR from \$29 to \$24; correct?</p> <p>9 A. Yes.</p> <p>10 Q. But this was not the first time an</p> <p>11 analyst had reduced a price target for CVRR due to the</p> <p>12 call right, was it?</p> <p>13 A. You'll tell me which one -- I'm sure</p> <p>14 there's other ones out there. I'm not recalling any</p> <p>15 off the top of my head.</p> <p>16 Q. In fact, Barclays did exactly that</p> <p>17 nearly two years earlier; correct?</p> <p>18 A. Oh, I mean, in prior years, yeah. I</p> <p>19 mean, ups and downs, people do that all the time,</p> <p>20 depending upon the dynamic of what's going on.</p> <p>21 Q. So if we can go to JX 77.</p> <p>22 MR. RAJU: Just one second, Your</p> <p>23 Honor.</p> <p>24 Maybe we're just having technical</p>	<p style="text-align: right;">259</p> <p>1 A. Yep.</p> <p>2 Q. That's a 25 percent decrease; correct?</p> <p>3 A. The percentages are right. This is</p> <p>4 also the nadir of the oil and gas work in fact, when</p> <p>5 all these guys were -- I was doing some bankruptcy</p> <p>6 work back then. But, yes, that's no surprise that</p> <p>7 this was in bad shape, especially the downstream guys.</p> <p>8 Q. Right. And CVRR was trading at \$5.62?</p> <p>9 A. Yep.</p> <p>10 Q. And the price that Barclays reduced</p> <p>11 price target from \$8 to \$6, correct, a 25 percent</p> <p>12 reduction due to the call right?</p> <p>13 A. Yes.</p> <p>14 Q. And then if you go to the third</p> <p>15 paragraph, starting on the third line, you see where</p> <p>16 it says, "We believe this recent disclosure has</p> <p>17 essentially put a ceiling on value and the units may</p> <p>18 not be able to reflect their underlying fundamental</p> <p>19 value given the potential forced privatization by the</p> <p>20 General Partner without proper compensation."</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. So despite the Barclays analyst</p> <p>24 believing there was a ceiling being created by the</p>
<p style="text-align: right;">258</p> <p>1 difficulties. Maybe we can just pull up the document.</p> <p>2 THE COURT: You're not the first to</p> <p>3 have technical issues like this. I apologize.</p> <p>4 THE WITNESS: Mr. Raju, 77?</p> <p>5 MR. RAJU: 77. Hopefully one of the</p> <p>6 early binders.</p> <p>7 THE WITNESS: Oh, boy.</p> <p>8 MR. RAJU: Small print, huh?</p> <p>9 Hopefully this will come up. There we go, we're back.</p> <p>10 Okay. Let's zoom in at the top.</p> <p>11 THE WITNESS: Saved by the magnifier.</p> <p>12 MR. RAJU: Yeah, exactly.</p> <p>13 BY MR. RAJU:</p> <p>14 Q. So, Mr. Atkins, this is a Barclays</p> <p>15 analyst report. You see the date on the upper right,</p> <p>16 it says August 4, 2016?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And it says, "Lower to [Underweight]</p> <p>19 from [Overweight]: Risk of Takeout by GP at Market</p> <p>20 Price."</p> <p>21 Do you see that?</p> <p>22 A. Yes, I see it, yes.</p> <p>23 Q. And this -- you see that the price</p> <p>24 target on the right is being reduced from \$8 to \$6?</p>	<p style="text-align: right;">260</p> <p>1 call right back in 2016 when the CVRR units were</p> <p>2 trading under \$6, the CVRR units did quite well in the</p> <p>3 runup to the exchange offer nearly two years later,</p> <p>4 didn't they?</p> <p>5 A. Yeah, they did. But I'm just</p> <p>6 wondering why the call right couldn't have -- I don't</p> <p>7 know how much the Icahn organization owned at this</p> <p>8 point -- or CVI owned, excuse me.</p> <p>9 Q. Well, this disclosure, this analyst</p> <p>10 report was spurred by CVI and its affiliates</p> <p>11 announcing they had gone under the 70 percent so that</p> <p>12 the call right trigger was permanently reduced from</p> <p>13 95 percent to 80 percent; correct?</p> <p>14 A. Right. So they still were at</p> <p>15 69.9 percent when this report was written. So the guy</p> <p>16 is saying, well, maybe they would have to get up --</p> <p>17 they'd have to find another 10.1 percent before they</p> <p>18 could do that.</p> <p>19 Q. Right. But the risk of -- but the</p> <p>20 analyst community and the market was aware that that</p> <p>21 was enough of a risk that at least one prominent</p> <p>22 analyst believed that there would be a ceiling on the</p> <p>23 CVRR unit price going forward when CVRR was trading at</p> <p>24 \$5.62. Isn't that correct?</p>

<p style="text-align: right;">261</p> <p>1 A. If you believe that the general</p> <p>2 partner was going to do takeout and -- find the other</p> <p>3 10.1 percent and do a takeout -- which to Mr. Icahn</p> <p>4 and his organization's credit he didn't do, because</p> <p>5 this was a really, really horrible time in the</p> <p>6 marketplace. It would have been a very, very high</p> <p>7 risk move to consider.</p> <p>8 Q. So it went up approximately four times</p> <p>9 between the time of this analyst report and the time</p> <p>10 the exchange offer was announced; correct?</p> <p>11 A. The market for oil recovered, yes.</p> <p>12 Q. So fair to say that Barclays</p> <p>13 anticipated a market dynamic that simply did not</p> <p>14 materialize with respect to the call right; correct?</p> <p>15 A. I think I told you at my deposition</p> <p>16 that I agreed -- one way I do agree with Mr. Cozza is</p> <p>17 that the analysts don't always get it right.</p> <p>18 Q. Analysts can get it wrong; correct?</p> <p>19 A. They can and --</p> <p>20 Q. Sometimes they get it right, sometimes</p> <p>21 they get it wrong. You don't know until after the</p> <p>22 fact; correct?</p> <p>23 A. Excuse me. You asked me a question.</p> <p>24 Let me finish. The difference here is that Mr. Icahn</p>	<p style="text-align: right;">263</p> <p>1 Q. One has a steady set of cash flows,</p> <p>2 the other --</p> <p>3 A. One has a stated distribution; the</p> <p>4 other does not.</p> <p>5 Q. So a variable-rate MLP can easily</p> <p>6 change out its cyclical assets and put in</p> <p>7 steady-stream assets and change its distribution</p> <p>8 policy without changing its legal structure in any</p> <p>9 way; correct?</p> <p>10 A. I would take issue with the word</p> <p>11 "easily." But aside from that, they could do it.</p> <p>12 Q. You also said that with respect to the</p> <p>13 public stub, that you disagreed that it had -- they</p> <p>14 would make -- having a public stub would make CVI less</p> <p>15 valuable. Do you recall that?</p> <p>16 A. Can you repeat that for me?</p> <p>17 Q. I'm sorry, I may have misstated it.</p> <p>18 I believe you testified earlier that</p> <p>19 you thought having a public stub of CVRR would make</p> <p>20 CVI less valuable to potential buyers of CVI; is that</p> <p>21 right?</p> <p>22 A. Yeah. We were looking at the BAML</p> <p>23 stuff, who concurred with that, yes.</p> <p>24 Q. Correct. But if one has a call right,</p>
<p style="text-align: right;">262</p> <p>1 and CVI were not at 80 percent yet. So there was two</p> <p>2 steps before this could have occurred.</p> <p>3 It's in 2018 I think the 80 percent</p> <p>4 threshold had been reached and crossed. And at that</p> <p>5 point it was pretty clear, given that this was a</p> <p>6 company with a 15 percent stub that was trading with a</p> <p>7 far less liquidity than was trading here, because</p> <p>8 there was 30 percent outstanding here, that it was</p> <p>9 more than likely that that -- that that call was going</p> <p>10 to be exercised, and, as such, it did act as a cap on</p> <p>11 CVRR's price.</p> <p>12 Q. Let's touch another topic. We talked</p> <p>13 about variable-rate MLPs and logistics MLPs. Do you</p> <p>14 recall that?</p> <p>15 Well, let me just ask the question.</p> <p>16 There's no legal difference between a</p> <p>17 variable-rate MLP and a logistics MLP, correct, that</p> <p>18 you're aware of?</p> <p>19 A. Legal difference? I'm not aware, but</p> <p>20 I don't know any.</p> <p>21 Q. Right. It really is a matter of the</p> <p>22 cash flows associated with the underlying assets;</p> <p>23 correct?</p> <p>24 A. If the cash was underlying --</p>	<p style="text-align: right;">264</p> <p>1 the public stub is something that can easily be taken</p> <p>2 out if a buyer preferred not to have a public stub;</p> <p>3 correct?</p> <p>4 A. That's why we believed that they were</p> <p>5 going to take it out, and that's why the trading</p> <p>6 patterns were so -- were what they were, which were</p> <p>7 not particularly pretty.</p> <p>8 Q. Understood. But from a sale of CVI</p> <p>9 perspective, having a public stub offered exceptional</p> <p>10 optionality, in that if someone wanted to keep it they</p> <p>11 could; if someone wanted to take it out easily they</p> <p>12 could; correct?</p> <p>13 A. If you could show me that buyer, I'd</p> <p>14 be real excited to be meet them and get to know them.</p> <p>15 I don't know if that buyer -- I've never met a buyer</p> <p>16 like that, that wants to buy a company with a stub.</p> <p>17 Nor does, apparently, BAML.</p> <p>18 Q. You didn't analyze here why</p> <p>19 institutional holders of CVRR units did or did not</p> <p>20 tender, did you?</p> <p>21 A. I mean, it came as no surprise. I</p> <p>22 mean, it was a price at a premium. People thought</p> <p>23 this was -- that the institutions thought this was</p> <p>24 sufficient for them to take the money. And I think</p>

<p style="text-align: right;">265</p> <p>1 many of them probably looked at the alternative of 2 staying around, which would subject them to a 3 Boardwalk-like dynamic. 4 Q. Yeah, but you didn't do any analysis 5 or study of why institutional holders chose not -- the 6 institutional holders chose to tender or not tender; 7 correct? 8 A. Just using my 35 years of experience, 9 I could tell you that is an outcome that was -- that I 10 could have predicted without having to do any detailed 11 analysis. 12 Q. There were a significant number of 13 institutional holders who did not tender; correct? 14 A. There was not a significant number. 15 There was a number that didn't tender. 16 Q. What's your basis for saying there was 17 not a significant number of institutional holders that 18 didn't tender? 19 A. Because when I look at Mr. Blair's 20 analysis when he says, "Okay, this is what we expect 21 to stay in," you had index funds still in there and 22 you had a couple other people. But the majority of -- 23 the 15 percent. There's approximately 15 percent 24 retail, okay? And so some of that retail may have</p>	<p style="text-align: right;">267</p> <p>1 Q. And you did no analysis on the effect 2 of the October distribution on the CVRR unit price, 3 did you? 4 A. Well, the unit price, at that point, 5 was traded on what I would describe as an effected 6 basis, because they were in the -- they were in the 7 call period and we were in what I would describe, 8 again, as the downward spiral, which had taken over 9 and kind of replaced fundamental value as a -- as what 10 was going on. 11 Q. Mr. Atkins, my question was: You did 12 no analysis on the effect of the October distribution 13 on the CVRR unit price; correct? 14 A. The answer is that is correct. But I 15 didn't have to, because the trading was no longer 16 based upon fundamental value, which would be based 17 upon the performance of the company in that quarter. 18 The trading was being -- was now in 19 the: I'm selling, the price is coming down; the call 20 price comes down, I'm going to sell some more. 21 That was the dynamic. The fear 22 feedback loop had taken over at that stage. 23 Q. Mr. Atkins, you did not conduct any 24 event study or another analysis as to the effect of</p>
<p style="text-align: right;">266</p> <p>1 tendered. But that meant that there was 15 percent 2 institutional. 3 And the vast majority of those 4 tenders, given what was left over, were institutional. 5 So you probably -- just looking at the numbers, I 6 think it would not be hard for me to figure out that 7 more than 90 percent of the institutions tendered. 8 Q. Let's talk about the October 9 distribution. The October distribution was higher 10 than analyst consensus estimates; correct? 11 A. Yes, sir. 12 Q. And the Barclays report that 13 Mr. Friedlander showed you earlier listed as a 14 positive the fact that the October distribution was 15 higher than analyst consensus estimates; correct? 16 A. It was a positive when the market 17 found out that there was -- I mean, analysts are 18 guided, to a certain extent, by the companies 19 themselves. The companies will say, "Okay, this is -- 20 we're hoping we're targeting. Here's our range of 21 distributions." 22 In that quarter, they far exceeded. 23 And then they did not tell the market that they far 24 exceeded until they did the analyst call.</p>	<p style="text-align: right;">268</p> <p>1 the November 29th announcement on the CVRR unit price; 2 correct? 3 A. No, we did not. 4 Q. And you did no analysis as to what the 5 CVRR unit price would have done if no announcement had 6 been made in November; correct? 7 A. Can you repeat that again. 8 Q. Yeah. You did -- you did not do any 9 analysis as to what the CVRR unit price would have 10 done if no November announcement had been made; 11 correct? 12 A. That's correct. 13 Q. And by late November, you believe that 14 CVRR unit price was already in the throes of a fear 15 feedback loop; correct? 16 A. It was in the fear feedback loop well 17 before then. That started in the end of -- the end of 18 October, when the 90-day period expired. And it 19 accelerated dramatically when the "should consider" 20 announcement was made. 21 Q. Mr. Atkins, you did not analyze what 22 portion of -- if any -- of the decline in the CVRR 23 unit price between the exchange offer and the exercise 24 of the call right was due to the call right; correct?</p>

<p style="text-align: right;">269</p> <p>1 A. I'm trying to think of why it wasn't</p> <p>2 all attributable to the call right and the perception</p> <p>3 as to when it was going to be exercised. I think the</p> <p>4 market came to the conclusion -- my view is the market</p> <p>5 came to the conclusion it was going to get exercised.</p> <p>6 And so when people began to sense -- when these retail</p> <p>7 holders began to really sense that, they began selling</p> <p>8 more and more and more, and that brought the call</p> <p>9 price lower and lower and lower.</p> <p>10 Q. But you didn't do that analysis, did</p> <p>11 you?</p> <p>12 A. I'm looking at it right here. And the</p> <p>13 answer is there's no analysis to do.</p> <p>14 Q. Where are you looking, Mr. Atkins?</p> <p>15 A. In my chart on page 57 of my opening</p> <p>16 report.</p> <p>17 Q. Okay. The Refiner Index there -- you</p> <p>18 have a line there that says, "Refiner Index." Where</p> <p>19 did you get that Refiner Index?</p> <p>20 A. My guys pulled a Refiner Index</p> <p>21 probably from Bloomberg.</p> <p>22 Q. And I believe you said that Refiner</p> <p>23 Index didn't include any MLPs; correct?</p> <p>24 A. I don't know. I do not know that.</p>	<p style="text-align: right;">271</p> <p>1 refiner equities completely swooned in the quarter,</p> <p>2 dropping []28% on average."</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. And do you see, if you look, each of</p> <p>6 the refiners -- leaving CVR and CVI out of it, looking</p> <p>7 at the others -- they all appear to drop about</p> <p>8 20 percent, and some appear to drop 30 or more</p> <p>9 percent. Do you see that?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And none of these are MLPs; correct?</p> <p>12 A. Not the refiners themselves, that's</p> <p>13 correct.</p> <p>14 Q. Right. So let's go to page -- let's</p> <p>15 go to page 22. Do you see this has a header "Refiner</p> <p>16 comp sheet"?</p> <p>17 MR. FRIEDLANDER: Scott, if you can</p> <p>18 blow up the upper quarter of the upper third of the</p> <p>19 chart. Okay.</p> <p>20 Actually, if you can blow up the left</p> <p>21 side. I want to see the names.</p> <p>22 THE WITNESS: It's the same group</p> <p>23 times three.</p> <p>24 MR. RAJU: Yeah, it's the same group.</p>
<p style="text-align: right;">270</p> <p>1 There was only one public MLP at that point, so that</p> <p>2 is -- which was CVR.</p> <p>3 Q. If I look at the Refiner Index, it</p> <p>4 looks like the Refiner Index, between May 25, 2018,</p> <p>5 and the end of this chart, looks -- it looks to have</p> <p>6 gone down about 20 percent. Isn't that right?</p> <p>7 A. Can you have your guy put it up on my</p> <p>8 screen so I can see it better?</p> <p>9 Q. I don't know if we have your report.</p> <p>10 Well, the chart says what it says.</p> <p>11 A. I mean, I'll just take your word for</p> <p>12 it. You're using pretty good numbers, Mr. Raju.</p> <p>13 Q. Let's go to JX 888. We'll put it up</p> <p>14 on the screen.</p> <p>15 A. My report was there.</p> <p>16 Q. So, Mr. Atkins, this is a Tudor</p> <p>17 Pickering fourth quarter '18 earnings summary,</p> <p>18 January 11, 2019. It's -- the upper right says "US</p> <p>19 Independent Refiners."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Let's go to page 17 of this.</p> <p>23 Do you see the first bullet point on the left?</p> <p>24 "Despite a healthy Q4'18 earnings season shaping up,</p>	<p style="text-align: right;">272</p> <p>1 Q. Do you see that, Mr. Atkins?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Do you recognize an MLP on there?</p> <p>4 A. CVR Refining.</p> <p>5 Q. You recognize any other MLPs?</p> <p>6 A. Nope.</p> <p>7 Q. Calumet is an MLP; right, Mr. Atkins?</p> <p>8 A. Calumet is an MLP? I don't know.</p> <p>9 Q. Do you know how Calumet performed</p> <p>10 between May 25, 2018, and January 29, 2019?</p> <p>11 A. No, I do not.</p> <p>12 Q. Do you know if it underperformed CVRR</p> <p>13 during that period of time?</p> <p>14 A. I don't know.</p> <p>15 Q. Did you do any analysis to determine</p> <p>16 what portion, if any, of the CVRR unit price decline</p> <p>17 had to do with the overall performance of the sector,</p> <p>18 refining sector?</p> <p>19 A. I did. I know how to do that, yeah.</p> <p>20 Q. I'm sorry?</p> <p>21 A. Yes. The answer is I did. And we can</p> <p>22 go back and look at it, if you want to put my chart</p> <p>23 back up on the screen.</p> <p>24 Q. No.</p>

<p style="text-align: right;">273</p> <p>1 A. Because then I could show you and</p> <p>2 answer your question correctly. Because what I'm</p> <p>3 looking at is that -- what you have to do is look</p> <p>4 at -- you're looking at fundamental value. You don't</p> <p>5 look at CVRR. You look at CVI, because CVI is</p> <p>6 90 percent CVRR.</p> <p>7 And so you could compare CVI's</p> <p>8 performance during this period to CVR's performance</p> <p>9 during this period. And you'll see the yawning gap, a</p> <p>10 widening gap, as we move towards the date on which the</p> <p>11 units were called. And so CVR -- CVI is the</p> <p>12 fundamental value contained in CVRR.</p> <p>13 So CVRR has nothing to do -- the very</p> <p>14 fact that it's widening shows me that the market is</p> <p>15 not looking at the performance of the refiners in</p> <p>16 valuing CVRR.</p> <p>17 Q. So let me ask you a question. If CVRR</p> <p>18 is going down because of the call right, shouldn't</p> <p>19 CVI's stock price be going up because the call right?</p> <p>20 A. The question is yes, there is some.</p> <p>21 There's a little bit of that in there. But a lot of</p> <p>22 it is the fundamental value. It reflects the</p> <p>23 fundamental value of -- it's \$200 million. CVI is</p> <p>24 a -- there's \$200 million in value being obtained out</p>	<p style="text-align: right;">275</p> <p>1 CVI gained approximately \$400 million due to the</p> <p>2 dynamic of the call right?</p> <p>3 A. Yeah, that was based upon -- that's --</p> <p>4 that was based upon the fundamental value, projected</p> <p>5 fundamental value -- Mr. Blair put out of \$27 or</p> <p>6 \$29 -- and the \$10 times the total number of units,</p> <p>7 the 22 million units.</p> <p>8 Q. Did you make any attempt to assess</p> <p>9 what the fundamental value of CVRR would have been but</p> <p>10 for the call right dynamic?</p> <p>11 A. No. You could look at CVI and you can</p> <p>12 figure that out.</p> <p>13 Q. Mr. Atkins, I think Mr. Friedlander</p> <p>14 talked to you, and you've been familiar with MLPs for</p> <p>15 a long time; correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. But until this litigation, you had</p> <p>18 never heard of HITE, had you?</p> <p>19 A. No, I had not.</p> <p>20 Q. And in realtime, during the spring and</p> <p>21 early summer of 2018, you did not notice and were not</p> <p>22 aware of the Boardwalk situation, were you?</p> <p>23 A. I'm sorry, run that by me again.</p> <p>24 Q. Yeah. In realtime, during the spring</p>
<p style="text-align: right;">274</p> <p>1 of CVRR. CVI is a 4 or \$5 billion market cap company.</p> <p>2 So, no, it's not sufficient enough. That does not</p> <p>3 explain this delta.</p> <p>4 Q. Why is -- I'm struggling with that.</p> <p>5 Let me ask the question.</p> <p>6 So let's say -- let's say the market</p> <p>7 is pricing CVRR at \$300 million below its fundamental</p> <p>8 value because of the call right dynamic. Why would</p> <p>9 CVI not -- given that the call right is CVI's personal</p> <p>10 asset, why would CVI's stock price not reflect that</p> <p>11 \$300 million asset?</p> <p>12 A. It's a 200 million delta, is what the</p> <p>13 delta is before -- the price that is being taken out</p> <p>14 of CVRR's unitholders and being -- I won't use a word</p> <p>15 that's pejorative. It's being obtained by CVI.</p> <p>16 That \$200 million, yes, it is in</p> <p>17 there. I would believe it would be in there. But</p> <p>18 that is a much smaller -- it's a very small percentage</p> <p>19 of this delta.</p> <p>20 So what I'm saying is that, yeah, CVI</p> <p>21 may be up a little bit, but there's still -- there's</p> <p>22 still billions of dollars between the two in valuation</p> <p>23 here.</p> <p>24 Q. Do you recall in your report you said</p>	<p style="text-align: right;">276</p> <p>1 and early summer of 2018, you did not notice and were</p> <p>2 not aware of the Boardwalk situation, were you?</p> <p>3 A. That's correct.</p> <p>4 Q. And you first heard of the Boardwalk</p> <p>5 situation when you were engaged as an expert by the</p> <p>6 plaintiffs in the Boardwalk litigation; correct?</p> <p>7 A. Yes, sir.</p> <p>8 MR. RAJU: I have no further</p> <p>9 questions.</p> <p>10 THE COURT: Thank you, Mr. Raju.</p> <p>11 Mr. Friedlander.</p> <p>12 REDIRECT EXAMINATION</p> <p>13 BY MR. FRIEDLANDER:</p> <p>14 Q. At the risk of not wanting to scramble</p> <p>15 anything, I'll just go in reverse order for some of</p> <p>16 the points Mr. Raju made.</p> <p>17 Talking about Calumet, I'd like to</p> <p>18 read to you from Mr. Lamp's deposition, on page 181,</p> <p>19 where it's referring to an email from Tudor Pickering</p> <p>20 from August 13, 2018. And the email is written to</p> <p>21 Mr. Finks, the investor relations person.</p> <p>22 And it says, "Jay, Think you should</p> <p>23 [something] Matt and ask him WTF."</p> <p>24 And an explanation on line 19, a</p>

<p style="text-align: right;">277</p> <p>1 response to the question, why were you unhappy with</p> <p>2 the report, says: "Well, he bunched this in with</p> <p>3 DK" -- another company -- "[but] I don't think we were</p> <p>4 down that much, is what I was reacting to. And we had</p> <p>5 a good quarter. And ... he was putting us in with</p> <p>6 Calumet that had a huge miss and DK that had all kinds</p> <p>7 of special issues. And there was really no apparent</p> <p>8 reason for us to be down"</p> <p>9 I was just wondering, are you familiar</p> <p>10 at all with, like, any particular issues at Calumet or</p> <p>11 at DK?</p> <p>12 A. I don't know what happened at that</p> <p>13 point, Mr. Friedlander.</p> <p>14 Q. Okay. Now, you were recently talking</p> <p>15 about Barclays and how they put -- going back to 2016,</p> <p>16 they were saying that the call right operates as a</p> <p>17 ceiling; correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And you think that that's an accurate</p> <p>20 assessment; right?</p> <p>21 A. I think that's an inaccurate</p> <p>22 assessment?</p> <p>23 Q. No, no. Well, you can answer how you</p> <p>24 wish.</p>	<p style="text-align: right;">279</p> <p>1 A. The target price should be whatever</p> <p>2 the call price is at that point, which was still above</p> <p>3 \$20.</p> <p>4 Q. Yeah, but if there's a fear feedback</p> <p>5 loop that you've attested to and there's problems with</p> <p>6 the distributions and there's this issue of having to</p> <p>7 get taken out. Do you think it would be good for</p> <p>8 investors to have an idea that the -- it could trade</p> <p>9 above, there could be a target --</p> <p>10 A. Well, 20 is above the call price. And</p> <p>11 then that's simply, as we saw -- and as we may talk</p> <p>12 about later this week, I think -- how the analysts</p> <p>13 got -- analysts were looking -- most were looking at</p> <p>14 fundamental value. Most of them were not equipped to</p> <p>15 understand the trading dynamics of this kind of stuff,</p> <p>16 which is why you need investment bankers advising</p> <p>17 conflicts committees to help them understand the risk.</p> <p>18 I mean, the \$20 -- and I haven't</p> <p>19 looked at it here, where they were at the time -- but</p> <p>20 that sounds like a fundamental value number, which</p> <p>21 really means it has no bearing on where this company</p> <p>22 is going to trade.</p> <p>23 Q. But for purposes of giving advice to</p> <p>24 investors, let's say it's just above the trading price</p>
<p style="text-align: right;">278</p> <p>1 But you think that's accurate, right,</p> <p>2 that it operated as a ceiling?</p> <p>3 A. Once the call right is triggered. In</p> <p>4 our case, it acted as a ceiling, yes.</p> <p>5 Q. Okay. And in -- but Barclays did not</p> <p>6 necessarily bring to bear the other aspects of the</p> <p>7 story that others did, that say HITE did or Citi did</p> <p>8 about game theory or things like that, that you're</p> <p>9 aware of, are you, sir?</p> <p>10 A. That's correct.</p> <p>11 Q. So we looked at JX 605 on your direct,</p> <p>12 and it's in your binder there. So -- and that's the</p> <p>13 report that was on October 26, 2018. So that's right</p> <p>14 at the end of the 90-day period; right?</p> <p>15 A. It's after, yeah, right at the very</p> <p>16 end.</p> <p>17 Q. And at the time, the stock, CVR units</p> <p>18 were trading at \$19.23, and their price target for</p> <p>19 Barclays was \$20 on the theory that the market price</p> <p>20 acts as a ceiling.</p> <p>21 Do you think that's a good way of</p> <p>22 looking at a target for CVRR units at that time, after</p> <p>23 the 90-day limit had expired? Do you think that's a</p> <p>24 good target?</p>	<p style="text-align: right;">280</p> <p>1 and I think the trading price is a ceiling, do you</p> <p>2 think that's good advice to investors, based on your</p> <p>3 analysis of the situation, to be invested at CVRR at</p> <p>4 19.23 at the end of the expiration of the 90 days?</p> <p>5 A. I think that, as I mentioned before,</p> <p>6 on numerous occasions, target prices, which are based</p> <p>7 upon some analyst fundamental value analysis, I don't</p> <p>8 give a lot of stock to.</p> <p>9 Q. Okay. Now, Barclays are the folks who</p> <p>10 did the "Digging deeper into call rights" report that</p> <p>11 we looked at. And that was, you know, back on May 10,</p> <p>12 2018; correct?</p> <p>13 A. Correct.</p> <p>14 Q. And one of the -- and we focused on</p> <p>15 that sentence about how Boardwalk caught the market by</p> <p>16 surprise. Right?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And I believe the -- at the end of</p> <p>19 their report, the last sentence of that "Digging</p> <p>20 deeper into call rights," says given -- this is on</p> <p>21 page 2 of the exhibit.</p> <p>22 Given how the stock was trading</p> <p>23 cheaply -- on, like, on a multiples basis relative to</p> <p>24 EBITDA, it says, "As a result of all this, it isn't a</p>

<p style="text-align: right;">281</p> <p>1 surprise that the general partner would try to use</p> <p>2 this 'loophole' in the partnership agreement to buy in</p> <p>3 the assets for what we believe is an extremely</p> <p>4 attractive price."</p> <p>5 Now, is that -- that is the surprise,</p> <p>6 that someone would buy in using this technique of</p> <p>7 preannouncing the call; right? That's the loophole</p> <p>8 that's being referred to?</p> <p>9 A. That's correct.</p> <p>10 Q. Now, at the time of the Terra call</p> <p>11 right in February 2018, was the market aware of this</p> <p>12 concept of the loophole?</p> <p>13 A. No. The market for Terra was not.</p> <p>14 Q. Now -- and the Terra exercise of the</p> <p>15 call was just done in one step without a press release</p> <p>16 in advance; right?</p> <p>17 A. That's correct.</p> <p>18 Q. And so it was done pre-Boardwalk, one</p> <p>19 day, announced and called at that price; right?</p> <p>20 A. Yes.</p> <p>21 Q. Now, actually, you note in your</p> <p>22 rebuttal report -- page 10, note 4, just for the</p> <p>23 record -- that the call right had been outstanding, I</p> <p>24 believe it was since like 2010 or for a long time?</p>	<p style="text-align: right;">283</p> <p>1 exchange offer"; right?</p> <p>2 A. Yes.</p> <p>3 Q. And are you aware, sir, that on -- for</p> <p>4 Terra, this is JX 336 -- that Mr. Lynn, the general</p> <p>5 counsel of IEP, was doing research on the mechanics of</p> <p>6 the Terra call right exercise on June 4, 2018?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So whether or not that's a</p> <p>9 smoking gun, it reflects people are looking at the</p> <p>10 mechanics of how you go about doing the call at the</p> <p>11 time when the exchange offer is outstanding.</p> <p>12 A. Yeah. And, I mean, when I say</p> <p>13 "smoking gun," I'm talking about somebody who would</p> <p>14 put some black and white that we're going to try to</p> <p>15 steal this company. There were none of those.</p> <p>16 But all the stuff that I looked at,</p> <p>17 most importantly the explanations that I found to be</p> <p>18 without foundation with respect to business and</p> <p>19 financial reasons, I mean, that to me adds up to the</p> <p>20 equivalent.</p> <p>21 Q. Now, there was a series of questioning</p> <p>22 by Mr. Raju about, hypothetically, was there a way</p> <p>23 Mr. Icahn and IEP could have pulled off the buy-in of</p> <p>24 the units at a way that was even more profitable to</p>
<p style="text-align: right;">282</p> <p>1 A. 2001.</p> <p>2 Q. 2001, sorry.</p> <p>3 Now, we saw and we saw how Mr. Cozza</p> <p>4 said some day about the Terra call right; right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Now, you were asked a series of</p> <p>7 questions about whether there was anything in the</p> <p>8 record that suggests a plan to buy out for less than</p> <p>9 fundamental value; right?</p> <p>10 A. Yes, I was.</p> <p>11 Q. Okay. And you responded that you</p> <p>12 didn't see any smoking guns. But Mr. Raju pressed you</p> <p>13 on whether there was anything that suggests a plan to</p> <p>14 buy out for less than fundamental value; right?</p> <p>15 A. Yes.</p> <p>16 Q. Now, one of the documents in the</p> <p>17 record, as we saw earlier today, is Exhibit 458, where</p> <p>18 Mr. Cozza sends to Mr. Lynn the Tudor report on</p> <p>19 July 27, 2018, while the tender offer is still open;</p> <p>20 correct?</p> <p>21 A. Yes, I think that's right, yes.</p> <p>22 Q. And the first, the headline of the</p> <p>23 Tudor report is "Downgrading to Hold on concerns of a</p> <p>24 depressed valuation resulting from CVI's pending</p>	<p style="text-align: right;">284</p> <p>1 IEP; correct? You remember that line of questioning?</p> <p>2 A. Yes.</p> <p>3 Q. And you gave some answers to the</p> <p>4 effect of, "Well, we'd be sort of facing this similar</p> <p>5 litigation on the same facts." Correct?</p> <p>6 A. Yes.</p> <p>7 Q. On different facts; right?</p> <p>8 A. Yes.</p> <p>9 Q. Now, there's also the question of the</p> <p>10 SEC; right?</p> <p>11 A. I guess so. Not a lawyer, but I guess</p> <p>12 so.</p> <p>13 Q. You're not a lawyer, but are you</p> <p>14 familiar with the concept of a 13e-3 transaction?</p> <p>15 A. Yes, sir, I am.</p> <p>16 Q. What is a 13e-3 transaction?</p> <p>17 A. 13e-3 is a go private transaction.</p> <p>18 Q. Okay. And how do the disclosures in a</p> <p>19 going private transaction compare to the disclosures</p> <p>20 for a tender offer that's not deemed going -- are they</p> <p>21 more expansive, in your recollection?</p> <p>22 A. My recollection was -- when I was a</p> <p>23 lawyer, Your Honor, many, many, many years ago,</p> <p>24 that -- I hated 13e-3 disclosure stuff when I was at</p>

<p style="text-align: right;">285</p> <p>1 Skadden.</p> <p>2 Q. Okay. But one thing you do is you</p> <p>3 have to disclose all the banker books, right, in a</p> <p>4 transaction?</p> <p>5 A. Yep.</p> <p>6 Q. And are you aware, sir, that in this</p> <p>7 transaction, the SEC sent a letter inquiring about</p> <p>8 really whether this was a prelude to a going private;</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And that's in the pretrial order in</p> <p>12 paragraph 70, that the June -- on June 5, 2018, the</p> <p>13 SEC wrote a letter to Mr. Walter asking about the</p> <p>14 applicability of 13e-3.</p> <p>15 A. Yes.</p> <p>16 Q. Are you aware of that?</p> <p>17 A. I'm aware of that, yes.</p> <p>18 Q. And asking in particular whether this</p> <p>19 was a first step in a series of transactions; correct?</p> <p>20 A. Yes.</p> <p>21 Q. Now, if this had been a transaction to</p> <p>22 buy 80.1 percent, a partial tender offer capped at</p> <p>23 80.1, do you think that would raise questions whether</p> <p>24 the whole purpose was then to do a back-end call for</p>	<p style="text-align: right;">287</p> <p>1 getting through would be that much harder.</p> <p>2 Q. And now you referred to the -- there</p> <p>3 was some talk about how the institutions would</p> <p>4 react -- like, say if there was an open market</p> <p>5 purchase or privately negotiated purchase of a -- to</p> <p>6 get above a certain threshold; correct?</p> <p>7 A. Yes.</p> <p>8 Q. Now, a couple -- one of the -- now,</p> <p>9 the precedent transactions that Mr. Raju referred to</p> <p>10 are discussed at length in your rebuttal report;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. So there's a couple page summary of</p> <p>14 the public filings for each of these transactions;</p> <p>15 correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And for a couple of them, there have</p> <p>18 been -- people have either bought just above the call</p> <p>19 right threshold or were just pretty close to it at the</p> <p>20 time of the proposed offer; correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And in what's called the Cheniere</p> <p>23 transaction, LNG had bought up to 99.1 percent.</p> <p>24 Do you understand that to be the case?</p>
<p style="text-align: right;">286</p> <p>1 the 19.9 percent remaining?</p> <p>2 A. Yeah, I'd have to let you lawyers</p> <p>3 figure that out. But that sounds like it certainly</p> <p>4 would raise some -- turn the radar on to the SEC.</p> <p>5 Q. And paragraph 71 of the pretrial order</p> <p>6 reflects that CVR Energy's outside counsel from</p> <p>7 Proskauer, they responded to the SEC by using that</p> <p>8 phrase, "the general partner and its affiliates have</p> <p>9 no current plans to exercise this call right at this</p> <p>10 time or upon [] consummation of the exchange.</p> <p>11 Therefore, the Company views the offer as a discrete</p> <p>12 transaction and not the first step in a series of</p> <p>13 transactions that may occur in the future."</p> <p>14 Are you aware of that?</p> <p>15 A. Yes, I am.</p> <p>16 Q. So that's around the same time that</p> <p>17 Mr. Lynn's looking at the Terra back end -- how to do</p> <p>18 the back-end mechanics.</p> <p>19 But do you think it might have been</p> <p>20 more problematic to get through the SEC without any</p> <p>21 further scrutiny if this had been a 80.1 percent</p> <p>22 partial tender offer?</p> <p>23 A. No. I mean, as I said, it certainly</p> <p>24 would get the SEC's attention. I don't know whether</p>	<p style="text-align: right;">288</p> <p>1 A. That's right.</p> <p>2 Q. Then they proposed a merger. The MLP</p> <p>3 formed a conflicts committee, got a fairness opinion</p> <p>4 from Jeffries, and Jeffries recommended the</p> <p>5 transaction on the basis that it was the best</p> <p>6 opportunity to maximize value in light of the</p> <p>7 existence of the call right.</p> <p>8 Is that right?</p> <p>9 A. Yeah. And that's what I planned to</p> <p>10 refresh myself on, what I referred to earlier when</p> <p>11 Mr. Raju was questioning me.</p> <p>12 Q. Right. But that's all spelled out in</p> <p>13 your rebuttal report; correct?</p> <p>14 A. Yes. Which I didn't look at before</p> <p>15 this -- for this day.</p> <p>16 Q. And the OCIP transaction, that was a</p> <p>17 situation where, you know, after a bit of history,</p> <p>18 there was a tender offer being proposed by an</p> <p>19 88.25 percent owner; right?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And a conflicts committee retained</p> <p>22 Tudor. And Tudor recommended tendering, stating,</p> <p>23 among other things, that publicly, and in the D9, the</p> <p>24 unaffiliated unitholders will not benefit from</p>

<p style="text-align: right;">289</p> <p>1 refraining from tendering. And there was a</p> <p>2 substantial risk of a unit purchase at a lesser price.</p> <p>3 And also pointed out the risk about how the controller</p> <p>4 would control future distributions, and there could be</p> <p>5 reduced liquidity from future unit purchases if this</p> <p>6 transaction did not go through; right?</p> <p>7 A. That's correct.</p> <p>8 Q. And, therefore, the transaction went</p> <p>9 through with the same consideration being paid for all</p> <p>10 unitholders?</p> <p>11 A. Yeah. And with the recommendation by</p> <p>12 the conflicts committee that people tender.</p> <p>13 Q. Now, the EGQP transaction, that was</p> <p>14 one where there was the privately negotiated purchases</p> <p>15 of units from a series of institutional holders;</p> <p>16 correct?</p> <p>17 A. Yeah, with Goldman Sachs, yeah, was</p> <p>18 the ...</p> <p>19 Q. Well, you list in your rebuttal</p> <p>20 report -- which I've been referencing as JX 1232. On</p> <p>21 page 21, you list who the institutions were; correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. So Goldman Sachs Asset Management,</p> <p>24 Neuberger Berman Investment Advisor LLP; Cushing Asset</p>	<p style="text-align: right;">291</p> <p>1 rejecting --</p> <p>2 Q. When you say "the right thing," what</p> <p>3 happened there was those agreements to buy at \$20 per</p> <p>4 unit and the acquiror announced it would buy the</p> <p>5 remaining units at at least the same price; right?</p> <p>6 A. Correct.</p> <p>7 Q. So in each transaction that you saw as</p> <p>8 precedents where there were open market purchases, the</p> <p>9 public was bought out at the same price; correct?</p> <p>10 A. Absolutely right.</p> <p>11 Q. There was -- you were shown early on</p> <p>12 in the cross, Exhibit 314 was a Barclays report from</p> <p>13 May 29, 2018. And it was about how the -- it was</p> <p>14 right after announcement of the exchange offer at a</p> <p>15 time when -- and Mr. Raju, you might recall, showed</p> <p>16 you how the stock had been going up as of that point,</p> <p>17 it was relatively high.</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Now, Barclays, they didn't know</p> <p>20 what any back end would look like; correct?</p> <p>21 A. At that point, no, they did not.</p> <p>22 Q. Now, in terms of -- and you were asked</p> <p>23 does this suggest there was an effort to time the</p> <p>24 market to buy the units out cheaper. Do you remember</p>
<p style="text-align: right;">290</p> <p>1 Management, LP; Kayne Anderson Capital Advisors; and</p> <p>2 ZP Energy Fund, L.P.</p> <p>3 Does that sound right?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Now, these institutions agreed to</p> <p>6 sell. But as part of their agreement to sell, the</p> <p>7 offer was being made to all the unaffiliated public</p> <p>8 holders at the same price; correct?</p> <p>9 A. There's right.</p> <p>10 Q. Now, is there a structural, logical</p> <p>11 finance or business rationale why these institutional</p> <p>12 holders would not want to just grab a price for</p> <p>13 themselves that didn't go to the public?</p> <p>14 A. There would be, they -- there might</p> <p>15 be, but they decided to do the right thing, which is</p> <p>16 to make sure everybody got the same consideration.</p> <p>17 Q. Right. So based on that example, that</p> <p>18 example does not provide evidence that you can just go</p> <p>19 to a bunch of institutions, grab their shares, and</p> <p>20 then buy out the rest of the public at a different</p> <p>21 lower price; right?</p> <p>22 A. Well, that's what happened there. And</p> <p>23 that I view, and along with a lot of the other</p> <p>24 precedents, as people doing the right thing,</p>	<p style="text-align: right;">292</p> <p>1 that question from Mr. Raju, the very beginning of</p> <p>2 your cross?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. Now, if I show you a Q&A</p> <p>5 from -- of Mr. Lamp from his deposition on January 29,</p> <p>6 2021, on page 40 of his deposition, line 13, after a</p> <p>7 whole discussion of this issue about valuation, and</p> <p>8 trends in the market, there's a question by</p> <p>9 Mr. Gorris:</p> <p>10 "So it was a good time to buy more of</p> <p>11 the economic [] interest in CVR Refining which</p> <p>12 ultimately held the assets of the refining business</p> <p>13 given what you just described about future</p> <p>14 expectations for the forward curve and the crack</p> <p>15 spread, right?"</p> <p>16 You're familiar with the concepts of a</p> <p>17 forward curve and a crack spread?</p> <p>18 A. Absolutely.</p> <p>19 Q. And Mr. Lamp's answer is "That's</p> <p>20 correct. And if you looked at the unit price and the</p> <p>21 yield at the CVR, CVR Refining level, you had -- it's</p> <p>22 very accretive to the CVI level, even at a premium, to</p> <p>23 the unit price at the time. So, in other words, the</p> <p>24 CVRR unit price was yielding almost 8, 9 percent, and</p>

<p style="text-align: right;">293</p> <p>1 that in our opinion was a low -- the unit price was</p> <p>2 too low."</p> <p>3 Now, would that suggest to you, sir,</p> <p>4 that CVI was willing to pay a premium to some at a</p> <p>5 time when they thought it was low, and that was</p> <p>6 advantageous to CVI?</p> <p>7 A. Yeah. And I think that a lot of the</p> <p>8 research guys, for whatever it's worth, had price</p> <p>9 targets well above the 25, 26 level, because of that</p> <p>10 factor.</p> <p>11 Q. And Butler Hall had complained</p> <p>12 publicly about the price?</p> <p>13 A. Yeah. I didn't know -- yeah, I saw</p> <p>14 that they did complain. I didn't look into their</p> <p>15 complaint.</p> <p>16 MR. FRIEDLANDER: I have no more</p> <p>17 questions at this time. I timed it perfectly.</p> <p>18 THE COURT: Mr. Raju.</p> <p>19 MR. RAJU: I do have questions, Your</p> <p>20 Honor. I don't know if your preference is -- I don't</p> <p>21 know if I'll finish in one minute.</p> <p>22 THE COURT: Will you finish in two?</p> <p>23 What is your estimate on how many?</p> <p>24 MR. RAJU: I think it will be less</p>	<p style="text-align: right;">295</p> <p>1 A. Yeah, that is correct.</p> <p>2 Q. Mr. Friedlander also showed you an</p> <p>3 email, I believe, between Mr. Cozza and others</p> <p>4 forwarding a TPH reported on July 27. Do you recall</p> <p>5 that?</p> <p>6 A. I remember -- I don't recall the --</p> <p>7 it's been a long time since I saw the document, but I</p> <p>8 recall the question.</p> <p>9 Q. The tender offer closed on July 27;</p> <p>10 correct?</p> <p>11 A. That's correct.</p> <p>12 Q. With respect to Terra Nitrogen,</p> <p>13 Mr. Friedlander mentioned a couple of emails among IEP</p> <p>14 folks regarding Terra Nitrogen. There was nothing</p> <p>15 about Terra Nitrogen that suggested to you that the</p> <p>16 call right expropriated value from the Terra Nitrogen</p> <p>17 unitholders; correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And there was nothing about Terra</p> <p>20 Nitrogen that suggested to you that a unit subject to</p> <p>21 a call right would not trade on its business</p> <p>22 fundamentals; correct?</p> <p>23 A. I think after 18 years of trading on</p> <p>24 business fundamentals, that there's no reason to</p>
<p style="text-align: right;">294</p> <p>1 than five minutes, Your Honor. And I'll try to make</p> <p>2 it as close to two as possible.</p> <p>3 THE COURT: That's fine. Let's go</p> <p>4 then.</p> <p>5 MR. RAJU: Okay.</p> <p>6 REXCROSS-EXAMINATION</p> <p>7 BY MR. RAJU:</p> <p>8 Q. Mr. Atkins, the call right in the CVRR</p> <p>9 partnership agreement has been in there since its</p> <p>10 inception; correct?</p> <p>11 A. I think so, yes. That's most</p> <p>12 partnership agreements, correct.</p> <p>13 Q. So in the back and forth with</p> <p>14 Mr. Friedlander regarding the loophole, you're not</p> <p>15 talking about the call right; correct?</p> <p>16 A. That's correct. The loophole was the</p> <p>17 "should consider" stuff.</p> <p>18 Q. Right. The loophole is a press</p> <p>19 release, a preannouncement press release that says</p> <p>20 we're now considering exercising the call right;</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And at the time of the exchange offer,</p> <p>24 there was nothing suggestive of a loophole; correct?</p>	<p style="text-align: right;">296</p> <p>1 expect it wouldn't continue to trade on business</p> <p>2 fundamentals.</p> <p>3 Q. Mr. Friedlander also mentioned the</p> <p>4 Butler Hall letter. Do you recall that?</p> <p>5 A. I do.</p> <p>6 Q. Do you recall seeing any letters that</p> <p>7 the CDRR GP received that requested that the general</p> <p>8 partner recommend in favor of tendering?</p> <p>9 A. I don't recall. I don't know the</p> <p>10 answer. I don't remember seeing it.</p> <p>11 Q. And they received letters from both</p> <p>12 institutional holders and retail investors; correct?</p> <p>13 A. I know -- the answer is I really don't</p> <p>14 remember that detail.</p> <p>15 Q. Last question, I believe.</p> <p>16 Mr. Atkins, are you ever aware of a</p> <p>17 situation where an entity has launched an exchange</p> <p>18 offer or tender offer where it did not believe that</p> <p>19 exchange offer or tender offer had a value proposition</p> <p>20 for the offeror?</p> <p>21 A. For the offeree?</p> <p>22 Q. No, for the offeror.</p> <p>23 A. Oh, yeah, for the offeror. No, I</p> <p>24 think that's absolutely correct.</p>

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1 MR. RAJU: No further questions, Your
 2 Honor.
 3 THE COURT: Thank you, Mr. Raju.
 4 Thank you for squeezing that in.
 5 I believe you're excused from the
 6 stand.
 7 Any objections, Mr. Friedlander?
 8 MR. FRIEDLANDER: Not at all, Your
 9 Honor.
 10 THE COURT: Thank you for your time.
 11 THE WITNESS: Thank you.
 12 (Witness excused.)
 13 THE COURT: Are there any housekeeping
 14 matters we should attend to before we adjourn for the
 15 day?
 16 MR. FRIEDLANDER: I'm not aware of
 17 any.
 18 MR. RAJU: No, Your Honor.
 19 THE COURT: All right. Thank you.
 20 I'll see you tomorrow.
 21 (Proceedings concluded at 4:48 p.m.)
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