

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

In re:

ENVIVA INC., *et al.*,

Debtors.¹

)
) Chapter 11
)

) Case No. 24-10453 (BFK)
)

) (Jointly Administered)
)

**SUPPLEMENTAL DECLARATION OF DAVID S. MEYER IN
SUPPORT OF APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE
RETENTION AND EMPLOYMENT OF VINSON & ELKINS LLP AS ATTORNEYS
FOR THE DEBTORS AND DEBTORS IN POSSESSION AS OF THE PETITION DATE**

I, David S. Meyer, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I am a partner of the law firm of Vinson & Elkins LLP (“**V&E**”). I am one of the lead attorneys from V&E working on these chapter 11 cases. I am a member in good standing of the State Bar of New York and the State Bar of Connecticut. There are no disciplinary proceedings pending against me.

2. I submit this supplemental declaration (the “**Supplemental Meyer Declaration**”) in support of the *Debtors’ Application for Entry of an Order Authorizing the Retention and Employment of Vinson & Elkins LLP as Attorneys for the Debtors and Debtors in Possession as of the Petition Date* [Docket No. 183] (the “**Application**”)² and to supplement the declaration attached thereto as **Exhibit A** (the “**Meyer Declaration**”). Except as otherwise noted, I have personal knowledge of the matters set forth herein.

¹ Due to the large number of Debtors in these jointly administered chapter 11 cases a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors’ claims and noticing agent at www.kcellc.net/enviva. The location of the Debtors’ corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

² Capitalized terms used but not otherwise defined herein have the meanings set forth in the Application.



V&E'S DISINTERESTEDNESS

A. Riverstone Representation in Unrelated Matters

3. As noted in the Meyer Declaration, V&E has represented Riverstone in matters unrelated to the Debtors. As set forth in the Engagement Letter, the Debtors have consented to V&E's representation of Riverstone in unrelated matters.

4. V&E has immense familiarity with the Debtors and has historically represented the Debtors on a variety of corporate, securities, transactional, and litigation matters since 2015.

5. V&E has never represented Riverstone in connection with the Debtors.³

6. Riverstone is a minority equity holder in Enviva Inc., a public company traded on the NYSE; while two of Enviva Inc.'s 13 directors are affiliated with Riverstone, those directors were nominated by the Nominating and Corporate Governance Committee of the Board (which did not include any Riverstone-affiliated members) and elected by the shareholders in the ordinary course at Enviva Inc.'s annual meeting of shareholders in 2023; Riverstone does not have a contractual right to nominate directors or otherwise control or retain these board seats, nor do the Riverstone-affiliated directors have any special rights as members of the board.

7. V&E reports to and takes direction from Enviva's management and board of directors, not Riverstone.

8. There is no Riverstone-affiliated person appointed to the Debtors' management team.

³ V&E did represent Riverstone in connection with its original investment in the predecessor entity to Enviva Inc. in March 2010. This matter was closed in 2011, and the billing partner on the matter is no longer at V&E.

9. Riverstone has consented to V&E's representation of the Debtors, provided an advanced waiver including as to litigation, and retained its own counsel, Weil, Gotshal & Manges, LLP, in connection with the Debtors' restructuring efforts.

10. V&E's representation of Riverstone in unrelated matters accounted for 0.8% of V&E billings and 1.4% of V&E collections for the fiscal year ended December 31, 2023.

11. V&E engaged in robust prepetition negotiations, on behalf of only the Debtors, resulting in two restructuring support agreements (including the RSA) and obtaining the overwhelming support of key stakeholders in the Debtors' capital structure for the Debtors' proposed restructuring. Riverstone consented to the Debtors entering into the RSA and commencing these chapter 11 cases.

12. Baker Botts LLP, not V&E, is leading the pending special board committee investigation.

13. My representations of Riverstone in the past two years consists of two matters. I represented Riverstone Holdings LLC ("***Riverstone Holdings***"), its portfolio company, Talen Energy Corporation ("***TEC***"), and TEC's wholly owned subsidiary, Cumulus Growth Holdings LLC ("***Cumulus***") in the chapter 11 cases (the "***Talen Bankruptcy Cases***") of TEC's wholly-owned subsidiary Talen Energy Supply, LLC ("***TES***"). The Talen Bankruptcy Cases' notice of effective date for their chapter 11 plan was filed on May 17, 2023, and all of the Talen Bankruptcy Cases except that of TEC (no longer represented by V&E as of December 2022) were closed on July 28, 2023. My work in the Talen Bankruptcy Cases also included an adversary proceeding commenced by TES against PPL Corporation ("***PPL***"), which brought prepetition litigation among TES, PPL, and Riverstone into the bankruptcy court. All claims and causes of action in the adversary proceeding have been settled, and the adversary proceeding has been dismissed. I also

represented Riverstone in connection with its preferred equity investment in Anuvia Plant Nutrients Holdings, Inc. (together, with its subsidiaries, “*Anuvia*”) during Anuvia’s negotiations regarding a forbearance agreement with its lender in December 2022. My last time entry on either of these matters was November 8, 2023.

14. My partner, Jessica C. Peet, also represented Riverstone Holdings, TEC, and Cumulus in the Talen Bankruptcy Cases. Ms. Peet has not represented Riverstone in any matter since that time. Ms. Peet’s last time entry in the Talen Bankruptcy Cases was February 17, 2022.

15. Ms. Peet and I are the partners leading representation of the Debtors’ chapter 11 cases.

16. I do not believe any actual conflict will arise between the Debtors and Riverstone during the Debtors’ chapter 11 cases.

17. To the extent an actual conflict with Riverstone were to arise in the future as a result of V&E’s representation of the Debtors in these chapter 11 cases, any matters subject to such conflict would be handled by Kutak Rock LLP.

B. *D&O Representation in Securities Cases and Derivative Case*

18. As further noted in the Application and the Meyer Declaration, V&E represents certain current and former directors and officers of the Debtors in connection with the Securities Cases and the Derivative Case (the “*D&O Representation*”). The D&O Representation is pursuant to separate engagement letters, which have been provided to the UST. The Debtors have historically paid V&E to represent both Enviva Inc. and the directors and officers in connection with the Securities Cases and the Derivative Case, pursuant to the Debtors’ indemnification obligations for its directors and officers. The Debtors maintain insurance that covers directors and officers, and any further compensation to V&E on account of the D&O Representation would be

through the applicable policies and subject to further order of the Court authorizing such payments. V&E has provided significant detail regarding such insurance to the UST in response to numerous inquiries. The Securities Cases and the Derivative Case are largely dormant and stayed due to the pendency of the Debtors' chapter 11 cases, pending motion to dismiss, or agreed stay, and V&E has provided only minimal services with respect to the Securities Cases and the Derivative Case since the Petition Date. V&E's engagement letters with Enviva Inc. and the director and officer defendants relating to the Securities Cases and the Derivative Case each provide that in the event any conflicts were to develop in the future between or among the jointly-represented clients, V&E can withdraw as counsel as to the director and officer defendants and, due to V&E's longstanding relationship with Enviva Inc., continue to represent only Enviva Inc. in such litigation.

19. The D&O Representation does not include representation of any parties in the special board committee investigation. V&E does not represent any parties in the special board committee investigation. The special board committee is represented by Baker Botts LLP.

20. In the event an actual conflict of interest were to arise in the future among the jointly-represented clients in the Securities Cases and/or the Derivative Case, V&E will withdraw from the representations of one or more of the individual defendants as may be necessary to address such actual conflict of interest, consistent with the terms of the applicable engagement letters. In furtherance of the foregoing, if the special board committee were to recommend that the Debtors should pursue litigation against one or more of the individual defendants or that such individual defendants should be excluded from any proposed Debtor releases, V&E will withdraw from representing such individual defendant(s) consistent with the terms of the applicable engagement letters.

C. *Ad Hoc Group Member Representations in Unrelated Matters*

21. An ad hoc group (the “***Ad Hoc Group***”) has appeared in these chapter 11 cases and also filed a *Verified Statement Regarding Ad Hoc Group of Creditors Pursuant to Bankruptcy Rule 2019* [Docket No. 50] (the “***Ad Hoc Group 2019 Statement***”). As set forth in the Ad Hoc Group 2019 Statement, the Ad Hoc Group was formed by certain holders (the “***Members***”)⁴ of (i) senior notes issued pursuant to that certain Indenture, dated as of December 9, 2019, by and among Enviva Partners, LP and Enviva Partners Finance Corp., as issuers, each of the guarantors party thereto, and Wilmington Savings Fund Society, FSB, as successor trustee, as may be amended, restated, supplemented or otherwise modified from time to time (the “***2026 Senior Notes***”); (ii) loans or commitments under that certain Amended and Restated Credit Agreement, dated as of October 18, 2018, by and among Enviva Inc., as administrative borrower, Enviva LP, as subsidiary borrower, Ankura Trust Company, LLC, as successor administrative agent and collateral agent, the lenders, and other parties thereto, as may be amended, restated, supplemented or otherwise modified from time to time, including by that certain Twelfth Amendment to Credit Agreement, dated as of February 24, 2023 (the “***Prepetition Senior Secured Debt***”); (iii) Exempt Facilities Revenue Bonds (Enviva Inc. Project), Series 2022 (Green Bonds) issued by the Industrial Development Authority of Sumter County, Alabama pursuant to that certain Indenture of Trust, dated as of July 1, 2022, between the Industrial Development Authority of Sumter County, Alabama, as issuer, and Wilmington Trust, N.A., as trustee, as may be amended, restated, supplemented or otherwise modified from time to time (the “***Epes Green Bonds***”); (iv) Exempt Facilities Revenue Bonds, (Enviva Inc.), Series 2022 (Green Bonds) issued by the Mississippi

⁴ The Ad Hoc Group 2019 Statement contains information attached in ***Exhibit A*** thereto listing the “address, nature and amount of all disclosable economic interests of each Member” that is “based on information provided by the Members to Davis Polk and is subject to change.” See Ad Hoc Group 2019 Statement, at 3.

Business Finance Corporation, as issuer, pursuant to that certain Indenture of Trust, dated as of July 1, 2022, between the Mississippi Business Finance Corporation and Wilmington Trust, N.A., as trustee, as may be amended, restated, supplemented or otherwise modified from time to time (the “**Bond Green Bonds**”); and (v) shares of common stock of Enviva Inc.

22. The Ad Hoc Group is represented by Davis Polk & Wardwell LLP and McGuire Woods LLP. As reflected in the Ad Hoc Group 2019 Statement, its current Members collectively, beneficially own (or are the investment advisors or managers for funds that beneficially own) or manage approximately (i) \$726,376,000 in aggregate principal amount of the 2026 Senior Notes; (ii) \$485,639,557 in aggregate principal amount of the Prepetition Senior Secured Debt, (iii) \$195,530,000 in aggregate principal amount of the Epes Green Bonds; (iv) \$45,000,000 in aggregate principal amount of the Bond Green Bonds; and (v) 5,073,753 shares of common stock of Enviva Inc. (in each case, as set forth in **Exhibit A** to the Ad Hoc Group 2019 Statement). Certain Members of the Ad Hoc Group have also provided commitments to loan or purchase the “DIP Loans and Notes” described in the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 24], in an aggregate principal amount of \$400 million.

23. V&E has not, does not, and will not represent the Ad Hoc Group, and V&E interacts and negotiates with the Ad Hoc Group on a collective basis through its counsel of record.

24. Based upon V&E’s contacts search, V&E currently represents or has represented in the past certain Members of the Ad Hoc Group in certain matters unrelated to these chapter 11 cases. V&E has not, does not, and will not represent any of the Ad Hoc Group Members in

connection with the Debtors or these chapter 11 cases. As far as I can determine, the factual and legal issues in this matter are unrelated to the work V&E does or is likely to do for any of these Members in other matters. The UST has informally inquired about V&E's representation of the following Members of the Ad Hoc Group, as disclosed in the Ad Hoc Group 2019 Statement: (a) Ares Management LLC, (b) Morgan Stanley & Co. LLC, and (c) Oaktree Capital Management, LP.

25. V&E's representation of Ares Management LLC and its affiliates ("**Ares**") in matters unrelated to the Debtors accounted for 0.7% of V&E's billings and 0.8% of V&E's collections for V&E's fiscal year ended December 31, 2023. V&E has not, does not, and will not represent Ares in connection with any matters related to the Debtors' restructuring process. I do not believe V&E's current or past representation of Ares in unrelated matters presents a conflict but have disclosed the connection out of an abundance of caution and in response to the UST's informal inquiry.

26. V&E's representation of Morgan Stanley & Co. LLC and its affiliates ("**Morgan Stanley**") in matters unrelated to the Debtors accounted for 0.3% of V&E's billings and 0.4% of V&E's collections for V&E's fiscal year ended December 31, 2023. V&E has not, does not, and will not represent Morgan Stanley in connection with any matters related to the Debtors' restructuring process. I do not believe V&E's current or past representation of Morgan Stanley in unrelated matters presents a conflict but have disclosed the connection out of an abundance of caution and in response to the UST's informal inquiry.

27. V&E's representation of Oaktree Capital Management, LP and its affiliates ("**Oaktree**") in matters unrelated to the Debtors accounted for 0.2% of V&E's billings and 0.2% of V&E's collections for V&E's fiscal year ended December 31, 2023. V&E has not, does not,

and will not represent Oaktree in connection with any matters related to the Debtors' restructuring process. I do not believe V&E's current or past representation of Oaktree in unrelated matters presents a conflict but have disclosed the connection out of an abundance of caution and in response to the UST's informal inquiry.

28. V&E was also recently hired in April 2024 by Monarch Alternative Capital LP ("***Monarch***") to represent it in a matter unrelated to the Debtors' restructuring process. V&E has not yet billed or collected any fees as part of this representation. V&E has not, does not, and will not represent Monarch in connection with any matters related to the Debtors' restructuring process. I do not believe V&E's current or past representation of Monarch in unrelated matters presents a conflict but have disclosed the connection out of an abundance of caution.

ADDITIONAL CONNECTIONS

29. Pursuant to the Firm Procedures, V&E ran additional conflicts searches on the parties listed hereto on **Schedule 1**. The results listed on **Schedule 2** are parties that V&E ran pursuant to the Firm Procedures that are V&E clients with open matters.

30. In my experience, members of ad hoc groups may trade in a debtor's debt and/or equity securities from time to time. V&E will make additional disclosures in the event it becomes aware of any other additional connections that must be disclosed. V&E acknowledges its continuing obligation to keep its disclosures current and updated, and V&E will file additional supplemental declarations during the pendency of the Debtors' chapter 11 cases.

V&E'S BILLING PRACTICES

31. V&E agreed in the Engagement Letter to continue a discount of its standard or customary billing agreements for this engagement, consistent with its historical fee arrangement with the Debtors. This discount is fifteen percent (15%) off of V&E's base rates, which are disclosed in the Application.

32. Prior to the Petition Date, V&E recorded \$695,076.59 in accrued but unpaid fees and expenses for the Debtors, inclusive of all services rendered and expenses incurred in bankruptcy and non-bankruptcy matters. Once billed, such prepetition fees and expenses (after applying the discount to V&E's invoices noted in the Application) will be offset against V&E's advance payment retainer, contingent upon approval by the Court. The amount of such prepetition fees and expenses are less than the amount of the advance payment retainer. V&E did not receive a retainer from the Debtors related to any non-bankruptcy matters prior to entering into the January 2024 engagement letter.

33. Pursuant to the January 2024 engagement letter, the Debtors were required to pay V&E an initial advance payment retainer and subsequently replenish the advance payment retainer on a bi-weekly or shorter interval. V&E retained discretion as to the frequency of its statements. Two prepetition advance payment retainers were inadvertently excluded from the Meyer Declaration. The total amount of prepetition advance payment retainers, including the previously omitted retainers, is \$11,299,706.⁵ A *Pillowtex* analysis chart showing all of the advance payment retainers and prepetition invoices applied against such retainers is attached hereto as **Schedule 3**.

34. Prior to entry into the January 2024 engagement letter, V&E billed and received payments from the Debtors for all services, in the ordinary course of business. The Debtors made certain of these payments of prepetition invoices during the 90-day period preceding the Petition Date and prior to payment of the initial advance payment retainer. The aggregate amount of such prepetition payments totals \$4,120,591.96. V&E provided a schedule of these prepetition invoices and payments to the UST.

⁵ The Application originally disclosed aggregate advanced payment retainers of \$8,299,847.90.

35. V&E does not concede that any claims of avoidable preference under Bankruptcy Code § 547 that potentially may be asserted against it relating to prepetition payments to V&E from the Debtors would be successful.

36. Nevertheless, V&E agrees that entry of the order approving the Application and any finding therein that V&E is a “disinterested person” shall not constitute a defense to any preference claims that may be asserted against V&E in these chapter 11 cases on account of any payments made prior to the Petition Date, and V&E hereby waives any resulting claims under 11 U.S.C. §502(h) it may have against the Debtors’ estates in the event any such preference claims are successfully asserted against it. Accordingly, I do not believe that V&E is a creditor of the Debtors on account of any such potential claims.

37. V&E anticipates that 45 attorneys and two paraprofessionals will be working on the Debtors’ chapter 11 cases. As noted in the Meyer Declaration, the Debtors approved V&E’s Budget and Staffing Plan, which contemplates the aforementioned staffing and is subject to material change as the chapter 11 cases evolve.

38. V&E has provided a minimal amount of services in connection with non-bankruptcy matters for the Debtors since the Petition Date, including certain scheduling and status conferences related to the Securities Cases and Derivative Case noted in the Meyer Declaration. All of V&E’s postpetition services for bankruptcy and non-bankruptcy matters will be included in fee statements filed with the Court and subject to the Court-approved interim compensation procedures. V&E has not received any payments from the Debtors for any post-petition services.

New York, New York
Dated: May 2, 2024

/s/ David S. Meyer
David S. Meyer
Partner, Vinson & Elkins LLP

Schedule 1

Additional Conflicts Parties Searched

American Industrial Partners

AT&T Co.

Boston Management and Research

Duke Energy

FedEx Freight Inc.

Lazard

Monarch Alternative Capital LP

Oaktree Capital Management, LP

Starr Indemnity

Unifirst Corp.

Schedule 2

Conflicts Results

The results listed on this **Schedule 2** are the product of implementing the Firm Procedures described in this Declaration and are based on the relationship of the indicated persons, entities, or their affiliates with the Debtors and V&E.

Creditors, Stakeholders, and Other Parties in Interest

V&E has previously represented, may currently represent, and may in the future represent, creditors, stakeholders, and other parties in interest and/or affiliates thereof in matters unrelated to the Debtors, as follows:

- AT&T Mobility
- Duke Energy Corporation
- Lazard Freres & Co. LLC
- Monarch Alternative Capital LP
- Oaktree Capital Management, LP
- Starr Indemnity

Schedule 3

[*Pillowtex* Chart]

Type of Transaction	Date	Amount of Fees and Expenses Listed on Statement	Amount of Advance Payment Retainer Request	Amount of Advance Payment Retainer Received	Advance Payment Retainer Balance
Receipt of Advance Payment Retainer	1/26/2024			\$1,500,000.00	\$1,500,000.00
Statement of Services Rendered and Expenses Incurred Through January 16, 2024	1/30/2024	\$1,498,368.57			\$1,631.43
Request for Additional Advance Payment Retainer	1/31/2024		\$1,500,000.00		
Receipt of Advance Payment Retainer	2/5/2024			\$1,500,000.00	\$1,501,631.43
Statement of Services Rendered and Expenses Incurred Through January 31, 2024	2/6/2024	\$1,501,120.28			\$511.15
Request for Additional Advance Payment Retainer	2/6/2024		\$1,500,000.00		
Receipt of Advance Payment Retainer	2/9/2024			\$1,500,000.00	\$1,500,511.15
Statement of Services Rendered and Expenses Incurred Through February 9, 2024	2/12/2024	\$1,500,104.80			\$406.35
Request for Additional Advance Payment Retainer	2/12/2024		\$1,500,000.00		
Receipt of Advance Payment Retainer	2/16/2024			\$1,500,000.00	\$1,500,406.35
Statement of Services Rendered and Expenses Incurred Through February 16, 2024	2/21/2024	\$1,299,651.47			\$200,754.88
Request for Additional Advance Payment Retainer	2/21/2024		\$1,299,245.12		
Receipt of Advance Payment Retainer	2/28/2024			\$1,299,245.12	\$1,500,000.00
Statement of Services Rendered and Expenses Incurred Through February 27, 2024	2/28/2024	\$1,499,858.10			\$141.90
Request for Additional Advance Payment Retainer	2/28/2024		\$1,499,858.10		
Receipt of Advance Payment Retainer	3/4/2024			\$1,499,858.10	\$1,500,000.00
Request for Additional Advance Payment Retainer	2/29/2024		\$750,000.00		
Receipt of Advance Payment Retainer	3/1/2024			\$750,000.00	\$2,250,000.00
Statement of Services Rendered and Expenses Incurred Through March 6, 2024	3/6/2024	\$1,750,602.78			\$499,397.22
Request for Additional Advance Payment Retainer	3/6/2024		\$1,750,602.78		
Receipt of Advance Payment Retainer	3/11/2024			\$1,750,602.78	\$2,250,000.00
Statement of Services Rendered and Expenses Incurred Through March 11, 2024	3/11/2024	\$1,233,035.37			\$1,016,964.63