

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649 (RDD)

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5 In the Matter of:

6
7 PURDUE PHARMA L.P.,

8
9 Debtor.

10 - - - - - x

11
12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15
16 June 16, 2021

17 10:19 AM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24
25 ECRO: ART

1 HEARING re Notice of Agenda/ Agenda for June 16, 2021

2

3 HEARING re Motion to File Proof of Claim After Claims Bar
4 Date with hearing to be held on 6/16/2021 at 10:00 AM at
5 Teleconference Line (CourtSolutions) (RDD) (related
6 document(s)2834) .

7

8 HEARING re Letter re: motion to file proof of claim after
9 the bar date & reporting problems connecting to May 14, 2021
10 hearing (related document(s)2834) (ECF #2899)

11

12 HEARING re Statement I Notice of Filing of Proposed Order
13 Granting Late Claim Motion (related document(s)2834) filed
14 by James I. McClammy on behalf of Purdue Pharma L.P.
15 (ECF #3011)

16

17 Adversary proceeding: 19-08289-rdd Purdue Pharma L.P. et al
18 v. Commonwealth of Massachusetts et al

19 HEARING re Motion to Extend Time I Motion to Extend the
20 Preliminary Injunction (ECF #269)

21

22 HEARING re Memorandum of Law in Support of Motion to Extend
23 the Preliminary Injunction (related document(s)269) filed by
24 Benjamin S. Kaminetzky on behalf of Avrio Health L.P.,
25 Purdue Pharma Inc., Purdue Pharma L.P., Purdue Pharma

1 Manufacturing L.P., Purdue Pharma of Puerto Rico, Purdue
2 Pharmaceutical Products L.P., Purdue Pharmaceuticals L.P.,
3 Purdue Transdermal Technologies L.P., Rhodes Pharmaceuticals
4 L.P., Rhodes Technologies. (ECF #270)

5
6 HEARING re Objection to Motion I CONTINUING OBJECTION AND
7 VOLUNTARY COMMITMENT IN RESPONSE TO PURDUE'S MOTION TO
8 EXTEND THE PRELIMINARY INJUNCTION (related document(s)269)
9 filed by Andrew M. Troop on behalf of Ad Hoc Group of Non-
10 Consenting States. (ECF #272)

11
12 HEARING re Reply to Motion /Reply Memorandum in Further
13 Support of Motion to Extend the Preliminary Injunction
14 (related document(s)269) filed by Benjamin S. Kaminetzky on
15 behalf of Avrio Health L.P., Purdue Pharma Inc., Purdue
16 Pharma L.P., Purdue Pharma Manufacturing L.P., Purdue Pharma
17 of Puerto Rico, Purdue Pharmaceutical Products L.P., Purdue
18 Pharmaceuticals L.P., Purdue Transdermal Technologies L.P.,
19 Rhodes Pharmaceuticals L.P., Rhodes Technologies. (ECF #273)

20
21 HEARING re Application for Appointment of Chapter 11
22 Examiner filed by Jonathan C Lipson on behalf of Peter
23 Jackson (ECF #2963)

1 HEARING re Opposition / Debtors' Opposition to Motion for
2 Order to Appoint an Examiner (related document(s)2963) filed
3 by Marshall Scott Huebner on behalf of Purdue Pharma L.P.
4 (ECF #3020)

5
6 HEARING re Opposition to Peter W. Jackson's Motion for Order
7 to Appoint Examiner (related document(s)2963) filed by Todd
8 E. Phillips on behalf of Multi-State Governmental Entities
9 Group. (ECF #3021)

10
11 HEARING re Objection to Motion I Ad Hoc Committee's
12 Objection to Motion to Appoint an Examiner (related
13 document(s)2963) filed by Kenneth H. Eckstein on behalf of
14 Ad Hoc Committee of Governmental and Other Contingent
15 Litigation Claimants. (ECF #3022)

16
17 HEARING re Objection /Objection of the Official Committee of
18 Unsecured Creditors to Motion to Appoint Examiner Pursuant
19 to 11 U.S.C. § 1104(c) (related document(s)2963) filed by
20 Ira S. Dizengoff on behalf of The Official Committee of
21 Unsecured Creditors of Purdue Pharma L.P., et al.
22 (ECF #3023)

1 HEARING re Reply Memorandum of Law (related document(s) 2963)
2 filed by Martin S. Rapaport on behalf of Peter Jackson.
3 (ECF #3034)
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Transcribed by: Sonya Ledanski Hyde

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

2 THE COURT: Okay, good morning. This is Judge
3 Drain. We're here in In re: Purdue Pharma, LP. I have the
4 agenda for today's hearing, and I'm happy to go down the
5 calendar, in the order of the agenda.

6 MR. HUEBNER: Terrific. Good morning, Your Honor.
7 Can you hear me clearly?

8 THE COURT: Yes, and see you.

9 MR. HUEBNER: Well, probably better just to hear
10 me. So, the first item on the agenda -- there are three
11 items on for the agenda today. The first is an uncontested
12 claims related matter that my colleague Ms. Jacquelyn
13 Knudson will be handling, so if I may turn over the virtual
14 podium to her.

15 THE COURT: Okay, that's fine.

16 MS. KNUDSON: Morning, Your Honor. For the record
17 --

18 THE COURT: Morning.

19 MS. KNUDSON: -- Jacquelyn Knudson of Davis, Polk,
20 and Wardwell on behalf of the Debtors. Can you hear me
21 clearly?

22 THE COURT: Yes. Fine, thank.

23 MS. KNUDSON: Excellent. As set forth in Mr.
24 Cobb's motion, he's been incarcerated for the past 17 years.
25 He notes that he has no access to a computer and the

1 internet and is not allowed to make toll-free calls. He
2 also cited COVID-19 lockdowns of the prison as an additional
3 reason for his untimely claim. Based on these assertions,
4 we believe there's a colorable basis for granting Mr. Cobb's
5 requested extension.

6 Moreover, given the limited number of late claim
7 motions filed to date, and the fact that the proposed order
8 preserves the trust's ability to review the merits of Mr.
9 Cobb's claim, and also, in an effort to avoid the undue cost
10 of litigating this motion, we believe the proposed order is
11 a reasonable resolution.

12 As we've done in the past, we also consulted with
13 both the Creditors Committee and the Ad Hoc Group of
14 Individual Victims, and they have both consented to the
15 relief requested. I'm happy to answer any questions Your
16 Honor may have. Otherwise, in light of the foregoing, the
17 Debtors (sound drops) at Docket No. 3011 be entered.

18 THE COURT: Right. I don't have any questions.
19 The Debtors' decision, which is unopposed, to grant the late
20 claim motion, is warranted here under Rule 9006, and
21 Pioneer, it's clear to me that Mr. Cobb's failure to file a
22 timely proof of claim is based on excusable neglect. It
23 really isn't, one would say, neglect, so much as the fact
24 that he's, as you said, incarcerated, has very limited
25 access to the means to file a claim, and he diligently tried

1 to do so. So, under all those circumstances, I'll grant the
2 I'll enter the order granting the motion, which, as I note,
3 and as you've noted, makes it clear that this shouldn't be
4 read as any sort of overall authority to file a late claim.

5 MS. KNUDSON: Yes, Your Honor. Thank you.

6 THE COURT: Okay. So, you can email that order to
7 chambers.

8 MS. KNUDSON: Thank you, Your Honor. We will.

9 THE COURT: Okay.

10 MR. HUEBNER: And Your Honor, as I think the Court
11 knows, this is the approach we've really taken with
12 everybody, you know, even where it requires a bunch of work
13 from the Debtors, the UCC, and other parties. We're really
14 trying very hard (sound drops) and circumstances where we
15 think it's appropriate (sound drops) you know, not (sound
16 drops) circumstances, including incarceration, but I think
17 that we have worked very hard (sound drops), and I'm glad
18 that no parties are objecting to resolutions like this, the
19 relief (sound drops).

20 The second item on the agenda, Your Honor, I, at
21 least, intend to be extraordinarily brief. You know, as the
22 Court, obviously, will know, the disclosure statement is out
23 as we speak for a vote or in the process of getting out with
24 thumb drives and documents being printed, our confirmation
25 hearing is now out, weeks away.

1 We actually feel quite strongly, along with,
2 obviously, many other parties, that we need (sound drops) to
3 get us to confirmation, but obviously, having, you know,
4 merely a few weeks before confirmation, while we very much
5 hope that a subset, and ideally, in a fantasy world, all of
6 the Nonconsenting States come into the deal, we cannot agree
7 with their petition that if their mediation fails, the
8 injunction ends and, essentially, you know, everything we've
9 been working for is put onto a radically different track,
10 especially days before the confirmation hearing from
11 (indiscernible) to get to confirmation clearly is the right
12 answer.

13 We note that the (indiscernible) the injunction
14 requested is supported by virtually every party in the case,
15 implicitly or explicitly, and opposed only by the NCSG.
16 They have, graciously, been brief in their pleadings. We
17 were graciously brief in our reply. We have no problem with
18 continuing to construct a voluntary compliance as opposed
19 to, obviously, a mandatory injunction, and with that I would
20 propose to rest on the papers.

21 THE COURT: Okay. All right. And I believe there
22 was only, as you say, the one objection to the motion,
23 which, as I read it, was a limited objection as to the
24 duration of the extension of the preliminary injunction, and
25 that was by the Nonconsenting States Group. Mr. Troop, do

1 you have anything further to say in support of the
2 objection?

3 MR. TROOP: Thank you, Your Honor. Can you hear
4 me clearly?

5 THE COURT: Yes, and see you.

6 MR. TROOP: Thank you. Your Honor, I really don't
7 have anything terribly substantive to say in addition to
8 what's in our pleadings. The practice in this case has been
9 to keep people on short leashes in connection with the
10 mediations that are ongoing, and deadlines coming back to
11 you pending (sound drops).

12 So, it seemed to me, simply from a (sound drops)
13 the NCSG, simply from a perspective of good case management,
14 that not waiting until confirmation to be back before you,
15 might result in something that changes your mind with regard
16 to the preliminary injunction, or might not, and that, given
17 the way that the hearings on the preliminary injunction have
18 condensed themselves over time, it did not seem a terrible
19 imposition to doing the process.

20 So, Your Honor, with that, I otherwise rest on our
21 papers. Thank you.

22 THE COURT: Okay. So, let me be clear, Mr.
23 Huebner. The proposed extension would go through the date
24 of the scheduled confirmation hearing?

25 MR. HUEBNER: I think that's right, Your Honor. I

1 actually apologize. I don't have the proposed order in
2 front of me. I think that the structure was designed to get
3 us through confirmation --

4 THE COURT: Mr. Troop is raising his hand. It's -
5 -

6 MR. TROOP: 8/30. I think it's August 30th, the
7 stay request.

8 MR. HUEBNER: Yeah --

9 THE COURT: Which is the date of the hearing,
10 right, or is the hearing the 28th?

11 MR. TROOP: The hearing starts on the 9th and I
12 believe --

13 THE COURT: An extra day is reserved.

14 MR. TROOP: Extra day reserved.

15 MR. HUEBNER: Yeah.

16 THE COURT: All right. Well, I -- obviously, no
17 one has objected to extension of the injunction, at least
18 through the date of the ongoing mediation. The issue is
19 whether I should extend it further through the confirmation
20 hearing, which would be the reserved dates for that hearing.
21 Frankly, I think the unusual circumstance that would argue
22 for not doing that, would be a turn of events at the
23 confirmation hearing that would suggest that a plan that
24 contemplated a settlement that would include a substantial
25 payment by the Sackler families would not be confirmed, and

1 that no similar plan would be confirmed.

2 That is, of course, certainly possible. However,
3 it seems to me, given the need to have some control over
4 where the case would go after that, I think having it
5 through the scheduled dates is warranted, even if I
6 concluded, for example, earlier than that, because the
7 confirmation hearing wouldn't run through the 30th, that I
8 wouldn't confirm the plan.

9 I still think there's probably a worthwhile basis
10 to have an injunctive pause for a few days, up to August
11 30th, for everyone to get their bearings, and I think the
12 parties' focus, in addition, obviously, to being on the
13 mediation, should be on preparing for the confirmation
14 hearing, rather than adding the potential litigation over
15 the preliminary injunction to that hearing, so I will grant
16 the motion through the last date scheduled for that hearing,
17 for the reasons that I've previously granted extensions and,
18 as affirmed by then Chief Judge McMahon, I believe that the
19 injunction is warranted.

20 The issue raised was the timing issue, which I've
21 just separately addressed. In terms of the balancing of the
22 harms over the timing issue, it seems to me that a focus on
23 the mediation and confirmation litigation is the key focus
24 at this time, rather than an additional focus that might
25 take place after the mediation, if the mediation is not

1 wholly successful on litigation over the preliminary
2 injunction.

3 So, I will grant the requested extension, again,
4 with the language that has been agreed pertaining to the
5 Nonconsenting States, as reiterated in their limited
6 objection to this extension motion. So, you can email that
7 order to chambers, Mr. Huebner.

8 MR. HUEBNER: Thank you, Your Honor.

9 THE COURT: Okay.

10 MR. HUEBNER: Your Honor, the third item on the
11 agenda, and final item on the agenda, is the motion filed by
12 Professor Lipson seeking employment of an (sound drops). It
13 is his motion, so I would turn the podium over to him.

14 THE COURT: Okay.

15 MR. LIPSON: Thank you, Your Honor. Jonathan
16 Lipson for Peter Jackson. Can you hear me and see me, Your
17 Honor?

18 THE COURT: Yes, I can, thanks.

19 MR. LIPSON: Thank you. Fifteen years ago, Peter
20 and Ellen Jackson lost their daughter, Emily, after she
21 ingested a single OxyContin pill, went to sleep, never woke
22 up. Since that time, the Jacksons have struggled to
23 understand how and why this happened, who was responsible,
24 and how it could be prevented in the future.

25 Today, they find themselves, like thousands of

1 creditors in this case, confronting a process -- this
2 Chapter 11 case -- that is, to them, opaque and byzantine.
3 Like many creditors in these cases, the Jacksons worry that
4 the owners of the Debtors, the Sackler families, may have
5 manipulated this process to obtain releases that will, once
6 granted, almost certainly make it impossible to learn any
7 more about the secretive family that has controlled the
8 Debtors.

9 As explained in our motion and reply, there is
10 reason for concern. The Debtors' objection practically
11 concedes that the board of directors that made this decision
12 shortly before bankruptcy was not independent of them, and
13 there's evidence from the Debtors' own --

14 THE COURT: Which decision are you discussing, Mr.
15 Lipson?

16 MR. LIPSON: The decision to release the Sacklers.

17 THE COURT: And you contend that that decision was
18 a binding decision and, in essence, controlled bankruptcy
19 process, correct?

20 MR. LIPSON: I contend that it had a significant
21 and undue -- may have had a significant and undue influence.

22 THE COURT: And what is your evidence for that?

23 MR. LIPSON: The evidence is the Debtors' own
24 statements, involving things like the historic control that
25 --

1 THE COURT: No, no. I'm saying controlling the
2 bankruptcy process.

3 MR. LIPSON: So --

4 THE COURT: Your evidence on that point. Well,
5 let me start with a basic question, Mr. Lipson. What is the
6 examination by the proposed examiner that you would propose
7 here? It is, in my view, to use your phrase,
8 (indiscernible) and byzantine. So, let's be clear. What
9 are you seeking here, to have the examiner examine?

10 MR. LIPSON: The process by which the board of
11 directors of Purdue Pharma --

12 THE COURT: The entire process, from beginning to
13 end?

14 MR. LIPSON: The Sackler board negotiated --

15 THE COURT: There is no Sackler board, all right.
16 There's a Purdue board. Listen, you're a law professor,
17 right? Words are important to lawyers, right? So again, I
18 go back to, what is the examination that you are seeking
19 here? Because that is how I am going to review your request
20 for relief. In your reply, which came in at 9:30 last
21 night, you state, at one point, that you seek a
22 determination --

23 MR. LIPSON: Your Honor, if I may help you, I can
24 tell you in very simple terms what we're trying to have an
25 examiner --

1 THE COURT: Okay. That's probably a good idea,
2 because what I was going to go through is the various points
3 where you seek different relief, not only in the initial
4 motion, but in the reply, so you tell me now, what is the
5 relief you're seeking?

6 MR. LIPSON: We simply want to know whether the
7 process by which the board of directors of Purdue Pharma,
8 during this case, and shortly before this case, to release
9 the Sacklers, was free of influence by the Sacklers. We
10 know that these are privately --

11 THE COURT: So, let's -- let me stop there,
12 because this is important --

13 MR. LIPSON: -- according to the Debtors' own
14 disclosure statement --

15 THE COURT: Please. You want to know whether the
16 process was free from the Sacklers' influence, right?
17 That's what you want to investigate, whether the people on
18 the board who made the decision, as embodied in the plan
19 that's before the Court, were independent of the Sacklers.
20 That's what you're looking for.

21 MR. LIPSON: That's correct, and would you like me
22 to tell you why we are concerned --

23 THE COURT: No, no. I want to first know what the
24 relief is.

25 MR. LIPSON: The relief is just that, Your Honor.

1 THE COURT: Just that.

2 MR. LIPSON: And not even to do an independent
3 investigation. We assume that the Creditors Committee in
4 this case has done this investigation, because they say so
5 in their plan support letter. But what they haven't done,
6 by virtue of the protective orders and confidentiality
7 stipulations in this case, is revealed their analysis. So,
8 creditors, like Mr. Jackson, are outside, not able to
9 understand all of the red flags --

10 THE COURT: No, but, again, I -- this goes to,
11 again, the relief you are seeking. Your pleading is replete
12 with allegations about an inadequate, you contend,
13 investigation of the "Sackler allegations," which, by the
14 way, you also don't define; although, when you appear to
15 define them on the first page of your pleading, they appear
16 to be allegations about criminal conduct by the Sacklers,
17 which is an odd thing, since that's not the subject of this
18 bankruptcy case, this not being a criminal case.

19 But, let's skip over that for a moment. And that
20 is a point that, I think, you may well have misled the
21 public over, because you lump that concept into a review,
22 which you say you're comfortable that the Committee has done
23 as far as the potential liability of the Sacklers in a civil
24 respect, i.e., for money, not criminal liability, but for
25 money, to the Debtors' estates and creditors, and

1 separately, to potential third parties, with respect to
2 their claims against the Sacklers.

3 That's not what you want to have investigated,
4 right. What you want to have investigated is whether the
5 board, and more specifically, the independent committee of
6 the board, that the Debtors say was charged with approving
7 the plan, was independent, right? So, I guess, my question
8 on that is, you've couched that specifically in that way,
9 and that is relatively easy to investigate, one way or
10 another.

11 You look at the board's independence. You look at
12 the people who are on the board. You talk to them. You
13 look at the -- any limitations on their independence, either
14 actual, in terms of corporate governance, or de facto, and
15 you get a result. Are they under the influence of or unduly
16 influenced by the Sacklers? On the other hand --

17 MR. LIPSON: Your Honor --

18 THE COURT: -- there are times when you say you
19 want to investigate the board's whole process in negotiating
20 a settlement. And to me, that is entirely open ended,
21 because that results in an investigation of all of the
22 twists and turns, and we know there have been many -- in
23 fact, they were not resolved until the morning of the file
24 hearing on the disclosure statement leading to a plan that
25 the Debtors were actually prepared to go forward with.

1 That involves, in my view, and extensive,
2 unnecessary, and microscopic view of each decision along the
3 way as to whether to make a negotiating point here or there
4 or elsewhere.

5 MR. LIPSON: Your Honor, would you like me to
6 argue the motion or --

7 THE COURT: No, I'm asking a question about what
8 the motion is about, so do you want to do that? Do you want
9 to have the examiner review that entire process? No.

10 MR. LIPSON: No.

11 THE COURT: Okay.

12 MR. LIPSON: We want to understand whether or to
13 what extent the Sackler families, who, at least until
14 November of 2019, apparently have the power to remove
15 members of the Special Committee. It's not an independent
16 committee, Your Honor. It's a Special Committee, which, of
17 course, might affect their capacity to be independent. We
18 know, during these cases, that the -- it appears the
19 Debtors' own lawyers and lawyers for the Sacklers have
20 entered into a common interest agreement, so to just settle
21 with the U.S. Trustee, is very difficult to understand how
22 the Debtors and the Sacklers could have a common interest at
23 this point.

24 On your point about our claims about the
25 inadequacy of the investigation, our whole point, Your

1 Honor, is we have no idea whether the investigation was
2 inadequate. I do not believe we said that. What we're
3 saying, is that this is a case of extraordinary public
4 interest, and in case of extraordinary public interest,
5 Congress said very clearly, examiners must be appointed to
6 conduct appropriate investigations of wrongdoing and other
7 potentially --

8 THE COURT: But you have -- all right, that's fine
9 --

10 MR. LIPSON: We have found --

11 THE COURT: I'm just trying to figure out what you
12 are contending is the appropriate investigation. I think I
13 have that answer now, which is determine -- to determine or
14 investigate whether the Special Committee, which I gather
15 made the decision to authorize the Debtors to seek
16 confirmation of the plan that is before the Court, did so on
17 a basis independent of the Sacklers.

18 MR. LIPSON: Correct, and that is in ii of our
19 order, Your Honor.

20 THE COURT: Well, I understand, but your order
21 covers other -- can be read more broadly than that, but this
22 is what you are seeking.

23 MR. LIPSON: Your Honor, if that is correct, and
24 if you are comfortable with narrowing it that way, I think
25 we can -- we may well be amendable to that, because that is

1 our underlying concern. As you know, Your Honor, contrary
2 to what you just said, I am not the one creating concern
3 about the Sacklers. The Sacklers have been the subject of
4 scrutiny and concern for many years. Mr. Jackson testified
5 in 2007 at the sentencing hearing, only to learn that it
6 turned out -- according to some, we don't know -- that the
7 Sacklers had allegedly manipulated the legal and regulatory
8 process to shield themselves.

9 Many claims of this sort have been made. We're
10 not citing those, but the facts in this case, the Debtors'
11 own claims that the Sacklers were the de facto CEOs of a
12 company that has now pleaded guilty a second time --

13 THE COURT: They don't say that as far as the
14 bankruptcy, period. Right? Do you have any evidence to say
15 that that statement, or any of the statements in connection
16 the plea agreement, pertain to the period after these
17 Debtors filed Chapter 11?

18 MR. LIPSON: Not that statement, Your Honor, but
19 that is not --

20 THE COURT: Do you have any evidence to support
21 the idea that the Sacklers have been the de facto management
22 of these Debtors, since the commencement of the Chapter 11
23 case?

24 MR. LIPSON: De facto management since the Chapter
25 11 case? No, Your Honor, but that --

1 THE COURT: Or de -- all right. Then, my next
2 question. Do you have any evidence that they were the de
3 facto board of these Debtors since the commencement of the
4 Chapter 11 case?

5 MR. LIPSON: I think that is unclear. If they had
6 the power to remove the board --

7 THE COURT: What evidence do you have on that?

8 MR. LIPSON: The Debtors' own admission that they
9 had to eliminate the power that the Sacklers had to remove
10 the directors in November of 2019. And more importantly,
11 Your Honor, that the governance documents of these Debtors
12 are not public. We have never seen their bylaws. We have
13 no idea what residual powers the Sacklers may or may not
14 have been able to wield over --

15 THE COURT: Okay, that's fine. That's a
16 relatively easy thing to figure out, right?

17 MR. LIPSON: Correct.

18 THE COURT: In fact, one could've --

19 MR. LIPSON: That's why we say --

20 THE COURT: -- a 2004 request to do it, instead of
21 making a motion for an examiner, but nevertheless, that's a
22 relatively easy thing to figure out.

23 MR. LIPSON: Right. This is why we say, this
24 should be a fairly painless and easy process, if, in fact,
25 the process has been free of undue influence by the

1 Sacklers. But it is important, Your Honor, to understand
2 that the motivation here is not Mr. Jackson's own litigation
3 position only. He's concerned about the integrity of this
4 process, and that is why --

5 THE COURT: Well, let's go to that, all right?
6 Because as the judge, I actually do get to ask these
7 questions of you.

8 MR. LIPSON: Of course.

9 THE COURT: Do you ever watch the History Channel?

10 MR. LIPSON: I do not, Your Honor.

11 THE COURT: Okay. Well, they have some good
12 programs on it, but a lot of their programs go like this.
13 They show an image that's kind of cool, of something, like
14 the Nazca lines or a marine --

15 MR. LIPSON: I'm not familiar with that, Your
16 Honor. Sorry.

17 THE COURT: A marine mine for a ship, and then
18 they say, "Some people say there are questions about the
19 origins of these." And then, they go on to ask the
20 questions, without any evidence, although -- other than
21 saying some people ask. I refer to pleadings that do the
22 same thing, as History Channel pleadings.

23 They say, "some people raise questions," or "some
24 people ask the following," or "some scholars say," and then
25 they try to link all that together, without evidence to

1 reach a conclusion. So other than the board issue, are you
2 pursuing any of those points today? Because if you are, I
3 need to pursue them with you. If you're not, if you
4 basically eschew them as to "your general contentions" that
5 some people have questions about the conduct of this case, I
6 will pursue them with you, and we'll get to the bottom of it
7 right now, as to your basis and your logic on it.

8 MR. LIPSON: As we say in our motion, we are not
9 asking for a secondary analysis of the underlying
10 allegations of the Sacklers.

11 THE COURT: That's not my question. What else are
12 you saying you want to deal with, as far as the questions
13 you say have been raised about the conduct of this case,
14 beyond the question that you say is now the only basis for
15 your request for an examiner, which is to investigate the
16 independence of the board in making a decision to propose
17 for confirmation, the plan before me?

18 MR. LIPSON: Are you asking me what the basis for
19 that --

20 THE COURT: No, I'm asking you if you want to
21 explore anything else.

22 MR. LIPSON: I just said, no.

23 THE COURT: All right. So, all of these
24 statements in your motion about, for example, the Committee
25 or the Court -- and I do take this personally, sir -- not

1 being able to police the process and, implicitly, alleging
2 that the Court is somehow biased, you're eschewing at this
3 point? If not, we will go through them, sentence by
4 sentence.

5 MR. LIPSON: Your Honor, those are examples of
6 reasons for concern. They are not History Channel facts.

7 THE COURT: All right, then let's go through them.

8 MR. LIPSON: Your Honor -- fine. Would Your Honor
9 please tell me where you are?

10 THE COURT: As soon as I get there.

11 MR. LIPSON: Your Honor, if I may, if I offended
12 you --

13 THE COURT: No, no. It's not a question of
14 offense. It's a question of actually making false or
15 illogical allegations.

16 MR. LIPSON: I'm sorry, Your Honor. You said you
17 took it personally, so I thought that that meant you were --

18 THE COURT: Well, I do, when my integrity is
19 challenged.

20 MR. LIPSON: I'm not challenging your integrity.

21 THE COURT: Oh, really? Really, you're not?

22 MR. LIPSON: Absolutely not, Your Honor.

23 THE COURT: Uh huh. So, let's look at Page 17 of
24 your motion. All right?

25 MR. LIPSON: I'm there.

1 THE COURT: Are you there? All right. You refer
2 to the reluctance of parties -- and I think it's not just
3 limited to the Special Committee, because you later refer to
4 the Creditors Committee in this vein as well -- to
5 "challenge the settlement framework in light of the insular
6 nature of Chapter 11 practice." That's a quote. Then, you
7 refer to two members of the Special Committee, Messrs.
8 Miller and Buckfire, well-known, highly regard
9 reorganization specialists.

10 Here's a -- okay, I appreciate you don't watch the
11 History Channel, but here's the line. "Scholarship has
12 found that large and complex reorganizations such as the
13 Debtors' are often dominated by a small number of
14 professionals and judges, who frequently appear in the same
15 cases together."

16 And then, in Paragraph 37, you state, "It is not
17 difficult to imagine that relationships among the members of
18 the Special Committee and key participants in this case" --
19 I take it that means judges -- "may have affected the
20 decision to settle or sue, whether conscious or
21 subconscious."

22 Then, you cite a forthcoming paper, hasn't been
23 published. I'm assuming that the editors of the Texas Law
24 Review still retain some control over it, right?

25 MR. LIPSON: Believe so, Your Honor. I don't

1 know. You'd have to ask them.

2 THE COURT: And in fact, it is coming out, if
3 ever, in 2022, as stated on their website, which your
4 pleading directed me to, and I would think they would change
5 it, since the professor who, I guess, unlike you, did not
6 have the courage to join in this pleading, refers, as a
7 basis for some of his statements, that the original version
8 of the disclosure statement -- not the one approved, but the
9 original version -- didn't discuss the Sackler issues in
10 detail. You think the editors might want to change that and
11 maybe other aspect of it?

12 In any event, you say, in this Law Review, because
13 attorneys appear in front of a handful of judges, "This
14 dynamic makes it imperative for these repeat players to
15 ensure that they stay in the judges' good graces. They know
16 that if they anger the judge by being zealous advocates in
17 one case, they will bear the consequences the next time they
18 appear before the judge, and worry that clients will not
19 want to hire them."

20 To me, that suggests that they somehow know the
21 judge is doing something improper and don't want to speak up
22 and tell him. Is that what you are citing it for, that
23 proposition?

24 MR. LIPSON: No, Your Honor, what I'm --

25 THE COURT: So, why are you citing -- what are you

1 citing it for?

2 MR. LIPSON: I'm citing it for the proposition
3 that, as Professor Levitin, who is a national -- an
4 internationally renowned scholar, says, in large bankruptcy
5 cases, there is, in fact, empirically, a small number of law
6 firms that appear over and over again, in front of a small
7 number of judges, and there is a strong impetus to settle.

8 We are not challenging --

9 THE COURT: That's really not what the statement
10 actually says. That says nothing about settlement. It
11 makes the very odd conclusion, which, I don't know whether
12 he's internationally recognized or not, that parties don't
13 want to anger the judge, presumably by taking some position
14 that's stupid -- because you've already said, it's not
15 taking a position that disagrees with what they believe the
16 judge is doing improperly -- not because it's a bad thing in
17 that case, but for some future purpose.

18 It's hard to imagine anything more illogical than
19 that, whether you're internationally recognized or not.
20 Listen.

21 MR. LIPSON: I think --

22 THE COURT: I am in Court every day on matters
23 large and small, perhaps, to Professor Levitin and you. They
24 are each equally important to me, whether they're large or
25 small, and I make the decisions based on the evidence before

1 me. I don't make them on the basis of who is appearing and
2 who isn't appearing.

3 Just in this case alone, Davis Polk, which is the
4 lead counsel, the whole firm has appeared in front of me in
5 two cases in my almost 20 years on the bench. So, it's not
6 really a repeat player. Mr. Kaminetzky, who is the only
7 common person in those cases, Delphi and Frontier Airlines,
8 won one and lost one. He neither angered me nor not angered
9 me.

10 This statement is just simply a load of hooey, and
11 you should know it. And if you're teaching law students
12 contrary to that, if you're saying to them, judges and
13 lawyers are somehow trying to conspire somehow -- although,
14 this doesn't really say how -- to change the facts or the
15 result and lawyers are hesitant to speak up and tell the
16 judge that the judge is doing something wrong, you're in the
17 wrong profession. All right?

18 MR. LIPSON: Your Honor, can I address this?

19 THE COURT: Yes, you should, because this is just
20 shocking to me. But I will go one further, because you also
21 have a footnote here. You say, Mr. Miller, for example,
22 apparently bragged about napping in Judge Drain's chambers,
23 in a book he wrote, right? Well, if he was napping in my
24 chambers, he was curled up on the floor, because I don't
25 have a couch.

1 I think, if you actually read it and talked to Mr.
2 Miller, you would understand that what he was talking about
3 is that during the Delphi case -- a case which, at that
4 moment, was requiring people to work around the clock, day
5 after day, because of the impending collapse of GM and the
6 auto industry -- he was falling asleep in settlement
7 conferences and at hearings, and he, in this book referenced
8 that and apologized for it.

9 So, you have slandered him in that paragraph.
10 Why? I have no idea, because it doesn't relate at all to
11 the relief you're seeking, but it does make a nice headline,
12 right, which is what I think you and Mr. Levitin are looking
13 for here, if I can engage in some History pleading. Now,
14 you can respond.

15 MR. LIPSON: Are you done?

16 THE COURT: I am done.

17 MR. LIPSON: Thank you, Your Honor. So, the first
18 point is that the question of forum shopping in this case,
19 is a live one, because the Debtors' board, when dominated by
20 the Sacklers, changed their corporate governance documents
21 to make it possible to file, in your Court, at the last
22 possible moment.

23 Now, we don't think that this goes to your
24 integrity at all, and if I offended you in any way, I am
25 deeply sorry. I have nothing but respect for you and for

1 this Court. Nor am I accusing any of the lawyers, nor do I
2 believe mister -- Professor Levitin has accused any of the
3 lawyers of corruption. I don't use that word. I don't
4 believe he uses that word.

5 THE COURT: He does, in fact, and you just used
6 the word "questions," which, to me, is just as bad.

7 MR. LIPSON: What we are concerned about and what
8 we say in our --

9 THE COURT: Right. Concerns, questions, issues.

10 MR. LIPSON: Yes, concerns, questions, and issues
11 that Congress created the position of examiner to address.
12 We're not making this up, Your Honor. These are in the
13 Debtors' own public statements, after a long, long time of
14 similar concerns, similar questions, involving a family that
15 has been aggressively secret. So --

16 THE COURT: You haven't said what the "this" is.

17 MR. LIPSON: Your Honor --

18 THE COURT: You just said, it's not manipulation
19 of the Chapter 11 case. It's not actions of the lawyers or
20 the judge in the Chapter 11 case, so what is the "this" that
21 you're referring to?

22 MR. LIPSON: The "this" is a strong bias to get a
23 deal done, and the reason that's a problem here, Your Honor,
24 is because I think many people in this case, including Mr.
25 Jackson, believe that the parties have viewed this case as

1 choice between the money or the truth. And you, yourself,
2 have said, well, trials are not truth serums. We're not
3 going to get the truth here, and that's right. We know
4 there's going to be a document repository. We don't know
5 what's going to be in it.

6 But of course, that will come into existence only
7 after the Sacklers have been released, so this is the last
8 best chance this Court has to address concerns about the
9 Sacklers and their capacity to manipulate the legal system
10 that has dogged them for many, many years.

11 THE COURT: Although, you're not actually seeking
12 that relief.

13 MR. LIPSON: That's exactly the relief --

14 THE COURT: What they have done in the past.
15 Because that's going to be covered by the document
16 depository.

17 MR. LIPSON: One hopes. We don't know what
18 documents the Sacklers are going to contribute.

19 THE COURT: So that's not the relief you're
20 seeking. Now, you also say here --

21 MR. LIPSON: -- the relief we're seeking --

22 THE COURT: -- if I can note --

23 MR. LIPSON: The relief we're seeking, Your Honor,
24 is whether they exercised that power during these cases and
25 shortly before in order to create conditions where --

1 THE COURT: I don't --

2 MR. LIPSON: -- they were --

3 THE COURT: I guess, what I don't understand is,
4 why you would -- well, I really don't understand the notion
5 as to the shortly before.

6 MR. LIPSON: Because that's apparently when the
7 deal was negotiated.

8 THE COURT: But it's -- but that, you keep
9 referring to the deal, right? And as far as I can tell, you
10 define that about as broadly as one can, which is either, A,
11 an agreement to settle with the Sacklers, or B, an absolute
12 determination not to settle with the Sacklers. Right?
13 That's your definition of the deal?

14 MR. LIPSON: No.

15 THE COURT: Because there was no deal until about
16 half an hour before the final day before the disclosure
17 statement hearing. That was when there was a deal.

18 MR. LIPSON: That's clearly inconsistent with the
19 terms sheet that was filed at the outset of this case.
20 There was an agreement in principle before the bankruptcy
21 case --

22 THE COURT: But it --

23 MR. LIPSON: -- it had three --

24 THE COURT: But it wasn't a deal. Again, I --

25 MR. LIPSON: It was a deal that was subject to

1 change, of course, and it did change in some ways. No
2 question. The Creditors Committee did an admirable job of
3 increasing the Sacklers' contribution, which is a fine
4 thing. The problem, Your Honor, is that all of that goes on
5 inside the bubble of a protective order that makes it
6 impossible for creditors outside of the case to understand
7 what is going on and --

8 THE COURT: Then --

9 MR. LIPSON: -- whether there's an undue influence
10 --

11 THE COURT: And you think -- of course, again,
12 this is not what you have the examiner now, as you stated,
13 investigate, but leaving that aside, if the examiner were to
14 investigate the basis for an agreement, right, you believe
15 that all of the information that would be provided to the
16 examiner would be public?

17 MR. LIPSON: Provided to the examiner? No --

18 THE COURT: Yes.

19 MR. LIPSON: -- clearly not.

20 THE COURT: Yeah.

21 MR. LIPSON: But the examiner's report would be.

22 THE COURT: Right. And --

23 MR. LIPSON: That's the whole point, Your Honor.

24 We understand why the parties --

25 THE COURT: Well, no, because your point is that

1 the protective order is shielding transparency. It's the
2 same constraint that would be imposed on an examiner, as you
3 well know.

4 MR. LIPSON: Not so, Your Honor.

5 THE COURT: So, have you ever tried a case, Mr.
6 Lipson?

7 MR. LIPSON: I have tried --

8 THE COURT: Have you taken discovery before the
9 case?

10 MR. LIPSON: I have, Your Honor.

11 THE COURT: And did you publish all of that
12 discovery?

13 MR. LIPSON: No, of course, not.

14 THE COURT: No, of course, not. Right.

15 MR. LIPSON: And we're not asking for --

16 THE COURT: And what happens when you try a case,
17 is that the judge gets the actual evidence that's derived
18 from the discovery. It's usually in a case that would be of
19 this size, quite voluminous. It generally takes up, you
20 know, my entire bench and auxiliary trays, but that's not
21 anywhere close to all the discovery, and when you actually
22 conclude and conduct the trial, you learn pretty quickly,
23 don't you, that it's only a miniscule amount of that
24 evidence that actually is relevant.

25 MR. LIPSON: The fact that you're talking about --

1 THE COURT: So, when you're complaining about
2 transparency, and when this is picked up by people who are
3 not lawyers, I really wonder what on earth you're talking
4 about.

5 MR. LIPSON: Your Honor, the -- I don't know what
6 trial you are talking about.

7 THE COURT: I'm talking about the trials I conduct
8 every day.

9 MR. LIPSON: We're talking about this case, not
10 other cases, Your Honor.

11 THE COURT: And I guarantee you, if one were to
12 try the issues in this case, there would not be 99 million
13 pages of documents that would be in front of me on my bench.

14 MR. LIPSON: That may be fine, and it simply not
15 relevant to the reason Congress created the examiner and --

16 THE COURT: No, but I'm just going to the point
17 that you keep making, which is that there is some veil
18 that's improper as far as the discovery that has been taken
19 in this case, because it's been taken --

20 MR. LIPSON: Quite the opposite.

21 THE COURT: -- under protective order.

22 MR. LIPSON: Quite the opposite. We are not -- we
23 clearly say we do not believe the protective order or the
24 confidentiality stipulations are, in themselves, improper.
25 We are saying that this is an unusual case, that involves an

1 unusual degree of public interest and concern, and we
2 believe that an examiner should go into a bubble, if you
3 will, created by that protective order, evaluate the work
4 that we assume was done on this narrow question, emerge with
5 a report saying, yes, it's okay, here's why. No, it's not
6 okay, here's what you need to think about.

7 That's what we want and the thing to study, the
8 thing to study is simply the question, did the Sackler
9 families use their governance powers to unduly influence
10 both the board, shortly before the bankruptcy, once the
11 Sacklers decided to give the company up -- not a final deal,
12 but they made the decision -- and then during the case when
13 the Special Committee was appointed.

14 THE COURT: Okay.

15 MR. LIPSON: Your Honor, confirmation is coming
16 soon. We understand that and we very, very narrowly
17 tailored the timing of the examiner not to interfere with
18 that. But when confirmation comes, the concerns that Mr.
19 Jackson has that the 3,500 people who signed a petition on
20 Change.org asking for an examiner in this case
21 (indiscernible) they have -- they're not going to vanish.
22 They're not going to go away.

23 There will be a public document repository of some
24 sort, and people will go through that. This is the last
25 best chance this Court has to quell those concerns, to show

1 that they are, in fact, unfounded. That's what we are
2 asking you to do.

3 THE COURT: That's what you're asking me now to
4 do. That's not what was in your pleading.

5 MR. LIPSON: Well, I apologize, if it was unclear,
6 Your Honor. Doing the best I can.

7 THE COURT: All right.

8 MR. LIPSON: Would you like me to continue with my
9 argument?

10 THE COURT: Sure.

11 MR. LIPSON: Or feel like you've exhausted --

12 THE COURT: No. I think we've exhausted the key
13 question, which is, what is the relief you're seeking. Now,
14 are you justified in getting it, is next.

15 MR. LIPSON: And I think -- correct. And the
16 answer, I believe, is absolutely yes, Your Honor. We know
17 that Congress said that Senator DeConcini said that the
18 reason we have examiners is to assure the public of the
19 integrity of the reorganization process in cases -- large
20 cases of great public interest.

21 So, cases like Enron, cases like New Century,
22 cases like Washington Mutual, cases like WorldCom have all
23 involved allegations of serious wrongdoing and have all
24 involved examiners who, in those cases, were doing much more
25 than we're asking for here. In those cases, they were

1 actually figuring out who was the bad guy, but we're not
2 asking for that.

3 All we're asking for is some assurance that the
4 bad guy didn't decide to release (indiscernible). That's
5 what we're asking for. Now, it may be the case that the
6 judges in Enron and New Century and WorldCom, maybe they
7 were wrong. Maybe there was no concern about the integrity
8 of the process. Maybe Congress was wrong. And if, Your
9 Honor, you think I'm wrong, you should simply deny the
10 motion and we can move on.

11 I do not want to waste your time. I do not want
12 to waste the time of the lawyers in this case who've already
13 billed nearly half a billion dollars. We're not looking to
14 run up anybody's bill. We're looking for some assurance
15 about the integrity of the decision going forward. Exactly.

16 THE COURT: Okay. As far as the debt threshold of
17 1104(c)(2), what evidence are you relying on?

18 MR. LIPSON: Well, let's start with the Debtors'
19 own disclosure statement. Right? At Page 131, they say --
20 not my words -- their words, that the Department of Justice
21 has "an allowed unsubordinated, undisputed, noncontingent,
22 liquidated, unsecured claim against Purdue Pharma in the
23 amount of \$2.8 billion, arising from the Department of
24 Justice's civil investigation."

25 Now, we know that the Creditors Committee and I

1 believe the Debtors, it was still contingent, Your Honor,
2 because they don't have to collect. They can rescind and do
3 something else. Well, of course, Your Honor, but that
4 proves too much. Creditors can always forbear. The fact
5 that they can forbear from collection, the fact that they
6 can forebear from enforcement, doesn't make a claim
7 contingent.

8 THE COURT: Well, this wouldn't be forbearance.
9 This is a right to rescind.

10 MR. LIPSON: The right to rescind, Your Honor,
11 then says they have a choice. They can either pursue
12 everybody or their claims balloon back up to their full
13 amount. The full amount is not contingent or unliquidated.

14 THE COURT: I'm sorry, the full amount of their
15 claim?

16 MR. LIPSON: The full -- I believe, their claim
17 has two components, one of which is clearly stated, two
18 claims at \$2.8 million each, one of which is trebled. There
19 is a portion that is contingent, but that's irrelevant.
20 \$2.8 million is clearly more than \$5 million.

21 THE COURT: No, but it -- the order actually says,
22 Paragraph 6, "The United States shall have an allowed
23 unsubordinated, undisputed, noncontingent, liquidated,
24 unsecured claim against PPLP in the amount of \$2.8 billion
25 arising from the DOJ's civil investigation provided that, if

1 the PPLP defaults on any material obligation, if a plan
2 materially consistent with the terms of the civil settlement
3 agreement is not confirmed, in the event of voluntary
4 dismissal or conversion of the cases, or in the event the
5 Debtors' obligations under the civil settlement agreement
6 are voided for any reason, the United States may elect in its
7 sole discretion to rescind the releases in the civil
8 settlement agreement or to have -- or, to have an
9 undisputed, noncontingent, liquidated, allowed unsecured
10 claim against the Debtors for the full amount of that claim"
11 -- of the proof of claim, not the allowed claim, but the
12 proof of claim.

13 MR. LIPSON: Correct. I believe you just answered
14 your question.

15 THE COURT: Right? So, and I think your reply
16 that came in last night actually contemplates, not only not
17 confirmation of the plan, but also the appointment of a
18 Trustee and/or liquidation of the Debtors, right, so that's
19 a contingency, isn't it? You refer to those in your reply,
20 those possibilities.

21 MR. LIPSON: I'm not sure I understand why that's
22 relevant.

23 THE COURT: Well, because, again --

24 MR. LIPSON: You planning to appoint a Trustee in
25 this case?

1 THE COURT: No, the conversion --

2 MR. LIPSON: If you think a Trustee should be
3 appointed --

4 THE COURT: The conversion of the case is a -- one
5 of the outs in this proviso as well as a plan materially
6 consistent with the terms of the civil settlement agreement
7 not being confirmed. And we don't know whether that's going
8 to happen, yet, right?

9 MR. LIPSON: There are always provisos in
10 agreements, and creditors always have the right not to --

11 THE COURT: No, I -- isn't that a contingency?

12 MR. LIPSON: I don't believe it's a contingency
13 that is relevant to this decision. And in any case, Your
14 Honor, that is only one of two prongs. We know that --

15 THE COURT: I'm just --

16 MR. LIPSON: -- examiner shall be appointed --

17 THE COURT: I'm just asking, on this C2 point.
18 I'm just focusing on the C2 point.

19 MR. LIPSON: I think that when the Debtor enters
20 into a settlement agreement that becomes a (sound drops).

21 THE COURT: You froze. Sorry.

22 MR. LIPSON: Sorry, Your Honor, I didn't hear
23 that.

24 THE COURT: You unfroze, just now. So, I think
25 you froze right when you said, when I think -- you said, I

1 think when the Debtor enters into a settlement agreement.

2 MR. LIPSON: And obtains a final order that says
3 the things you just read, that creates an allowed unsecured
4 claim that is not contingent and is fixed.

5 THE COURT: Okay.

6 MR. LIPSON: For these purposes. I think the
7 reality of this case, Your Honor, I think everybody knows,
8 is that a plan will be confirmed, a Trustee will not be
9 appointed, any of the contingencies that you identify are
10 remote. In fact, the Debtors' own disclosure statement
11 says, oh, the DOJ has said we're getting comfortable with
12 all this stuff. We feel pretty good. So, Your Honor, in
13 all due respect, I don't think that's the strong argument
14 that they can make.

15 THE COURT: So, you're assuming the plan will be
16 confirmed.

17 MR. LIPSON: I think it is highly likely. Yes,
18 absolutely.

19 THE COURT: Okay.

20 MR. LIPSON: And as I said, Your Honor, we are not
21 here to blow up that deal. We are not here to reinvent that
22 wheel. We are here to try to make sure that we have some
23 minimal level of confidence about the integrity of the
24 process that has -- that leads to that final deal. We,
25 obviously, understand that the agreement that was struck by

1 the Sacklers with the plaintiffs' attorneys in 2018 was not
2 the final deal.

3 We realize that it created three pillars of a
4 deal, and those pillars, fundamentally, have not changed.
5 The amounts have changed. Other details have changed. The
6 Creditors Committee has done incredible work in this case.
7 The Debtors' counsel has done incredible work in this case
8 to try to manage an extraordinarily difficult situation.

9 We are not attacking that, and I'm sorry if they
10 are attacked. We are not attacking you, and we're sorry if
11 you feel attacked. Outside the protective order bubble of
12 this case, there are concerns that will not go away. You
13 may disagree with those --

14 THE COURT: You don't think that that might be
15 because --

16 MR. LIPSON: Inside the bubble --

17 THE COURT: -- of statements that you, yourself,
18 have made in these pleadings?

19 MR. LIPSON: I'm sorry, Your Honor. You're saying
20 that the past 15 years of --

21 THE COURT: No, no. I'm talking about statements
22 you have made --

23 MR. LIPSON: -- the Sacklers being --

24 THE COURT: -- in these pleadings about the
25 conduct of this case.

1 MR. LIPSON: Are you suggesting Mr. Jackson does
2 not have the right to ask for an examiner, because --

3 THE COURT: No. I am, for example, referring to a
4 statement on Page 23 of your motion where you state -- you
5 clearly imply, quoting me from an opinion, a bench ruling I
6 gave, in September 2020, where I, as part of the factual
7 analysis, said, "It appears to me to have always been the
8 case, and will continue to be the case, that a plan in which
9 the Sackler families do make a material contribution that
10 satisfies the Second Circuit's test in In re: Metromedia,
11 is not only possible but the most likely outcome in this
12 case."

13 Now, what you neglect to say, and I can understand
14 why someone like Mr. Jackson or the people that read about
15 this in the press might think from that, that that was just
16 a preconceived view of mine, what you failed to state was,
17 that was in the context of a hearing on the preliminary
18 injunction. Now, we both know, the four prongs that need to
19 be shown to get a preliminary injunction, right, which
20 includes likelihood of success on the merits and irreparable
21 harm or risk of serious harm and a balancing.

22 So, in a reorganization context, that includes a
23 likelihood of a successful reorganization, which includes an
24 analysis of whether the plan contemplated at that time could
25 lead to a successful reorganization. So, this was not just

1 some sort of avuncular remark or preconceived notion of
2 mine, right? You left that out. You left that as an
3 implication. You didn't state that this was as a result of
4 a hearing on notice with over a day's argument as to the
5 facts.

6 MR. LIPSON: Your Honor, with all due respect, I
7 don't think that that is the only time you have urged the
8 parties to settle. I don't have the transcript at hand, but
9 the December hearing, at which you approved the DOJ
10 settlement, concludes with you saying something like, you
11 must get this deal done.

12 THE COURT: I've said --

13 MR. LIPSON: You can do it; you should do it.

14 THE COURT: And you think it's improper for a
15 Court --

16 MR. LIPSON: Absolutely not.

17 THE COURT: -- have the parties focus on a
18 settlement option?

19 MR. LIPSON: Absolutely not.

20 THE COURT: All right, I think that's important
21 for the record, because one can read this pleading as being
22 to the contrary.

23 MR. LIPSON: Well, if that's --

24 THE COURT: Including the notion that there's a
25 binary decision, which, I think, this pleading is premised

1 upon, that one either decides at the beginning of a case to
2 settle and -- to the exclusion of everything else, or not to
3 settle, to the exclusion of potential settlement.

4 Now, we both know that that's not the case, that
5 that binary decision doesn't exist. One is always
6 evaluating one as against the other, which is why I don't
7 understand why one would be focusing on a period before the
8 time that there actually was a decision to recommend
9 confirmation of the plan that's currently before me. I
10 think that's the main point that the Committee is making,
11 which is, if you examine the whole process, you're going too
12 far, because --

13 MR. LIPSON: Fair enough.

14 THE COURT: -- people don't settle until they
15 settle.

16 MR. LIPSON: Fair enough.

17 THE COURT: Okay. All right. Okay, is there
18 anything else?

19 MR. LIPSON: No, Your Honor, except -- no, except
20 -- I believe that this case will result in a confirmed plan
21 of reorganization and I'm not sure that's a bad result at
22 all, and from inside the case, everything may look, and in
23 fact be, fine. Contrary to your insinuations, I'm not the
24 one creating concerns about the Sacklers. They have done it
25 themselves by being secretive.

1 There are plenty of far better qualified people
2 asking those questions than myself. Mr. Jackson, just like
3 any creditor -- just like the single creditor brigade in
4 (indiscernible) is entitled to some assurance about the
5 integrity of the process. Congress said examiners are
6 required in these cases, not because they're substitutes for
7 litigation, not because they're substitutes for a deal, but
8 because, in these cases, we need to know legitimately that
9 people who are getting the benefit of the deal are entitled
10 to it.

11 I might make one other point. I'm sorry. I said
12 I was done. My -- you said settle or sue. Well, if you
13 back and look at the cases, where examiners have been
14 involved, there often have been suits against insiders, even
15 in Insys, which is one of the other opioid cases, the
16 Debtors have sued the insider there. We're not saying the
17 Sacklers should've been sued.

18 THE COURT: My point is -- my point is a different
19 one. Your motions focus on the negotiation of the
20 settlement framework, which, throughout, was only a
21 framework, subject to massive due diligence and further
22 negotiation -- which, in fact, I think, has undisputedly
23 occurred since then -- is the starting point for a review
24 of, as you say, "the process."

25 To me, that is misguided, because it assumes,

1 because I think this is -- because it was only the starting
2 point, that if one at least contemplates the prospect of a
3 settlement, that is an irrevocable decision and one cannot
4 turn to litigation. We both know that that's just absurd,
5 and in fact, is belied by the facts of this case.

6 MR. LIPSON: What litigation --

7 THE COURT: One is always evaluating what is
8 possible under a settlement and achievable versus what's
9 possible and achievable in litigation.

10 MR. LIPSON: So maybe I'm not making my point --

11 THE COURT: To me, the decision that counts is the
12 decision to actually enter into and be bound by a
13 settlement.

14 MR. LIPSON: Right. And what we're saying is that
15 outside of your protective order bubble, many people wonder
16 why the estate hasn't sued the Sacklers. Well, they're not
17 suing them because they're settling. Fine.

18 That may be the right thing to do, but given the
19 concerns that have long existed about the Sacklers, we need
20 to know more than what the Debtors have told us in the
21 disclosure statement, which after 40 pages of a litany about
22 the meetings that they've had and the discovery they've
23 taken, and so on and so forth, throws up the hands and says,
24 well, suing the Sacklers would be complicated. They may be
25 judgment proof. This is the best deal they can get.

1 THE COURT: Really? That's your take on the
2 disclosure statement and the Creditors Committee's letter?

3 MR. LIPSON: Yes.

4 THE COURT: In any event, that's not the relief
5 that you're seeking --

6 MR. LIPSON: (indiscernible).

7 THE COURT: -- is to look behind that. You're not
8 looking to look behind that, right? You're looking as to
9 the issue of independence.

10 MR. LIPSON: Independence on the decision to grant
11 the releases. That's correct.

12 THE COURT: Okay. All right. I understand that.
13 that, frankly, could've been made without the -- I mean, I
14 underlined about, I think, 50 times when you made these
15 other allegations, so, that's fine.

16 MR. LIPSON: Thank you for your guidance, Your
17 Honor.

18 THE COURT: Okay.

19 MR. HUEBNER: Your Honor, with respect to the
20 parties responding, I think we have agreed on an order of
21 operations, as we often do, in order to be efficient and not
22 debate who should go next, so I actually think I'm leading
23 off for the people who are objecting to the motion.

24 Good morning, Your Honor. May it please the
25 Court. For the record, I am Marshall Huebner of Davis,

1 Polk, and Wardwell on behalf of the Debtors.

2 Your Honor, it is difficult to know where to begin
3 in responding to this Kafkaesque view of both the fact and
4 the law. It actually is quite important, because Professor
5 Lipson's pleadings, I think, as your colloquies have tweaked
6 out, the fundamental attacks on every party to this case
7 and, in fact, themselves calling to question the integrity,
8 not only of a great many people, but frankly, of the
9 bankruptcy system itself.

10 I'm going to apologize in advance. I will try
11 very hard, but I will -- I may end up slipping into a level
12 of passion and a tone that in the case of one of the most
13 difficult cases I've worked for two years, the Court has
14 never heard from me, but candidly, as I think you will hear,
15 I actually think that Professor Lipson's pleading, in many
16 respects, is outside the bounds of acceptable advocacy to a
17 Court of law.

18 Let me first begin with something on which I want
19 to be very clear. The Debtors' opposition to this motion
20 should not be perceived in any way, shape, or form to
21 denigrate, minimize, or (indiscernible) the unspeakable and
22 tragic (indiscernible) Mr. Jackson and his family, that
23 fact, that loss, deniable and unfathomable.

24 That said, the terrible and tragic circumstances
25 of the Jackson family cannot change the fact that the motion

1 contains no evidence whatsoever of the almost endless litany
2 of nasty, utterly unsupported, and flatly (indiscernible)
3 and unsupportable facts that Mr. Lipson blends into his
4 papers to justify the relief requested.

5 And remarkably, in his reply brief, filed very
6 late last night, he makes no attempt to fill the gaps. In
7 fact, he doubles down. I was asked, recently, by someone
8 why, why is Professor Lipson doing this at this stage in the
9 case and why Professor Lipson in particular.

10 So, I'm going to hazard a guess why relief --
11 because it's not supported by a single one of the hundreds
12 of thousands of creditors on the docket of this case, any of
13 the 12 organized groups, many of whom, I think it is fair to
14 say, hate, H-A-T-E, hate either or both of Purdue and the
15 Sacklers and describe them with words like criminal, kill,
16 evil, monster, in describing the opioid epidemic and joining
17 the relief, because candidly, this is about Professor
18 Lipson, in no small degree.

19 On November 10th, 2020, Professor Lipson gave the
20 Friel-Scanlon lecture at Temple University entitled -- I
21 guess, to generate interest -- "Sex, Drugs, and Bankruptcy:
22 Due Process and Social Debt," in which he argued, in
23 essence, the bankruptcy professional, and by extension, the
24 Courts, that work all day every day on these cases, are
25 basically corrupt, that they, in fact, do repeat deals with

1 one another, and that they sell out their own clients
2 because of the art of the deal.

3 He specifically actually says that in this case,
4 opioid victims were sold out because the professionals are
5 repeat players and the art of the deal is more important
6 than the epical, sacred obligation to address the dignity
7 and human values and rights of their clients.

8 In particular, he goes on to say that Akin Gump,
9 counsel to the UCC, and Milbank, counsel to Sacklers, are in
10 a huge number of deals together and that, in essence
11 (indiscernible) work stuff out as part of the art of the
12 deal in the relational bankruptcy world. This ugly, dark
13 vicious view of what we do for a living might explain
14 Professor Lipson's otherwise mindboggling, unsupportable
15 claim that the UCC, Akin Gump, represented UCC, that in the
16 real world, on planet earth, has been battering and slamming
17 and attacking the Sacklers almost every day for two years
18 has somehow taken a dive.

19 I'm not going to let him walk back from what he
20 said in his pleadings. They could have been a check on the
21 process, but they didn't. Instead, they wrote the
22 stipulation and gave up their rights and didn't do what they
23 were supposed to do. We'll talk a little bit later about
24 the ethical canons that govern the practice of law and who
25 might have violated them in this case.

1 It also explains why, in the twisted maneuver that
2 is also outside the bounds of acceptable advocacy, Professor
3 Lipson, both in his opening brief and after his
4 extraordinary (indiscernible) statement were pointed out in
5 about a hundred pages of pleadings, totally, completely, and
6 utterly erases the Ad Hoc Committee, the MSGE, the PEC and
7 the MDL, and the mediators from his narrative, because, of
8 course, the country's mass tort lawyers and 48 attorneys
9 general are not "repeat players" in the bankruptcy system in
10 his relational view of what may have happened here.

11 And so, because they don't fit his "relational
12 theory" of Chapter 11, he closes his eyes again and again
13 and again to the actual facts of this case, which I'll
14 describe in a few minutes, clicks his heels together, and
15 tries to enter a world of projected, made up reality.

16 Now, let's talk about the actual facts of this
17 case and how this deal got actually cut. Because he
18 actually commits a fatal and unforgivable error at the
19 outset. The original deal was not cut by the board of
20 directors or the Special Committee opposite the Sacklers.
21 That he claims is the original sin that was both massive,
22 (indiscernible) and irredeemable, never happened. It's a
23 fabrication of his own that is absolutely described in the
24 informational brief and in the disclosure statement and in
25 multiple hearings before this Court.

1 Prior to petition date, it was the AG, attorneys
2 general, the highest legal officers of their states, and the
3 MDL PEC, comprised of most of the most terrifying tort
4 lawyers in America who have filed thousands of lawsuits
5 against Purdue and the Sacklers who were on one side, and
6 Purdue and the Sacklers together were on the other side.
7 That's who cut the framework here. It was not the board
8 opposite the Sacklers.

9 The plaintiffs were suing Purdue and its owners,
10 in thousands of lawsuits and, as opposed to letting those
11 continue forever, until nothing was left and lawyers made
12 billions of dollars, and the company was destroyed, after
13 mediation ordered and personally overseen by the MDL judge
14 in Cleveland, pre-filing, the original deal was cut.

15 I repeat, it was not cut opposite the Sacklers by
16 the board or the Special Committee. And if he bothered to
17 read the pleadings or call anyone and ask, it would've been
18 brazenly, totally obvious. We cite, in our reply papers,
19 exactly where those descriptions are to be found. The first
20 day transcript is just as clear.

21 He also just makes up -- and I have no better
22 phrase than the colloquial -- makes up what did and did not
23 happen and what was and was not discussed in the mediation
24 ordered by this Court under two of the most respected and
25 august mediators every had worked in this country. He

1 actually had the temerity in a signed pleading to advise us
2 all what happened and did not happen in a confidential
3 mediation he knows nothing about and in which he did not
4 participate, that it was not about the past, but only about
5 the present and the future.

6 And I see he's frowning. I'm happy to get a pin
7 cite and read his false claim from his initial motion if he
8 doesn't remember it. In this approach of Professor Lipson,
9 being utterly unburdened by the facts in the quest to
10 vindicate this meta-theory about bankruptcy cases, was
11 equally unburdened much earlier in 2019 when he wrote a
12 letter copying the U.S. Trustee, the Wall Street Journal,
13 this Court, the Debtors, and the UCC requesting an examiner.

14 I'd forgotten until 9:23 p.m. last night, when I
15 read the final exhibit to his untimely declaration, hat he
16 actually, literally looped the Wall Street Journal on an
17 email to the Department of Justice and this Court, a letter
18 that, just like his examiner motion, was fired off with no
19 prior notice to any of the parties actually what he was
20 trying describe, no attempt to reach out and verify basic
21 facts, and utterly replete with flatly false factual claims,
22 including what was and was not being undertaken by the
23 Special Committee and other statutory fiduciary duties about
24 which he knew nothing. But I guess copying The Wall Street
25 Journal to try to get a story picked up maybe made it okay.

1 No lawyer I know would imagine copying the media on a letter
2 to a federal court and the Department of justice.

3 At base, as I noted above, he repeats again and
4 again his motion at Page 2, Paragraph 23 and the reply that
5 notwithstanding the fact that multiple, highly-adversarial
6 plaintiff constituencies, including multiple attorneys
7 general negotiated this, the deal is somehow improper and
8 needs further examination.

9 He goes on to then allege that the UCC, a
10 statutory fiduciary -- oh, here it is, "Could have" but did
11 not "act as a check on questions of independence". It's at
12 Paragraph 49 of their initial motion if you want to check
13 where he made that accusation.

14 And unless even the Court escaped unaccused of
15 impropriety, he actually did that as well. On paragraph --
16 motion in Paragraph 55, he said the Court has already made
17 up its mind and will approve the settlement and releases,
18 "with little scrutiny". So the debtors didn't do their job,
19 the UCC didn't its job, the mediators didn't do their job,
20 attorneys general didn't do their job, and the court didn't
21 do their job. Because, "people worry that (indiscernible)
22 except for the noble Professor Lipson."

23 Your Honor, we (indiscernible) at great length in
24 our opening paper how Professor's motion distorts terribly
25 beyond the boundary of (indiscernible) advocacy, the actual

1 facts of the case, how it's filled with arguendo with no
2 basis in fact. And I'm going to hit only a few highlights
3 and then turn to the law.

4 So here's his first factual claim. And he's sure
5 lucky he didn't put that he didn't put that in the
6 declaration, because then we'd be talking about different
7 legal provisions that govern submitting sworn statements to
8 the court that turn out to be unsupportable.

9 "Important decision leading to the settlement
10 agreement may have been made before the PPI Board or a
11 special committee with independence of the Sackler
12 families." Motion at Paragraph 23. On his telling all that
13 follows, including the special committee's decision to
14 accept the much-improved, totally different and totally
15 advanced shareholder settlement was taken. But of course
16 that's just not what happened.

17 As I said a few minutes ago, it was dozens of
18 attorneys general and MDL PEC people representing thousands
19 of governmental entities that negotiated the deal opposite
20 the Sacklers. And it was those groups who are on the other
21 side of the terms sheet that was filed on October 8th, 2019
22 at Docket Entry 257.

23 Twenty-three AGs and the PEC -- and by the way,
24 just for the record, the PEC represents more than a thousand
25 counties, multiple states and territories, municipalities,

1 Native American tribes, individuals, and third-party payors,
2 a group that ultimately merged along with the AGs into the
3 Ad Hoc Committee, who I think it's fair to say are no
4 friends of the Sacklers or Purdue.

5 And, Your Honor, if you want to look at where all
6 these facts were laid out, I'll give you the ping sites for
7 that as well so there can be no possible question of the
8 irresponsibility of the claims that were made. Pages 3
9 through 4 and 44 through 45 of the Debtor's informational
10 brief, Docket 17, also went on to say the settlement
11 agreement came about as a result of (indiscernible) critical
12 mass of plaintiffs, including many AGs and the PEC. The
13 Disclosure Statement, Docket Number 2983, would have the
14 same, among many other places, on Pages 3 to 4 and 70 to 71.

15 Despite objecting to the disclosure statement,
16 interestingly enough, Professor Lipson did not object to
17 this part of the disclosure statement. Nowhere in that
18 objection where he could have said you need to explain more
19 about how the initial deal was cut truly, honestly, and well
20 and by whom. He didn't do that. So if he thought that
21 needed more disclosure, maybe he should have done what a
22 regular lawyer would do, which is either call us up and say,
23 you know, I think there are some questions here, I wanted it
24 quite clear enough, or he could have objected if he didn't
25 get accommodation from us, as we accommodated so many other

1 people.

2 Moreover, Your Honor, while his examiner motion
3 was actually quite vicious and really nasty in attacking
4 members of the Special Committee -- we mentioned before you,
5 you have Steve Miller dropping, exhausted as he tried to
6 save Delphi, working for a dollar to save a historic
7 American company. And in fact, the disclosure statement had
8 pages and pages about the formation and independence of the
9 Special Committee. See AG, Pages 60 to 66. Did Professor
10 Lipson object to that part of the disclosure statement and
11 say I need more here, I want to know more about how to
12 (indiscernible) who they were? No, he didn't. He waited
13 until after the hearing was basically over to drop another
14 totally unexpected, never called, never discussed, you know,
15 thing on the docket that the rest of us have to deal with.

16 So I think that everybody on the planet other than
17 Professor Lipson seems to know this, but let me say it one
18 last time. The original deal was not negotiated between the
19 Sacklers and the Board of Purdue, nor between the Sacklers
20 and the Special Committee. It was negotiated in and grew
21 out of the MDL mediation ordered and organized by Judge
22 Polster with many state AGs and the MDL PEC on one side and
23 the Sacklers and Purdue, because we were not in Chapter 11,
24 on the other side.

25 Indeed, Your Honor, another little point of

1 bankruptcy law, the Debtors did not even own the fraudulent
2 transfer claims in August of 2019 because they had not yet
3 gone into Chapter 11. They were not the Plaintiff. 548
4 didn't exist yet, creating a federal action for fraudulent
5 transfer owned by the estate, because there was no Chapter
6 11 proceeding. And of course 544 didn't exist yet. So none
7 of the claims that are actually being pursued by state
8 attorneys general and the MDL PEC on fraudulent transfer
9 theory could possibly have been settled by Purdue because
10 they were not Purdue's claims. They were the claims of the
11 plaintiffs who did settle.

12 Second, Professor Lipson goes on to state again
13 and again with no foundation and directly contrary to every
14 fiber of the record that the shareholder settlement was
15 "foreordained" and "irreversible", see (indiscernible)
16 motion at Paragraph (indiscernible). It is a thread that
17 again he doubles down on last night, Page 5 of the reply.
18 "While the plan may reflect important developments --"
19 thanks for the shoutout, "-- since the settlement framework
20 was announced, the initial decision to settle appears to
21 have been the first link to a chain of decisions, including
22 the preliminary injunction mediations (indiscernible) the
23 plan."

24 This fact that it was irreversible is totally,
25 outrageously false and ridiculous. The record in this case,

1 of which lawyers are obligated to take notice and be
2 familiar before filing pleadings as officers of the court,
3 are that the settlement framework was simply the launching
4 off point of further negotiations, and many, many parties
5 were not on board, and many parties didn't even exist. So
6 it could not possibly have been foreordained. The UCC
7 wasn't even formed until weeks and weeks after the framework
8 was first agreed to. And we said this to the world again
9 and again, but I guess not everybody felt that we needed to
10 check it out.

11 In the first three pages of the Debtor's
12 Informational Brief, the first document filed that sets the
13 stage and explains the case, we said there were, "many open
14 points" that had to be resolved before any settlement could
15 be reached. The Disclosure Statement, on Page 4, more
16 language no one took exception to because it is
17 unquestionably, utterly, totally, and profoundly true, on
18 Page 4 says, and I quote, "The settlement framework,
19 however, was far from a final settlement. Indeed, the
20 debtors made clear on multiple occasions that the settlement
21 framework left many items to be negotiated and resolved."

22 As the Court may or may not recall, I stood on the
23 podium, the actual podium, in November of '19 at the outset
24 of the cases and emphasized that A critical precondition to
25 any final resolution with the Debtor's shareholders was,

1 "massive amounts of diligence, structuring and negotiation",
2 November 19th, 2019 transcript at 70, Line 8 to 72, Line 3.

3 Although Professor Lipson prefers to either
4 rewrite or invent history. This is exactly what happened
5 for 22 months as hundreds of people working around the clock
6 every single week of their lives. Not one, but two estate
7 fiduciaries with duties under federal law completed
8 comprehensive and independent investigations into claims
9 against the Sacklers, not to mention the Department of
10 Justice of the United States of America and the Attorneys
11 General of almost every state in the union and
12 representatives of tens of thousands of municipalities and
13 other representatives of hundreds of thousands of claimants
14 representing the 11 committees that we have in this case.

15 Let's talk just for a minute about the special
16 committee. Let's actually just for a minute close our eyes
17 and pretend that they cut the initial deal and that
18 therefore this original sin theory actually we should spend
19 a moment on its arguendo.

20 The Debtor's Special Committee, whose precursor
21 was formed in May 2019, conducted an investigation for over
22 22 months that involved an exhaustive review of allegations
23 against the Sacklers, the identification of legal claims,
24 reviewed hundreds of thousands of documents, the commission
25 of forensic analysis, and the publication of all transfers

1 to the Sacklers families, totaling over \$11 billion, on the
2 docket for the whole world to see.

3 Despite all of this and the description of their
4 independence in the disclosure statement, Professor Lipson's
5 pleading goes on to great lengths to challenge it without
6 any evidence that, independent from the Sacklers, nothing
7 but essentially snide (indiscernible) arguendo.

8 First of all, charters of New York companies are
9 publicly available. So why don't you stop telling people
10 you couldn't see the charter? All you do is you go on the
11 certificate -- on the secretary of state's website and you
12 pull up the certificate of incorporation and you can see it.
13 And you can shake your head. It's just going to be
14 emarassing when you call later and say you're right. I
15 don't think it is at all untrue.

16 The charter of Purdue Pharma Inc., which is where
17 the (indiscernible) and the special committee said the
18 certificate of incorporation is a public document available
19 on the website of the New York State Secretary of State.

20 Second, Professor Lipson showed fundamentally
21 understanding -- misdescribes how discovery works in every
22 case ever brought in this country (indiscernible), and it's
23 shocking. Here's how it actually works, for the benefit of
24 everybody.

25 People seek discovery. All the parties to a

1 litigation sign a protective order. Your Honor, you stole
2 my thunder. If you get discovery from a counterparty, are
3 you allowed to publish all the documents in the newspaper?
4 Of course you're not. That's ridiculous. You are allowed
5 to use them at trial, or at a hearing, or to negotiate, or
6 to threaten. And you're allowed to use them publicly when
7 the time is right unless the other side says, wait a minute,
8 I have a statutorily legitimate basis to seal a subset of
9 the documents that you want to use in discovery. And then
10 there is a burden on the producing party to keep the
11 documents confidential.

12 Professor Lipson could have signed the protective
13 order, as so many other parties could have at any time and
14 basically seen everything. And then if you wanted to
15 litigate -- and we'll talk about that in a few minutes --
16 like every other party in the case, he is absolutely within
17 his rights to use every document, a hundred million pages,
18 probably the most in the history of the world, he is
19 entitled to use all those documents in litigation, to object
20 to confirmation, to object to the disclosure statement, to
21 say that the deal was somehow born in sin. Right? And if
22 we thought that something shouldn't be made public of the
23 producing party, we say wait a second, we think this
24 satisfies (indiscernible), and you have a discussion about
25 it. That's how it works. There's no secrecy, there's no

1 shield from the public. There's no such thing in the world
2 as the entire public world seeing on a website documents
3 produced by parties in discovery. Just like prior to the
4 bankruptcy case when there are 2,700 lawsuits by almost
5 every government in the country against Purdue and the
6 Sacklers, those documents weren't public, either. Because
7 that's not how litigation works, ever. Ever, in any court
8 in this country. It's the United States legal system that
9 you produce documents and then when it's time to use them,
10 you can use them in a public forum unless there is a unique
11 justification for sealing.

12 Now let's talk for a minute about his next
13 ridiculous disclosure that because independent directors
14 were not insulated from removal formally until November
15 19th, somehow they were captured or jaded or something until
16 then.

17 Let me be very clear. I've been doing what I do
18 for a pretty long time and I've seen hundreds of situations
19 where companies needed an independent committee of the board
20 or a special committee of the board to investigate or
21 analyze a transaction or a potential litigation or a
22 potential merger where for a complex reason or other the
23 full board might not be disinterested, or it might just be
24 the better approach. And so companies all the time -- I
25 don't even know what he meant (indiscernible) when he said

1 this is a special committee and not an independent
2 committee. I don't know what that means, but every one of
3 these directors unquestionably satisfies the independent
4 (indiscernible) in any stock exchange world, which is where
5 they lie.

6 But here's the answer. I have never in my entire
7 career seen any company do what we did, which is actually
8 formally block the shareholders from touching, removing, or
9 adding to the members of a special committee. You can read
10 about all the horrible cases out there with the sex scandals
11 and CEO impropriety and fighting with department executives
12 over pay. You will not find one case where the members of
13 the special committee were barred from being (indiscernible)
14 by a shareholder or (indiscernible) because we were so
15 concerned with being so cleaner than the driven snow and
16 having our process be so utterly above any reproach that we
17 did things nobody even heard of before, like executing a
18 proxy.

19 And, by the way, as this Court knows perfectly
20 well, and probably most of the practitioners because we do
21 this every day know well also had the Sacklers tried to
22 touch a member of the special committee or remove them from
23 office, we would have been before Your Honor in about a New
24 York minute. And the Second Circuit law is quite clear that
25 attempts by shareholders to interfere with a Chapter 11

1 process and interfere with the fiduciary duties of a Chapter
2 11 sworn fiduciary trustee will never be tolerated. This
3 was belt and suspenders that I believe has truly never been
4 done before, which (indiscernible) criticism that nobody
5 else even has ever thought of before.

6 Every (indiscernible) private equity case where
7 ethe private equity firm is out of the money and their
8 directors all sit on the board, I dare you to show me cases
9 where the firms actually created a proxy that they can never
10 touch or remove or change the board members for the length
11 of the case. Never happens.

12 Now let's talk about (indiscernible). There's
13 law, it's called Iridium. It's the governing Second Circuit
14 Case about one of the ways (indiscernible) the court's
15 approved settlements. And guess what one of the very first
16 (indiscernible) factors is? Was the settlement the product
17 of arm's length bargaining? It's a totally fair question.
18 That's kind of the only thing maybe that Professor Lipson
19 and I agree on. The world deserves to know and to be
20 comfortable, a hundred percent comfortable, including
21 because of the pre-2018 and pre-2019 domination of the
22 company by its owners, which in a privately-held solvent
23 company is not unusual at all. In fact, every privately-
24 held solvent company is normally controlled directly by its
25 owners. The question is did it change, did it change soon

1 enough, and was the process by which these settlements were
2 reached appropriate?

3 So how do you do that? Well, let me for example
4 give you an explanation of how the non-consenting groups
5 (indiscernible) fair to say that even professionals would
6 agree that the non-consenting states group is quite adverse
7 to the Debtors. I think they're quite adverse to many
8 things in this case, and they have respectfully and strongly
9 and (indiscernible) on many issues.

10 (indiscernible) Professor Lipson, who was trying
11 to evade this Court's order and the confirmation procedures
12 that were entered by this Court a few weeks ago to no
13 objection. The NCSG is testing and (indiscernible) to
14 litigate if we can't cut a deal, the arm's length nature of
15 Iridium, it is our burden to prove at confirmation
16 (indiscernible) discovery. Because that's what lawyers do
17 when they want to impose a (indiscernible). And in fact,
18 the NCSG has sought broad discovery of these points,
19 including a wide array of communication between each of the
20 four special committee members. All for of them, and the
21 Sacklers. Because they may be asking or seeking
22 confirmation of a similar question, but they're trying to
23 get an answer the right way, without making up facts and
24 basically accusing everybody in the court of misconduct.

25 But instead of doing that, which is what he should

1 be doing, signing the protective order, paying a small fee
2 to the secretary of state, (indiscernible) corporation,
3 asking questions and seeking discovery, Professor Lipson
4 (indiscernible) people are concerned, we need an
5 examination, a lot of stuff here happened that doesn't feel
6 right.

7 Now let's talk about the UCC (indiscernible). I
8 already read to the Court Professor Lipson's view
9 (indiscernible) for the Sacklers, just outrageous. So I
10 want to remind Professor Lipson that the UCC is a statutory
11 fiduciary appointed by the Department of Justice of the
12 United States of America whose members include multiple
13 passionate victims' advocates who have suffered losses no
14 less unfathomable, egregious, and horrible (indiscernible).
15 That committee conducted its own massive, separate, and
16 entirely independent investigation for more than a year-and-
17 a-half, and it cost them tens of millions of dollars that
18 was appropriately spent but (indiscernible). The record is
19 quite clear, as this Court lived every month for almost two
20 years, that the UCC was incredibly adversarial to the
21 Sacklers. They pursued discovery from the debtors, from the
22 Sacklers and the like.

23 And by the way, on the relational theory, they
24 weren't much more kind to the Sackler's lawyers. They
25 actually sought to invade the privilege in an extraordinary

1 motion alleging the crime-fraud exception that the Sackler's
2 lawyers may have helped them commit crimes and that
3 therefore the Sackler's (indiscernible) attorney-client
4 privilege deserved to be invaded.

5 And, by the way, as an aside, to this day, I still
6 can't pronounce Mr. Uzzi's name correctly, so I don't know
7 if there's much coziness over there.

8 So what's the evidence -- what's the evidence that
9 Professor Lipson has of undue holiness -- unholiness and
10 birthed in sin? No. He ignores the fact that the Debtors
11 were involved in a discovery program that was unprecedented,
12 with 90 million pages of materials that he could have gotten
13 access to with one flick of a pen. Millions of additional
14 pages of financial and other materials from the Sackler
15 families, including from banks and institutions all over the
16 world. And he ignores all of this.

17 He cites the UCC letter and says, you know, there
18 were things helpful, but it doesn't contain the analysis of
19 what they found. I guess he just didn't read all the way to
20 the end. Because the UCC explained extremely clearly at
21 Page 23 why it would have been helpful to the Sacklers and
22 totally inappropriate for them -- and by the way for us as
23 well -- to explain in great detail why we did what we did
24 and our strengths and weaknesses.

25 And I quote so the record is clear and Professor

1 Lipton can take comfort, and those of us who have worked
2 about 16 hours on this case every day for years actually
3 care deeply in doing our jobs -- and I quote, "This letter
4 is not the appropriate forum to address each of these issues
5 regarding estate and third-party claims. This is
6 particularly true by the structure of the Sackler's
7 settlement, which provides that in the event the Sacklers
8 breach their payment obligations, the Master Distribution
9 Trust will be responsible for making all payments to other
10 creditor trusts for subsequent distribution, will take
11 ownership of and have the ability to pursue the creditor's
12 (indiscernible) all estate (indiscernible) causes of action
13 against the Sacklers and related parties. And further, that
14 accounts (indiscernible) all public and private claimants
15 will be free to recommence or commence their direct causes
16 of action. As such, it would be inappropriate for this
17 debtor to provide the UCC's views on these issues. It's
18 because we are adverse to the Sacklers, very adverse, that
19 we're not doing this, not because we are somehow
20 (indiscernible).

21 He also explains, as I described before, that the
22 protective order keeps suggesting that it casts an
23 inappropriate shield to keep documents from public view.
24 Your Honor, I have a long quote from you where you actually
25 explained this to parties way back in January. I'm not

1 going to bother rereading it. I think the rest of us
2 understand quite well how discovery works in every case.

3 Finally on this point, the motion and the reply
4 totally, utterly, and completely, which is outrageous,
5 ignores the multi-month phase two mediation overseen by
6 former federal district judge Layn Phillips and Ken
7 Feinberg, who are indisputably two of the most highly-
8 regarded, experienced mediators in the country. Contrary to
9 the movant's utterly false and unsupportable claim that the
10 mediation focused on a "present and future" motion
11 (indiscernible) mediation, of which he could not know, I
12 don't really know where he decided (indiscernible), was in
13 fact focused on the past. Its principal purpose was to
14 address the strengths, weaknesses, and recoverability on the
15 claims that the debtors and the creditors have against the
16 Sacklers arising from their past conduct to what the right
17 settlement is to address those past claims.

18 He again ignores totally that it was not the
19 debtors and the special committee that ultimately reached
20 agreement with the Sacklers after 11 months of mediation, it
21 was the ad hoc committee with 23 attorneys general, dozens
22 of other state actors, and the MDL PEC. The UCC, who I
23 already described several times, the MSGE, and the four
24 independent (indiscernible) who negotiated opposite,
25 against, and reached a deal with the Sacklers. Every one of

1 those three other parties made that point strongly, clearly,
2 unambiguously in their objection. The response is zero. He
3 doesn't even bother in his reply brief to acknowledge that
4 he got the facts wrong. The deal was not cut by the special
5 committee, the deal was cut utterly independently by four
6 antagonistic, motivated -- I think actually all of them were
7 fiduciaries, because two were pretty much all governmental
8 entities and the other two were Chapter 11 fiduciaries.

9 He also totally fails to acknowledge that the
10 \$4.275 billion number that he says were birthed in sin was
11 the mediator's number. It wasn't the debtor's number, it
12 wasn't the special committee's number, it wasn't the UCC's
13 number, it wasn't the AHC's number, it wasn't the
14 (indiscernible) number, it was a joint proposal of two
15 mediators who spent almost a year on this case listening to
16 hundreds and hundreds of hours of presentation about the
17 Sackler's risk and liability and culpability and wealth and
18 everything who then said this is what we think is the right
19 number. Maybe they are corrupt (indiscernible).

20 Now let's talk about the law. Because he's pretty
21 much as strong on the law as he is on the facts. So, Your
22 Honor, I'm going to skip the whole pot on what relief he
23 actually asks for because I think we finally got that
24 clarified. There's a whole lot of points where the relief
25 he wants is radically different in different places,

1 including in Paragraph 17 of his reply, where he appears to
2 radically broaden the requested relief even over what was
3 originally sought in the extraordinary motion.

4 So now let's just go to the law. Let's start with
5 1104(c)(1), the interests of creditors. So 1104(c)(1) says
6 that you should appoint an examiner if it's in the interest
7 of creditors. Well, given that there are 614,000 creditors
8 in this case and there are 12 organized committees of
9 creditors and the fact that not a single other party on the
10 planet, including people who have been passionately adverse
11 to us nonstop for years have joined or supported the relief
12 I think pretty much tells you everything you need to know
13 about what everyone else in the entire case genuinely,
14 truly, and caringly believe is in the interest of creditors.

15 Moreover, Your Honor, the UCC (indiscernible),
16 they have the express support (indiscernible) to Professor
17 Lipson's motion of virtually every organized creditor group
18 in this case on the private side. And of course the AHC
19 speaks for the people (indiscernible) speaks on the public
20 side and the MSGE basically speaks for the balance.

21 Second, as we already discussed, it's only his
22 gross misunderstanding of how the original deal was cut that
23 we could have justified this motion whatsoever. And it is
24 false and it is unsupported.

25 Third, he concedes in Paragraph 77 of his original

1 motion that (indiscernible) duplicate work done by, dot,
2 dot, dot, key participants in these cases. That actually
3 was one of the factors for denying (indiscernible) when it
4 duplicates work already done.

5 He then claims, again, that the examiner could
6 deal with the nearly hundred-million page record in this
7 case, wouldn't need his own discovery, could minimize undue
8 delay and duplication. But that's of course not right,
9 because the nature of the wild accusations (indiscernible)
10 by Professor Lipson and (indiscernible) examiner or anyone
11 of quality would finally, you know, be there through
12 Professor Lipson's world view, finally let the world know
13 whether this all happened properly or not is not doing it in
14 a week or two or four or six. I wouldn't agree to take the
15 job. I don't think anybody (indiscernible) would take the
16 job unless they were given a massive period of time and a
17 massive budget. Because if that's the imprimatur, to use
18 his word, that the world hasn't gotten yet, which he agreed
19 was totally false, that obviously would require anybody
20 (indiscernible) with extraordinary effort.

21 Third, the costs of an examiner, including the
22 delay alone, would be terrible and massive. So many parties
23 have worked day and night to maintain the current schedule
24 and avoid a delay in confirmation to get the board
25 (indiscernible) the issue out to help (indiscernible) to

1 stop the fee burn, to tell the lawyers to go home and to
2 start savings lives. Delay alone, even a month's delay, is
3 millions and millions of dollars, and maybe more than that.

4 His only answer to the concern that a lot of good,
5 caring fiduciary people have for this is, oh, don't worry --
6 this is in Paragraph 43 of his reply -- it will -- it can
7 conclude, "ten days before the commencement of the
8 confirmation hearing". This is just poppycock.

9 First of all, ten days before the confirmation
10 hearing is a tiny number of weeks. Second of all, he
11 cleverly doesn't say when that confirmation hearing would
12 be. For sure if we adjourn the confirmation hearing a month
13 or two or three or five, maybe it could be done ten days
14 before. If it's going to happen in August, we'll have used
15 tens of millions of dollars. For someone who has actually
16 lived (indiscernible) cases Professor Lipson talks about, we
17 lost those examiners, I don't think so.

18 Now let's talk about (indiscernible) and the debt
19 threshold question. Once again -- and this just really was
20 highlighted by the colloquy of the Court -- I just found it
21 mystifying that when this Court actually read him the
22 provisions of the DOJ settlement, he insisted on trying to
23 maintain that this was a fixed debt. So let me educate here
24 as well.

25 This is not like any claim settlement. Claim

1 settlements do not give counterparties the right to the sin.
2 They do not contain multiple contingencies. They do not
3 allow creditors to produce alternative remedies of either
4 springing to a much higher dollar amount or rescinding and
5 suing and doing other things if multiple conditions are not
6 satisfied. They never (indiscernible). A typical claim
7 settlement (indiscernible) is very straightforward. If any
8 (indiscernible) you will have an allowed unsecured or
9 secured claim of X dollars, period. You have a claim
10 ticket, you have an anticipated distribution, whatever the
11 allow.

12 This claim looks nothing like that. Because the
13 DOJ settled early in the case -- or earlier in the case, it
14 wasn't actually that early -- when the contours of a plan
15 and its ultimate distribution could not be known. And even
16 if they didn't have a rescission right, which Your Honor
17 called him on correctly which he misdescribed in his
18 pleadings, they only said, no, they just sprang to a
19 different amount. Wrong. (indiscernible). But even once
20 again if I just pretend that his facts are (indiscernible)
21 and they merely (indiscernible) to choose between one of two
22 (indiscernible), it's still not fixed. The statute says
23 fixed, liquidated, and unsecured. And so if it's one of two
24 amounts depending on multiple contingencies -- and by the
25 say, it's the only claim in the entire (indiscernible) that

1 is even arguably, potentially, hypothetically maybe fixed
2 (indiscernible) the only one (indiscernible). It's just
3 not. Because if I either owe you \$5 or \$20. We have not
4 fixed the amount that is owed. It is subject to contingency
5 and therefore to fluctuation.

6 But again, that's the deal that we didn't cut. The
7 deal that we did cut gives them a rescission right based on
8 multiple contingences. And there's no universe in which
9 that extremely atypical claim settlement represents a fixed
10 amount.

11 I'm going to skip citing the legislative history
12 about fixed amount. There's a lot about balance sheets and
13 (indiscernible) debt (indiscernible) whole section was about
14 (indiscernible) were not unduly heard and the fact that many
15 of the cases that actually say (indiscernible) no
16 exceptions, say it in the public company context because
17 they are there to protect shareholders. I assume that
18 Professor Lipson and I also agree that the last thing either
19 one of us wants to (indiscernible) is protecting Purdue
20 shareholders.

21 Then, Your Honor, let's talk about the assumption.
22 Because I'm willing to keep giving him the benefit of the
23 doubt again and again and again because he still
24 (indiscernible). And now let's just pretend for a minute
25 that the DOJ (indiscernible). We filed a one-page agreement

1 with them that says you have a fixed, allowed, unsecured
2 claim of two-point-x billion dollars, period, end of story.
3 Right? Is it actually mandatory? I think the answer is no.

4 So let's explain. First of all, the legislative
5 history he doesn't tell you about is that it says that it
6 shall permit (indiscernible) to a (indiscernible) examiner
7 (indiscernible) where the court believes that it's
8 appropriate. Permit and where appropriate certainly don't
9 sound like the language of mandatory. It doesn't say the
10 require. It actually says permit.

11 Second of all, if you look at Paragraph 62 of his
12 motion, you might not be surprised to see that almost every
13 one of these cases is from the 1980s and 1990s, which ended
14 a very long time ago. Because what's actually happened in
15 the last twenty-something years is that court after court
16 has held that the as-is-appropriate language in 1104(c) in
17 fact gives the courts discretion to refuse to appoint an
18 examiner when it is inappropriate.

19 And this Court -- this Court (indiscernible)
20 originally (indiscernible) examiner. We actually think,
21 Your Honor, that you got it right back then, and you were
22 probably ahead of the opponent. Because what's happened
23 since then is that a great many courts have adopted a
24 similar approach. And I would note, by the way, that the
25 (indiscernible) actually might well also rule

1 (indiscernible) right now, even Judge Patterson. Because he
2 said, you know, I didn't see enough in there on waiver and
3 laches. He did not actually rule out the possibility of
4 (indiscernible) and he actually (indiscernible) on the
5 public company context. So what's happened in the last 20
6 years which we don't (indiscernible) with Professor Lipson's
7 recitation of the law.

8 In re Dewey & LeBeouf, 478 B.R. 627, 639, Judge
9 Glenn declined to appoint an examiner notwithstanding the
10 clear meeting of the debt threshold because, among other
11 things, and I quote, "An appropriate and sufficient
12 investigation has already been conducted supporting approval
13 of the settlement". Judge Glenn ultimately concluded that
14 the motion was, "filed for improper purpose".

15 In Spansion, a 2012 Delaware case, 426 B.R. 114 at
16 127, Judge Carey declined to appoint an examiner, even
17 though the debt threshold had unquestionably been met,
18 because, quote -- and this is going to sound pretty familiar
19 -- "Creditors' committees and various ad hoc committees
20 vigorously represented unsecured creditors... and all
21 parties had ample opportunity to conduct and have conducted
22 extensive discovery to investigate the debtors". They
23 didn't spend over a hundred million dollars because they
24 (indiscernible), and that was good enough. Judge Carey
25 found, and I quote, "No sound purpose in appointing an

1 examiner only to significantly limit the examiner's role
2 when there exists insufficient basis for an investigation",
3 426 B.R. 114 at 127.

4 Then there's Innkeepers, where Judge Chapman held
5 that, "A number of course have entirely declined to find it
6 in (indiscernible) is mandatory" and found that, "because
7 the request for the appointment of examiner has increasingly
8 been used as a litigation tactic by parties unhappy with the
9 status or conduct of a case... Courts have quite
10 understandably and properly, I believe, pushed back and
11 declined to appoint an examiner to join in otherwise
12 (indiscernible) in which the many combatants are well-armed
13 and highly motivated". If this is not a case with an
14 unprecedented number of well-armed and highly-motivated
15 combatants, including almost every government in our
16 country, I don't know what case is.

17 And, Your Honor, Judge Glenn summed it up in
18 ResCap. The appointment of -- this is a quote also. And
19 I'll always quote, I won't paraphrase. We don't make up.
20 "The appointment of an examiner would be inappropriate if
21 the motion was filed with improper (indiscernible) such as a
22 litigation (indiscernible) or if there was no factual basis
23 to conclude that an investigation needs to be conducted or
24 if an appropriate and thorough investigation has already
25 been conducted or is nearly complete by a debtor's committee

1 or a governmental entity." ResCap, 474 B.R. 112
2 (indiscernible). We hit every possible alternative within
3 every possible alternative laid out by Judge Glenn in the
4 ResCap decision.

5 Professor Lipson addresses not one of these cases
6 in his reply, not one. He talks only about (indiscernible),
7 which, frankly, I could have spent five minutes. I walked
8 you through why he was totally wrong even on the one case he
9 tried to fend off. But I'll just give him that
10 (indiscernible) and let's just say that every other case
11 that he failed to deal with is insanely (indiscernible).

12 This is not a case -- and I actually want to be
13 generous to Professor Lipson for a minute. This is not I
14 think a fact pattern of the type of improper purpose that
15 courts are normally concerned about where parties
16 (indiscernible) and is unhappy with how the whole case is
17 going and maybe trying to sort of, you know, flip the apple
18 cart (indiscernible). I understand that he is an academic
19 who has a view of the bankruptcy and the Bankruptcy Code and
20 that he actually believes that this case is an example of
21 the way things should not go. The problem is none of the
22 rest of us who have lived it every day (indiscernible) and
23 the number of people who have acted improperly and
24 (indiscernible) for an examination to be warranted here is
25 (indiscernible) and it really is on some level not the type

1 of litigation tactic (indiscernible) I certainly acknowledge
2 that Professor Lipson Mr. Jackson were not the typical
3 litigants. The reality is it's kind of a litigation tactic.
4 Because as I said before, there are procedures ordered by
5 this court for (indiscernible) like challenge the arm's
6 length nature of the negotiations. It is one of the prongs
7 we have to satisfy (indiscernible).

8 And I talked before about the fact that someone
9 else who is very adverse to us in this case, the NCSG, is
10 beginning from the same question, but they are doing it
11 properly, not attempting (indiscernible) that all parties
12 agreed to and after extensive negotiation no party
13 (indiscernible) Professor Lipson, objected to. But
14 Professor Lipson and Mr. Jackson believe that the
15 shareholder settlement and the special committee did not do
16 things (indiscernible) to think they should litigate it at
17 confirmation. What they can't do is try to force the
18 examiner none of us (indiscernible) to do it
19 (indiscernible).

20 Finally, I need to quickly address (indiscernible)
21 which Professor Lipson perplexingly rests a great deal of
22 his argument (indiscernible). But let's just say that
23 (indiscernible) actually did. In Cenevo, this Court
24 acknowledge that there were, "clearly cases" under
25 1104(c) (2) (indiscernible) discussion to refuse to appoint

1 an examiner where the motion, "happens towards the end of
2 the case" check, would be a total waste of time, check,
3 (indiscernible). Again, not intended in the way our
4 litigants might. I absolutely understand that. But
5 nonetheless similar outcome.

6 March 6th hearing, transcript at 86
7 (indiscernible) to 87, Line 19. Well, actually
8 (indiscernible), which we are totally comfortable with.
9 Because I don't think this Court makes too many mistakes
10 that I know of, is that they filed with the (indiscernible)
11 motion ten days after the petition date, not 19 months after
12 the petition date, where all parties agreed there will be
13 some formal investigation by someone was required. It's the
14 exact, exact, exact other end of the spectrum from this
15 case.

16 Then finally, Your Honor, is the concept of waiver
17 or laches. Professor Lipson, in his reply, seems to allege
18 that laches only applies sort of within the statute of
19 limitations and it has no applicability as long as the
20 proposal was made (indiscernible) before the
21 (indiscernible). It's just not what the cases say. It's
22 interesting, but you can't make up the law. You need to
23 actually read the cases and accurately represent what they
24 say. We have the cases on Page 26 of our breach. And
25 (indiscernible) irrespective of the mandatory nature of

1 1104, a party in interest can be deemed and often is deemed
2 to waive its rights to seek an examiner and a delay even if
3 the predicates of 1104(c)(2) were satisfied. Other than
4 that (indiscernible) he doesn't even touch the caselaw.

5 In (indiscernible), Hearing Transcript 72 filed
6 December 2019, the Court held, quote -- I'm sorry, the
7 movant, "Waived its right to request an examiner by
8 waiving...almost two years after the petition date...and
9 less than two months before the confirmation hearing." It's
10 like (indiscernible) that case (indiscernible) the motion be
11 excused.

12 Professor Lipson has been very intellectually
13 interested in (indiscernible) since the beginning. And I
14 don't blame him. They're actually difficult, challenging,
15 complex cases that raise tremendous issues of social policy
16 in the bankruptcy system. But that involvement and focus
17 actually proves fatal under the governing cases.

18 In November 2019, Professor Lipson himself, at the
19 time with no client, essentially writing as an
20 (indiscernible) academic who believed that (indiscernible)
21 to the U.S. Trustee and other parties (indiscernible)
22 requesting an examiner. And that request obviously did not
23 bear proof because the U.S. Trustee and the Department of
24 Justice for the United States of America decided not to
25 accept his invitation and seek an examiner.

1 For 19 months he did nothing to follow up or to
2 try to press forward (indiscernible) examiner
3 (indiscernible). Obviously he lectured and he spoke, but
4 that's not what I mean. I mean appearing in a court of law
5 seeking relief from (indiscernible).

6 In July of 2020, his now-client submitted a
7 (indiscernible) requesting an examiner. As we have been
8 with many individual and pro se plaintiffs, I think
9 consistently every time, this Court was responsive and
10 gracious in issuing invitation to treat the letter as a
11 motion. Mr. Jackson, for reasons that may well be utterly
12 (indiscernible) and completely understandable, chose not to
13 do that. Perhaps recognizing this -- and this is another
14 just astonishing (indiscernible), and I think he really does
15 not realize how unkind/vicious his (indiscernible) can be.
16 He tries to blame the Court for not (indiscernible). He
17 basically says the Court warned counsel to stop sending
18 these letters and warning counsel (indiscernible), reply at
19 Paragraph 39. This is unbelievable. He's basically saying
20 this Court tried to bully me (indiscernible) the examiner.
21 It's outrageous. The courts are not supposed to be copied
22 on the letters that people sent to the DOJ or journalists.
23 It's unthinkable. I know no one would do that. There are
24 courts that say, and I think (indiscernible) declaration is
25 about seven words long, please stop copying me on these

1 emails. Like, who copies a court on emails like this?
2 Hello? And read the transcript. I think a lot of what
3 you're thinking about and asking about has already been put
4 on the record (indiscernible). To suggest now that the
5 court bullied him in some way out of (indiscernible) and
6 that's excusable neglect is just unbelievable.

7 Then he claims next, and I quote -- I'm sorry, let
8 me (indiscernible), is the (indiscernible) should be deemed
9 excusable by, "hope that the debtor's (indiscernible)
10 statement would provide some answers to the
11 (indiscernible)," Paragraph 31 of the reply.

12 Well, Your Honor, I've already (indiscernible)
13 someone. We think the disclosure statement advances
14 everything that it needs to. Obviously every other party in
15 the case does as well since we resolved every single
16 objection, and the Court does as well. If Professor Lipson
17 (indiscernible) needed to provide more on these topics, he
18 should have called us like everyone else did and said, hey,
19 I think you need more (indiscernible) or you know what, I
20 really care, as an academic who cares about the integrity of
21 the bankruptcy system. And I think if you don't put in more
22 stuff on the following three topics, questions will remain.
23 And you know what we would have done? We would have
24 (indiscernible). Because we added dozens and dozens of
25 pages to the disclosure statement basically requested by

1 anybody. Because Davis Polk has a very specific approach,
2 which is more (indiscernible) is great in the disclosure
3 statement. Almost anything anybody else put in to say,
4 well, what about this, what about that, we try to
5 accommodate. But it just didn't happen. Instead, we got
6 ambushed with an examiner motion, but we have no idea what's
7 coming based on facts they've made up.

8 So with this, let me close. It is only when you
9 make up facts and ignore the actual facts that are clear on
10 the record of the case and many documents filed in the case
11 that motion papers like this could even be signed. Facts
12 that he makes up like, one, the initial deal was cut between
13 the Sacklers and the Special Committee, and that needs to be
14 investigated. False. Two, there was no MDL mediation
15 (indiscernible). False. But the AGs and the PEC are not
16 actually (indiscernible) opposite the Sacklers in the
17 initial framework. False. The original framework
18 inexorably foreordained, and I quoted it (indiscernible) to
19 you, the final settlement reached almost two years later by
20 totally different parties, two of whom did not exist when
21 the deal was originally cut. False. That the UCC took a
22 (indiscernible) for the Sacklers and didn't do its job, and
23 I quoted his words, and I'm not going to let him
24 (indiscernible) like so many other of these factual
25 assertions in the pleading, totally false, slanderous, and

1 outrageous (indiscernible) to the victims on the UCC who
2 have done this as a volunteer for two years.

3 Next, for the almost year-long second mediation
4 before Judge Phillips and Ken Feinberg were, quote, "Not
5 about the past". False. 4275 may not be okay
6 (indiscernible) Ken Feinberg. False.

7 Perhaps Professor Lipson either lost sight of or
8 is not aware of the fact that Rule 9011(b)(3) details
9 representations to the court, provides for the following.
10 By presenting to the court, whether by signing, filing,
11 submitting, or later advocating a petition, pleading,
12 written motion, or other paper, an attorney or unrepresented
13 party is certifying that to the best of the person's
14 knowledge, information, and belief formed after an inquiry
15 reasonable under the circumstances. Three, the allegations
16 and other factual contentions have evidentiary support or
17 are specifically so identified are unlikely to have
18 evidentiary support after a reasonable opportunity for
19 further investigation and discovery.

20 This case has over 600,000 creditors. It is with
21 very good reason not a single one of them, so many of whom
22 have suffered unthinkable, devastating losses, support this
23 motion where virtually every single organized group opposes
24 it. Professor Lipson, with very good reason, stands
25 utterly, completely alone. Because the estate is actually

1 paying the fees of the UCC, the MSGE, and the AHC, Professor
2 Lipson has already diverted hundreds of thousands of dollars
3 and probably more from lifesaving, critically-needed
4 abatement to totally waste in legal fees.

5 His latest misguided, ill-informed, and
6 inappropriate foray runs the risk of delaying and diverting
7 millions of dollars and more with terrible, unthinkable
8 (indiscernible) costs to opioid victims and, ironically, to
9 the human and dignity value he purported to champion in his
10 (indiscernible) lecture that the rest of us are desperately
11 trying to uphold and validate.

12 For these reasons, Your Honor, we ask that this
13 motion be denied.

14 THE COURT: Okay. Mr. Lipson, I'll give you a
15 chance to reply, but why don't I hear from the other
16 objectors first. And I have reviewed all the objections, so
17 you should assume that.

18 MR. LIPSON: I would like to reply when I can,
19 Your Honor.

20 MR. ECKSTEIN: Your Honor, Good afternoon. This
21 is Kenneth Eckstein for Kramer Levin. I hope Your Honor can
22 year me

23 THE COURT: Yes, and see you.

24 MR. ECKSTEIN: Thank you. Your Honor, Kenneth
25 Eckstein for Kramer Levin, co-counsel for the Ad Hoc

1 Committee of governmental claimants in the he case.

2 Your Honor, we filed an objection to the motion,
3 which I'm sure, as Your Honor indicted, you have had a
4 chance to review. And we've all had the benefit of Mr.
5 Huebner's comprehensive and thorough presentation.

6 I'm hesitant to repeat. And to the extent Your
7 Honor believes that you've already heard particular points,
8 please let me know and I will try to shorten my comments as
9 much as possible because I am mindful of the time. I would
10 like just to make a handful of points that I think are
11 particularly important in connection with today's motion.

12 First, Your Honor, I also wanted to bring to the
13 Court's attention the quote that Mr. Huebner referred to
14 from the decision by Judge Glenn in the Residential Capital
15 case, which I think in some respects captures the legal
16 standard that the Court abided by in this case. And that is
17 that the appointment of an examiner would be inappropriate
18 if, among other things, there is no factual basis to
19 conclude that an investigation needs to be conducted or if
20 an appropriate and thorough investigation has already been
21 conducted, or is nearly completed by a creditor's committee
22 or a governmental agency, 474 B.R. 112, 121. We think those
23 are the appropriate standards that should guide today's
24 consideration and we think it is well-established that both
25 of the standards that have been articulated in the

1 Residential Capital case resonate in this case and warrant
2 denying the motion.

3 The movants have effectively conceded and an
4 appropriate and thorough investigation has already been
5 conducted in this case by the Official Creditor's Committee
6 with the active support of the NCSG, the Ad Hoc Committee,
7 and the MSGE, each of whom have been actively involved for
8 the last 18 months in a thorough investigation that has been
9 led most effectively by the Creditor's Committee.

10 Instead, Professor Lipson retreats to arguing that
11 the UCC investigation has not been sufficiently publicized
12 and in order to shoehorn into the argument that there is a
13 factual basis for an examination in this case, he argues
14 that we need to better understand the motivation or
15 influences that the Sacklers may have had over the special
16 committee and the board.

17 I think Your Honor has already heard Mr. Huebner
18 articulate very cogently that there is simply no basis
19 whatsoever for the (indiscernible) and there is clearly no
20 evidence in the record. And Your Honor has already heard
21 extensive presentations that the evidence is to the
22 contrary.

23 Professor Lipson tries to insinuate that this was
24 a case where pre-petition the Debtor's board and the Sackler
25 family privately and secretly negotiated a settlement that

1 was dropped on the parties in interest to the creditors as
2 the predicate for a Chapter 11 case. I think as Your Honor
3 already has heard, nothing could be further from the truth.

4 As Your Honor knows, and as the pleadings that
5 were submitted at the outset of this case and throughout
6 have reflected, these cases were preceded by extensive,
7 multi-year litigation in federal and state courts throughout
8 the country pursued by the state's attorneys general for
9 nearly every state in the country, plus hundreds of local
10 governments and Indian tribes that were actively involved in
11 a coordinated litigation. There was a multi-district
12 litigation based in Ohio led by a vigorous plaintiff's
13 executive committee. These parties coordinated massive pre-
14 bankruptcy discovery and investigations leading up to
15 multiple trials against Purdue and the Sacklers.

16 The governments, consenting and non-consenting
17 states, participated in a year-long intensive negotiation
18 against Purdue and the Sacklers to explore the possibility
19 of settlement. There was nothing inevitable or pre-ordained
20 about those negotiations. The debtors participated in those
21 negotiations with the Sacklers, and as Mr. Huebner has
22 explained, they were adverse to the governmental entities
23 and the PEC.

24 The negotiations were supervise by the MDL judge,
25 district Judge Polster, and by a highly-regarded mediator at

1 the time. These negotiations were intensive and were quite
2 adversarial. As Your Honor knows, the prepetition
3 negotiations ultimately resulted in a settlement framework.
4 The settlement framework had the support of the members of
5 the Ad Hoc Committee and to this day remains opposed by the
6 non-consenting states. There was no restructuring support
7 agreement, there was no definitive agreement.

8 But in October of 2019, there was a settlement
9 term sheet. The settlement term sheet was not binding. It
10 merely indicated that the parties who supported the
11 settlement term sheet would work to see whether they could
12 arrive at a settlement that would be the basis for a plan of
13 reorganization.

14 At the outset of the case, the settlement term
15 sheet was pursued in conjunction with an undertaking by the
16 Creditor's Committee to pursue an extensive investigation
17 during this Chapter 11 case that had the active support of
18 the non-consenting states, the Ad Hoc Committee, and the
19 MSGE. And as Your Honor knows, there was no steps taken by
20 any parties in this case to commit to a settlement in this
21 case until that investigation was, if not completed, was
22 extensively explored.

23 Your Honor, there is no basis to suggest that the
24 Debtor's board drove the process and that there was no
25 alternative to settlement. Up until November 2020, the UCC,

1 the Ad Hoc Committee, and the non-consenting states, as well
2 as the MSGE, were actively considering a no-settlement plan.
3 And that alternative remains real even today if this deal
4 does not ultimately come together. That has always been a
5 real alternative. There was no inevitability of a
6 settlement. In fact, throughout this process, I believe
7 every party that has been involved in this case has had
8 great concerns about whether or not we ultimately would be
9 able to achieve a settlement that each of us could recommend
10 to our clients.

11 Your Honor, it is the case that the Ad Hoc
12 Committee continues to prefer pursuing a settlement rather
13 than endless, unpredictable litigation that will go on for
14 years and that ultimately at the end will in all likelihood
15 have to return back to a settlement structure. But that is
16 an issue that ultimately the Court will have to consider in
17 connection with confirmation.

18 The fact that the Sacklers will receive a release
19 in exchange for the settlement, if that settlement is
20 approved, is certainly not remarkable or surprising and is
21 certainly not a (indiscernible) for the examiner. That is
22 essentially what the Court will have to consider in making a
23 determination of whether or not to approve the settlement
24 and to approve the releases that are embodied in the plan of
25 reorganization.

1 The fact that the UCC has conducted a thorough and
2 rigorous investigation -- even the movant acknowledged has
3 been thorough and has been complete. And the fact that he
4 could like more disclosure belies the fact that we just
5 finished an extensive, multi-day disclosure statement
6 hearing where, as Mr. Huebner indicated, the Debtor was
7 prepared to accept all suggestions for additions, resisted
8 essentially nothing. And Professor Lipson, frankly, should
9 have, if he wanted to have more disclosure, participated
10 more productively and constructively in the disclosure
11 statement process and would have actually achieved more
12 disclosure if he felt that there was something more to say.

13 As we know, there will be an unprecedented public
14 repository of documents. And while Professor Lipson is
15 complaining about the fact that that will take place post-
16 confirmation, that also I think has been explained
17 extensively and is completely logical and in fact will be
18 the first time in my experience that something as
19 unprecedented as essentially a public library of the
20 discovery will be created as part of a plan of
21 reorganization.

22 And finally, there will be a confirmation hearing
23 where all parties in interest will have an opportunity to
24 examine and listen to witnesses and where the Court is going
25 to have an opportunity and a responsibility to determine

1 whether or not there is a basis to approve a settlement in
2 this case.

3 There is simply no basis whatsoever for the
4 appointment of an examiner to perform any role in this case
5 at what really is the eleventh hour. This case has been
6 unprecedented in so many respects, but the most important is
7 that there has been a massive 18-month investigation that
8 has been participated in by multiple parties acting on
9 behalf of hundreds and hundreds of thousands of creditors,
10 most of them private. There is at this point in time a
11 proposed plan that is proceeding to confirmation in a matter
12 of weeks, and we believe that there is no justification
13 under the facts or the law for the appointment of an
14 examiner to do what Mr. Lipson has now tried to explain, but
15 I still am not completely clear makes a lot of sense. But
16 regardless of the justification that he's trying to
17 articulate in response to the Court's questions, we believe
18 he has failed and we believe that the caselaw and the facts
19 of this case strongly and compellingly support this Court
20 denying the motion. Thank you, Your Honor.

21 THE COURT: Okay. Thank you.

22 MR. CRAWFORD: Your Honor, Monte Crawford from
23 Caplin & Drysdale on behalf of the MSGE group.

24 THE COURT: Afternoon.

25 MR. CRAWFORD: Good afternoon. We filed an

1 opposition, and I will try not to repeat those arguments
2 here or the arguments raised above. But we would like to
3 highlight a few points specific to the MSGE group.

4 The motion does fail to understand how the parties
5 arrived at the (indiscernible) and ignores the substantial
6 work done by the MSGE group and (indiscernible) parties, and
7 it should be denied.

8 The motion to appoint examiner does not even
9 mention the MSGE group or the Ad Hoc Committee or others.
10 This failure in many ways demonstrates the fundamental flaw
11 of the logic of the motion. Movants (indiscernible)
12 examiner (indiscernible) committee was in fact independent
13 when we approved the settlement agreement. But in addition
14 to the points raised by Mr. Huebner, the current settlement
15 is simply different from the original settlement framework.

16 The MSGE group arrived at its decision
17 (indiscernible) and independent deliberation and with the
18 benefit of a massive amount of (indiscernible) and
19 considered (indiscernible) and in the many pre-petition
20 cases (indiscernible) by the MSGE group's members against
21 the debtors and the Sacklers. Its review and negotiation
22 helped increase the settlement amount from \$3 billion to
23 \$4.275 billion. It gave no weight (indiscernible)
24 settlement framework in its decision (indiscernible).

25 It's also important to note that (indiscernible)

1 the AHC, the DOJ, and the NCSG, apart and independent from
2 the Debtors and from each other, and each a substantial
3 party in interest in this bankruptcy. And this undercuts
4 the entire justification of the motion.

5 The motion for appointment of an examiner should
6 be denied, as the appointment of an examiner is simply not
7 appropriate under Section 1104(c), it's not in the best
8 interest of the creditors, the public, or the estates.
9 (indiscernible). There are over 100,000 personal injury
10 claimants and these are in addition to those severed by
11 (indiscernible). It is telling none of these groups are
12 seeking an examiner and none of these groups has come
13 forward to support this motion. There is not fiduciary
14 (indiscernible).

15 And the reason no one has (indiscernible) an
16 examiner is that those investigations (indiscernible)
17 investigations (indiscernible) and would impose substantial
18 (indiscernible) and payments to (indiscernible).
19 (indiscernible). We join in (indiscernible) that we agree
20 (indiscernible) clearly supports the view that this Court
21 has discretion to whether or not to appoint an examiner.
22 And we also agree that the doctrine of laches provides an
23 independent ground for this Court to deny the request for
24 (indiscernible).

25 In his reply brief, (indiscernible) that an

1 examiner is necessary because if the Board was not
2 independent, then it would not be clear creditors have a
3 meaningful choice (indiscernible). And he argues it would
4 not be clear the UCC or other groups that are litigating
5 (indiscernible).

6 But to echo a point made by Your Honor earlier,
7 throughout the mediation and negotiation, the MSGE group
8 always retained the ability to disagree and alter the
9 settlement. And the MSGE group always maintained the threat
10 of litigation (indiscernible). And of course the
11 (indiscernible) did in fact change (indiscernible).

12 And for these reasons, the MSGE respectfully
13 requests this Court deny the motion.

14 THE COURT: Okay. Thank you.

15 MR. PREIS: Your Honor, Arik Preis from Akin Gump
16 Strauss Hauer & Feld on behalf of the Official Creditor's
17 Committee. May I be heard?

18 THE COURT: Sure. Thank you.

19 MR. PREIS: I know that you've heard now an hour-
20 and-a-half or so of argument, so I'm only going to focus on
21 (indiscernible) Mr. Lipson mentioned about the Creditor's
22 Committee.

23 First, I want to make -- I'm going to make ten
24 points. The first is the following. I want to take a
25 moment to talk about Peter Jackson, the moving party. Mr.

1 Jackson lost his daughter, Emily, almost exactly 15 years
2 ago to an overdose from taking one OxyContin prescribed for
3 her uncle. Putting aside the motion in this case and the
4 opioid epidemic, Mr. Jackson's loss of an 18-year-old
5 daughter three days from the beginning of college should be
6 enough to make everyone stop for a moment and cherish the
7 time we have with our loved ones.

8 Point two, Mr. Jackson now dedicates his life to
9 being an advocate for the reform of prescription opioids.
10 In this way, he is like some of the individual members of
11 the UCC who also dedicate their lives to fighting the opioid
12 epidemic, whether it be through victim advocacy, counseling,
13 or helping the families of those who have lost loved ones.

14 Point three, given our personal views of Mr.
15 Jackson, it's very difficult to take an emotional and
16 passionate and angry stance against him. And even worse, to
17 be on the same side as Purdue in this proceeding. And it is
18 a testament to both the seriousness with which the UCC takes
19 its fiduciary duties and the unfortunate and in many ways
20 just plain wrong statements that Mr. Lipson's pleading make,
21 but it's exactly the position we found ourselves in.

22 Point four. As we noted in our papers, the UCC is
23 supported in its objection by the following four groups.
24 The Ad Hoc Group of Hospitals, the Ad Hoc Group of NAS
25 Children, the TPP mediation participants, and the rate payer

1 mediation participants.

2 Point five, as you noted, Mr. Lipson was a bit all
3 over the place in his pleadings about what he wanted. I
4 know he said earlier the scope of what he wanted as examiner
5 was to seek to examine the independence of the special
6 committee. And if you think about it in biblical terms, he
7 kind of believes that everything stems from the original
8 decision to enter into the settlement framework by the
9 special committee, which didn't happen. And so it's kind of
10 like everything that's happened in the case is the fruit of
11 the poisonous tree.

12 He also wants an examiner -- and I don't want to
13 let this go because he says it five times in his reply -- he
14 says he wants the examiner to independently assure the
15 integrity of the reorganization process. He mentions those
16 words five times in his reply. He later concedes that the
17 UCC's independence is not in question, in Paragraph 31. But
18 it's hard to understand a lot of what he says without
19 assuming he's questioning everybody's independence in the
20 case and integrity, including every state, every
21 municipality, tribe, public claimant, private claimant, an
22 of course the Debtors.

23 Third, he wants an examiner -- and I don't want to
24 let this go -- to evaluate the work that has been done by
25 all the other parties in the case and publicly report on the

1 analysis. This kind of has the feel of examining the
2 examiner who examined the examiner. I'll address each of
3 these in turn.

4 His first point stems from the unholy settlement
5 framework entered into between the Debtors and the Sacklers
6 that didn't happen at a time when the Sacklers controlled
7 the Debtors, which Mr. Huebner explained. The facts don't
8 bare that out.

9 On the public side, let's look at the original
10 settlement framework. The states and the PEC entered into
11 that deal, as Mr. Eckstein and Mr. Huebner pointed out. But
12 furthermore, it's beyond comprehension for anybody who has
13 spent even a moment with any of the AGs in this case to
14 think that 23 sovereigns who like to call themselves
15 sovereigns, or even aware of them for that matter, would
16 agreed to a deal with the Sacklers based on the Special
17 Committee's recommendation. If anything -- and I mean this
18 in the kindest way possible to everyone involved -- the
19 approval of a special committee of just about anything in
20 this case would have been a reason for people to question
21 it. Anyone who thinks otherwise has spent zero time with
22 the state AGs.

23 As it relates to the UCC, we weren't involved in
24 the pre-petition investigation. When we were informed, we
25 never once felt constrained by the settlement agreement. We

1 did our investigation as if it didn't exist. We don't need
2 to talk about the breadth of our investigation because
3 that's in our letter and people have mentioned it. When we
4 felt we had reached sufficient diligence -- and this gets to
5 what Mr. Lipson put in his reply papers -- we put together a
6 rather long analysis, something like 200 pages or so, and
7 presented it to the mediation parties and non-consenting
8 states, the Ad Hoc Group, the Debtors, the MSGE, and the
9 mediators. We fielded questions from all the groups in our
10 analysis. And after that, we negotiated. We negotiated
11 unconstrained by settlement framework, by the Debtors, or by
12 Special Committee. The only thing we were constrained by,
13 and we say it in our letter, was the bankruptcy process in
14 phase one of the mediation. But that's not a bankruptcy
15 issue. That's more about the opioid epidemic and the
16 reality of needing to abate the crisis and compensate
17 victims, not about the bankruptcy issues or about the
18 decision not to -- agree not to appoint an examiner or seek
19 a trustee.

20 And to be clear, we absolutely, one thousand
21 percent were ready to file a motion seeking standing to
22 prosecute the estate cause of action against the Sacklers.
23 And we spent hundreds of hours debating with numerous
24 parties whether seeking to lift the injunction and go full-
25 bore against the Sacklers was the right outcome for this

1 situation. Indeed, Mr. Lipson, we filed not one, but two
2 briefs which have been largely unredacted seeking to compel
3 the production of privileged documents. In those briefs, we
4 laid out some of our analysis that ultimately would have
5 been part of any standing motion. And we ultimately made
6 the decision that we did based on looking at every facet of
7 this situation.

8 But I can assure you we never once, never, never,
9 never looked at the settlement framework as something we
10 needed to work within, nor did we ever base anything we did
11 on what the Special Committee did. And so while we were not a
12 sovereign like the states, we carried with us a fiduciary
13 duty to every single unsecured creditor in this case, which
14 includes sovereigns just as much as it includes individuals
15 like Peter Jackson.

16 Point seven. Mr. Lipson states in his reply brief
17 that he wants an examiner to independently assure the
18 integrity of the reorganization process. We, the UCC, are
19 part of that process. Indeed, an important part. We take
20 his statement to mean an examiner would be necessary to
21 assure, among other things, the integrity of the UCC, its
22 members, and its work. For the life of me, I have no idea
23 what that means or how Mr. Lipson, without ever once calling
24 me or reaching out to talk to the UCC or its members, can
25 come to this conclusion that the UCC's integrity needs to be

1 independently assured. It's instructed to remember that the
2 UCC contains, among other things, four individuals who want
3 nothing more than to take every last dollar, if not more
4 than every last dollar, from the Sacklers and who have
5 fought very hard to make sure the UCC satisfies itself and
6 uncovers every single one. And to (indiscernible) opioid
7 litigants who, while perhaps less emotional, want nothing
8 less.

9 And also the UCC contains three members who take
10 their fiduciary duties very seriously but who are not opioid
11 litigants. And we have three ex officio members, a county,
12 a (indiscernible) district, and two Native American tribes,
13 who care deeply about the cases and every single one of the
14 issues associated with them.

15 For Mr. Lipson to question the integrity of that
16 group of people and institutions with whom he never asked to
17 spend a moment with or talk to is not just insulting, it's
18 careless.

19 Point eight. It seems that Mr. Lipson wants
20 someone to examine the work that was done by the UCC. He
21 says so in Paragraph 37 of his reply brief. This feels a
22 little bit academic. Basically everybody in this case has
23 examined (indiscernible). The Sacklers -- sorry, the states
24 examined the Sacklers pre-bankruptcy. We investigated the
25 Debtors and the Sacklers and the estate causes of action

1 post-bankruptcy. The non-consenting states have examined
2 all these things. So one party examined X, the various
3 parties examined that, and then various parties examined all
4 of that and then some. Now Mr. Lipson wants someone to come
5 in and examine the examinations? Will someone then be
6 needed to come in and examine the examination done by the
7 examiner to make sure that it has integrity? At what point
8 does this end?

9 Point nine. And this -- and, Judge, you hit on
10 this earlier. Mr. Lipson seems to think that an examiner is
11 just going to review the work done and then publicly file
12 everything he found, everything that the examiner found. We
13 are dumbfounded by this. Would the examiner not be found by
14 the protective order? Is he going to run roughshod over the
15 protective order in some way that we weren't when we were
16 able to un-redact, along with the (indiscernible), a whole
17 bunch of (indiscernible) privileges motion?

18 My last point. Mr. Lipson is banking on the fact
19 that this Court will feel compelled to appoint an examiner
20 by virtue of the wording of the statute.

21 Messrs. Huebner, Eckstein, and Crawford have all
22 pointed out to you that many courts have determined that
23 wording of the statute does not make appointment of the
24 examiner mandatory in all circumstances, and that based on
25 the facts in this case, a court can determine not to appoint

1 an examiner at all.

2 They've also pointed you to the laches argument.
3 We agree obviously with the points they made and would urge
4 the Court not to spend even a penny of this estate
5 appointing an examiner.

6 Thank you, Your Honor.

7 THE COURT: Okay, thanks. Did anyone else want to
8 speak in opposition to the motion or on the motion other
9 than Mr. Lipson in brief response?

10 Okay, why don't you go ahead, Mr. Lipson?

11 MR. LIPSON: Thank you, Your Honor. So I want to
12 make four points. The first is that a great bulk of what we
13 have just heard has nothing to do with our motion.
14 Rejectors attack me, they attack my work as an academic,
15 they focus on their own integrity. They protest a great
16 deal. They completely distort the relief that we want and
17 the reasons for seeking it. But this is not about me, and
18 this is not about them. This is about the fact that there
19 are problems in the factual record that they have not
20 addressed. They have not in any way addressed any of the
21 concerns that we have raised.

22 Number one, the Debtors themselves have said in
23 order to justify the preliminary injunction, they were and
24 are inextricably intertwined with the Sacklers. They and
25 their counsel are parties to or have been parties to joint

1 defense of litigants and common interest agreements with the
2 Sacklers.

3 THE COURT: Can I interrupt you?

4 MR. LIPSON: And -- and --

5 THE COURT: Can I -- let me --

6 MR. LIPSON: And to this day --

7 THE COURT: I can't let these to points -- no,
8 please. I cannot let these two points go by.

9 When you say inextricably intertwined, are you
10 actually alleging that that includes management or control
11 of the Debtors post-bankruptcy? Are you actually alleging
12 that?

13 MR. LIPSON: No. Your Honor, I don't know what it
14 means.

15 THE COURT: Okay.

16 MR. LIPSON: That's the point.

17 THE COURT: Yeah, you don't know what it means.
18 But you're not alleging that because you have no evidence of
19 that. Right?

20 MR. LIPSON: We have the Debtor's own admissions.
21 So all we have to do --

22 THE COURT: No, no. The debtor -- honestly. You
23 believe that that admission applies to the post-bankruptcy
24 period as far as management or control of the debtors? Did
25 you read the papers? Did you see anything about interfering

1 with management? That is a common ground for an injunction
2 to protect third parties, i.e. you can't sue management or
3 the Board because they are active in running the company.
4 Did you see that in the pleadings?

5 MR. LIPSON: No, but that's not --

6 THE COURT: No. So do you think it might be a
7 logical inference that the inextricable nature that they're
8 referring to is with regard to the claims against both of
9 them and the source of recovery and the fact that there
10 would be inevitably the Debtors pulled into the litigation
11 against the Sacklers? That didn't jump out to you as the
12 logical inference?

13 MR. LIPSON: That's certainly an inference, Your
14 Honor --

15 THE COURT: Is there any other -- is there any
16 other, given the fact that they did not allege and
17 everything that you have heard today belies the assertion
18 that the Sacklers have any role in running these debtors
19 post-bankruptcy?

20 MR. LIPSON: We are not saying that they ran the
21 debtors post-bankruptcy --

22 THE COURT: Any role whatsoever, whatsoever,
23 including in respect of the most important aspect,
24 controlling in any way the entry into the settlement
25 agreement?

1 MR. LIPSON: Your Honor, we are --

2 THE COURT: Answer my question. Yes or no. Do
3 you have any basis to assert that fact?

4 MR. LIPSON: Which fact, that they managed the
5 debtors?

6 THE COURT: That they had any role post-petition
7 in running the debtors, including, without limitation with
8 regard to the debtor's decision to enter into and support
9 the plan?

10 MR. LIPSON: With respect to running the debtors,
11 no. But that's not the concern --

12 THE COURT: And finish the rest. Do you have any
13 basis to believe that?

14 MR. LIPSON: Do we have any basis to believe that
15 the Sacklers might have interfered with the Board's decision
16 to --

17 THE COURT: Yes, the decision to enter into the
18 plan and to support the plan.

19 MR. LIPSON: Absolutely.

20 THE COURT: What? What is it? What is it?

21 MR. LIPSON: I'll say it for a fifth time. We
22 know that the debtors, it appears, had to create a proxy for
23 the Sacklers such that they gave up their right to remove
24 directors on the special committee in November of 2019,
25 number one.

1 Number two, we have never seen the governance
2 documents of --

3 THE COURT: Have you looked?

4 MR. LIPSON: Obviously ---

5 THE COURT: Have you looked?

6 MR. LIPSON: Obviously -- obviously, Your Honor,
7 the charter is publicly available. And sorry that Mr.
8 Huebner is not so good at quoting after all, but we never
9 say we didn't see the charter, obviously. We quote from the
10 Charter. It's the bylaws, it's the shareholder agreements.
11 It's all of the other governance documents that might give
12 the Sacklers the ability to control the board. If they were
13 not controlling the board or didn't have that power, then
14 why was the proxy necessary? That's fact number one.

15 Fact number two, the common interest agreements
16 (indiscernible). I do not understand how the Sacklers and
17 the debtors can have a common interest once they are in
18 bankruptcy.

19 THE COURT: You don't think that there are the
20 same types of claims asserted against both the company and
21 the Sacklers?

22 MR. LIPSON: There may be, but the --

23 THE COURT: There may be. You just said there's
24 an inextricable link, right?

25 MR. LIPSON: Right. And so --

1 THE COURT: Mr. Lipson, at some point you have to
2 actually be realistic. Right? I mean, is this what you
3 teach your students, just to assume these sorts of things
4 without actually, you know, doing any real pragmatic
5 analysis?

6 You know, I actually had Michael Avenatti appear
7 in front of me. He spoke these ways, too. It might be --
8 it could be the debtors haven't shown, et cetera. That
9 didn't last very long. He had no evidence. He left, and he
10 never came back. I hope you're not teaching the future
11 Michael Avenattis of this world at Temple.

12 Go on with your argument.

13 MR. LIPSON: I'm not sure it's appropriate to
14 personalize this sort of an argument, Your Honor. And I'm
15 not sure why others are doing it and --

16 THE COURT: I think there is a responsibility to
17 first ask for the relief that you're actually asking for,
18 and second, to back it up with some facts and legal
19 argument. I'm testing the facts that you are asserting.
20 The first one you asserted is that the Debtors have
21 acknowledged in their preliminary injunction motion that the
22 Sacklers are inextricably intertwined with Purdue without
23 distinguishing between pre and post-bankruptcy. You haven't
24 given me a credible answer in response to that.

25 If you think that's personal, it is. Because at

1 some point, you do have an obligation to be real. All
2 right? To be realistic and to not just throw out statements
3 that people who are not lawyers, people who have suffered a
4 lot and who really don't quite understand the law think, oh
5 my god, are they letting the Sacklers go? And they read
6 stuff like you are submitting and they see quotes that say,
7 well, academics have said the following, the process may not
8 be conducted with integrity. What do you think they
9 believe?

10 So, yes, you do have an obligation to support it
11 with facts and not History Channel pleading.

12 MR. LIPSON: Are the bylaws public? Are they
13 available? Do they permit the Sacklers to --

14 THE COURT: Do you doubt for a minute, Mr. Lipson,
15 that if in fact the Sacklers weren't exercising control over
16 the board in the way that would affect the decision-making
17 in this case, that the creditors' committee and all of the
18 other parties in interest, including all 50 -- well, all 48
19 states because to have settled -- wouldn't be moving
20 immediately for a trustee? Do you doubt that for a minute?
21 Or that such a motion would be granted if in fact it was the
22 case?

23 MR. LIPSON: Well, as we pointed out, Your Honor,
24 since the creditors' committee stipulated that it wouldn't
25 do so for the first several months of the case, we don't

1 know.

2 THE COURT: Because they were doing the
3 investigation to see. And of course the 48 states did not
4 so stipulate. So you really haven't answered my question.

5 MR. LIPSON: Your Honor, I might point out since
6 the Debtor's lawyer and Mr. Eckstein both made a point of
7 talking about ResCap, that ResCap does say what it says, but
8 it also resulted in the appointment of an examiner. I
9 believe Judge Gonzalez was appointed in that case. And let
10 me read to you, since everybody likes to read from cases --

11 THE COURT: I've read it. I understand the case.
12 I've read it. I understand the case. You can go on.

13 MR. LIPSON: So an examiner was appointed there.
14 The other cases that they cite, Spansion, Dewey & LeBoeuf,
15 these are not cases of great public interest. This is.

16 Mr. Huebner has said over and over about -- over
17 and over again, rather, how significant the public interest
18 in this case is. If in fact everything is as fine as they
19 claim, the examination into the very limited question we
20 have posed, the very limited concern we have, should be very
21 easy.

22 The creditors' committee could very easily have
23 published their analysis, released their analysis --

24 THE COURT: No, they couldn't. Do you -- have you
25 ever moved for approval of a settlement agreement in

1 bankruptcy court?

2 MR. LIPSON: Not in many years.

3 THE COURT: Yes. Okay. And do you think that it
4 really makes sense, particularly where the settlement
5 agreement can be breached in the future and the settling
6 party has the right to proceed against the target on all
7 counts as if the settlement agreement hadn't happened to lay
8 out all of your theories, pro and con? Do you really think
9 that's advisable, to blow that out, to say that? Have you
10 ever read a motion for approval of a settlement agreement
11 that actually says that?

12 MR. LIPSON: Your Honor, that's exactly why we
13 think there is concern about what's happening in these
14 cases. The settlement agreement -- the settlement is what
15 justifies keeping the analysis of the independence of the
16 special committee and the board from public knowledge, then
17 that means the settlement is the problem. It's like the
18 protective order. Right? Within the protective --

19 THE COURT: So you wouldn't -- so that basically
20 means you wouldn't have a settlement, right? You would just
21 have one alternative in a bankruptcy case, which would be to
22 litigate.

23 MR. LIPSON: No. It means you have what Congress
24 intended, which is an examiner and a settlement.

25 THE COURT: Okay. You can go ahead.

1 MR. LIPSON: And unlike -- contrary to what Mr.
2 Preis said, we are not asking for an examiner to redo
3 anybody's work.

4 THE COURT: Really? Well, let's read that, then.
5 Let's read Paragraph 17 of your reply and Paragraph 18.
6 "The motion plainly anticipated that key participants in
7 these cases may have conducted this work" may have, "and
8 thus seeks an examiner not to redo it (unless it was not
9 properly done in the first place)". Groups, right?
10 Including the Committee. And then in Paragraph 18 you say
11 that, "It is true that some of these parties are adverse to
12 each other, but their motivation, i.e. their adverse nature
13 and their fiduciary nature, is likely to demaximize --" I
14 don't know. This ungrammatical. It says, "This may be
15 true, but their motivation is likely to be demaximize the
16 settlement amount, not to assess and report on the integrity
17 of the process", whatever that means. What does that mean?
18 It means to report on their motives, right? Their
19 integrity. And you don't think that's embodied in the
20 settlement itself? You want someone to question their
21 motives? You want to question the motives of the Unsecured
22 Creditors' Committee, the integrity of the Unsecured
23 Creditors' Committee, the integrity of the group that Mr.
24 Eckstein represents, the integrity of the people who
25 represent the personal injury claimants? I mean, that seems

1 to be what you suggest here. So that's what you want, an
2 integrity finder?

3 MR. LIPSON: Are you finished?

4 THE COURT: But not to analyze what they did, just
5 to decide whether that was done with integrity? How do you
6 distinguish between those two? I guess it wouldn't be with
7 a bankruptcy professional who actually knows what they're
8 doing because they are all in small groups to scratch each
9 other's backs, right? So the people that you asked to
10 review your articles, including judges and bankruptcy
11 professionals, won't be reviewing your articles in the
12 future, right? You're not going to ask me to do that
13 anymore in the future, right? Because obviously we can't be
14 relied upon to act with integrity. So it would have to be
15 someone who doesn't know about the process, won't be
16 reviewing the work that was done, but somehow has to assess
17 and report on the integrity of the people who did it.

18 MR. LIPSON: Are you done, Your Honor?

19 THE COURT: I am. I'm reading your -- I'm reading
20 Paragraph 17 and 18 of your reply, which you submitted, and
21 I'm trying to ask you what on earth that they mean.

22 MR. LIPSON: What we mean is exactly what we said,
23 which is our concern is that the Sacklers used undisclosed
24 governance powers to influence (indiscernible) --

25 THE COURT: That's all these pleadings are about?

1 That's all these pleadings are about? So you could tell
2 your client and anyone else who asks you what all these
3 questions and concerns were about integrity, and that
4 included the Committee, the MSGE, and others, that that's
5 all you were talking about when you raised questions as to
6 the integrity of the process?

7 MR. LIPSON: All of those questions.

8 THE COURT: What?

9 MR. LIPSON: Correct, because those are evidence,
10 those are facts that have given us concern. You may not --

11 THE COURT: So we shouldn't ignore --

12 MR. LIPSON: You may not agree --

13 THE COURT: -- the rest of the statements in your
14 pleadings?

15 MR. LIPSON: Absolutely not. You may disagree,
16 Your Honor, with my assessment of the facts. You may
17 disagree with the importance of the facts. You may
18 mischaracterize the facts (indiscernible) --

19 THE COURT: So then I have to ask you again the
20 question, what is it that distinguishes the examination that
21 was done, which you don't want to redo, you want to have the
22 same discovery, no additional discovery, or anything
23 pertaining to that examination that's already been done, but
24 just to assess and report on the integrity of it?

25 MR. LIPSON: Well, Your Honor, that's --

1 THE COURT: And I'm assuming when you talk about
2 the examination, you mean the work done by the Committee and
3 the analysis of it by the 48 states and the governmental
4 entities and all those other parties, right? So you want to
5 examine their integrity?

6 MR. LIPSON: I don't know how many times you need
7 me to say the same thing, Your Honor. I already said no.
8 What we --

9 THE COURT: Well, all right, but then when I asked
10 you, okay, fine, then you said -- and I said, well, so we
11 should ignore those aspects of your pleading, you said no, I
12 shouldn't ignore them. So that's why I'm coming back. So I
13 guess I'll take your last word on it, which is, no, that's
14 not the examination you want and therefore I should ignore
15 those aspects of your pleading because they're just hot air.
16 Right? It's just hot air. It might get a good quote
17 somewhere, but it's not anything having to do with the
18 relief that you're seeking when you question the integrity
19 of the process.

20 I think Mr. Preis was right on point when he noted
21 that your pleadings refer, I think, five or six times to
22 questioning "the integrity of the process of the bankruptcy
23 case." And actually, that's not what you're asking now to
24 have an examination on.

25 MR. LIPSON: No.

1 THE COURT: I think that's important to get on the
2 record. And that's why I let the other parties because long
3 as they did, because one's reputation and one's integrity is
4 important. And the facts that they laid out on the record
5 should show that you really aren't, with facts, attacking
6 that.

7 MR. LIPSON: We believe that there are plenty of
8 facts asserted in our motion, Your Honor, and we've already
9 said --

10 THE COURT: Going to the integrity of the
11 Committee's work?

12 MR. LIPSON: No, Your Honor. That is not what we
13 want investigated.

14 THE COURT: Okay. Good.

15 MR. LIPSON: The integrity of the process --

16 THE COURT: All right. I think we've covered
17 enough of this, then.

18 MR. LIPSON: The integrity of the process is
19 affected by the power that the shareholders have to
20 influence a board of directors --

21 THE COURT: Okay.

22 MR. LIPSON: -- before and during the
23 (indiscernible).

24 THE COURT: All right.

25 MR. LIPSON: The parties spend a great deal of

1 time talking about the deal, about the fact that the deal
2 changed, about the fact that the deal is better. It hasn't
3 changed that much, but it doesn't make any difference --

4 THE COURT: (Laughing)

5 MR. LIPSON: It doesn't --

6 THE COURT: (Laughing)

7 MR. LIPSON: The structure of the deal --

8 THE COURT: Oh, my goodness, Mr. Lipson. It's
9 just incredible. Shall we subtract 4. --

10 MR. LIPSON: It's not relevant, Your Honor.

11 THE COURT: Shall we subtract the amount from the
12 original amount, and shall we compare the two? Shall we
13 compare the remedies? Shall we also reflect on the fact
14 that it still isn't a deal because there is ongoing
15 mediation, which I directed, which we haven't addressed?
16 How do you think your motion would affect those
17 negotiations, which really are important, which really might
18 further improve the deal?

19 How do you -- have you negotiated a deal like this
20 before? How do you think that the existence of a pending
21 examination would affect those negotiations? Wouldn't
22 people just wait to see how that happens?

23 MR. LIPSON: Your Honor, if everything is as fine
24 as the parties all claim, then the examination that we are
25 calling for should have no effect at all.

1 THE COURT: The negotiation, it was with the
2 parties who are not on board. How do you think the Sacklers
3 and those parties would engage in those negotiations in the
4 mediation, knowing that there's this other question mark out
5 there? You didn't give any thought to that, did you?

6 MR. LIPSON: Of course, I did.

7 THE COURT: Oh, really?

8 MR. LIPSON: But the --

9 THE COURT: What thought did --

10 MR. LIPSON: But the mediation is --

11 THE COURT: -- you give to it? How do you think
12 it would affect it?

13 MR. LIPSON: The mediation is not relevant to the
14 question of --

15 THE COURT: Of course --

16 MR. LIPSON: -- whether an examiner should be
17 appointed.

18 THE COURT: Oh, of course not. Oh, it's not
19 relevant at all, right? Because you don't know how to
20 negotiate. Honestly, this is just puerile. It's really
21 embarrassing, Mr. Lipson, I've got to say.

22 MR. LIPSON: Your Honor, I don't think anybody
23 benefits from personal invectives, so let's --

24 THE COURT: If people file pleadings like this and
25 argue like this, there are consequences. This is a public

1 forum. This is a litigation. This is where the facts come
2 out. This is where people are judged.

3 MR. LIPSON: If Your Honor does not agree with our
4 concerns or our assessment of the facts, then you should
5 deny the motion and we will move on.

6 THE COURT: Okay. Do you have anything more to
7 add?

8 MR. LIPSON: No, Your Honor.

9 THE COURT: Okay.

10 MR. HUEBNER: Your Honor, I know this is a little
11 bit unusual, but just because of the process questions,
12 could I make four points? And then I will be done, and I
13 will be very quick?

14 THE COURT: Okay.

15 MR. HUEBNER: Number one, it's not really an
16 apology, but it is an explanation. (indiscernible) the
17 issue is not that it is personal in the personal sense. The
18 issue is that you originally moved for an examiner in your
19 own name as an academic. And you had spoken extensively on
20 this case, and I actually took the time to listen to your
21 lectures and take out of it what I believe is motivating
22 your involvement. And I actually think that it is important
23 for people to understand what brings people to court. I
24 don't actually think I accused anybody of impropriety or
25 misconduct.

1 You have a view of the bankruptcy system and how
2 it affected this case that you lay out at length in your
3 lecture and otherwise, and I actually thought it was
4 important for the parties to understand that. And there is
5 a public link to your lecture that anybody is welcome to go
6 and read. There is also a synopsis of it on "The Temple 10-
7 Q", the Temple Business Law magazine, and it's quite sharp
8 in accusing the professionals in this case and the parties
9 (indiscernible) leaving moral considerations behind in order
10 to "get the economic (indiscernible) done".

11 And given ironically (indiscernible) this hearing,
12 which is once again spending hours and hours figuring out
13 how to help an incarcerated pro se person file a claim
14 months after the bar date, and following a case where we're
15 talking about tens of millions of dollars in a repository,
16 and pleading guilty to fines after years of denying them,
17 and the exit of every single Sackler from the board, and the
18 appointment of a (indiscernible) Special Committee, the
19 notion that people are being told, especially even more than
20 the Debtor and the Special Committee, the members of the UCC
21 that they threw moral and personal dignity concerns to the
22 wind to get a money deal going. I just don't think you
23 understand how terribly painful it is for people who devoted
24 years of their lives (indiscernible) as much as possible
25 with this case.

1 Number two, I ought to say congratulations,
2 because in fact, we prevailed with respect to how the Judge
3 ruled. Your primary request was to confirm that the deal
4 was not borne in an original sin that irrevocably
5 (indiscernible). You essentially got representation signed
6 under Rule 9011(b)(3) by the UCC, MSGE and the AHC,
7 answering your question. All three of them signed pleadings
8 that said in essence, we could not have cared less what the
9 Special Committee thought. The deal was not foreordained.
10 We made the decision ourselves. And so I actually think,
11 ironically, you got the answer.

12 And then each of those three parties very strongly
13 validated to you with different levels of passion that the
14 message was equally clear that they reached their decision
15 entirely and utterly independently, that it was never
16 foreordained, and they stood ready and stand ready, even
17 now, to litigate if needed, if we don't get to the goal
18 line.

19 So I would ask you to realize that on some level,
20 what I think earlier today you said was your primary
21 question, in fact you got the answers. You could have
22 gotten them, ironically, by probably calling any one of us
23 and just asking about it or reading things that I think laid
24 it out. But if (indiscernible) wasn't clear before, if
25 there's one thing that's imported out of this meeting that I

1 think cannot be unclear to anyone on the planet now, is that
2 the UCC, the AHC and the MSGE, after a month of mediation,
3 utterly independently negotiated a deal opposite the
4 Sacklers.

5 The Special Committee was there as well with Mr.
6 Preis -- that I thought it was a little bit unkind actually,
7 but I'll let it go -- that this constituency probably would
8 do the opposite of anything the Special Committee thought or
9 recommended, and if that didn't advance their
10 (indiscernible) structure and actually detracted from it.

11 Three, the bylaws -- and I guess I sort
12 (indiscernible) -- I actually didn't remember that we were
13 talking about ending the bylaws and not (indiscernible)
14 corporation, we could have gotten those in one second flat,
15 like hundreds of other (indiscernible) in the case and their
16 representatives, by signing a protective order and having
17 access to all diligence. You had chosen not to do that,
18 which is fine, despite being involved in the case since its
19 opening months, which is fine, but please don't pin that on
20 us.

21 Like we prepared (indiscernible) early on. We
22 (indiscernible). And since you are not representing a
23 litigant in the case, it's not really fair to say that we
24 didn't do what litigants do when they want to access
25 documents. You could have read the bylaws. You could have

1 asked us about it. And you could have raised the issue in
2 the disclosure statement.

3 And finally, to repeat one last time, because it
4 came up in your opening remarks, the UCC explained in its
5 letter -- and I read in almost this full-page paragraph
6 (indiscernible) why they did not, and we also did not, for
7 the same reason, lay out in detail all the considerations,
8 both the weaknesses and the strengths (indiscernible)
9 Sacklers.

10 We may have to sue some or all of them someday.
11 There are 10 pods. If any pod defaults, we have remedies
12 and rights and snapbacks, and the leases fade away and the
13 foreclosure leases fade away. And the Judge got it exactly
14 right. It is precisely to protect the constituencies for
15 who we are fiduciaries that were not ever going to lay out
16 in detail, here are the things that we're afraid of. Here
17 are the things we might have lost. Here are the things we
18 were most bullish about. Here's how we weighted the
19 (indiscernible) and Sackler facts. Here's how we
20 (indiscernible) Sackler. Why? Because that would be
21 suicide and it would be a breach of our fiduciary duties to
22 lay out the weaknesses and the strengths of our case.

23 The issue, at the end of the day, is that unlike
24 the case, which does happen -- and I think we just picked
25 the wrong case -- where only an independent committee of a

1 board, only appointed by (indiscernible) a private equity
2 firm, does a deal, and that may or may not be subject to
3 (indiscernible). Here you have the whole country that was
4 opposite the Sacklers. Every AG, every municipality, and a
5 fearsome UCC, who hit them harder than any UCC basically
6 ever.

7 But again, I want to end where I began. We don't
8 treat this count (indiscernible) loss of the Jackson family
9 or any of the other families. But the process actually
10 work. And the AHC and the MSGE and the UCC, even if you
11 don't trust the Special Committee, there's no
12 (indiscernible) all (indiscernible) government or victim did
13 not ensure both the moral values and the dignity values, as
14 well as the economic values that need to be indicated, and
15 (indiscernible).

16 You, assuming you actually comply with the
17 procedures that the Court ordered, or anyone else is welcome
18 to challenge at the confirmation hearing whether the
19 Creditors Committee (indiscernible) -- sorry (indiscernible)
20 -- whether the Special Committee or the board operated and
21 made its decisions free of (indiscernible) influence or
22 (indiscernible) Sacklers. It's a fair question. And as I
23 said before, the MSGE is exploring it correctly.

24 Let me be very clear, because I didn't say this
25 before. I am very, very (indiscernible) based on everything

1 I know, and I know quite a lot, that the Special Committee
2 has in fact (indiscernible) of inappropriate (indiscernible)
3 influence or connectivity, that each one of them came to the
4 company in a way that was clean and pure and appropriate and
5 free of prior (indiscernible). That they did their job
6 exactly as one would want them to do. And that is one of
7 the things we have to prove at confirmation, and we will be
8 doing so.

9 But please don't mistake the fact that we did not
10 want to detail factual defenses of Special Committee
11 (indiscernible) reply, believing that when the time was
12 right and appropriate, we will show all of that and more.
13 The Judge asked us to add dozens of pages to the
14 (indiscernible) parties, which we did. We literally have
15 (indiscernible).

16 But we, like you, you know, could not possibly
17 feel more strongly about vindicating the propriety of the
18 process that led to the settlement, which is a difficult
19 settlement. Nobody is unaware of the fact that a whole
20 bunch of money left after they paid this. No one thinks
21 it's perfect. No one (indiscernible) side, which is that
22 they didn't have (indiscernible). But it doesn't mean
23 people didn't do their jobs and didn't act with integrity
24 and traded away things inappropriately for inappropriate
25 reasons.

1 (indiscernible) the passion is so strong, I think
2 you genuinely don't realize how brutal your theory is. And
3 we're here, the fact of unquestionably at the ultimate upper
4 end of the spectrum, seeking relief in front of a Federal
5 Court, based on no facts, and frankly explanations of law
6 that we don't agree with. It's just something we cannot
7 countenance, you know, this far into it.

8 THE COURT: Wait --

9 MR. LIPSON: Your Honor, if I can just respond
10 very briefly?

11 THE COURT: Yes, that's fine.

12 MR. LIPSON: If I understand what Mr. Huebner just
13 said, he said something incredibly important, which is that
14 in the entire time the Special Committee has existed,
15 including before November of 2019, it was independent. And
16 that's very, very helpful. Now, maybe that's woven into the
17 disclosure statement somewhere else, but I think that's a
18 really important statement.

19 If I can just step back for a second, we
20 understand that everybody would much prefer to get a deal
21 done. And we understand that this has been disrupted, and I
22 am sorry if that has been disrupted. We do not intend to
23 cast aspersions on any (indiscernible). We are concerned
24 that those inside the case simply do not see what it looks
25 like from outside.

1 And as I said before, the questions that we have
2 about the board's governance, the Sacklers' influence over
3 the board, will not go away after confirmation. But if Mr.
4 Huebner has been able to make that assurance, that is
5 extremely valuable. Thank you.

6 THE COURT: Okay. All right. I have before me a
7 motion by Mr. Jackson, Peter W. Jackson, for the appointment
8 of an examiner in these cases, under Section 1104(c)(1) or
9 (2) of the Bankruptcy Code.

10 I must say that most of this hearing, I think
11 quite appropriately, has dealt with the motion papers and
12 the statements made in them, as opposed to what the movant's
13 counsel, Professor Lipson, has stated, albeit that that
14 differed from the pleading that was filed at 9:30 last
15 night, is really the relief that's being sought as far as
16 the nature of the examination.

17 I think it's important not only to deal with that
18 request for relief, which was really only clarified this
19 morning after extensive prodding, but also the language in
20 the motion. I say that because these are very public cases
21 with hundreds of thousands of people, if you count family
22 members, who are not represented by lawyers, who know about
23 the case mostly from what they read or hear about in the
24 media, which, correctly, reads the pleadings and assumes
25 that there is some cogency to what is actually filed. I

1 believe that in respect of this motion, those people have
2 been misled, and in fact, sadly misled.

3 Again, this is a public case where tremendous harm
4 is intended to be addressed. The victims of that harm
5 certainly no that they have been harmed, and they want to
6 make sure that what comes out of this case is the best
7 result for them.

8 When it is asserted with no evidence that that
9 process lacks integrity, and that the fiduciaries, both
10 under the Bankruptcy Code and their own representatives,
11 somehow have misguided motives, or were misled or confused,
12 or somehow acting without integrity, that's a problem.

13 It's particularly a problem when a law professor,
14 who one would think would understand how courts work, would
15 understand that integrity is the fundamental basis of the
16 legal system, suggesting a series of "questions",
17 "concerns", "issues", without any real support that that's
18 not how it's working here. That goes so far as to state
19 that the Court and the fiduciaries here have some form of
20 backscratching relationship that prevents them from pursuing
21 the right result, as required by the law, with rationales to
22 suggest, for example, that judges may rule one way because
23 that's not as justice requires, but for some other reason,
24 which is unarticulated, but nevertheless laid out as a
25 concern or at issue. That the people who practice in the

1 court may for some reason not want to pursue their clients'
2 rights to the full, to the best of their ability, because
3 somehow they want to appear again later in the court in some
4 other matter, as Footnote 15 on Page 17 of the motion
5 suggests, as opposed to doing their best job in the court,
6 in the matter in which they are proceeding, is not only
7 bizarre and totally illogical, but again, simply
8 misrepresents to the public, who are employers, what lawyers
9 do.

10 Of course, it's all qualified by, well, we don't
11 mean any disrespect or, you know, of course, judges take
12 seriously their rulings, although it's couched in the draft
13 article that's cited as legal authority by saying, well,
14 judges may do that, but sometimes when it's important, they
15 may not, as the discussion of Judge Isgur in Mr. Levitin's
16 article suggests. I guess Mr. Levitin left it up to himself
17 to determine what was important and not. I would tell you
18 that Judge Isgur and every other judge in this country,
19 including me, takes every issue before him with the utmost
20 seriousness, and only looks at those issues and none others,
21 and certainly doesn't look into the future as to what might
22 be filed in front of him or her. And to suggest otherwise,
23 particularly coming from an academic, is shocking.

24 Now, as I said during oral argument, at least I
25 give Mr. Lipson the credit of taking the heat and appearing

1 here today, as opposed to just writing a draft article, as
2 his colleague, Mr. Levitin did. But I really think it's a
3 sad day when someone who calls themselves an academic, a
4 scholar, engages in that type of ad hoc rationale.

5 This motion began on Page 1 with the wonderfully
6 quotable and totally off point, "These cases have been
7 overshadowed by a single critical question. Who is
8 responsible for the Debtors' confessed crimes and the harms
9 they caused?" And that's what's defined as the Sacklers
10 allegations, the crimes.

11 And then that paragraph ends by saying, "While the
12 case has involved massive, perhaps a record amount, of
13 discovery, it has been contained among and analyzed by a
14 small group of case insiders.", who are then discussed at
15 Page 17, as I have already described, as somehow people
16 scratching each other's back, and not actually getting to
17 the truth or to justice.

18 And by the way, Mr. Lipson, when I say justice, I
19 don't distinguish between justice and dignitary justice. In
20 fact, it's a term I'd never heard before. And when I looked
21 it up, it comes out of a completely different context than
22 you and your colleague, Mr. Levitin, have used.

23 All justice is dignitary justice. Justice
24 includes a sense of the dignity of the people who appear
25 before one. It also includes a responsibility to get the

1 facts and the arguments right. Justice assumes dignity.
2 That's inherent in the oath of office, to do justice to the
3 poor and the rich, the same justice.

4 These cases are not about crimes. This is not a
5 criminal case. When I get letters from people who say, how
6 can you "absolve" the Sackler family and let them get away
7 with it, people are thinking of crimes, or they're thinking
8 of something that a ruling in a civil case cannot confer,
9 moral absolution. That is a different topic, as a law
10 professor should understand.

11 This is a case about who should pay money, based
12 upon claims, and whether that money is best used in a
13 collective settlement, in a collective proceeding, which is
14 the very nature of bankruptcy. And clearly, there is no
15 more collective proceeding than this one, since it involves
16 48 states, the Federal Governments, hundreds of thousands of
17 individuals and other claimants. Essentially, it involves
18 the entire country.

19 It is a disservice, not only to the people that I
20 believe you have slandered, but also to the public, to
21 mislead them about what has happened in this case. Most of
22 these pleadings, including the reply papers, do just that.
23 They talk in vague terms about assessing and reporting on
24 the integrity of the process.

25 And contrary to the remarks at the beginning of

1 this hearing, that process, one could clearly infer from
2 reading these pleadings, involves not only the Debtors but
3 also the Official Unsecured Creditors Committee and, I
4 think, 11 or 10 other committees in this case and the Court.

5 Now, what the relief ultimately being sought here
6 is is quite different from all of that. As I understand it,
7 what Mr. Lipson is now seeking is that an examiner be
8 appointed to investigate whether the Debtors acted
9 independent of the Sacklers in filing and seeking
10 confirmation of the plan before the Court, which includes
11 within it an agreement between the Debtors and the Sackler
12 families, as set forth in the plan and disclosure statement,
13 which was also negotiated with and signed onto by most of
14 the parties in interest in this case, including the Ad Hoc
15 Group of Consenting States and Governmental Entities and the
16 Official Unsecured Creditors Committee, a much more narrow
17 task for an examiner than the various formulations of the
18 proposed examination set forth in the motion and the reply.

19 Section 1104(c) of the Bankruptcy Code says that
20 if the court does not order the appointment of a trustee
21 under Section 1104, then at any time before the confirmation
22 of a plan on a request of a party in interest or the United
23 States Trustee, and after noticing a hearing, the court
24 shall order the appointment of an examiner to conduct such
25 an investigation of the debtor as is appropriate, including

1 an investigation of any allegations of fraud, dishonesty,
2 incompetence, misconduct, mismanagement or irregularity in
3 the management of the affairs of the debtor, of or by
4 current or former management of the debtor.

5 Let's just stop there before we get to the two
6 clauses that trigger the foregoing examination. The named
7 allegations to be investigated, fraud, dishonesty,
8 incompetence, misconduct, mismanagement or irregularity in
9 the management of the affairs of the debtor, of or by
10 current or former management of the debtor, none of those
11 things is within the scope of the examination that is
12 actually being sought by Mr. Lipson.

13 He has not alleged fraud; he has not alleged
14 dishonesty; he has not alleged incompetence, misconduct,
15 mismanagement or irregularity, as far as the decision by the
16 Debtor and the Special Committee to propose the plan. Of
17 course, those are not the only things that could be
18 investigated, but they give a good indication of what
19 Congress felt should be investigated.

20 Again, what he now says the investigation should
21 entail is a determination or an investigation as to whether
22 the Debtors' Board, and more specifically the Special
23 Committee, on its own, without direction or influence by the
24 Sacklers, determined to propose and seek confirmation of the
25 plan.

1 It is crystal clear, in fact it is beyond doubt,
2 notwithstanding insinuations in both the motion and the
3 reply, that that plan and the pursuit of it was dependent
4 not only on the Debtors signing onto it, but the agreement
5 by the Unsecured Creditors Committee, the Ad Hoc Committee,
6 and others, who separately and independently negotiated,
7 after separately and independently conducting the most
8 massive due diligence that I am aware of in any case under
9 the Bankruptcy Code, of potential causes of action against
10 the Sacklers.

11 Indeed, the motion does not dispute that that
12 happened. In fact, it states that the examiner would not
13 even attempt to redo that investigation in any way. One
14 wonders, then, why it is relevant to look at the Debtor
15 alone and the Special Committee. The objectors say it is
16 not, because they separately made the determinations that
17 they did in support of the settlement. And it is clear to
18 me from statements made on the record during the course of
19 the disclosure statement hearing that obtaining those
20 parties' agreement was critical to proceeding with the plan
21 by the Debtors.

22 Again, the motion suggests either artfully or
23 inartfully -- it's hard to know -- that those parties also
24 were somehow acting improperly in making those
25 determinations, but the suggestion is not borne out by

1 anything in the record. And I think -- although it's hard
2 to follow him sometimes -- Mr. Lipson disavowed it during
3 oral argument.

4 Under Section 1104(C), an examiner is not supposed
5 to be appointed in every case to conduct that type of an
6 investigation, as is appropriate under the words of the
7 statute. An examiner shall only be appointed if, 1, such
8 appointment is in the interests of creditors, any equity
9 security holders, and other interests of the estate; or 2,
10 the debtors fixed liquidated unsecured debts, other than
11 debts for goods, services or taxes, or owing to an insider,
12 exceed \$5 million. As noted, the movant seeks relief under
13 both of those sections.

14 Section 1104(c)(1) clearly provides a judge
15 discretion to appoint an examiner. The appointment is only
16 appropriate if such appointment is in the interests of
17 creditors, any equity security holders, and other interests
18 of the estate, so that even though the section is introduced
19 by the word "shall", that is the overall section, Section
20 (c), it is clearly discretionary.

21 And in fact, it is highly unusual for a judge's
22 decision on such a discretionary appointment not to be
23 upheld on appeal. See Clifford J. White III and Walter W.
24 Theus, Jr., Chapter 11 Trustees and Examiners after BAPCPA,
25 80 Am. Bankr. LJ, American Bankruptcy Law Journal 289, 302

1 (2006). "In fact, no District Court or Court of Appeals
2 decision has been reported that reversed a decision by a
3 Bankruptcy Court if appointing or declining to appoint an
4 examiner under (c)(1)."

5 This district has adopted the discussion in 7
6 Collier on Bankruptcy, Paragraph 1104.03, that "Mere
7 allegations of fraud, dishonesty, incompetence, misconduct,
8 mismanagement, or irregularity in the management of the
9 affairs of the debtor of or by former or current management
10 are insufficient to justify the appointment of an examiner
11 under Section 1104(c)." In Re Dewey & LeBoeuf LLP, 478 B.R.
12 627, 640 (Bankr. S.D.N.Y. 2012).

13 The Court needs to focus on whether such
14 appointment is in the interests of creditors and the estate
15 instead. See In Re JNL Funding Corp., 2010 WL 3448221, *2
16 (Bankr. E.D.N.Y. August 26, 2010).

17 In conducting such an analysis, the court looks at
18 a number of factors, including whether the basis for the
19 examination is warranted in the pleadings by sufficient
20 facts. Second, whether other parties with a fiduciary
21 interest or fiduciary obligation, or alternatively, a strong
22 practical interest in getting to the bottom of the alleged
23 irregularities, is already conducting such a process in the
24 state in which it is in. And that is related to the third
25 point, the timing of the request.

1 This is in part based upon the undeniable cost of
2 examinations, both in terms of the hard costs of conducting
3 the examination, which includes not only the examiner's
4 costs but the costs of the people that he or she deals with,
5 as well as the time and delay factor with respect to the
6 examination.

7 Mr. Lipson should fully understand this, as laid
8 out in Jonathan C. Lipson, "Understanding Failure: Examiners
9 and the Bankruptcy Reorganization of Large Public
10 Companies", 84 Am. Bankr. LJ 1, 2010, which he summarized
11 the data in 27 cases where examiners reported -- were
12 appointed and noted the high cost of examiners in large
13 cases by and large, the highest being \$250 million; the
14 Enron examination being around \$100 million.

15 Examiners also, by statute, don't have the power
16 to do any follow-up on their examination. That is, they
17 can't bring the claims that they find. Other parties have
18 to bring them. Other parties may also disagree with the
19 report of the examiner, which is just that, a report by an
20 objective third-party, based on the fact that he or she
21 uncovers. Other parties may have uncovered their own facts
22 or may disagree with the examiner's conclusion. So at best,
23 an examiner's report is guidance. Sometimes it is very
24 clear guidance; sometimes examiners also can act as an
25 objective third-party to try to bring together the parties

1 in interest in the case, who may have a different view as to
2 the merits of the claims at issue.

3 That clearly was the situation in In Re Cenveo, my
4 case that Professor Lipson uses as a precedent for the
5 relief that he is requesting here. Notwithstanding the fact
6 that in that case, the request for an appointment of an
7 examiner was made in the second week of the case, where
8 there was substantial disagreement among the parties as to
9 who should be conducting an investigation, whether it would
10 be a committee, whether it be the debtors, through an
11 independent director. And I wanted to nip that in the bud
12 by appointing a person who would look over the shoulders of
13 both of them and work with them to get to a fair result,
14 which actually happened.

15 I will note that those parties were all members of
16 the small group of professionals that the motion refers to
17 as often practicing in bankruptcy cases. They seemed to
18 conduct the process with integrity. And of course, it was
19 recommended as one by Professor Lipson, who also, I will
20 note, thanked, in his preface to the article that I cited,
21 numerous bankruptcy judges and professionals whose work he
22 is now challenging, as I previously summarized, and as his
23 colleague, Mr. Levitin, is challenging.

24 In this case, we are weeks away from a
25 confirmation hearing on a plan that has been the subject

1 just to extensive mediations, following an unprecedented
2 examination by both the Debtors and by the Official
3 Unsecured Creditors Committee, which gave access to its
4 investigation to the key participants in this case, who were
5 not "a small group of case insiders," but representatives of
6 the 48 states that have asserted claims against the Debtors.
7 Those are clearly independent parties who take their duties
8 extremely seriously.

9 All but one of the groups involved in the two
10 mediations have agreed to the plan. That one group, I take
11 very seriously, the so-called Nonconsenting States Group.
12 They are very well represented. They are very
13 sophisticated, being the Attorney Generals of their
14 respective states, and they are now engaged in a third
15 mediation, which I directed to see if the plan, including
16 the settlement with the Sacklers can be improved.

17 That mediation, as is appropriate given the almost
18 two years in these cases, is on a short timetable. One of
19 my colleagues who, in addition to the two other mediators in
20 this case, I view as one of the best mediators in the
21 country, particular with regard to issues like this. Judge
22 Chapman is conducting that mediation. It will be concluded
23 before plan confirmation, although it may not be concluded
24 until shortly before plan confirmation.

25 In that context, the request for an appointment of

1 an examiner here, even as limited by Professor Lipson this
2 morning, to the topic of whether the Debtors' board, and
3 more specifically, the special committee was independent of
4 the Sacklers and made its own determination when directing
5 the Debtors to file and seek confirmation of the plan that
6 is now up for confirmation is not in the interest of
7 creditors and other interests of the estate.

8 I'm not even considering here whether it would be
9 in the interest of the equity security holders. Obviously,
10 that's of minimal importance to me in this context. Why do
11 I say it's not? First, it is largely irrelevant, if not
12 entirely irrelevant, given the role of the other fiduciaries
13 in these cases that I've already detailed and it is well
14 laid out in the record and, frankly, simply not addressed in
15 any meaningful way by Professor Lipson, other than to
16 disparage it or question it without evidence and belied by
17 the fact that the very work would be the work that he
18 believes his examiner should investigate to see if, not that
19 the investigation itself was thorough, but whether it had
20 "integrity," whatever that means, and he was not able to
21 define it.

22 Secondly, this request comes very late in the
23 case, as I've noted, and while perhaps the most sensitive
24 negotiation in the case is going on. It beggars belief that
25 Professor Lipson would not believe that the appointment of

1 an examiner might adversely affect this negotiations is, in
2 fact, the case in any negotiation, and certainly in a
3 negotiation over a Chapter 11 plan, that as the closer one
4 gets to court, the more parties get serious about
5 negotiations and actually put their best deal on the table.

6 If they believed they could wait and see how an
7 examiner would come out on "the integrity of the process",
8 it's human nature that people will wait and not use what
9 really is important in this case, that mediation
10 productively.

11 In that context, in addition to the delay and
12 irrelevance of the inquiry, given the roles played by the
13 states, the governmental entities, the Indian tribes, the
14 committee and the subcommittee and the other unofficial
15 committees in this case, the cost simply isn't warranted,
16 nor is the delay warranted. That is particularly so since
17 it is clearly, I believe, everyone's hope in this case that
18 funds go out promptly to abate the opioid crisis.

19 Professor Lipson also relies on, as I said,
20 Section 1104(c) (2) of the Bankruptcy Code, which again
21 states that, "The Court shall appoint an examiner to conduct
22 an investigation of the Debtor as is appropriate if the
23 Debtors' fixed, liquidated, or unsecured debts, other than
24 debts for goods, services, or taxes, or owing to an insider
25 exceed \$5 million."

1 There is a dispute in the case law as to whether
2 this provision is mandatory, i.e., that an examiner must be
3 appointed if the fixed, liquidated, or unsecured debts,
4 other than debts for goods, services, or taxes, or owing to
5 an insider exceed \$5 million. The dispute is not a new one.
6 It goes back at least to 1984 where the issue was discussed
7 at length in *In re. GHR Companies*, 43 B.R. 165 (Bankr. D.
8 Mass. 1984), where that Court that the appointment was not
9 mandatory, in large part, because of the Court's assessment
10 of the legislative history and background to the section and
11 the facts present in that case, as well as the statutes'
12 direction to conduct an investigation as is appropriate.

13 In that case, the Court went through an extensive
14 analysis of the legislative history, which I will not repeat
15 here, which reflects, however, I believe, a couple of
16 important points.

17 First, in enacting the 1978 Bankruptcy Code,
18 Congress was considering prior practice in which for public
19 companies above a certain debt threshold, a trustee was
20 appointed automatically, and the SEC had an important
21 statutory role, to protect the interests of public
22 debtholders and public shareholders. Congress believed that
23 that level of third-party supervision was actually, as borne
24 out in practice, not a good thing and, therefore, decided to
25 change those provisions of the Chandler Act in the 1978

1 Code.

2 There was a considerable back and forth as to
3 whether an examiner would need to be appointed and, if so,
4 under what circumstances in such cases, and there was
5 substantial support for the notion that the Court should
6 discretion to appoint both an examiner and a trustee.
7 Nevertheless, the statute came out as it was drafted, which
8 in one paragraph, (c)(2), appears to make the appointment
9 mandatory, but then in the overall provision pertaining to
10 the investigation makes the nature of the investigation as
11 is appropriate, i.e., in the discretion of the Court.

12 It is clear from the legislative history, and as
13 discussed in the In re. GHR Companies, that Congress was
14 focused largely on public companies with public debt and
15 public equity or public equity, although the statute itself
16 does not limit it to public debt, but rather instead to
17 fixed, liquidated, unsecured debts, other than debts for
18 goods, services, or taxes, or owing to an insider.

19 It's probably safe to say that Congress did not
20 have in mind when it drafted this a case where the claims
21 asserted, other than the claims for goods, services, or
22 taxes, would not be funded debt, but instead would be debt
23 for personal injury and the like.

24 The Court's continued -- well, I would cite
25 Professor Lipson's article, in addition to the legislative

1 history discussed in the GHR case, which it goes through
2 this similar analysis and notes, among other things, that
3 the provision as drafted was "ASOP" to the SEC; that quote
4 is from an unnamed party who Professor Lipson said was
5 involved in the negotiations of the language that appears
6 now in the Code.

7 The issue of whether the appointment is mandatory
8 proceeded and still proceeds to this day in the case law and
9 commentary. Indeed, as originally drafted in prior editions
10 of the leading treatise on bankruptcy, "Collier on
11 Bankruptcy," the section suggested that the Court had
12 discretion under (c) (2).

13 The current discussion in Collier is somewhat
14 schizophrenic. It now states in, again, paragraph
15 1104.03(2) (b) headed, "The Court's lack of discretion once 5
16 million threshold is met," that "Section 104(c) (2) does not
17 leave any room for the Court to exercise discretion about
18 whether an examiner should be appointed as long as the 5
19 million threshold is met and a motion for an appointment of
20 an examiner is made by a party in interest."

21 It then goes on to state, however: "Nevertheless,
22 the mandatory nature of this provision was not intended and
23 should not be relied on to permit blatant interference with
24 the Chapter 11 case or the plan confirmation process.
25 Failure to make a timely request for the appointment of an

1 examiner may provide the Court with a basis for denying the
2 request on the ground of laches, nor should the mandatory
3 nature of the provision be used to allow one group of
4 creditors or interest holders to obtain a protagonist
5 supporting its litigation position under the guise of an
6 investigation. In addition, where the parties do not seek
7 mandatory appointment under Section 1104(c) (2), but rather,
8 discretionary appointment, the appointment is not
9 mandatory."

10 The editors then go on to state: "Alternatively,
11 a Court might grant their request for an examiner, but so
12 limit the role assigned to the examiner that substantial
13 interference will be prevented. As noted above, Section
14 1104(c) states that the Court shall order the appointment of
15 an examiner to conduct such an investigation of the Debtor
16 as is appropriate."

17 "The limitations and prescriptions regarding the
18 scope of the investigation are subject only to the sound
19 discretion of the bankruptcy judge. For example, the scope
20 of the examiner's duties is properly limited to an
21 investigation, rather than an evaluation. In addition, or
22 as an alternative, the Court can limit in advance the
23 compensation to be awarded to the examiner and limit the
24 expenses as well."

25 "Finally, the Court may permit the confirmation

1 process to continue and perhaps even conclude prior to
2 receipt of an examiner's report. Citing the legislative
3 history, 124 Congressional Record H-11103, Daily Edition,
4 September 28, 1978." "Accordingly," Colliers goes on to
5 state, "In an appropriate case, it is possible both to
6 comply with the clear statutory provisions and also to
7 consider their practical implications. Again, citing the
8 same legislative history," which to my mind means that the
9 editors say it's mandatory, but not mandatory. The case law
10 reflects that type of division.

11 Interestingly, Professor Lipson's motion only
12 cites the case law in his favor and ignores cases from this
13 district. I won't. There are indeed many cases that
14 construe Section 1104(c)(2) as requiring the appointment of
15 an examiner when the debt limit is met. They include the
16 only Circuit Court case to have addressed the issue, Morgan
17 Stern v. Revco D.S., Inc. (In re. Revco D.S., Inc.) 898 F.2d
18 (6th Cir. 1990).

19 They include a number of other decisions,
20 including Loral Stockholders Protective Committee v. Loral
21 Space & Communications Ltd. (In re. Loral Space &
22 Communications Ltd), 2004 WL 2979785 (S.D.N.Y. Dec. 23,
23 2004) and In re. Schepps Food Stores, Inc., 148 B.R. 2730
24 (S.D. Tex. 1992), as well as In re. UAL Corp., 307 B.R. 8085
25 (Bankr. N.D. Ill. 2004).

1 I will note though that the two District Court
2 cases that I just cited recognize there are exceptions to
3 the mandatory nature that they found, including based on
4 delay, the timing of the motion that is, and the motives or
5 underlying purpose of the request. In addition, each of
6 those Courts recognize the Court's substantial discretion,
7 as does Colliers, in deciding what is an appropriate
8 examination under the statute.

9 There are many decisions that go the other way,
10 including many more recent ones. In re. PG&E Corp., 2020 WL
11 9211190 at page 3 (Bankr. N.D. Cal. July 6, 2020), In re.
12 Dewey v. LeBoeuf LLP, 478 B.R. 627, 639 (Bankr. S.D.N.Y.
13 2012), In re. Residential Capital LLC, 474 B.R. 112, 121
14 (Bankr. S.D.N.Y. 2012), U.S. Bank National v. Wilmington
15 Trust Company (In re. Spansion, Inc.) 426 B.R. 114, 128
16 (Bankr. D. Del. 2010), and unreported decisions where there
17 are lengthy bench rulings, which I will go through in a
18 moment.

19 The Spansion case by Judge Carey reflects rulings
20 by some of his colleagues, including Judge Walsh, Judge
21 Walrath, and Judge Sontchi. I will note that the
22 Residential Capital case also quotes at length an
23 unpublished decision bench ruling by Judge Chapman in the
24 Innkeepers case, all for the proposition that the Court has
25 discretion, albeit not perhaps as extensive discretion as

1 under (c) (1) if the debt limit is, in fact, exceeded under
2 (c) (2) .

3 Judge Carey in Spansion actually stated the
4 obvious, "If the Court concludes that there is no basis for
5 an appropriate examination, what is the point of appointing
6 an examiner just to sit there and do thing," highlighting, I
7 think, the compromise that Congress made when it enacted
8 this provision, i.e., 1104(c), and I believe the desire of
9 those parties to just leave it up to the Court as to what is
10 appropriate if there is no basis to not appointment an
11 examiner.

12 In the Residential Capital case, Judge Glenn
13 stated the requirement for the appointment of an examiner
14 under 1104(c) (2) as one requiring, "That a Court order the
15 appointment of an examiner when (1) no plan has been
16 confirmed, (2) no trustee has been appointed, (3) the Debtor
17 has in excess of 5 million in fixed debts, and (4) the facts
18 and circumstances of a case do not render the appointment of
19 an examiner inappropriate," 474 B.R. 121.

20 He then goes on to lay out the circumstances under
21 which such an appointment would not be appropriate. I might
22 disagree with him as to the burden of proof on that issue.
23 I think probably those opposing the appointment would need
24 to show it.

25 But if they do show it, I agree with him that if,

1 in fact, the same investigation or substantially the same
2 investigation is well underway already either by an estate
3 fiduciary or by a third party with clearly a strong interest
4 to pursue that investigation, one should ordinarily believe
5 that the examination would be inappropriate; that is, the
6 appointment of an examiner to conduct a duplicate
7 examination would be inappropriate, which frankly, is common
8 sense.

9 He also notes the timing points that I've already
10 mentioned that were raised in a number of cases, including
11 the Loral opinion that I've cited, the Schepps opinion that
12 I cited, and In re. Bradley Stores, Inc., 209 B.R. 36,
13 (Bankr. S.D.N.Y. 1997).

14 It's also worth quoting from a lengthy transcript
15 by Judge Walrath in the Washington Mutual bankruptcy case,
16 which is also cited in the Residential Capital opinion as
17 Judge Walrath says:

18 "As I recently ruled orally...", so you can't
19 really on it, but I will follow it myself..., "I do believe
20 that 1104(c)(2) gives the Court some discretion, even if the
21 debt level is reached, and the discretion is that the Court
22 has the discretion to determine what appropriate
23 investigation of the Debtor should occur, and that if the
24 Court determines that there's no appropriate investigation
25 that needs to be conducted, the Court has the discretion to

1 deny the appointment of an examiner."

2 "The Courts have looked at various factors in
3 determining whether an appropriate investigation is
4 warranted. They include whether, that same investigation
5 has already been conducted by other parties. They have
6 looked at whether the appointment of an examiner will
7 increase costs and cause a delay with no corresponding
8 benefit, and they look at the timing of the motion. They
9 look at whether the motion is a litigation tactic, which
10 includes consideration of the timing, not just how soon it
11 is in a case, but whether it is timed such as to evidence a
12 litigation tactic."

13 In that case, Judge Walrath stated that it was a
14 very close call as to whether to appoint an examiner since
15 she did not find that it was a litigation tactic, but that
16 she concluded that "The appointment of an examiner here
17 really would -- an examiner really would only have the task
18 of reviewing what others have already done. I don't think
19 there's any original investigation left to be done, so I
20 think that's just a waste of assets."

21 "Secondly, I think the equity committee, which was
22 moving for the appointment of an examiner, is fully able to
23 conduct the investigation that it seeks to have the examiner
24 conduct. It has the benefit of Rule 2004. It has the
25 benefit of the discovery rules because there are contested

1 matters presently and anticipated in which the equity
2 committee could fully avail itself of that discovery."

3 That's found at In re. Washington Mutual, Inc.,
4 08-1229, Docket No. 3699-mfw, the hearing transcript at page
5 97 through 101.

6 Other courts have actually done what Collier
7 suggests and simply appointed an examiner but then had them
8 do nothing, or in the case of In re. Erickson Retirement
9 Communities, LLC, 425 B.R. 309, 317 (Bankr. N.D. Tex.), the
10 Court appointed an examiner but then gave that person no
11 meaningful duties as there was no sound purpose for it and
12 said, "Perhaps if the Court does not confirm the plan, an
13 examiner could do something."

14 Finally, the objectors properly focus on the Dewey
15 LeBoeuf case, which I previously cited; again, it's at 478
16 B.R. 627 (Bankr. S.D.N.Y. 2012). There, the Court concluded
17 that it had the discretion under Section 1104(c)(2) not to
18 appoint an examiner under those circumstances present there,
19 given that the investigation that the examiner was sought to
20 be done had already been conducted or was nearly complete,
21 and the appointment of an examiner would upend the
22 settlement process and the consideration of the settlement
23 in connection with the confirmation hearing, in essence,
24 obtain an adjournment of that hearing when, in fact, the
25 Court had set all of those issues up to be determined before

1 it.

2 The issue, again, that the motion seeks to have be
3 the subject of the examination is the independence of the
4 Debtor, its board and, more specifically, the special
5 committee of the board in submitting the plan for
6 confirmation.

7 This is, frankly, different than the issues raised
8 in the motion and the reply, which focus on the entire scope
9 of the negotiation of the plan, even before key parties who
10 are supporting the plan were in existence. The motion is
11 premised upon the theory that the pre-bankruptcy settlement
12 framework embodied in the term sheet negotiated between, on
13 the one hand, the Sacklers and the Debtors -- then not
14 Debtors, just Purdue -- as defendants in multi-district
15 litigation.

16 And the claimants in that litigation, or at least
17 certain of the claimants in that litigation, including the
18 so-called consenting states and the lead personal injury
19 attorneys' committee, was, in fact, a structure that
20 determined the outcome leading to the plan and, therefore,
21 every step from that structure to this moment -- and
22 conceivably, the future -- need to be investigated by the
23 examiner to determine the integrity of the process, using
24 the words of the motion and the reply.

25 This completely ignores that the Debtors are a

1 different side of the settlement at this point. When they
2 become Debtors, they are fiduciaries for their estates and
3 creditors. They then have claims that otherwise could be
4 asserted only by creditors, namely fraudulent transfer,
5 preference, and veil piercing claims, and they're subject to
6 the supervision of this Court.

7 It also ignores the creation of the official
8 unsecured creditors' committee, which obviously didn't exist
9 before the commencement of these cases, and its fiduciary
10 duties. It also ignores that the framework settlement was
11 not a settlement, it was merely a framework, subject to
12 definitive documentation and extensive due diligence, as was
13 made clear on the first day of this case and basically in
14 every hearing thereafter by the parties and by me.

15 Given all of that, it appears to me to be
16 completely irrelevant and wasteful to investigate the
17 Debtors' negotiations of the plan. The motion and Professor
18 Lipson really have no other evidentiary support for the
19 contention that the post-petition Debtor was in any way
20 controlled by the Sacklers, let alone that the special
21 committee was.

22 Again, it's hard for me to see whether the issue
23 itself is particularly relevant, given that there are
24 multiple parties in interest who conducted extensive
25 investigations of claims against the Sacklers besides the

1 Debtors, although, of course, the Debtors did too. Indeed,
2 the announcement by the Attorney General of the State of New
3 York that she had uncovered in excess of \$10 billion of
4 claims for potential avoidable transfers by the Sacklers
5 came from uncovering the first page of the Debtors'
6 extensive report detailing those transactions.

7 There is no real suggestion, except wholly
8 inappropriate innuendo, some of which I addressed during
9 oral argument, that the special committee had some sort of
10 proclivity not to act as independent fiduciaries. But
11 again, even if they did, of which there's no evidence, there
12 were plenty of other fiduciaries adamantly in opposition to
13 the Sacklers, well represented, who actively and, in fact, I
14 think uniquely in bankruptcy practice engaged in I believe
15 the most thorough investigation of those claims one can
16 imagine.

17 Of course, they considered whether the process
18 itself was affected by the Sacklers' role as shareholders of
19 the Debtor and, of course, if they had reached that
20 conclusion, I would have heard it and, of course, if that
21 were true, I would have appointed a trustee or otherwise
22 directed the Sacklers to have no role. But again, it
23 beggars the mind to believe that Professor Lipson is sincere
24 when he says that you cannot rely upon the creditors'
25 committee to have done that inquiry.

1 This was not a point he raised in his objection to
2 the disclosure statement, yet he relies on the disclosure
3 statement as not discussing it to his satisfaction.
4 Frankly, it would have been a five-minute discussion at the
5 disclosure statement hearing if he had. I would have asked
6 the Debtors, I would have asked the committee and I would
7 have asked other parties in interest, do you have any reason
8 to believe that the Sacklers are directing or influencing
9 the special committee or the Debtors in their putting forth
10 this plan. Although frankly, I believe again the answer to
11 that question is obvious: if the committee did have that
12 belief, it would have raised it, knowing how active,
13 diligent, and committed the members of the committee and its
14 professional are.

15 The Dewey and LeBoeuf case also deals with a
16 second aspect of the issue under Section 1104(c)(2); that
17 is, Judge Glenn in that case analyzes whether the debts in
18 that case as asserted -- and the movant does have the burden
19 of proof on this -- by the movant were, in fact, fixed,
20 liquidated, and unsecured, other than debts for goods,
21 services, or taxes or owing to an insider, in excess of \$5
22 million. Obviously, that's relevant because of the number
23 of cases that state that, at least in most circumstances,
24 the Court must appoint an examiner.

25 As Judge Glenn states in Dewey LeBoeuf, the \$5

1 million requirement is typically satisfied where there is
2 outstanding unsecured bank debt or outstanding publicly
3 issued debentures in an aggregate sum in excess of \$5
4 million. He goes on to state, "While there is little case
5 law on what constitutes a fixed and liquidated debt for
6 purposes of Section 1104(c)(2), Blacks Law Dictionary
7 defines fixed debt as, "Generally a permanent form of a
8 debt, commonly evidenced by a bond or debenture; long-term
9 debt".

10 Judge Glenn goes on to state, "Conversely, it
11 defines a contingent debt as 'A debt that is not presently
12 fixed but that may become fixed in the future with the
13 occurrence of some event,'".

14 Lastly, it defines a liquidated debt as "A debt
15 whose amount has been determined by agreement of the parties
16 or by operation of law,".

17 Finally, Judge Glenn states "In other bankruptcy
18 contexts, a contingent debt has been defined as one which
19 the Debtor will be called upon to pay only upon the
20 occurrence or a happening of an extrinsic event which will
21 trigger liability. A debt is liquidated where the claim is
22 determinable by reference to an agreement or by a simple
23 computation", citing *Mazzeo v. United States, In re. Mazzeo*
24 131 F.3d 295, 303 through 05, (2d Cir. 1997).

25 Generally, these types of issues don't come up in

1 the 1104 context, but rather, as to who is an eligible
2 petitioner to commence an involuntary case under Section 303
3 of the Bankruptcy Code. And certainly, contemplating the
4 legislative history of this section, which was focused on
5 funded debt, as well as the Section 303 case law and the
6 Dewey LeBoeuf case, which addressed contingencies and
7 concluded that the debts that were being asserted did not
8 fall into the category of "fixed, liquidated unsecured
9 debts."

10 There is a substantial question in my mind here as
11 to whether the only debt that is asserted by Professor
12 Lipson as triggering this provision, in fact, falls within
13 the actual language of it. It is the debt set forth in
14 paragraph 6 of the Court's order pursuant to 11 U.S.C.
15 Section 105 and Federal Rule of Bankruptcy Procedure 9019,
16 authorizing and approving settlements between the Debtors
17 and the United States.

18 That settlement contemplated various judgments and
19 payments to be made to the United States in paragraphs 3
20 through 5, all of which are contingent upon the District
21 Court accepting the plea agreement at the sentencing
22 hearing.

23 And then there is the debt that Mr. Lipson relies
24 on set forth in paragraph 6, which states that "The United
25 States shall have an allowed unsubordinated, undisputed,

1 non-contingent, liquidated unsecured claim against PPLP,
2 that is Purdue, in the amount of \$2.8 billion arising from
3 the DOJ's civil investigation, defined as the civil claim."

4 If you just stopped there, obviously Professor
5 Lipson would be right. But the paragraph continues,
6 "Provided that if PPLP..." and then I'll skip the first
7 proviso and go on to, "... provided that if a plan
8 materially consistent with the terms of the civil settlement
9 agreement is not confirmed", and then goes on to say, "In
10 the event of voluntary dismissal or a conversion of the
11 cases, that is the bankruptcy cases, or in the event the
12 Debtors' obligation under the civil settlement agreement are
13 voided for any reason, the United States may elect in its
14 sole discretion to rescind the releases in the civil
15 settlement agreement and bring any civil and/or
16 administrative claim action or proceeding against the
17 Debtors where the claims that would otherwise be covered by
18 the release provided in paragraph III.3 of the civil
19 settlement agreement or to have an undisputed non-contingent
20 and liquidated allowed unsecured claim against Debtors for
21 the full amount of the DOJ's civil proof of claim."

22 To me, that is a material contingency that, quite
23 arguably, takes this without the range of a fixed liquidated
24 unsecured debt.

25 All of these conclusions would lead one in a

1 normal situation to deny the motion outright. I am troubled
2 though, again, by the unsupported and inflammatory
3 allegations in the motion that really have little or nothing
4 to do with the relief that was actually pursued today, i.e.,
5 the relief sought.

6 In particular, I am concerned that based upon
7 those unwarranted and unsupported statements regarding the
8 Debtors' special committee; that the special committee,
9 which as far as I can tell has, in fact, been independent,
10 will somehow always have a taint over it. We're talking
11 about actual people who I think have already been slandered
12 in this motion, as I've noted during oral argument.

13 It's also clear to me that many provisions of this
14 motion are written in a way to be easily quoted and
15 misconstrued by the media, which again, casts a pall or
16 would cast a pall on these people. That shouldn't have
17 happened, but it has happened.

18 As everyone agrees, this is a case that elicits
19 properly very emotional reactions. It is not a case about
20 forgiveness. It is not even a case about forgetting, and
21 (indiscernible) said, "Many more people just forget or try
22 to forget than forgive."

23 But it is a case where I believe hundreds of
24 people with the best of intentions have worked tirelessly to
25 reach a result that best addresses the claims against Purdue

1 and Purdue's rights against the Sacklers and, frankly,
2 third-parties rights against the Sacklers. Whether that
3 result is enough for me to confirm the plan has not been
4 decided.

5 I will note regarding my concern about how the
6 public views this case that, notwithstanding that obvious
7 fact or the obvious fact that this is not a criminal case, I
8 continue to get correspondence from people who I truly --
9 well, being sorry for them is not enough, I mean, what
10 they've gone through is inexpressible -- but who believe
11 nevertheless because of what they have read that this is a
12 criminal case that will somehow absolve the Sacklers, both
13 criminally and morally. That is not what this case is
14 about; it never has been about that, nor could it be.

15 On the other hand, as I said, hundreds of people
16 have worked tirelessly to try to maximize the recovery to
17 undo the injuries that have taken place over decades, and
18 how that is perceived is important because most of the money
19 will go to programs to abate the opioid crisis. If people
20 believe that somehow that process was not conducted with
21 integrity, that effort is somehow tainted.

22 I believe that Professor Lipson could have gotten
23 to this result much more easily than spewing out what he did
24 in his pleadings, but I am concerned that if I do not
25 appointment an examiner, the next press release will be,

1 "Court refuses to appoint examiner to determine whether
2 process was fair," and not add, "because there was no
3 evidence submitted to show that it wasn't."

4 So my inclination here is to appoint one person on
5 his or her own, not with a team, to look at one issue, which
6 is whether the board, and more specifically the special
7 committee, in directing that the Chapter 11 plan before me
8 be filed and pursued was acting independently and not under
9 the direction or influence of the Sacklers.

10 That appointment will not -- and I repeat not --
11 involve an assessment of the prior negotiations or of the 99
12 million pages of the investigation conducted by the
13 committee or the other millions of pages of the
14 investigation conducted by the Debtors under the auspices of
15 the special committee. It will not assess the quality of
16 that work. It will assess independence.

17 In essence, the Iridium and TMT Trailer factor
18 that I will separately assess if the plan -- when the plan
19 is brought before me to determine whether it should be
20 confirmed. The Debtors contend that it is enough that I
21 assess that factor based on the evidence, and if this case
22 were not already tainted by this pleading, I think that is
23 the right result, but I believe an examiner should be
24 appointed to do that task.

25 The Debtors stated that the ad hoc committee of

1 non-consenting states is taking discovery on that issue,
2 among other issues. The examiner will have access to that
3 discovery. He or she can also interview parties in
4 interest, including, of course, the special committee, and I
5 will expect a report on that issue before the commencement
6 of the confirmation hearing.

7 I will also expect a report about the cost of that
8 process and of this motion, so that everyone in this case
9 can know the cost and what was not spent on abating the
10 opioid crisis. I will set the budget for that process by
11 the examiner, i.e., the examiner's own cost, at \$200,000,
12 which is essentially my salary; that should do it. I don't
13 expect the examiner to need another lawyer, except perhaps
14 to put in his or her fee application and to review the order
15 retaining him or her, although I expect that the U.S.
16 Trustee will appoint a senior person with experience in
17 Chapter 11 cases involving corporate governance or
18 experience with corporate governance in Chapter 11 cases.

19 The concept asserted in these pleadings and in
20 Professor Levitin's article that somehow the people that
21 know best those issues are tainted because they do, leading
22 to the inevitable result that one should appoint a neophyte
23 is, of course, ludicrous. And, in fact, at least as far as
24 Professor Lipson is concerned, I trust he continues to seek
25 the comments and input from such people when he writes real

1 articles, as opposed to press releases to the "Wall Street
2 Journal."

3 I don't expect there to be a lengthy debate or
4 scrutiny before it's submitted to me of the order. I will
5 ask the Debtors to draft it, since I don't trust Mr.
6 Lipson's drafting since I've read about 20 different
7 versions of the task that he wanted the examiner to
8 undertake. But, of course, the Debtors should provide him
9 with a copy before it's submitted to the Court so he can
10 make sure it's consistent with my ruling. Copies should
11 also be circulated to the other parties, but it should not
12 deviate from my ruling.

13 Lastly, I am, as I said, concerned about how this
14 ruling may affect the critical mediation that is ongoing. I
15 trust, having had Mr. Troop appear before me throughout this
16 entire case -- and by the way, Mr. Lipson, I don't believe
17 Mr. Troop has ever appeared before me in an engagement like
18 this before, unlike the two times that Mr. Kaminetzky has
19 and the one time that Mr. Huebner has -- and I trust that
20 his clients will recognize that this investigation is
21 largely, if not entirely, irrelevant to their negotiations.

22 However, I'm directing the parties to let Judge
23 Chapman know that if they point to it as a reason to delay
24 the mediation or to hold back if she asks them to put their
25 best offer on the table, she should tell me because I

1 believe that will be in bad faith. Now, again, I don't
2 believe that any of the parties to the mediation would do
3 that, but I want to be clear that they shouldn't.

4 So any questions from the parties?

5 MR. HUEBNER: Yes, Your Honor, just to clarify one
6 this if I may. It's Marshall Huebner. So as I think we've
7 made clear in every document ever, it was the special
8 committee that had the authority exclusively vested in it.
9 The other board members did not participate, they were never
10 in the room, and the special committee by and large had, you
11 know, a separate dedicated team and the like. I'll just
12 give you the one from --

13 THE COURT: The inquiry should be of the inquiry
14 should be about the special committee, if anyone else had an
15 undue influence them on behalf of the Sacklers, you know, it
16 starts with the special committee.

17 MR. HUEBNER: I was just confirming that one very
18 small, tangled point, Your Honor. Obviously, that the
19 reason we had a special committee and, obviously, I wouldn't
20 say we welcome it to approve at a confirmation in any event,
21 but obviously, we certainly understand and are, you know,
22 ready to engage with an examiner appointed to put the
23 special committee through the questions that Professor
24 Lipson has asked, and I hope that there will be quite
25 satisfactory answers for all concerned.

1 THE COURT: And one other point, although this
2 probably goes without saying also. I've said that the
3 examiner will have access to the discovery taken by the ad
4 hoc group of non-consenting states; that will be subject to
5 the protective order. In my experience -- and I don't
6 believe there's ever been a case otherwise, in fact, there
7 are a number of reported opinions where examiners say that
8 the only thing discoverable from them is their report --
9 what the examiner is privy to as far as discovery and the
10 like will be subject to that protective order, and what will
11 be publicly released will be his or her report.

12 So obviously, Mr. Troop, it's the raw discovery;
13 it's not your side's analysis of it. You can share that if
14 you want, but you don't have to go beyond that obviously. I
15 see you're nodding there.

16 MR. TROOP: Sorry, Your Honor. Understood, Your
17 Honor.

18 THE COURT: Okay, very well. So any other
19 questions? I see the U.S. Trustee, there she is, Miss
20 Riffkin.

21 MR. TROOP: Your Honor, if I may.

22 THE COURT: No, I think Miss Riffkin, you're on
23 mute I think still.

24 MS. RIFFKIN: Yes, I got off of mute. Thank you,
25 Your Honor. And we are ready to appoint an examiner once we

1 have the order and we'll start the process right away.

2 THE COURT: Okay, very well. Thank you.

3 MR. TROOP: Your Honor, if I may, one quick
4 clarification. Will the examiner be permitted to meet and
5 confer with counsel to the unsecured creditors' committee
6 and the other major participants in this case?

7 THE COURT: To get their sense of the
8 independence, not to investigate their integrity.

9 MR. TROOP: Correct, correct. Thank you.

10 THE COURT: All right.

11 MR. TROOP: Thank you, Your Honor.

12 THE COURT: All right, very well. Okay. Anything
13 else for today? No? All right. Thanks very much.

14 MR. TROOP: Thank you, Your Honor.

15 (Whereupon these proceedings were concluded at 3:02 PM)

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I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions

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