

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 United States Bankruptcy Court

12 300 Quarropas Street, Room 248

13 White Plains, NY 10601

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16 September 30, 2021

17 2:04 PM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24
25 ECRO: A. VARGAS

1 HEARING re Statement / Notice of Status and Scheduling
2 Conference (related document(s) 3779) (ECF #3788).

3
4 HEARING re Motion to Shorten Time United States Trustees Ex
5 Parte Motion For An Order Shortening Notice And Scheduling
6 Hearing With Respect To The United States Trustees Expedited
7 Motion For A Stay Of Confirmation Order And Related Orders
8 Pending Appeal Pursuant To Federal Rule Of Bankruptcy
9 Procedure 8007 (related document(s) 3778) filed by Linda
10 Riffkin on behalf of United States Trustee. (ECF #3779)

11
12 HEARING re Motion for Stay Pending Appeal /Memorandum of Law
13 In Support Of United States Trustees Expedited Motion For A
14 Stay Of Confirmation Order And Related Orders Pending Appeal
15 Pursuant To Federal Rule Of Bankruptcy Procedure 8007
16 (related document(s) 3777, 3776) filed by Linda Riffkin on
17 behalf of United States Trustee. (ECF #3778)

18
19 HEARING re Notice of Appeal - United States Trustee's Notice
20 of Appeal of Advance Funding Order (related document(s) 3773)
21 filed by Linda Riffkin on behalf of United States Trustee.
22 (ECF #3777)

1 HEARING re Notice of Appeal - United States Trustee's Notice
2 of Appeal of Confirmation Order and Order Approving
3 Disclosure Statement, filed by Linda Riffkin on behalf of
4 United States Trustee. (ECF #3776)

5
6 HEARING re Order signed on 9/15/2021 Granting Motion (I)
7 Authorizing the Debtors to Fund Establishment of the
8 Creditor Trusts, the Master Disbursement Trust and Topco,
9 (II) Directing Prime Clerk LLC to Release Certain Protected
10 Information, and (III) Granting Other Related Relief
11 (Related Doc # 3484) (ECF #3773).

12
13 HEARING re Statement / Notice of Listen-Only Dial-in for
14 Status and Scheduling Conference (related document(s) 3779)
15 (ECF #3838)

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P R O C E E D I N G S

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2 THE COURT: Good afternoon, everyone. We are here
3 in In re Purdue Pharma L.P., et al on a status conference
4 that I scheduled pertaining to the issue of a motion or
5 motions to come for a stay pending appeal of my order
6 confirming the Chapter 11 plan in this case from September
7 17th.

8 The last day I believe to file an appeal is
9 tomorrow. So I guess it's conceivable there would be
10 someone who would not be participating today. But the
11 purpose of this conference is to put some structure around
12 the process of considering motions for a stay pending appeal
13 of the confirmation order.

14 There were some appeals filed before the order was
15 even entered. And, somewhat surprisingly, at least one
16 motion for a stay pending appeal before the order was
17 entered. I have been assured by the Debtors, and I believe
18 this is borne out by the facts of the case, that the plan
19 could not go effective for a considerable time. It's
20 somewhat unclear to me whether that time runs out in
21 November or some period in December. But it seemed to me
22 that rather than rushing ahead and dealing with piecemeal
23 motions for a stay pending appeal, we should have this
24 conference and set a reasonable date for the parties to put
25 something before the Court on a basis that is not rushed.

1 So I guess the first question is one for the
2 Debtors, which is to ask them to go through the timing on
3 when at the earliest the Chapter 11 plan could go effective.

4 MR. HUEBNER: Sure, Your Honor. Can I be heard
5 clearly in the court?

6 THE COURT: Yes.

7 MR. HUEBNER: Okay. Your Honor, for the record,
8 Marshall Huebner of Davis Polk & Wardwell LLP on behalf of
9 the Debtors.

10 Your Honor, the way that the DOJ settlement works
11 is that there is to be a sentencing hearing scheduled --
12 there is a lot of feedback. I'm not sure where it's coming
13 from.

14 THE COURT: I can hear you clearly, but it may be
15 coming separately from someone.

16 MR. HUEBNER: Okay. There is a hearing on the
17 sentencing to be held not earlier than 75 days from the day
18 the Court confirms the plan. It doesn't say entry of the
19 confirmation order or doesn't say anything like it. It just
20 says the day the Court confirms the plan. We're talking
21 (indiscernible) whether we have a shared view about that.
22 Obviously one possible date is September 1st when Your Honor
23 said I am confirming the plan and then gave us a six-and-a-
24 half-hour oral ruling. Another possibility is obviously
25 September 17th, when the amended bench order and the

1 findings of facts and conclusions of law were entered. But
2 in any event, it's many weeks away and so I think it's not
3 really relevant most likely for today's purposes because
4 first, there is a sentencing and then there is another brief
5 period before the Debtors can emerge. That structure was
6 put into the DOJ settlement by the Debtors for the Debtors
7 because we need time to get ready to emerge and obviously
8 didn't want to be sentenced until essentially the eve of
9 emergence.

10 So it's there really for our purposes, and I'm
11 sure we'll figure out where the other -- whether it's
12 November 22nd or I think December 8th is the alternative
13 date. But in any event, just to get ahead to help everybody
14 out here, the parties have had hours of calls and emails and
15 things like that about the right schedule for this. And I
16 think that there is universal agreement that we would like a
17 stay hearing if it is possible before this Court which all
18 parties are willing to agree to, most likely in the middle
19 of October. And depending on some things that relate to
20 evidence that came up on a call earlier today which I am
21 happy to explain, that might need to slip a little bit. But
22 in any event, several to many weeks before the earliest
23 possible emergence date, which I think is far more than
24 enough time to let people have a hearing on a stay and
25 potentially further.

1 If it would be useful to the Court, I'm happy to
2 explain why there might be presently unknowable arbitrage in
3 the actual hearing date based on what essentially
4 (indiscernible) to a very large two-hour meet and confer we
5 had earlier today if that would be useful.

6 THE COURT: Okay.

7 MR. HUEBNER: So, simply stated, Your Honor, but
8 for one issue, I think the core parties, and many of them
9 were on the call -- I think there were 60 people on the
10 email -- are by and large agreeable to the reply papers of
11 appellees and parties supporting the appellees being filed
12 on October 7th and then the hearing either being held
13 October 14th if that's the date that the Court can make it,
14 or, because Mr. Eckstein is very important and without,
15 unfortunately, giving too much of a shoutout, he is just not
16 available that day, some other day very soon thereafter. We
17 are not in any way, shape, or form trying to slow things
18 down. We are happy to move very quickly.

19 The reason that date might not work is because the
20 movants -- and I think we got the latest stay motion only
21 very late last night from Maryland. And so they're still
22 kind of coming in piecemeal on a rolling basis. One of the
23 stay motions I believe had evidence attached to them.
24 They're just legal briefs. But of course the stay inquiry
25 is a balancing of the harms, which in fact I think two of

1 the four prongs in fact relate to facts about where the
2 harms are both from granting a stay and from not granting a
3 stay. And suffice it to say that many parties other than
4 the tiny number of objectors and appellants take
5 extraordinarily strong issue with the lawyers' claims about
6 where harm is and is not.

7 And so at a minimum, the Debtors, the AHC, the
8 UCC, and the MSGE all plan to have declarations attached to
9 their reply briefs providing facts for the Court to have in
10 front of it with respect to our view of harms from a stay,
11 facts that were not adduced at trial which have nothing to
12 do with harm from the timing or a delay in effectiveness,
13 but rather more about the propriety and legality of the
14 plan. So this is actually a different issue. It's a
15 different motion, it's a different legal standard, it's a
16 different inquiry.

17 And as Your Honor has heard me say many times, at
18 the end of the day, maybe it's simplistic, but I believe
19 that our job is to present facts that support law and lead
20 to a conclusion. And I think we're supposed to have both
21 when we make motions, which is why the debtors invariably
22 do.

23 And so the (indiscernible) arbitrage comes in the
24 fact that if the movants for the stay decide they don't want
25 to depose our witnesses and they are happy to cross-examine

1 them sort of live at the hearing and they're not putting in
2 any witnesses of their own on rebuttal, which at this point
3 (indiscernible) fairly allowed because everybody filed their
4 motions and they chose not to put in evidence, that was
5 their choice. At this point that other than I think an
6 improper ambush, they should be limited to rebuttal. Then
7 maybe we can still proceed on the 14th.

8 But if they say oh, wait a minute, there are now
9 going to be four or five witnesses, we want to depose them
10 all and then we want to reserve the right to put in rebuttal
11 witnesses of our own, then this turns into a factually
12 contested matter, and obviously we will need time -- you
13 know, the same seven days I assume that they got at a
14 minimum with our stuff to see what facts they have at least
15 decided to put in sometime in late October and probably
16 depose their witnesses and then have a hearing sometime
17 later.

18 So the short answer is if they want to move very
19 quickly, we're totally game for that. And we're ready to
20 proceed as early on or after the 14th and as makes sense.
21 But obviously if they would like time to depose our
22 witnesses, because it's certainly our due process and
23 constitutional right to supply facts along with our legal
24 pleadings, then obviously at their election, they are
25 welcome to slow things down. And we have no objection to

1 that, either. We are in essence happy to proceed in
2 whatever way seems sensible based on what the movants want
3 to do in response to what we intend to do in our objections.

4 So I hope and trust, fingers crossed, that I
5 fairly summarized a pretty intense, freewheeling
6 conversation among many parties that lasted a pretty long
7 time earlier today. I see Mr. Schwartzberg, who was the
8 first of the movants, is on screen. And so hopefully he
9 will add to what I say as opposed to correcting it. If I
10 got something wrong and he corrects it, that's fine, too.
11 I'm just trying to relay what I believe was discussed among
12 the great many parties.

13 THE COURT: Okay.

14 MR. HUEBNER: Paul, you're on mute.

15 MR. SCHWARTZBERG: I'm sorry, Your Honor. Good
16 afternoon. Paul Schwartzberg from the U.S. Trustee's
17 Office. I also just wanted to bring the Court's attention
18 to my colleague, Beth Levine, who is also on the line with
19 me and probably filling the holes that I miss.

20 Your Honor, the U.S. Trustee believes that a stay
21 is necessary to ensure an appropriate review of important
22 constitutional rights of victims by an Article 3 court. And
23 as Mr. Huebner said, we do believe a hearing should go
24 forward on October 14th. We are prepared to go forward with
25 the stay hearing at that time.

1 We do disagree with Mr. Huebner that there needs
2 to be an evidentiary hearing. We believe that all the facts
3 are on the record from the multi-day confirmation hearing,
4 Your Honor. We believe that perhaps the seeking of adding
5 more evidence or trying to stretch out the hearing is
6 perhaps a delaying tactic to try to get us beyond the
7 effective date.

8 And in fact, Your Honor, although Mr. Huebner
9 indicated that effective date could be as early as November
10 22nd, I do note I believe November 14th, which is only six
11 weeks from now, would be the date of a possible sentencing
12 hearing. So a lot of eggs could be scrambled on the
13 November 14th date, Your Honor.

14 But back to the hearing, Your Honor. I do also
15 note that just last night we did also receive a notice of
16 deposition from one of the appellees seeking a deposition of
17 the U.S. Trustee, which we believe is also once again trying
18 to delay the matter and put us beyond the effective date.
19 But we are trying to move as expeditiously as possible.

20 In fact, we've received a notice of approval from
21 the Solicitor General to try to seek a direct appeal to the
22 Second Circuit in this case. But while we're doing that, we
23 also think we can go on a dual track and try to deal with
24 the appeal on the merits in the district court on an
25 expedited basis. And we spoke to the Debtor about a

1 proposed briefing schedule there where we think we could
2 possibly get oral arguments before the -- hopefully before
3 the November 14th date. They hopefully are amenable to
4 that.

5 But, Your Honor, between now and the 14th, the 14-
6 day automatic stay of the confirmation order is going to
7 expire. I believe the 14 day ends tomorrow and hearing on
8 the stay motion is not until the 14th. And so we had a
9 conversation on what's actually going on between now and
10 then. People were concerned the eggs may be scrambled, that
11 the horse may get out of the barn between now and the 14th.
12 And we know pursuant to the structuring steps memoranda, a
13 lot of things are going to be happening. The shareholder
14 settlement agreement will be entered into, Newco and Topco
15 will be formed, the various trusts under the plan will be
16 formed. The directors' and employees' escrow account may be
17 established, the \$6.8 million from the advanced funding
18 order potentially will be distributed. And it's not just
19 going to sit in an account. It's actually going to be
20 distributed out. Prime Clerk may release personally-
21 identifiable information to the PI trustee and his
22 associates. And then we believe a lot of licensing and
23 regulatory office work will be done to be able to turn the
24 switch upon the effective date such that -- I keep using the
25 metaphor, Your Honor, the eggs will be scrambled.

1 So I think between now and the 14th, as we put in
2 our motion, we would like a bridge order extending that 14-
3 day order to whatever date Your Honor sets for a hearing on
4 the stay motion.

5 MR. HUEBNER: Okay, Your Honor, just to help
6 clarify a couple of things. Number one, when we've already
7 told all parties that we agree both to their expedited
8 schedule for the 14th and we also have the contours of an
9 agreement for potential expedited briefing on the merits and
10 an appeal before whatever appeal court we go to, to hear Mr.
11 Schwartzberg even use the phrase delaying tactic I actually
12 find simply extraordinary, especially in the same --

13 THE COURT: All right, let's cut this short. Have
14 the other appellants agreed to seek an expedited appeal,
15 whether it's to the district court or directly to the
16 circuit?

17 MR. HUEBNER: Go ahead.

18 MR. SCHWARTZBERG: I was going to say, Your Honor,
19 you'd have to ask -- I can't --

20 THE COURT: No, I'm not asking you, Mr.
21 Schwartzberg. I'm asking the other appellants.

22 MR. SCHWARTZBERG: I apologize.

23 MR. GOLD: Excuse me, Your Honor, Matthew Gold
24 from Kleinberg Kaplan. Can you hear me?

25 THE COURT: Yes. Afternoon.

1 MR. GOLD: Thank you, Your Honor. We represent
2 the State of Washington and I believe now as appellants the
3 State of Oregon and District of Columbia. In any event, we
4 agree both with the idea that there should be a direct
5 appeal to the Second Circuit which will most expedite the
6 appellate review of this process, and also to the idea of an
7 expedited briefing schedule on the merits. I'm not sure
8 that we've completely worked out the exact dates, but we
9 strongly support the concept.

10 THE COURT: Okay, thank you.

11 MR. GOLDMAN: Your Honor, good afternoon. Irve
12 Goldman, Pullman & Comley, State of Connecticut. We do as
13 well support a direct appeal to the Second Circuit and the
14 expedited briefing schedule that's been discussed.

15 THE COURT: Okay, thanks.

16 MR. UNDERWOOD: This is Allen Underwood on behalf
17 of certain Canadian municipal creditors and first nations'
18 appellants each, and we also support an expedited appeal to
19 the Second Circuit. Thank you.

20 THE COURT: Okay. Thank you, Mr. Underwood.

21 Is there anyone else?

22 MR. ESKANDARI: Bernard Eskandari on behalf of the
23 State of California. We concur with direct appeal to the
24 Second Circuit as well as expedited briefing.

25 THE COURT: Okay, thank you.

1 MR. EDMUNDS: Your Honor, Brian Edmunds from
2 Maryland. I'm sorry, something has come up here where I
3 can't be on camera. But we are in agreement as to direct
4 review by the Second Circuit.

5 THE COURT: Okay.

6 MR. HUEBNER: Your Honor, just so the point is not
7 lost, I do want to be clear for the avoidance of any
8 ambiguity. The position I talked about before is about the
9 expedition of the appeal, not about its venue. And there
10 are a fair number of parties obviously on the other side
11 from these appellants. And that's actually not an issue
12 neither up for today nor, frankly, up for this Court.

13 THE COURT: I understand.

14 MR. HUEBNER: Okay. I just want to make sure
15 there's no confusion.

16 THE COURT: What I'm leading up to -- and I think
17 it probably isn't that big an issue given what I've just
18 heard -- is that it would seem to me that the appellants'
19 willingness, as well as the appellees' willingness to have
20 an expedited appeal, whether it's to the district court or a
21 direct appeal to the circuit, but in any event seeking
22 expedition, is an important factor that I'll take into
23 account on the request for a stay. And that's just to give
24 people a heads up.

25 MR. HUEBNER: Understood, Your Honor.

1 THE COURT: As far as the timing is concerned,
2 October 14th is the Purdue omnibus day for October. It's
3 not that far off. I think it's probably achievable if the
4 parties don't engage in any material discovery before that
5 hearing. But you're not really able to tell me that today I
6 think. I also have free either November 9 or November 10.
7 We can move things that are on the calendar for each of
8 those days to the other day. So it may make sense just to
9 fix that day which would give parties another week for
10 discovery of November 9th. That's well before I believe the
11 plan would even, under what I think is an unlikely scenario,
12 be ready to go effective.

13 To me, and I think this applies to the time to
14 appeal, frankly, it's when the order is entered, not when
15 the Judge says that he is going to enter an order. And that
16 clearly is in any event, whether that more likely scenario
17 applies or the less likely one, gives parties plenty of
18 time, having gotten their whole record in the lower court,
19 if they disagree with my ruling to go to the district court.
20 Which by that point will have had pleadings and gotten some
21 grounding in the matter. So you're not going to be hitting
22 someone cold with the arguments that you will have made and
23 will again make on appeal of request for a stay.

24 So I guess I would urge people to focus on the 9th
25 unless you can get clear agreement on an acceptable

1 discovery schedule for the 14th.

2 MR. SCHWARTZBERG: Your Honor, the U.S. Trustee
3 would prefer to at least initially put in the 14th and --

4 THE COURT: Well, the 14th is an omnibus day. So
5 that could be done. But I'm not prepared to do that yet
6 unless it actually works given the timing here. It's not an
7 issue that warrants any concern. If I ruled on the 9th,
8 there is still plenty of time to address it at a higher
9 level.

10 MR. GOLD: Your Honor, may I be heard?

11 THE COURT: Sure.

12 MR. GOLD: Matthew Gold. I recognize that Your
13 Honor's calendar is one that I have not looked at
14 extensively, but I just wish to ask whether it's possible
15 from the Court's perspective that there could be a hearing
16 date the week following the 14th just because --

17 THE COURT: Well, you can check with Ms. Li on
18 that.

19 MR. GOLD: Okay, thank you.

20 THE COURT: I'm giving you the dates that I
21 thought were free. And given again the timing here -- and
22 it's certainly not unheard of for a bankruptcy judge, even
23 if it denies a stay or if it grants a stay, one way or the
24 other, but it would really only apply if I denied the
25 request for a stay, nevertheless to grant a sufficient stay

1 so that the district court could decide that issue. I have
2 a feeling that that would be unnecessary here, whether it's
3 the 14th or the 9th. And it's certainly the case that if I
4 denied a stay, I would nevertheless require the Debtors for
5 example to provide notice to all the appellants several
6 days, perhaps as much as two weeks in advance of their going
7 effective so that they could go to the district court if my
8 assessment of when they would go effective is just
9 inaccurate. So I think the parties are protected here under
10 either date.

11 MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg.
12 I just wanted to point out that the sentencing date, at
13 least under the Debtor's calculation, would be just a few
14 days after the 9th. So --

15 THE COURT: What did I just say, Mr. Schwartzberg?
16 I said that if I denied a stay, I would probably
17 nevertheless stay it so that a district court could rule. I
18 would expect that at that point you would have engaged with
19 the district court, you would have gotten a timeline for
20 when that judge is free.

21 MR. SCHWARTZBERG: Thank you, Your Honor.

22 THE COURT: So I'm not going to have people jump
23 through hoops for the least likely event here under the
24 scenarios that apply. I'm also not going to enter some sort
25 of bridge order between now and then. It's clear to me -- I

1 said this when I granted the motion. It's in the order for
2 the pre-effective date implementation work that that just
3 isn't a basis for mootness. It just isn't. All the things
4 you listed, Mr. Schwartzberg, can be undone. Every single
5 one of them. It just can't be a basis for mootness, and it
6 isn't. And the Debtors have said so. And that's why I
7 granted the motion, so they would be judicially estopped.
8 I'm not going to go through that again. It makes no sense
9 to enter a stay now on the order that I granted given the
10 basis for that order and the record.

11 MR. HUEBNER: Your Honor, let me give all parties
12 comfort. Because the thing that they're concerned about and
13 that Your Honor is talking about actually can't happen. Let
14 me explain.

15 Our sentencing hearing is going to be a very
16 public hearing before the district court in New Jersey, of
17 which everyone in this case and many other people will get
18 clear notice. There is no question that people will know
19 exactly when our sentencing hearing is scheduled.

20 Under the DOJ settlement agreement, we cannot
21 emerge prior to seven days after the sentencing hearing. So
22 there is going to be plenty of notice and plenty of time
23 about the earliest possible confirmation date. And,
24 frankly, I actually don't think that a temporary stay might
25 even be needed then. Because if you rule on date X and our

1 sentencing hearing is scheduled for day Y and then it's T
2 plus seven, that could easily be a sufficient period.

3 In any event, we've explained to people again and
4 again -- and it's all in the public documents that were
5 actually approved after an extensive hearing -- the earliest
6 possible emergence dates are utterly, completely knowable
7 and known by all parties because they are keyed off of
8 another hearing in another federal court whose date will be
9 very open and public.

10 So I think there really is neither a concern that
11 the ministerial things happening before sentencing could
12 ever constitute mootness, as we've also told the parties
13 about a hundred times. But it is also case that there can't
14 be some prized emergency. It's just not possible. We have
15 a court-approved agreement with the United States of America
16 that sets forth the timing that keys it off of seven days
17 after a public sentencing hearing before the district court
18 in New Jersey.

19 So hopefully that will give people comfort now
20 that we've said it yet again on the record yet again about
21 how it works. But there can be no surprise press release
22 that we emerged yesterday. It just can't happen because of
23 the DOJ agreement.

24 THE COURT: Okay. Well, that probably is the
25 case, Mr. Huebner. But in any event, if there is some issue

1 on the timing, in all likelihood I would require the Debtors
2 to provide advanced notice as I've described it of an
3 effective date.

4 MR. HUEBNER: Thank you, Your Honor.

5 THE COURT: So, look, I think I can't set the 14th
6 today because you don't have that agreement with the
7 appellants and appellees about discovery. In fact, it's
8 conceivable there would be some other appellant tomorrow.

9 On the other hand, that day is already set for
10 Purdue. So I don't think you need to reserve it. If you
11 reach that agreement, we can use that day.

12 But I think you should be thinking of the 9th or
13 10th of November as your fallback day. And we won't be
14 scheduling anything for those days. I have matters -- I
15 have omnibus days on other cases on both of those days, but
16 the omnibus matter on each day can be moved to the other day
17 just to accommodate a hearing on the stay motions for either
18 the 9th or the 10th.

19 So I think that probably is enough for today.
20 Although I do want to say to me, given the timing here and
21 everyone's desire to have an expeditious determination on
22 appeal, that should be the parties' focus, and I'm glad it
23 is the parties' focus. I have little doubt that there will
24 be appellate review here. I can't imagine why there
25 wouldn't be given the facts and the parties' desire to move

1 expeditiously. The judges in this building really do
2 understand the need for speed in bankruptcy matters when
3 that need exists. And I think certainly in this case they
4 will be told that exists by the parties and they'll see that
5 it is important. And I think that's in all likelihood the
6 same for the Second Circuit Court of Appeals. So I am
7 encouraged that the parties are in agreement on moving
8 expeditiously on this because there is no reason why it
9 shouldn't be reviewed at the appellate level.

10 MR. HUEBNER: Your Honor, assuming for a minute
11 that the evidentiary issues as requested by the appellants
12 don't delay the hearing, it sounds to me like we should
13 still be shooting for filing our briefs and declarations by
14 October 7th. So if people decide we'll just cross-examine
15 them at the hearing, we choose speed over a slower discovery
16 period. In other words, we're giving them the choice. And
17 I want to be clear about that.

18 THE COURT: Right.

19 MR. HUEBNER: Obviously we need to have our briefs
20 so we can go forward with the hearing to have that be fair.
21 So we're still willing I think to be held until October 7th.

22 THE COURT: That's fine. A week in advance of the
23 hearing with three days before the hearing for reply briefs,
24 that's fine.

25 THE COURT: Right. But I should just ask, because

1 I'm very nervous, as I'm normally not a litigator, I'm
2 certainly not an appellant litigator. And if I could ask
3 the UCC, the AHC, the MSGE, or the PIs if I have sort of
4 gotten something wrong or if there is some other deadline.
5 Because, for example, the fact that we're still getting new
6 stay motions right now -- obviously we got one very late
7 last night. Are there any other deadlines that as part of
8 this, if this calendar holds, that we want to make sure that
9 we sort of lay out right now so we're not surprised by
10 filings. So I would ask someone from one of the other
11 parties on sort of our side of the V as it were, to please
12 jump in if I've missed something that's important that we
13 all agree and lock down publicly and firmly on the record.
14 Mr. Shore and Mr. Preis, Mr. MacLay, Mr. Eckstein, please
15 supplement if I've gotten something not complete.

16 MR. PREIS: Your Honor, this is Arik Preis with
17 Akin Gump Strauss Hauer & Feld. Can you hear me?

18 THE COURT: Yes. Fine, thanks.

19 MR. PREIS: Good afternoon. I did want to ask one
20 question. Because you correctly pointed out at the
21 beginning that there are motion or motions to come seeking a
22 stay. Given that and given that you're either going to have
23 this hearing on October 14th or November 9th, how does the
24 Court (indiscernible) deal with the late (indiscernible) who
25 are appealing today, but then they make final their motion

1 for stay next week? How do we deal with that?

2 THE COURT: Right. Well, I think they have to fit
3 into the same schedule. It's a good question, but I think
4 they have to fit into the same schedule. I mean, look, they
5 waited -- they will have waited obviously until the last day
6 to file an appeal and the 14-day stay will have passed then.
7 Because of that choice, I think they really need to be
8 prepared, and they've had time to be prepared to make a stay
9 motion. And they'll just have to fit into the schedule that
10 is adopted. And that includes if there is an agreement by
11 everyone else that they don't need discovery on your
12 witnesses. That would apply to someone who files a stay
13 motion say on October 3rd or whenever, you know, before the
14 hearing.

15 MR. PREIS: Well, that's understood. And I
16 appreciate that. But Mr. Huebner just said our replies
17 would come in October 7th. We can't very well reply to
18 something that comes in October 7th if it comes in
19 (indiscernible).

20 THE COURT: Well, I guess that's fair. On the
21 other hand, there are plenty of motions for stays pending
22 appeal where it's just heard orally by the judge. And I
23 think, look, I think the issues on appeal are going to be
24 pretty standard. So I'm not bothered by that. If there's
25 something that really comes in from left field and it's not

1 some that you can dispose of easily at oral argument, then
2 maybe I'll hear that a couple days later. But I don't want
3 to suggest that that would happen because I don't think it
4 will.

5 MR. PREIS: Is there a way -- I take your point.
6 But is there any way to set a deadline for motions for stay
7 pending appeal (indiscernible) on October 15th?

8 THE COURT: I think the deadline is just the fact
9 that they have to be ready for the hearing then. And I
10 appreciate that puts some pressure on you, but I think the
11 allies of the appellee debtor are up to him on that.

12 MR. PREIS: Okay.

13 THE COURT: Again, with the caveat if something
14 truly comes out of left field that isn't bizarrely out of
15 left field -- and I think it would be unfair to give you
16 just a day or so to respond, then I may hear that particular
17 issue later.

18 MR. PREIS: Okay. Thank you, Your Honor.

19 THE COURT: Okay.

20 MR. ECKSTEIN: Your Honor, good afternoon. It's
21 Kenneth Eckstein of Kramer Levin, if I can briefly be heard.

22 THE COURT: Sure.

23 MR. ECKSTEIN: First, as Mr. Huebner indicated,
24 from a personal standpoint, I would prefer the 9th. But if
25 the hearing needs to go forward on October 14th, my

1 colleague is certainly capable of handling it in my place.
2 I actually do believe that November 9th is a more organized
3 date to do this because (indiscernible) pleadings on the
4 7th. We do intend to put in declarations (indiscernible)
5 that the harm is (indiscernible) and needs to be addressed
6 in connection with the consideration of even a suggestion of
7 staying beyond the effective date.

8 I happen agree with Your Honor, between now and
9 the effective date, we don't see the urgency because
10 (indiscernible) a couple of weeks.

11 THE COURT: Well, the urgency is getting it in
12 front of the appellate court. That's the urgency.

13 MR. ECKSTEIN: Right. And I recognize that. And
14 I think that we're all willing to work to make sure that
15 that gets accomplished.

16 But in any event, it's a bit I think disjointed if
17 we're going to find out two days in advance of the court
18 date that there's either going to need to be depositions or
19 there's going to be rebuttal witnesses or if there's even
20 going to be cross-examination and the like. So that to me
21 compels in favor of a more organized date. But as I said,
22 we will work with either and we'll be prepared
23 (indiscernible) to put in a pleading and a declaration in
24 opposition to a post effective date (indiscernible).

25 THE COURT: Okay. I mean, coming into this

1 conference, it seemed to me that November 9th might be also
2 a more organized date for all of this. But if the parties
3 are able to do it by the 14th, I guess we can do it by the
4 14th. One benefit of doing it on the 9th is that you do
5 have another week that the appellate court will be focusing
6 on this. And just based on the nature of this chapter 11
7 case, someone on some side will be unhappy with my ruling
8 about a stay. And having the appellate court be more up to
9 speed on the underlying issues might be helpful when they
10 hear a request for a stay, or more likely, an appeal from my
11 ruling on the stay. So I'd like the parties to keep that in
12 mind too as far as picking a date

13 MR. ECKSTEIN: I think that is (indiscernible),
14 Your Honor. And I think that they're going to overlap quite
15 significantly, there's no question.

16 THE COURT: Right. I mean, look, I think one of
17 the reasons that the law on equitable mootness is so diverse
18 throughout the country and even within circuits is because
19 there are times when an appellate court just wants to rule.
20 You know? They want to address something that they see that
21 needs to be addressed in the lower court's order, and
22 they're going to find a way to do it. And other times, they
23 really don't want to rule. And sometimes, therefore,
24 instead of affirming or reversing, simply say it's moot.
25 The more that the appellate court is informed, the better as

1 far as the consideration of these types of issues at that
2 level.

3 MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg
4 again. I apologize. When the parties coalesce on a date,
5 whether it be the 14th or the 9th, should we just contact
6 chambers?

7 THE COURT: Yes. Again, yes, definitely. And in
8 the meantime, we won't add anything to either the 9th or the
9 10th. So you can coalesce on that date. And in the
10 meantime of course we have the 14th because it's a Purdue
11 omnibus day.

12 MR. SCHWARTZBERG: Thank you, Your Honor.

13 THE COURT: But in each case, any objections to
14 the stay motions would be due a week in advance unless
15 someone files a stay motion. You know, but you can't do
16 that -- you know, someone else other than the people here.
17 And any replies three days before the hearing. And I won't
18 reiterate what I told Mr. Preis, but that's also applicable.

19 Mr. Fogelman --

20 MR. HUEBNER: Your Honor, one -- I'm sorry, Your
21 Honor. I apologize.

22 THE COURT: Mr. Fogelman, I think you've been
23 trying to say something. Or maybe not.

24 MR. FOGELMAN: Yes, Your Honor. Thank you. I
25 just wanted to address the point that Mr. Huebner raised

1 before when he said the issue of whether the Debtor
2 (indiscernible) or not, it's not before the Court today.
3 While that may literally true on the calendar, it's clear
4 today that all appellants have expressed a willingness to
5 brief the merits on an expedited schedule and
6 (indiscernible) direct certification to the Second Circuit.

7 Frankly, Your Honor, it makes sense for the Second
8 Circuit to have the opportunity to review these important
9 issues before the plan goes effective. And in order to
10 facilitate the process, it would be helpful to hear from the
11 Debtors as quickly as possible regarding whether they
12 consent to (indiscernible) certification as they are the
13 only appellee here, that they agree to certification
14 (indiscernible) have the right to go to the Second Circuit
15 on petition without further action of the bankruptcy court.
16 And I think it makes sense first to determine
17 (indiscernible) briefing schedule as soon as possible and
18 well in advance (indiscernible).

19 Thank you, Your Honor.

20 THE COURT: That's a fair point. I'm sure the
21 parties are focusing on that, and that's important.

22 MR. HUEBNER: So, Your Honor, two quick points.
23 One thing I realize may not have been what the Court
24 intended, which is I don't think it would be remotely fair -
25 - and I hope it's not what anybody intended -- that we file

1 our briefs on October 7th, then the appellant announce we're
2 good with November 9th and we're not filing anything for a
3 month until November 6th, including witness declarations --

4 THE COURT: No, no. You should work it -- well
5 before the briefs, well before the objections are filed, the
6 parties need to work out whether it's the 14th or the 9th.

7 MR. HUEBNER: Exactly. And I assume that we'll
8 have a different schedule if there are going to be
9 evidentiary submissions by the appellants, which would be
10 well before three days before the hearing in November.

11 THE COURT: The best way to describe it is it
12 should be -- any replies are three days before the hearing
13 and any briefs are seven days before the hearing, whichever
14 hearing it's going to be, the 14th or the 9th.

15 MR. HUEBNER: Okay. So we'll figure that out in a
16 way that's fair.

17 With respect to Mr. Fogelman's point, I just want
18 to note it's a little bit bizarre that Department of Justice
19 itself filed the first (indiscernible) of appeal, it listed
20 both sides of the Sackler families as appellees. Of course
21 it's a little bit strategic to say the least because they
22 did not list all the other plan supporters who actually in
23 in fact I think are the actual appellees. The MSGE, the
24 AHC, the UCC, the PIs. It's ultimately for the appellate
25 court to decide who the appellees are. And, frankly, this

1 sort of jockeying before the trial court, including who the
2 appellees are, is (indiscernible). But again, to have Mr.
3 Fogelman on behalf of the DOJ saying the only appellees are
4 the debtor while another part of the DOJ listed only the
5 debtors and the Sacklers, truly could create a terrible
6 misimpression up above that this is the Debtors and the
7 Sacklers versus the U.S. Government, when as everybody
8 knows, the Sacklers did not vote on the plan, did not draft
9 the plan, did not see the plan until it was public. Rather,
10 this is the creditors' and the stakeholders' plan. And,
11 Your Honor, I think that many of our core constituencies
12 absolutely positively and passionately believe that they are
13 appellees, and I think they will be seeking to be made
14 appellees. And those are the kinds of things that lots of
15 conversations are going on about right now.

16 So I just -- Mr. Fogelman knows how deeply I
17 respect him. But to have him stand up and contradict the
18 written position of the Department of Justice on this issue
19 is a little bit too much to bear.

20 THE COURT: Well, Department of Justice hasn't
21 appealed. It's the United States Trustee that has appealed.

22 MR. HUEBNER: Well, they are a division of the
23 Department of Justice. I don't imagine we'll be seeing
24 conflicting positions from different parts of one
25 government. But if they are allowed to do that, we'll deal

1 with it as it comes.

2 THE COURT: All right.

3 MR. HUEBNER: Nothing more to be said about that.

4 It's not today's issue. We're working as quickly as we can

5 --

6 THE COURT: But I think that -- okay, fine.

7 Although that's really more of an issue for the appellate
8 court, including identifying who they need to check into and
9 make sure that they are aware of their interests in the
10 case.

11 But as far as the decision on whether they agree
12 to a direct appeal or not, that really should be made
13 promptly. Because obviously this is going to be a
14 substantial amount of work for one of the judges in this
15 building. And there's no reason to have him or her engage
16 in that work if everyone promptly agrees that it should be a
17 direct appeal.

18 MR. HUEBNER: Your Honor, we agree completely.
19 And we are working hours a day on all of these topics. I
20 don't want to leave any misimpression.

21 Ironically, we actually think we can get to a much
22 faster hearing on the merits before the district court
23 because it saves probably two rounds of briefing before the
24 merits. But again, people make their own decision. The
25 direct certification rules essentially call for a polling of

1 both appellants and appellees, and not even all appellants
2 are even on this hearing, so I'm not -- you know, there are
3 some that aren't even here at all right now. So I'm not
4 sure how anybody could speak for all appellants.

5 But lots of conferences going on, lots of emails.
6 Everyone is working at warp speed. We know we're going
7 upstairs. We know we're having stay hearings. We're all
8 working as fast as we can. And that's I think the best we
9 can do.

10 THE COURT: Okay. All right. Very well. Very
11 well. All right.

12 So I think in all likelihood then sometime
13 probably early next week, probably I would say no later than
14 Wednesday or Thursday next week, you should let Ms. Li in
15 chambers know whether you're going to be moving ahead on the
16 omnibus day, October 14, or instead on the 9th of November.

17 MR. HUEBNER: Thank you, Your Honor.

18 THE COURT: Okay.

19 MR. GOLD: Your Honor?

20 THE COURT: Yes.

21 MR. GOLD: Matthew Gold again. May I briefly
22 address the Court?

23 THE COURT: Sure.

24 MR. GOLD: Just to raise the related topic that
25 we've all been discussing partially. While we are in

1 agreement, as I said before, that we should be moving
2 promptly to try to get a certification, but I would request
3 to the Court that perhaps we can also -- if Your Honor is
4 agreeable, file a formal motion to be heard on the 14th so
5 that if the parties are still having a discussion, it
6 provides the vehicle for the Court to make a decision one
7 way or another. We did discuss certification during the
8 call earlier today, and several of the parties said to us
9 you haven't even filed a motion yet and need to file a
10 motion for us to consider it. So we are trying to be
11 responsive to that concern unless Your Honor doesn't think
12 it's necessary. We just want to be able to move that
13 process forward as quickly and properly as possible.

14 THE COURT: I haven't really looked at that issue.
15 I know there is a scheduling order in place in the case
16 which might require you to file the motion by tomorrow. I
17 think if you file it within a reasonable time, I would be
18 willing to modify that order so that it could be heard on
19 the 14th. On the other hand, my distinct impression,
20 although it's based on looking at these issues several years
21 ago, is that ultimately it's up to the Second Circuit
22 whether they take it or not.

23 MR. GOLD: Okay. Thank you, Your Honor.

24 THE COURT: So how I rule on that issue is not
25 necessarily that important.

1 MR. GOLD: (indiscernible)

2 THE COURT: Okay.

3 MR. HUEBNER: So, Your Honor, we're happy to look
4 at that just so that we're all clear (indiscernible). I do
5 not believe I was on any call where anyone said you haven't
6 even filed a motion --

7 THE COURT: Well, it doesn't matter. I mean, Mr.
8 Gold has a legitimate concern that under the scheduling
9 order in the case generally if he doesn't file it by
10 tomorrow, someone -- not necessarily you -- may raise their
11 hand and say, well, it's too late for the judge to hear it
12 on the 14th. If you file it within a reasonable time before
13 the 14th, Mr. Gold, I will probably hear it.

14 MR. HUEBNER: Yeah. And, Your Honor, that's where
15 I was going to go next, which is, like everything else we
16 keep saying, we actually believe in due process. And if
17 people need to make a motion to protect their rights, we
18 will move as swiftly as reasonable to meet them on whatever
19 schedule the Court requires. And if this ends up being
20 contested at the trial court level, which is one
21 possibility, absent consent from the majority of appellants
22 and appellees, we have no problem at all moving swiftly. So
23 I was actually going to agree with the predicate, just not
24 with the factual statement that preceded it.

25 THE COURT: Okay. All right.

1 MR. ECKSTEIN: Your Honor, just before you
2 conclude, it's Mr. Eckstein. Just if I could suggest one
3 minor amendment to the way Your Honor was I think
4 concluding. Given the fact that right now if the hearing
5 goes forward on the 14th, brief will be due on the 7th,
6 which is I think next Thursday, I would suggest that both
7 parties try to reach consensus by Tuesday as to whether or
8 not we're going to use the --

9 THE COURT: That's fair. I don't see why people
10 need to be flat-out rushing to get briefs in if they can
11 reach consensus, you know, by end of the day Tuesday.
12 That's fair.

13 MR. HUEBNER: Yeah. And then if it's the 9th,
14 we'll just try to agree on an appropriate briefing schedule
15 if they're going to be putting in witnesses and declaration
16 and discovery, it then becomes a contested evidentiary
17 matter, and presumably we should be able to be on a schedule
18 cruising towards the 9th.

19 THE COURT: So can I just leave you with one
20 thought? And I'm just going to leave it with you because
21 it's just to help perhaps guide all the parties' thinking on
22 the stay pending appeal issue.

23 It seems to me that having a sense for the
24 schedule as to when the appellate court or courts can rule -
25 - and of course you don't know that for sure, but at least

1 you know what your briefing schedule would be, you're
2 assuming that there would be requests for expedited ruling.
3 And we've seen in the past that they rule promptly in
4 important cases like this.

5 It would be my wish if that schedule is a
6 reasonable one that does not run the risk of causing
7 enormous harm to the creditors, to have a stay through that
8 period or at least to have a stay through the period that
9 everyone things is necessary with a potential second look at
10 the appellate court as to whether any further stay is
11 necessary. I think that might obviate the need for a lot of
12 litigation with the stay issue.

13 I don't know if -- I hope I am being clear. The
14 idea is I would like to accommodate those who believe -- and
15 I think it's a very legitimate belief -- that my ruling
16 should be subject to review, meaningful review. On the
17 other hand, I am sensitive to the concerns of the creditors
18 that getting this money out into the health system and to
19 individuals is important. If you can hit the sweet spot or
20 close to the sweet spot where at least you can reasonably
21 predict that there will be appellate review by date X, I
22 think you might well consider coming together on an order
23 that just has a stay until day X with an opportunity to, if
24 the Court hasn't ruled by then, if the appellate court
25 hasn't ruled by then, go to the appellate court and say all

1 right, you know, I want to extend that stay. And then
2 everyone who says that that's too long can oppose it.
3 I have a feeling that the appellate court will have ruled by
4 then and you won't need to do that.

5 So that's the question I will be asking you
6 primarily at this hearing, whether it's on October 14 or
7 November 9th. And so I think that's what you all should be
8 focusing on. That involves getting some crystal balling
9 from your litigators about your briefing schedule and when a
10 court might rule on this. But, you know, they moved really
11 fast in GM and Chrysler. And this doesn't affect the entire
12 auto industry, but it affects a lot of people. And I think
13 they probably would rule very fast here one way or the
14 other, at least within the period that you are contemplating
15 here, which is months from now.

16 Okay. Thank you.

17 MR. GOLDMAN: Your Honor?

18 THE COURT: Yes.

19 MR. GOLDMAN: One last comment here. I'm sorry to
20 digress. But in terms of the opposition papers, I think we
21 would be at somewhat of a disability to determine whether we
22 are going to make it an evidentiary hearing unless we
23 actually see what the opposition papers are. So I don't
24 know --

25 THE COURT: Well, I'm assuming they will tell you

1 what they intend to have their witnesses, you know, submit
2 declarations on. And I'm assuming they're declarations
3 about the timing of getting the money out to individual
4 victims and to the states and localities for abatement. And
5 I find it hard to believe that there wouldn't be any other
6 irreparable harm that they're focusing on. And, again, that
7 ties into just what I said. If you hit the sweet spot and
8 let the appellate process play out, albeit on an expedited
9 basis without jeopardizing that timetable in a meaningful
10 way, then the parties should be able to agree on at least a
11 date. You can't decide -- you can't force the appellate
12 courts to make a ruling by that date, but at least you could
13 extend it to that date with the right to ask for a further
14 stay of that court. They know what they're up to at that
15 point. They know how long it will take to rule, and they
16 can evaluate the balance of harms themselves at that point.
17 So I'm just leaving that with you all.

18 But I think they don't have to -- I mean, I think
19 it's too much to say we need to see their briefs and then
20 decide whether we're going together on going forward on the
21 14th. But they'll tell you what it is they intend to put
22 out. And if they surprise you and submit something else,
23 then we'll have to move it. But I don't think that's going
24 to happen, but they should tell you generally. But I'm
25 assuming that's what it's going to be about, that type of

1 harm, that type of calculus.

2 MR. GOLDMAN: Okay. Thank you, Your Honor.

3 THE COURT: Okay. All right. Thanks, everyone.

4 MR. HUEBNER: Thank you, Your Honor.

5 (Whereupon these proceedings were concluded at
6 2:59 PM)

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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

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Date: October 4, 2021

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