

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 Case No. 19-23649-rdd

**5      In the Matter of:**

6

7 PURDUE PHARMA L.P.

8

**9** | **Debtor.**

11

12 United States Bankruptcy Court

**13**                   **300 Quarropas Street, Room 248**

14 White Plains, NY 10601

15

16 | November 9, 2021

17 9:49 AM

18

19

20

21 | B E F O R E :

**22 HON ROBERT D. DRAIN**

23 U.S. BANKRUPTCY JUDGE

24

25 | ECRO : ART

1 HEARING re Order signed on 11/3/2021 Establishing Procedures  
2 for Remote Hearing on Motions for Stay Pending Appeal with  
3 hearing to be held on 11/9/2021 at 10:00 AM at  
4 Videoconference (ZoomGove) (RDD)

5

6 HEARING re Notice of Agenda / Agenda for November 9, 2021  
7 Hearing

8

9 HEARING re Motion for Stay Pending Appeal / Memorandum of  
10 Law In Support of United States Trustees Expedited Motion  
11 for a Stay of Confirmation Order and Related Orders Pending  
12 Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8007  
13 (related document(s) 3777, 3776) filed by Linda Rifkin on  
14 behalf of United States Trustee. (ECF #3778)

15

16 HEARING re Objection to Motion / Ad Hoc Committee's  
17 Objection to Stay Motions (related document(s) 3801, 3873,  
18 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein  
19 on behalf of Ad Hoc Committee of Governmental and Other  
20 Contingent Litigation Claimants. (ECF #4002)

21

22 HEARING re Opposition Tribal Group Joinder in Opposition to  
23 Stay Motions filed by Peter D'Apice on behalf of Certain  
24 Native American Tribes and Others (ECF #4003)

25

1 HEARING re Opposition of the Official Committee of Unsecured  
2 Creditors to Motions for Stay Pending Appeal (related  
3 document(s) 3801, 3873, 3789, 3845) filed by Ira S.  
4 Dizengoff on behalf of The Official Committee of Unsecured  
5 Creditors of Purdue Pharma L.P., et al. (ECF #4006)

6

7 HEARING re Opposition The Ad Hoc Committee of NAS Children's  
8 Joinder to Opposition of the Official Committee of Unsecured  
9 Creditors to Motions for Stay Pending Appeal (related  
10 document(s) 4006) filed by Harold D. Israel on behalf of Ad  
11 Hoc Committee of NAS Babies. (ECF #4009)

12

13 HEARING re Opposition Joinder of the Private Insurance  
14 Ratepayers to Opposition of the Official Committee of  
15 Unsecured Creditors to Motions for Stay Pending Appeal  
16 (related document(s) 3801, 3873, 3789, 3845) filed by  
17 Nicholas F. Kajon on behalf of Eric, Hestrup, et al.  
18 (ECF #4010)

19

20 HEARING re Opposition /Joinder (related document(s) 4006)  
21 filed by Lauren Guth Barnes on behalf of Blue Cross Blue  
22 Shield Association. (ECF #4011)

23

24

25

1 HEARING re Objection to Motion /The Ad Hoc Group of  
2 Individual Victims' (I) Objection to the United States  
3 Trustee's and Certain Public Creditors' Motion for Stay  
4 Pending Appeal and (II) Joinder in the Opposition of the  
5 Official Committee of Unsecured Creditors to Motions for  
6 Stay Pending Appeal (related document(s) 3873, 3972, 3789,  
7 3845) filed by J. Christopher Shore on behalf of Ad Hoc  
8 Group of Individual Victims of Purdue Pharma L.P.  
9 (ECF #4012)

10

11 HEARING re Memorandum of Law/Debtors' Memorandum of Law in  
12 Opposition to the Motions for Stays of the Confirmation  
13 Order and the Advance Order Pending Appeal (related .  
14 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)  
15 filed by Marshall Scott Huebner on behalf of Purdue Pharma  
16 L.P. (ECF #4014)

17

18 HEARING re Opposition of the MSGE Group to the Motions to  
19 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
20 3789, 3860, 3845) filed by Kevin C. Maclay on behalf  
21 of Multi-State Governmental Entities Group. (ECF #4016)  
22 Opposition - Joinder to the Opposition of the Official  
23 Committee of Unsecured Creditors to Motions for Stay Pending  
24 Appeal (related document(s) 4006) filed by Michael Patrick  
25 O'Neil on behalf of Ad Hoc Group of Hospitals. (ECF #4017)

1 HEARING re Reply to Motion Reply in Support of United States  
2 Trustee's Motion for a Stay of Confirmation Order and  
3 Related Orders Pending Appeal Pursuant to Federal Rule of  
4 Bankruptcy Procedure 8007 (related document(s) 3801, 3972,  
5 3778) filed by Paul Kenan Schwartzberg on behalf of United  
6 States Trustee. (ECF #4050)

7

8 Related Documents:

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

15

16 HEARING re Motion to Shorten Time United States Trustees Ex  
17 Parte Motion For An Order Shortening Notice And Scheduling  
18 Hearing With Respect To The United States Trustees Expedited  
19 Motion For A Stay Of Confirmation Order And Related Orders  
20 Pending Appeal Pursuant To Federal Rule Of Bankruptcy  
21 Procedure 8007 (related document(s) 3 778) filed by Linda  
22 Riffkin on behalf of United States Trustee. (ECF #3779)

23

24

25

1 HEARING re Modified Bench Ruling On For Confirmation Of  
2 Eleventh Amended Joint Chapter 11 Plan Signed on 9/17/2021.  
3 (ECF #3786)

4

5 HEARING re Findings Of Fact, Conclusions Of Law, And Order  
6 Confirming The Twelfth Amended Joint Chapter 11 Plan Of  
7 Reorganization Of Purdue Pharma L.P. And Its Affiliated  
8 Debtors Signed On 9/17/2021 (related document(s) 3726).  
9 (ECF #3787)

10

11 HEARING re Amended Motion for Stay Pending Appeal/ Amended  
12 Memorandum of Law In Support Of United States Trustee's  
13 Expedited Motion For A Stay Of Confirmation Order And  
14 Related Orders Pending Appeal Pursuant To Federal Rule Of  
15 Bankruptcy Procedure 8007 (related document(s) 3799, 3777,  
16 3776, 3778, 3779) filed by Linda Riffkin on behalf of United  
17 States Trustee. (ECF #3801)

18

19 HEARING re Motion to Stay/ Memorandum of Law in Support of  
20 United States Trustee's Expedited Motion to Extend the  
21 Automatic Stay of the Confirmation Order and for a Limited  
22 Stay of the Related Orders Pending Resolution of His  
23 Expedited Motion for a Stay Pending Appeal (related  
24 document(s) 3786, 3787, 3773) filed by Linda Riffkin on  
25 behalf of United States Trustee. (ECF #3803)

1 HEARING re Motion to Shorten Time I United States Trustees  
2 Ex Parte Motion for an Order Shortening Notice and  
3 Scheduling Hearing with Respect to the United States  
4 Trustee's Expedited Motion to Extend the Automatic Stay of  
5 the Confirmation Order and for a Limited Stay of the Related  
6 Orders Pending Resolution of His Expedited Motion for a  
7 Stay Pending Appeal (related document(s) 3803) filed by Linda  
8 Riffkin on behalf of United States Trustee. (ECF #3804)

9

10 HEARING re Statement/ Notice of Listen-Only Dial-in for  
11 Status and Scheduling Conference (related document(s) 3779)  
12 filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P.  
13 (ECF #3838)

14

15 HEARING re Motion for Stay Pending Appeal / Second Amended  
16 Memorandum Of Law In Support Of United States Trustees  
17 Amended Expedited Motion For A Stay Of Confirmation  
18 Order And Related Orders Pending Appeal Pursuant To Federal  
19 Rule Of Bankruptcy Procedure 8007 (related document(s) 3801,  
20 3778) filed by Brian S. Masumoto on behalf of United States  
21 Trustee. (ECF #3972)

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1 HEARING re Motion for Stay Pending Appeal/ Blackline Second  
2 Amended Memorandum Of Law In Support Of United States  
3 Trustees Amended Expedited Motion For A Stay Of Confirmation  
4 Order And Related Orders Pending Appeal Pursuant To Federal  
5 Rule Of Bankruptcy Procedure 8007 (related document(s) 3972)  
6 filed by Brian S. Masumoto on behalf of United States  
7 Trustee. (ECF #3973)

8

9 HEARING re Objection to Motion / Ad Hoc Committee's  
10 Objection to Stay Motions (related document(s) 3801, 3873,  
11 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein  
12 on behalf of Ad Hoc Committee of Governmental and Other  
13 Contingent Litigation Claimants. (ECF #4002)

14

15 HEARING re Declaration of Cheryl Juaire in Support of the  
16 Opposition of the Official Committee of Unsecured Creditors  
17 to Motions for Stay Pending Appeal (related document(s) 4006)  
18 filed by Ira S. Dizengoff on behalf of The Official  
19 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
20 al. (ECF #4007)

21

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25

1 HEARING re Declaration of Kara Trainor in Support of the  
2 Opposition of the Official Committee of Unsecured Creditors  
3 to Motions for Stay Pending Appeal (related document(s) 4006)  
4 filed by Ira S. Dizengoff on behalf of The Official  
5 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
6 al. (ECF #4008)

7

8 HEARING re Motion to Allow/ Debtors' Motion for Leave to  
9 Exceed the Page Limit in Filing Memorandum of Law in  
10 Opposition to the Motions for Stays of the Confirmation  
11 Order and the Advance Order Pending Appeal filed by Marc  
12 Joseph Tobak on behalf of Purdue Pharma L.P. (ECF #4013)

13

14 HEARING re Declaration of Jesse DelConte (related  
15 document(s) 4014) filed by Marshall Scott Huebner on behalf  
16 of Purdue Pharma L.P. (ECF #4015)

17

18 HEARING re Opposition of the MSGE Group to the Motions to  
19 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
20 3789, 3860, 3845) filed by Kevin C. Maclay on behalf  
21 of Multi-State Governmental Entities Group. (ECF #4016)

22

23

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25

1 HEARING re Amended Statement Supplemental Designation of  
2 Record in Rebuttal and in Support of United States Trustee's  
3 Second Amended Expedited Motion for a Stay of Confirmation  
4 Order and Related Orders Pending Appeal Pursuant to Federal  
5 Rule of Bankruptcy Procedure 8007 (related document(s) 3972)  
6 filed by Paul Kenan Schwartzberg on behalf of United States  
7 Trustee. (ECF #4043)

8

9 HEARING re Motion to Allow Motion to Exceed Page Limit in  
10 Filing Reply in Support of United States Trustee's Motion  
11 for a Stay of Confirmation Order and Related Orders Pending  
12 Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8007  
13 filed by Paul Kenan Schwartzberg on behalf of United States  
14 Trustee. (ECF #4049)

15

16 HEARING re Motion for Stay Pending Appeal (related  
17 document(s) 3786, 3787, 3773) filed by Matthew J. Gold on  
18 behalf of State of Washington. (ECF #3789)

19

20 Responses Received:

21 Objection to Motion/ Ad Hoc Committee's Objection to Stay  
22 Motions (related document(s) 3801, 3873, 3972, 3789, 3778,  
23 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc  
24 Committee of Governmental and Other Contingent Litigation  
25 Claimants. (ECF #4002)

1

2 HEARING re Opposition Tribal Group Joinder in Opposition to  
3 Stay Motions filed by Peter D'Apice on behalf of Certain  
4 Native American Tribes and Others. (ECF #4003)

5

6 HEARING re Opposition of the Official Committee of Unsecured  
7 Creditors to Motions for Stay Pending Appeal (related  
8 document(s) 3801, 3873, 3789, 3845) filed by Ira S. Dizengoff  
9 on behalf of The Official Committee of Unsecured Creditors  
10 of Purdue Pharma L.P., et al. (ECF #4006)

11

12 HEARING re Opposition The Ad Hoc Committee of NAS Children's  
13 Joinder to Opposition of the Official Committee of Unsecured  
14 Creditors to Motions for Stay Pending Appeal (related  
15 document(s) 4006) filed by Harold D. Israel on behalf of Ad  
16 Hoc Committee of NAS Babies. (ECF #4009)

17

18 HEARING re Opposition Joinder of the Private Insurance  
19 Ratepayers to Opposition of the Official Committee of  
20 Unsecured Creditors to Motions for Stay Pending Appeal  
21 (related document(s) 3801, 3873, 3789, 3845) filed by  
22 Nicholas F. Kajon on behalf of Eric Hestrup, et al.  
23 (ECF #4010)

24

25

1 HEARING re Opposition /Joinder (related document(s) 4006)  
2 filed by Lauren Guth Barnes on behalf of Blue Cross Blue  
3 Shield Association. (ECF #4011)

4

5 HEARING re Objection to Motion /The Ad Hoc Group of  
6 Individual Victims' (I) Objection to the United States  
7 Trustee's and Certain Public Creditors' Motion for Stay  
8 Pending Appeal and (II) Joinder in the Opposition of the  
9 Official Committee of Unsecured Creditors to Motions for  
10 Stay Pending Appeal (related document(s) 3873, 3972, 3789,  
11 3845) filed by J. Christopher Shore on behalf of Ad Hoc  
12 Group of Individual Victims of Purdue Pharma L.P.  
13 (ECF #4012)

14

15 HEARING re Memorandum of Law/ Debtors' Memorandum of Law in  
16 Opposition to the Motions for Stays of the Confirmation  
17 Order and the Advance Order Pending Appeal (related  
18 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)  
19 filed by Marshall Scott Huebner on behalf of Purdue Pharma  
20 L.P. (ECF #4014)

21

22 HEARING re Opposition of the MSGE Group to the Motions to  
23 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
24 3789, 3860, 3845) filed by Kevin C. Maclay on behalf  
25 of Multi-State Governmental Entities Group. (ECF #4016)

1 HEARING re Opposition - Joinder to the Opposition of the  
2 Official Committee of Unsecured Creditors to Motions for  
3 Stay Pending Appeal (related document(s) 4006) filed by  
4 Michael Patrick O'Neil on behalf of Ad Hoc Group of  
5 Hospitals. (ECF #4017)

6

7 Related Documents:

8 Modified Bench Ruling On Confirmation Of Eleventh Amended  
9 Joint Chapter 11 Plan Signed on 9/17/2021. (ECF #3786)

10

11 HEARING re Findings Of Fact, Conclusions Of Law, And Order  
12 Confirming The Twelfth Amended Joint Chapter 11 Plan Of  
13 Reorganization Of Purdue Pharma L.P. And Its Affiliated  
14 Debtors Signed On 9/17/2021 (related document(s) 3726).  
15 (ECF #3787)

16

17 HEARING re Objection to Motion/ Ad Hoc Committee's Objection  
18 to Stay Motions (related document(s) 3801, 3873, 3972, 3789,  
19 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of  
20 Ad Hoc Committee of Governmental and Other Contingent  
21 Litigation Claimants. (ECF #4002)

22

23

24

25

1 HEARING re Objection to Motion I Ad Hoc Committee's  
2 Objection to Stay Motions (related document(s) 3801, 3873,  
3 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein I  
4 on behalf of Ad Hoc Committee of Governmental and Other  
5 Contingent Litigation Claimants. (ECF #4002)

6

7 HEARING re Declaration of Cheryl Juaire in Support of the  
8 Opposition of the Official Committee of Unsecured Creditors  
9 to Motions for Stay Pending Appeal (related document(s) 4006)  
10 filed by Ira S. Dizengoff on behalf of The Official  
11 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
12 al. (ECF #4007)

13

14 HEARING re Declaration of Kara Trainor in Support of the  
15 Opposition of the Official Committee of Unsecured Creditors  
16 to Motions for Stay Pending Appeal (related document(s) 4006)  
17 filed by Ira S. Dizengoff on behalf of The Official  
18 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
19 al. (ECF #4008)

20

21 HEARING re Motion to Allow/ Debtors' Motion for Leave to  
22 Exceed the Page Limit in Filing Memorandum of Law in  
23 Opposition to the Motions for Stays of the Confirmation  
24 Order and the Advance Order Pending Appeal filed by Marc  
25 Joseph Tabak on behalf of Purdue Pharma L.P. (ECF #4013)

1 HEARING re Declaration of Jesse DelConte (related  
2 document(s) 4014) filed by Marshall Scott. Huebner on behalf  
3 of Purdue Pharma L.P. (ECF #4015)

4

5 HEARING re Opposition of the MSGE Group to the Motions to  
6 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
7 3789, 3860, 3845) filed by Kevin C. Maclay on behalf of  
8 Multi-State Governmental Entities Group. (ECF #4016)

9

10 HEARING re Reply to Motion Reply in Further Support of  
11 Motion of the States of Washington and Connecticut for a  
12 Stay Pending Appeal filed by Matthew J. Gold on behalf of  
13 State of Washington. (ECF #4051)

14

15 HEARING re Motion for Stay Pending Appeal of Confirmation  
16 and Trust Advances Orders filed by Brian Edmunds on behalf  
17 of State Of Maryland. (ECF #3845)

18

19 Responses Received:

20 Objection to Motion/ Ad Hoc Committee's Objection to Stay  
21 Motions (related document(s) 3801, 3873, 3972, 3789, 3778,  
22 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc  
23 Committee of Governmental and Other Contingent Litigation  
24 Claimants. (ECF #4002)

25

1 HEARING re Opposition Tribal Group Joinder in Opposition to  
2 Stay Motions filed by Peter D'Apice on behalf of Certain  
3 Native American Tribes and Others. (ECF #4003)

4

5 HEARING re Opposition of the Official Committee of Unsecured  
6 Creditors to Motions for Stay Pending Appeal (related  
7 document(s) 3801, 3873, 3789, 3845) filed by Ira S. Dizengoff  
8 on behalf of The Official Committee of Unsecured Creditors  
9 of Purdue Pharma L.P., et al. (ECF #4006)

10

11 HEARING re Opposition The Ad Hoc Committee of NAS Children's  
12 Joinder to Opposition of the Official Committee of Unsecured  
13 Creditors to Motions for Stay Pending Appeal (related  
14 document(s) 4006) filed by Harold D. Israel on behalf of Ad  
15 Hoc Committee of NAS Babies. (ECF #4009)

16

17 HEARING re Opposition Joinder of the Private Insurance  
18 Ratepayers to Opposition of the Official Committee of  
19 Unsecured Creditors to Motions for Stay Pending Appeal  
20 (related document(s) 3801, 3873, 3789, 3845) filed by  
21 Nicholas F. Kajon on behalf of Eric Hestrup, et al.  
22 (ECF #4010)

23

24

25

1 HEARING re Opposition /Joinder (related document(s) 4006)  
2 filed by Lauren Guth Barnes on behalf of Blue Cross Blue  
3 Shield Association. (ECF #4011)

4

5 HEARING re Objection to Motion /The Ad Hoc Group of  
6 Individual Victims' (I) Objection to the United States  
7 Trustee's and Certain Public Creditors' Motion for Stay  
8 Pending Appeal and (II) Joinder in the Opposition of the  
9 Official Committee of Unsecured Creditors to Motions for  
10 Stay Pending Appeal (related document(s) 3873, 3972, 3789,  
11 3845) filed by J. Christopher Shore on behalf of Ad Hoc  
12 Group of Individual Victims of Purdue Pharma L.P.  
13 (ECF #4012)

14

15 HEARING re Memorandum of Law/ Debtors' Memorandum of Law in  
16 Opposition to the Motions for Stays of the Confirmation  
17 Order and the Advance Order Pending Appeal (related  
18 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)  
19 filed by Marshall Scott Huebner on behalf of Purdue Pharma  
20 L.P. (ECF #4014)

21

22 HEARING re Opposition of the MSGE Group to the Motions to  
23 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
24 3789, 3860, 3845) filed by Kevin C. Maclay on behalf  
25 of Multi-State Governmental Entities Group. (ECF #4016)

1 HEARING re Opposition - Joinder to the Opposition of the  
2 Official Committee of Unsecured Creditors to Motions for  
3 Stay Pending Appeal (related document(s) 4006) filed by  
4 Michael Patrick O'Neil on behalf of Ad Hoc Group of  
5 Hospitals. (ECF #4017)

6

7 HEARING re Reply to Motion for a Stay of Confirmation and  
8 Trust Advances Orders Pending ;I Appeal (related  
9 document(s) 3801, 3973, 3873, 3972, 3789, 3778, 3860, 3803,  
10 3845) filed by Brian Edmunds on behalf of State Of Maryland.  
11 (ECF #4048)

12

13 HEARING re Related Documents:

14 Order signed on 9/15/2021 Granting Motion (I) Authorizing  
15 the Debtors to Fund Establishment of the Creditor Trusts,  
16 the Master Disbursement Trust and Topco, (II) Directing  
17 Prime Clerk LLC to Release Certain Protected Information,  
18 and (III) Granting Other elated Relief (Related Doc# 3484).  
19 (ECF #3773)

20

21 HEARING re Modified Bench Ruling On For Confirmation Of  
22 Eleventh Amended Joint Chapter 11 Plan Signed on 9/17/2021.  
23 (ECF #3786)

24

25

1 HEARING re Findings Of Fact, Conclusions Of Law, And Order  
2 Confirming The Twelfth Amended Joint Chapter 11 Plan Of  
3 Reorganization Of Purdue Pharma L.P. And Its Affiliated  
4 Debtors Signed On 9/17/2021 (related document(s) 3726).  
5 (ECF #3787)

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8 Objection to Stay Motions (related document(s) 3801, 3873,  
9 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein  
10 on behalf of Ad Hoc Committee of Governmental and Other  
11 Contingent Litigation Claimants. (ECF #4002)

12

13 HEARING re Declaration of Cheryl Juaire in Support of the  
14 Opposition of the Official Committee of Unsecured Creditors  
15 to Motions for Stay Pending Appeal (related document(s) 4006)  
16 filed by Ira S. Dizengoff on behalf of The Official  
17 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
18 al. (ECF #4007)

19

20 HEARING re Declaration of Kara Trainor in Support of the  
21 Opposition of the Official Committee of Unsecured Creditors  
22 to Motions for Stay Pending Appeal (related document(s) 4006)  
23 filed by Ira S. Dizengoff on behalf of The Official  
24 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
25 al. (ECF #4008)

1 HEARING re Motion to Allow/ Debtors' Motion for Leave to  
2 Exceed the Page Limit in Filing Memorandum of Law in  
3 Opposition to the Motions for Stays of the Confirmation  
4 Order and the Advance Order Pending Appeal filed by Marc  
5 Joseph Tabak on behalf of Purdue Pharma L.P. (ECF #4013)

6

7 HEARING re Declaration of Jesse Del Conte ( related  
8 document( s )4014) filed by Marshall Scott Huebner on behalf  
9 of Purdue Pharma L.P. (ECF #4015)

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11 HEARING re Opposition of the MSGE Group to the Motions to  
12 Stay Pending Appeal (related document(s)3801, 3873, 3890,  
13 3789, 3860, 3845) filed by Kevin C. Maclay on behalf of  
14 Multi-State Governmental Entities Group. (ECF #4016)

15

16 HEARING re Motion for Stay Pending Appeal (related  
17 document(s)3810, 3847) filed by Ronald Bass Sr. (ECF #3860)

18

19 HEARING re Responses Received:  
20 Objection to Motion/ Ad Hoc Committee's Objection to Stay  
21 Motions (related document(s)3801, 3873, 3972, 3789, 3778,  
22 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc  
23 Committee of Governmental and Other Contingent Litigation  
24 Claimants. (ECF #4002)

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1 HEARING re Opposition Tribal Group Joinder in Opposition to  
2 Stay Motions filed by Peter D'Apice on behalf of Certain  
3 Native American Tribes and Others. (ECF #4003)

4

5 HEARING re Opposition of the Official Committee of Unsecured  
6 Creditors to Motions for Stay Pending Appeal (related  
7 document(s) 3801, 3873, 3789, 3845) filed by Ira S. Dizengoff  
8 on behalf of The Official Committee of Unsecured Creditors  
9 of Purdue Pharma L.P., et al. (ECF #4006)

10

11 HEARING re Opposition The Ad Hoc Committee of NAS Children's  
12 Joinder to Opposition of the Official Committee of Unsecured  
13 Creditors to Motions for Stay Pending Appeal (related  
14 document(s) 4006) filed by Harold D. Israel on behalf of Ad  
15 Hoc Committee of NAS Babies. (ECF #4009)

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17 HEARING re Opposition Joinder of the Private Insurance  
18 Ratepayers to Opposition of the Official Committee of  
19 Unsecured Creditors to Motions for Stay Pending Appeal  
20 (related document(s) 3801, 3873, 3789, 3845) filed by  
21 Nicholas F. Kajon on behalf of Eric Hestrup, et al.  
22 (ECF #4010)

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1 HEARING re Opposition /Joinder (related document(s) 4006)  
2 filed by Lauren Guth Barnes on behalf of Blue Cross Blue  
3 Shield Association. (ECF #4011)

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5 HEARING re Objection to Motion /The Ad Hoc Group of  
6 Individual Victims' (I) Objection to the United States  
7 Trustee's and Certain Public Creditors' Motion for Stay  
8 Pending Appeal and (II) Joinder in the Opposition of the  
9 Official Committee of Unsecured Creditors to Motions for  
10 Stay Pending Appeal (related document(s) 3873, 3972, 3789,  
11 3845) filed by J. Christopher Shore on behalf of Ad Hoc  
12 Group of Individual Victims of Purdue Pharma L.P.  
13 (ECF #4012)

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15 HEARING re Memorandum of Law/ Debtors' Memorandum of Law in  
16 Opposition to the Motions for Stays of the Confirmation  
17 Order and the Advance Order Pending Appeal (related  
18 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)  
19 filed by Marshall Scott Huebner on behalf of Purdue Pharma  
20 L.P. (ECF #4014)

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22 HEARING re Opposition of the MSGE Group to the Motions to  
23 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
24 3789, 3860, 3845) filed by Kevin C. Maclay on behalf  
25 of Multi-State Governmental Entities Group. (ECF #4016)

1 HEARING re Opposition - Joinder to the Opposition of the  
2 Official Committee of Unsecured Creditors to Motions for  
3 Stay Pending Appeal (related document(s) 4006) filed by  
4 Michael Patrick O'Neil on behalf of Ad Hoc Group of  
5 Hospitals. (ECF #4017)

6

7 HEARING re Related Documents:

8 Modified Bench Ruling On Confirmation Of Eleventh Amended  
9 Joint Chapter 11 Plan Signed on 9/17/2021.  
10 (ECF #3786)

11

12 HEARING re Findings Of Fact, Conclusions Of Law, And Order  
13 Confirming The Twelfth Amended Joint Chapter 11 Plan Of  
14 Reorganization Of Purdue Pharma L.P. And Its Affiliated  
15 Debtors Signed On 9/17/2021 (related document(s) 3726).  
16 (ECF #3787)

17

18 HEARING re Objection to Motion/ Ad Hoc Committee's Objection  
19 to Stay Motions (related document(s) 3801, 3873, 3972, 3789,  
20 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of  
21 Ad Hoc Committee of Governmental and Other Contingent  
22 Litigation Claimants. (ECF #4002)

23

24

25

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2 Objection to Stay Motions (related document(s) 3801, 3873,  
3 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein  
4 on behalf of Ad Hoc Committee of Governmental and Other  
5 Contingent Litigation Claimants. (ECF #4002)

6

7 HEARING re Declaration of Cheryl Juaire in Support of the  
8 Opposition of the Official Committee of Unsecured Creditors  
9 to Motions for Stay Pending Appeal (related document(s) 4006)  
10 filed by Ira S. Dizengoff on behalf of The Official  
11 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
12 al. (ECF #4007)

13

14 HEARING re Declaration of Kara Trainor in Support of the  
15 Opposition of the Official Committee of Unsecured Creditors  
16 to Motions for Stay Pending Appeal (related document(s) 4006)  
17 filed by Ira S. Dizengoff on behalf of The Official  
18 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
19 al. (ECF #4008)

20

21 HEARING re Motion to Allow/ Debtors' Motion for Leave to  
22 Exceed the Page Limit in Filing Memorandum of Law in  
23 Opposition to the Motions for Stays of the Confirmation  
24 Order and the Advance Order Pending Appeal filed by Marc  
25 Joseph Tabak on behalf of Purdue Pharma L.P. (ECF #4013)

1 HEARING re Declaration of Jesse DelConte (related  
2 document(s) 4014) filed by Marshall Scott Huebner on behalf  
3 of Purdue Pharma L.P. (ECF #4015)

4

5 HEARING re Opposition of the MSGE Group to the Motions to  
6 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
7 3789, 3860, 3845) filed by Kevin C. Maclay on behalf of  
8 Multi-State Governmental Entities Group. (ECF #4016)

9

10 HEARING re Motion for Stay Pending Appeal filed by Allen J.  
11 Underwood on behalf of Certain Canadian Municipality  
12 Creditors and Canadian First Nation Creditors (ECF #3873)

13

14 Responses Received:

15 Objection to Motion/ Ad Hoc Committee's Objection to Stay  
16 Motions (related document(s) 3801, 3873, 3972, 3789, 3778,  
17 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc  
18 Committee of Governmental and Other Contingent Litigation  
19 Claimants. (ECF #4002)

20

21 HEARING re Opposition Tribal Group Joinder in Opposition to  
22 Stay Motions filed by Peter D'Apice on behalf of Certain  
23 Native American Tribes and Others. (ECF #4003)

24

25

1 HEARING re Opposition of the Official Committee of Unsecured  
2 Creditors to Motions for Stay Pending Appeal (related  
3 document(s) 3801, 3873, 3789, 3845) filed by Ira S. Dizengoff  
4 on behalf of The Official Committee of Unsecured Creditors  
5 of Purdue Pharma L.P., et al. (ECF #4006)

6

7 HEARING re Opposition The Ad Hoc Committee of NAS Children's  
8 Joinder to Opposition of the Official Committee of Unsecured  
9 Creditors to Motions for Stay Pending Appeal (related  
10 document(s) 4006) filed by Harold D. Israel on behalf of Ad  
11 Hoc Committee of NAS Babies. (ECF #4009)

12

13 HEARING re Opposition Joinder of the Private Insurance  
14 Ratepayers to Opposition of the Official Committee of  
15 Unsecured Creditors to Motions for Stay Pending Appeal  
16 (related document(s) 3801, 3873, 3789, 3845) filed by  
17 Nicholas F. Kajon on behalf of Eric Hestrup, et al.  
18 (ECF #4010)

19

20 HEARING re Opposition /Joinder (related document(s) 4006)  
21 filed by Lauren Guth Barnes on behalf of Blue Cross Blue  
22 Shield Association. (ECF #4011)

23

24

25

1 HEARING re Objection to Motion /The Ad Hoc Group of  
2 Individual Victims' (I) Objection to the United States  
3 Trustee's and Certain Public Creditors' Motion for Stay  
4 Pending Appeal and (II) Joinder in the Opposition of the  
5 Official Committee of Unsecured Creditors to Motions for  
6 Stay Pending Appeal (related document(s) 3873, 3972, 3789,  
7 3845) filed by J. Christopher Shore on behalf of Ad Hoc  
8 Group of Individual Victims of Purdue Pharma L.P.  
9 (ECF #4012)

10

11 HEARING re Memorandum of Law/ Debtors' Memorandum of Law in  
12 Opposition to the Motions for Stays of the Confirmation  
13 Order and the Advance Order Pending Appeal (related  
14 document(s) 3801, 3873, 3972, 3890, 3789, 3778, 3860, 3845)  
15 filed by Marshall Scott Huebner on behalf of Purdue Pharma  
16 L.P. (ECF #4014)

17

18 HEARING re Opposition of the MSGE Group to the Motions to  
19 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
20 3789, 3860, 3845) filed by Kevin C. Maclay on behalf of  
21 Multi-State Governmental Entities Group. (ECF #4016)

22

23

24

25

1 HEARING re Opposition - Joinder to the Opposition of the  
2 Official Committee of Unsecured Creditors to Motions for  
3 Stay Pending Appeal (related document(s) 4006) filed by  
4 Michael Patrick O'Neil on behalf of Ad Hoc Group of  
5 Hospitals. (ECF #4017)

6

7 HEARING re Reply to Motion Reply in Support of United States  
8 Trustee's Motion for a Stay of Confirmation Order and  
9 Related Orders Pending Appeal Pursuant to Federal Rule of  
10 Bankruptcy Procedure 8007 (related document(s) 3801, 3972,  
11 3778) filed by Paul Kenan Schwartzberg on behalf of United  
12 States Trustee. (ECF #4050)

13

14 Related Documents:

15 Modified Bench Ruling On Confirmation Of Eleventh Amended  
16 Joint Chapter 11 Plan Signed on 9/17/2021.  
17 (ECF #3786)

18

19 HEARING re Findings Of Fact, Conclusions Of Law, And Order  
20 Confirming The Twelfth Amended Joint Chapter 11 Plan Of  
21 Reorganization Of Purdue Pharma L.P. And Its Affiliated  
22 Debtors Signed On 9/17/2021 (related document(s) 3726).  
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2 Objection to Stay Motions (related document(s) 3801, 3873,  
3 3972, 3789, 3778, 3803, 3845) filed by Kenneth H. Eckstein  
4 on behalf of Ad Hoc Committee of Governmental and Other  
5 Contingent Litigation Claimants. (ECF #4002)

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7 HEARING re Objection to Motion/ Ad Hoc Committee's Objection  
8 to Stay Motions (related document(s) 3801, 3873, 3972, 3789,  
9 3778, 3803, 3845) filed by Kenneth H. Eckstein on behalf of  
10 Ad Hoc Committee of Governmental and Other Contingent  
11 Litigation Claimants. (ECF #4002)

12

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14 Opposition of the Official Committee of Unsecured Creditors  
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16 filed by Ira S. Dizengoff on behalf of The Official  
17 Committee of Unsecured Creditors of Purdue Pharma L.P., et  
18 al. (ECF #4007)

19

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5 Joseph Tobak on behalf of Purdue Pharma L.P. (ECF #4013)

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8 document(s) 4014) filed by Marshall Scott Huebner on behalf  
9 of Purdue Pharma L.P. (ECF #4015)

10

11 HEARING re Opposition of the MSGE Group to the Motions to  
12 Stay Pending Appeal (related document(s) 3801, 3873, 3890,  
13 3789, 3860, 3845) filed by Kevin C. Maclay on behalf of  
14 Multi-State Governmental Entities Group. (ECF #4016)

15

16 HEARING re Motion for Stay Pending Appeal filed by Ellen  
17 Isaacs (ECF #3890)

18

19 HEARING re Responses Received:  
20 Objection to Motion/ Ad Hoc Committee's Objection to Stay  
21 Motions (related document(s) 3801, 3873, 3972, 3789, 3778,  
22 3803, 3845) filed by Kenneth H. Eckstein on behalf of Ad Hoc  
23 Committee of Governmental and Other Contingent Litigation  
24 Claimants. (ECF #4002)

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6 Creditors to Motions for Stay Pending Appeal (related  
7 document(s) 3801, 3873, 3789, 3845) filed by Ira S. Dizengoff  
8 on behalf of The Official Committee of Unsecured Creditors  
9 of Purdue Pharma L.P., et al. (ECF #4006)

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25 of Multi-State Governmental Entities Group. (ECF #4016)

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8       **JESSE DELACONTE**  
9       **MARIA ECKE**  
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11      **BERNARD ARDAVAN ESKANDARI**  
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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, L.P., et al on  
4 the hearing on motions for a stay pending appeal of the  
5 Court's confirmation order, as well as the Court's, what  
6 I'll refer to as implementation procedures order filed by  
7 the United States Trustee, the States of Washington,  
8 Connecticut, and California, certain Canadian creditors, Ms.  
9 Ellen Isaacs, and Mr. Ronald Bass.

10 So I believe I've reviewed all of the relevant  
11 pleadings on these motions, including the various objections  
12 and the replies and the declarations submitted in support of  
13 the objections.

14 I'll also note my order dated November 3, 2021  
15 establishing procedures for this remote hearing, which is  
16 being held entirely remotely. For those participating in  
17 the hearing as a movant or objectant by Zoom for Government  
18 and, otherwise, by telephone.

19 So I'm happy to proceed with the motions, unless  
20 there's been any development on them, which I had encouraged  
21 the last time the parties were before me as a way  
22 potentially to resolve these motions.

23 MR. HIGGINS: Your Honor, this is Ben Higgins for  
24 the U.S. Trustee. I'm joined today by my colleague, Beth  
25 Levine from the U.S. Trustee's Washington office, and she'll

1       be handling the oral argument for the U.S. Trustee.

2                  We had two housekeeping issues to flag for Your  
3       Honor, but we don't have a resolution of the stay motions,  
4       to answer Your Honor's question directly.

5                  THE COURT: All right, very well. On the  
6       housekeeping, the request to exceed page limits on various  
7       pleadings?

8                  MR. HIGGINS: That is the first item, yes, Your  
9       Honor.

10                 THE COURT: Okay. And the Debtors made such a  
11      motion too. I'll grant both of those motions.

12                 MR. HIGGINS: Thank you, Your Honor.

13                 The second housekeeping issue, as we previewed for  
14      Your Honor at the October 14 status conference, we did file  
15      a amended memorandum of law at Docket No. 3972 with specific  
16      citations to documents.

17                 And we also, as we discussed at the October 14  
18      hearing, we filed two designations at Docket Nos. 3918 and  
19      4043, identifying specific documents that are either in the  
20      record and that we're asking the Court to take judicial  
21      notice of. We haven't received any objections, but if we  
22      did, I know Your Honor raised a couple of questions at the  
23      last status conference.

24                 So to the extent I can clarify anything or address  
25      any questions, I'm happy to do that, Your Honor.

1           THE COURT: I think you reduced the list to  
2 address my concerns, which were that you were seeking that I  
3 take judicial notice of matters that were not appropriate to  
4 take judicial notice of, namely press accounts and the like,  
5 correct?

6           MR. HIGGINS: Well, just to be clear, Your Honor,  
7 the second designation was actually a supplement to the  
8 first designation, so we were still asking you to take  
9 judicial notice of what we listed in the first designation.  
10 And I can clarify what we're seeking it for, Your Honor, and  
11 you can determine if it's appropriate or not. You know,  
12 we're happy to live with your decision on that.

13          THE COURT: Okay. Why don't you do that.

14          MR. HIGGINS: Sure, Your Honor.

15          So I believe the items that you raised issues  
16 with, we listed some pending legislation, as well as the  
17 records of some of congressional hearings concerning the  
18 validity of third-party releases.

19          And we're asking you to take judicial notice  
20 merely for the fact that the validity of third-party  
21 releases is an issue of public interest and they're publicly  
22 available documents, and we're simply asking you to take  
23 judicial notice of the fact these materials exist. That's  
24 the limit of it and we're willing to live with Your Honor's  
25 decision either way, but that's the request, Your Honor.

1           THE COURT: Okay. Do any of the objectors have a  
2       view on this?

3           MR. KAMINETZKY: Not quite sure about judicial for  
4       what purpose he's offering them judicial notice. Your Honor  
5       is welcome to notice that.

6           THE COURT: Okay.

7           MR. KAMINETZKY: The rest of -- what I saw most of  
8       what's been submitted are various pleadings from this case,  
9       we don't have a problem with that.

10          THE COURT: Right, and I have no problem with  
11       those pleadings or with pleadings filed in other courts, as  
12       long as they're not being -- sought to be admitted for the  
13       truth of the pleadings as opposed to just the fact that  
14       these are pleadings that have been filed.

15          MR. HIGGINS: And that's correct.

16          MR. KAMINETZKY: With respect to newspaper  
17       accounts, I'm not sure what the point is. Is it for  
18       evidentiary purposes? I'm just struggling to understand  
19       what exactly the request of the Court is before we made an  
20       objection or not.

21          MR. HIGGINS: Sure. I'm not sure there are any  
22       newspaper accounts, Your Honor.

23          THE COURT: I don't think there are at this point,  
24       and maybe there never were. I thought I saw one that you  
25       had submitted, although they were included, I believe, in

1 the record of the hearing.

2 I will take judicial notice of the bill and the  
3 hearing for the fact that they took place, not for anything  
4 as far as the hearing is concerned that any other  
5 evidentiary purpose or for which they might be asserted.

6 MR. HIGGINS: Thank you, Your Honor. Those are  
7 the housekeeping issues from the U.S. Trustee's perspective.

8 THE COURT: Okay, very well.

9 MR. EDMUNDS: Your Honor, Brian Edmunds for  
10 Maryland. I don't -- it may be helpful if I address a  
11 threshold issue from our reply first. I think the Court  
12 will probably want to hear what everyone has to say anyway.

13 But logically, the one issue which is the effect  
14 of the District Court's decision on the Trustee's and  
15 Canadian entities' motion for a stay in that Court limits, I  
16 think, what is before the Court today.

17 Because there's a clear ruling, an unappealed  
18 ruling, a ruling, in fact, that the appellees acquiesced  
19 from the District Court that holds that there's a likelihood  
20 of success on the merits and that the issue raised by the  
21 Trustee, which is the issue of equitable mootness, raises  
22 when the Debtors or appellees are actually doing something  
23 that the balance of hardships would tip decidedly in the  
24 Trustee's and the Canadian entities' favor.

25 And so, there's a finding, and there's a finding

1 that in the end denies those parties' motion for a stay  
2 because the District Court found that there's nothing going  
3 on right now. But you found that without prejudice to the  
4 states making motions and to the U.S. Trustee coming forward  
5 with evidence that something is happening now. So it's  
6 without prejudice to that showing or to those showings, and  
7 she does not decide the states' motions, which had not been  
8 formally brought before her.

9                 But to the extent she rules on that equitable  
10 mootness issue and addresses the likelihood of success on  
11 the merits is raised in the other parties' motions before  
12 that Court, those findings are her decision. And I'm not  
13 sure that, you know, there's any -- they could have  
14 appealed, but I think that they become law of the case in  
15 light of the fact that they haven't.

16                 And they've, in fact, filed a stipulation in the  
17 District Court essentially doing -- purporting to comply  
18 with the conditions that the District Court placed in its  
19 denial of the stay, so that issue, I think, is the threshold  
20 matter.

21                 And I understand the Court is likely to hear  
22 everybody, but just as a logical matter, it seemed important  
23 to raise that first.

24                 THE COURT: I'm looking for my copy --

25                 MR. EDMUNDS: Your Honor, if it's helpful --

1           THE COURT: I'm looking for that copy of that  
2 order. This was an issue that really was, if anything,  
3 touched on in a reply, so you've caught me a little bit  
4 unprepared on this, Mr. Edmunds, but I want to get out the  
5 order.

6           MR. EDMUNDSD: I'm sorry, Your Honor. I mean, we  
7 filed our motion before we were in the District Court.

8           THE COURT: I know.

9           MR. EDMUNDSD: But if you need the opinion --

10          THE COURT: I'm not faulting you for not raising  
11 it when you did then, but I want to make sure I have Judge  
12 McMahon's order in front of me, which I am leafing through.  
13 Well, here it is. I found it.

14          MR. EDMUNDSD: I think it might be attached to our  
15 reply as an exhibit. If it's helpful, Your Honor, I think  
16 the relevant language --

17          THE COURT: No. I'm reading -- let me read it --

18          MR. EDMUNDSD: Okay.

19          THE COURT: -- as to the points that you're  
20 specifically raising.

21          MR. EDMUNDSD: Sure.

22          THE COURT: Well, again, I've just reread it. And  
23 on the two points that you've raised, Mr. Edmunds, that you  
24 say would be law of the case, the first one is whether the  
25 merits prong has been satisfied. And there, Judge McMahon

1       says, "In this case, Debtors conceded at oral argument on  
2       October 12 the existence of sufficiently serious questions  
3       going to the merits to make them a fair ground for  
4       litigation."

5                 The other point that you raised, however, as far  
6       as the possibility of equitable mootness is in the context  
7       of the balance of hardship and not as to a finding as to  
8       whether equitable mootness has risen above the level of  
9       speculation.

10               So I think it's a little more -- maybe I didn't  
11      hear you clearly enough, but I think it's a little more  
12      complicated than you stated. I think that issue of  
13      irreparable harm and its relation to equitable mootness and  
14      the issue of the balance of the harms and its relation to  
15      equitable mootness are not exactly the same issue. And  
16      secondly, I think they're both quite context specific as far  
17      as the record before the Court.

18               The case law seems to be uniform that the risk of  
19      equitable mootness -- and of course, that's an evaluation  
20      that the Court needs to make and that clearly is not law of  
21      the case as far as Judge McMahon's order -- standing alone  
22      or vel non is not irreparable harm or arguably harm but  
23      needs to be taken into account with other factors.

24               So it seems to me that the record before me is  
25      important still on that point.

1           If the objectors are arguing that the risk of  
2     equitable mootness just isn't to be taken into account, I  
3     completely agree with you; in fact, I wouldn't need Judge  
4     McMahon's ruling because it is to be taken into account.  
5     But I don't think it's dispositive on this point, given the  
6     different record before her and before me.

7           So I think the thing we should probably focus on,  
8     although I'm happy to hear you more on this, is the effect  
9     of the Debtors' concession. I mean, both -- not both -- all  
10    parties have spent a considerable amount of time,  
11    notwithstanding that concession, arguing the merits of the  
12    appeal, both in the motions themselves, which again I  
13    repeat, were made before the hearing before Judge McMahon,  
14    but also in the replies.

15           So I was going to suggest to the parties that they  
16    spend the vast bulk of their time not addressing the merits,  
17    but rather, addressing the other three factors and the bond  
18    issues. But why don't I hear from the objectors on the  
19    merits point in the first case as to whether their  
20    concession should be viewed as a concession for this hearing  
21    as well.

22           MR. EDMUNDSD: Sure, Your Honor. Let me just --  
23    you've read it the same way, I think, we have, which is that  
24    there is a fact issue on the balance of hardships and that  
25    the question of whether, you know, the possibility of

1       equitable mootness vel non is a, you know, irreparable harm  
2       question, is decided by her and that equitable mootness  
3       could pose irreparable harm, but the fact issues are still  
4       left open as to what's happening now.

5                   So I think -- I'm not saying -- I wasn't saying  
6       anything different and I think that we've read it the same  
7       way.

8                   THE COURT: Well, maybe with one qualification,  
9       Mr. Edmunds. Based on my review of the case law, and I  
10      don't think Judge McMahon is saying anything different, the  
11      weight to be given to the risk of equitable mootness  
12      constitute two ways: first, the way that we clearly agree  
13      on, which is the Court needs to evaluate how likely it is  
14      that something would become equitably moot; the second is  
15      whether -- and this second point is very closely tied to the  
16      first point -- I think the more likely it is that something  
17      becomes equitably moot, the less important it is to  
18      establish something in addition to the risk of mootness.

19                  And nevertheless, I do think that is a second  
20      inquiry because I believe all the courts, including the  
21      Adelphia court and St. Johnsbury Trucking court have said  
22      standing alone, the risk of equitable mootness isn't enough.  
23      But what needs to be shown, in addition to that, can be any  
24      one of the other factors, it seems to me. It can be the  
25      seriousness of the issues on appeal; it can be the issue of

1 whether a reversal as appear at victory.

2 You know, there are all sorts of things that can  
3 affect that extra something that I think all the courts  
4 recognize you need to have in addition to just the risk of  
5 equitable mootness. And again, that can be merely the  
6 seriousness of the issues on appeal, and also, the courts'  
7 assessment of the likelihood of success on appeal. If  
8 something really does seem to be maybe not a frivolous  
9 appeal, but a real long shot, then the risk of mootness  
10 really doesn't seem to be something that courts care about.

11 So I think I may go back again to the question,  
12 which is the -- my recommendation was that we not spend a  
13 lot of time on the merits of the appeal, showing of the  
14 substantial possibility of success, and really only as it  
15 pertains to the other three issues.

16 So Mr. Kamenetzky's on the screen. I know there  
17 are other objectors too, but I'll look to you on that point.  
18 You're on mute.

19 MR. KAMINETZKY: Your Honor, good morning.  
20 Benjamin Kaminetzky of Davis Polk for the Debtors.

21 I could just address the effect of Judge McMahon's  
22 order, the kind of contention by Maryland that there's some  
23 sort of law of the case or issue preclusion because I think  
24 that's just completely inherently wrong. If you want, I can  
25 go further, but I just think it's important that we address

1       that upfront because Mr. Edmunds suggested something that  
2       just, it's just completely and utterly false. If I could  
3       get two minutes on that.

4                 And then, you know, I assume you'd want them to go  
5       first on the other factors. And I agree that spending a lot  
6       of time on probability of success on the merits, which is  
7       devolved into another oral argument that you've heard for  
8       hours now, are so -- on the point, just Mr. Edmunds point.  
9                 Again, it's just a blatant mischaracterization of Judge  
10      McMahon's decision and what happened. So let me just give  
11      you some context.

12                 The U.S. Trustee filed an emergency stay motion  
13       before the District Court on the evening of Friday, October  
14       8th. After entering a TRO based on the U.S. Trustee's  
15       breathless suggestion that something could be happening over  
16       the weekend, Judge McMahon heard that motion the very next  
17       business day without a single brief from the Debtors or any  
18       other party.

19                 We had no opportunity -- the Debtors and the plan  
20       proponents had no opportunity to put in any evidence at the  
21       hearing. All the District Court had was the brief that the  
22       U.S. Trustee filed in connection with its Friday night  
23       emergency motion, had no evidence from anyone else, no  
24       briefs from anyone else. They didn't even have the  
25       confirmation hearing transcripts or anything.

1           What Judge McMahon focused on at this emergency  
2 hearing that was held, you know, that Tuesday, which was the  
3 next business day, was -- and the Debtors and the plan  
4 proponents didn't present any argument whatsoever on the  
5 likelihood of success of the appeal. The focus was solely  
6 on whether the movant's evidence might suffer harm in the  
7 interim period between that day and today when Your Honor  
8 will be hearing the stay motion.

9           All of that notwithstanding, the District Court  
10 denied the U.S. Trustee's stay motion the next business day,  
11 as she concluded that the movants had not identified any  
12 concrete harm that will arise between now and November 9  
13 when Judge Drain is scheduled to consider the various stay  
14 motions. That's on Page 12 of her decision.

15           Now, the notion --

16           THE COURT: Okay, so could I just interrupt you?  
17 So you're basically saying that your concession that Judge  
18 McMahon's decision refers to was really just a concession  
19 for purposes of that hearing because you were focusing on  
20 the --

21           MR. KAMINETZKY: It wasn't even that. Judge  
22 McMahon misheard. She didn't have the transcript. What Mr.  
23 Huebner said is even if we give them all three other  
24 factors, they nevertheless lose because there's no harm.  
25 There was a hypothetical which he misheard. We corrected

1       her in a subsequent filing and said, no, we've reviewed the  
2       transcript. It was one of these even if they're right that  
3       there are substantial issues, there's no harm because  
4       nothing would happen between now and November 9, so it was  
5       kind of in that context.

6                  And Judge McMahon, as you said, there was a  
7       concession, but there actually wasn't; it wasn't in the  
8       context of an even if they could prove all three other  
9       factors, they certainly can prove imminent harm. And again,  
10      we corrected her on the record. We sent a letter  
11      identifying and pointing that out in the transcript.

12                 But more important, the law is very clear what  
13       collateral estoppel means and it doesn't mean. And, I mean,  
14       Second Circuit law here is well developed: Collateral  
15       estoppel only applies if the identical issue was decided in  
16       the prior proceeding. And none of the issues, Your Honor,  
17       none of the issues before the Court today was actually  
18       decided by Judge McMahon.

19                 Again, what she was focused on, based on the U.S.  
20       Trustee's emergency motion, is do I need to do something now  
21       before the November 9 hearing before Judge Drain, and she  
22       said no, but that was the entire focus of the hearing. And  
23       as Your Honor knows, nothing could possibly have happened  
24       because the sentencing needs to happen and the effective  
25       date and all that.

1           So there was absolutely no ruling whatsoever on  
2       the balance of harm with respect to an indefinite stay,  
3       which the movants are seeking, or even any sort of stay  
4       beyond November 9.

5           There's also -- you know, we talked about that  
6       there wasn't a concession. There's also collateral estoppel  
7       only applies where there's a full and fair opportunity to  
8       litigate the relevant issues in the first proceeding, and  
9       I'm quoting from Central Hudson Gas & Electric Company, 56  
10      F.3d 359 at 368. Obviously, when on an emergency motion  
11      filed on Friday night when we're imminent on Tuesday  
12      morning, was obviously not a full and fair opportunity to  
13      litigate. So even if it was the same issue, they still  
14      don't get collateral estoppel because the Judge only heard  
15      one side; there was no ability to submit evidence.

16           And finally, Your Honor, it's blackletter law that  
17       collateral estoppel only applies where there was a final  
18       judgment on the merits. And to say this again, this was a  
19       decision on a TRO on a stay motion, not a final judgment on  
20       the merits, and it cannot give rise to collateral estoppel.

21           And, of course, neither the two cases that  
22       Maryland cites in its brief has anything remotely to do with  
23       the preclusive effect of a decision on emergency stay  
24       motion. They both involve prior actions that were litigated  
25       to a final judgment on the merits. In the PCH case that

1       they cite, there was a final and binding decision on the  
2       merits and affirmed on appeal that the relationship between  
3       parties was a joint venture and the Court found that that  
4       was law of the case. And in the other case they cite, the  
5       Central Hudson case, there was a trial and a judgment and  
6       that's when the Court held that there was a collateral  
7       estoppel.

8                   So, I mean, I think it speaks volumes that the  
9       actual movants before the District Court didn't even dare  
10      make this argument that there's some collateral estoppel  
11      effect of Judge McMahon's decision. And I see why now  
12      people are -- I mean, it's clear why now, because this is  
13      such a, quite frankly, bizarre argument that somehow on a  
14      TRO emergency motion that there's some sort of binding  
15      decision that's law of the case that prevents Your Honor  
16      from making his own determination I think is just completely  
17      and utterly wrong.

18                   And I'll stop now because I don't want to, again,  
19      step on anyone's toes.

20                   THE COURT: Okay, all right. Well, I think you've  
21      addressed the point I really wanted you to address, which is  
22      what sort of concession was referred to in that order, and I  
23      think I have the context here in any event. I don't believe  
24      it was a concession, other than for purposes of that  
25      argument and not for purposes of this argument.

1           Although that being said, it appears to me that  
2       the parties should primarily focus on the other three  
3       factors for obtaining a stay pending appeal and assume that  
4       I've reviewed their arguments with respect to the  
5       substantial possibility of success on the merits and still  
6       remain fully aware of how I addressed those issues in my  
7       decision.

8           MR. EDMUNDS: Your Honor, may I respond briefly?

9           THE COURT: Well, I don't think there's -- I think  
10      I've already given my view on this, and I don't think  
11      there's any other thing to say on it. I mean, I'm not sure  
12      there's anything more to be said on it really, unless you  
13      say that somehow that they did concede for all time.

14           MR. EDMUNDS: I don't think it matters whether  
15      it's a concession. I think the District Court made a ruling  
16      on the issue, and it made a determination as to likelihood  
17      of success on the merits and it said that it was not going  
18      to allow the appeal to come equitably mooted.

19           THE COURT: Clearly, the order doesn't say that.  
20      It says the Debtors concede, and the only issue is whether  
21      they conceded for purposes of that argument or for all time,  
22      and I'm satisfied that they did not concede for all time  
23      because I can't imagine they would in that context. There's  
24      no ruling on the likelihood of the merits, no discussion on  
25      the likelihood of the merits here.

1                   MR. EDMUNDS: But I would just say we respectfully  
2       disagree, reading the entire opinion that she didn't. But I  
3       understand Your Honor's ruling.

4                   THE COURT: Okay.

5                   MR. EDMUNDS: I don't need to say more I guess.

6                   THE COURT: Okay.

7                   MR. EDMUNDS: All right. Thank you, Your Honor.

8                   THE COURT: All right. Okay, so I do have a  
9       suggestion for structuring this argument beyond what I've  
10      already said, which is I want the parties to focus on what  
11      sort of stay they are seeking in terms of duration and  
12      activity, and also address it in the light of Bankruptcy  
13      Rule 8025.

14                  The parties -- the U.S. Trustee has thrown out  
15      different alternatives, which includes a stay that would be  
16      ordered by me for a relatively brief period after the  
17      District Court's ruling.

18                  It's not clear to me whether the three states have  
19      limited their request for a stay in any way or whether  
20      they're seeking a stay by me that would go through  
21      ultimately a final order, which could conceivably be either  
22      denial of certiorari or a ruling by the Supreme Court.

23                  And I think this is important in the context again  
24      of Bankruptcy Rule 8025, which is titled, Stay of a District  
25      Court -- or BAP, but the focus here's on the District Court

1       of course -- Judgment, which states in (a): "Unless the  
2       District Court orders otherwise, its judgment is stayed for  
3       14 days after entry." And I'll also note in that regard (c)  
4       of Rule 8025, which says that if the District Court enters a  
5       judgment affirming an order of judgment or a decree of the  
6       Bankruptcy Court, a stay of the District Court's judgment  
7       automatically stays the Bankruptcy Court's order, judgment,  
8       or decree for the duration of the appellate stay.

9                  And then Rule 8025(b) states, is headed for a stay  
10       pending appeal to the Court of Appeals and states in (1) in  
11       general: "When a party's motion and notice to all other  
12       parties to the appeal, the District Court may stay its  
13       judgment pending an appeal to the Court of Appeals." In  
14       (2), it says, "Time limit. The stay must not exceed 30 days  
15       after the judgment is entered, except for cause shown," and  
16       then it says, "Stay continued if before a stay expires. The  
17       party who obtained the stay appeals to Court of Appeals, the  
18       stay continues until final disposition by the Court of  
19       Appeals."

20                  And then finally, (d) states: "This rule does not  
21       limit the power of the Court of Appeals or any of its judges  
22       to do the following, including: a stay; stay proceedings  
23       while an appeal is pending; suspending, modifying, restore,  
24       vacating, or granting a stay while an appeal is pending; or  
25       issue any order appropriate to preserve the status quo or

1 the effectiveness of any judgment to be entered."

2 So clearly, appeals from Bankruptcy Court orders  
3 should generally and ordinarily be, where there's a motion  
4 seeking a stay, that motion should be brought first in the  
5 Bankruptcy Court, and courts regularly deny such motions if  
6 they are not brought first in the Bankruptcy Court unless  
7 there's a legitimate reason to do so. But 8007 pertains to  
8 a motion for a stay of a judgment, order, or decree of the  
9 Bankruptcy Court pending appeal.

10 So I have a serious concern that any request for a  
11 stay pending appeal beyond the District Court's ruling is  
12 not really properly before me or it shouldn't be decided by  
13 me -- maybe that's a better way to phrase it -- given Rule  
14 8025.

15 So let me first ask, is anyone looking for relief  
16 beyond a stay up to the time that the District Court rules?

17 MS. LEVINE: Your Honor, this is Beth Levine for  
18 the United States Trustee.

19 We have asked for relief beyond that. We think,  
20 as we argued in our papers, that this Court has the  
21 authority, both under Rule 8007 and its inherent authority  
22 to control its docket, to stay its own orders, to enter a  
23 stay pending a conclusion of the appellate process, so we  
24 have asked for that full relief of a stay pending the  
25 conclusion of the appellate process or, in the alternative,

1 pending the District Court's decision. So we have asked for  
2 that additional relief.

3 THE COURT: Right. Although I don't think you  
4 addressed Rule 8025 or the case law interpreting it.

5 MS. LEVINE: Your Honor, I think we addressed the  
6 language if 8025, which is different. You know, Rule 8007  
7 does not have the limiting language that refers to the  
8 duration of the stay that Rule 8025 does. 8025 refers to  
9 the District Court's stay of another court, the Bankruptcy  
10 Court's order, which I think is a somewhat different thing  
11 than a Bankruptcy Court staying its own order, and that  
12 you've got that discretion to stay your own order pending  
13 the appeals.

14 Certainly, you've got the discretion to determine  
15 how long that stay should be, but we are asking for that  
16 stay for the full duration of the appellate process, with  
17 the alternative request for a stay at least until the  
18 District Court has made its decision.

19 THE COURT: Okay.

20 MS. LEVINE: Your Honor, would you like me to  
21 proceed with our motion now or to hear from others on that  
22 at this point?

23 THE COURT: Well, let me just make sure, as far as  
24 the three states are concerned, are you looking for a stay  
25 through the entire course of any appellate process?

1                   MR. EDMUNDS: Maryland is, Your Honor, and we'd  
2 agree with what Ms. Levine just argued.

3                   THE COURT: Okay.

4                   MR. GOLD: Your Honor, Matthew Gold from Kleinberg  
5 Kaplan representing State of Washington and Connecticut.

6                   We agree with what Ms. Levine said, our original  
7 requests, so that there was no question was for the broader  
8 stay. But our alternative position minimum, if you would,  
9 is that we have a stay that preserves the status quo and  
10 leaves the positions intact so that it can be decided by the  
11 District Court or any higher Court when the issue gets put  
12 to them.

13                  THE COURT: Okay.

14                  MR. ESKANDARI: Bernie Eskandari on behalf of  
15 California, Your Honor. I may have misheard at the  
16 beginning of the hearing, you included California with --

17                  THE COURT: No. If I did, it was a mistake.

18                  MR. ESKANDARI: Thank you.

19                  THE COURT: It's just Washington and Connecticut  
20 and Maryland. Sorry to give you a heart attack there.

21                  MR. GOLDMAN: Your Honor, if I may add -- Irv  
22 Goldman, Pullman & Comley, for the State of Connecticut.

23                  Just to note, Bankruptcy Rule 8007 does embrace  
24 motions not only to the Bankruptcy Court but to the District  
25 Court, so I would contend it does contemplate a stay pending

1 appeal through the Circuit. And there's no limiting  
2 language in Bankruptcy Rule 8000(a)(1)(A) as to what is  
3 meant by pending appeal, so it's open ended. I would just  
4 add that point.

5 THE COURT: Okay. Well, I will note that there  
6 are a number of decisions that rule otherwise, including In  
7 re Russo, 2017 B.R. Lexis 544 at 5-6 (Bankr. C.D. Cal., Feb.  
8 27, 2017), In re VCR I, LLC 2019 B.R. Lexis 3376 at 27  
9 (Bankr. S.D. Miss., Oct. 28, 2019), and In re Schupbach  
10 Investments, LLC 2016 B.R. Lexis 836 at 5-6 (Bankr. D.  
11 Kans., March 17, 2016), In re Howell-Robinson, 2008 WL  
12 5076975 at 2 (Bankr. D.D.C. July 30, 2008), and Culwell v.  
13 Texas Equipment Co. (In re Texas Equipment Co.) 283 B.R.  
14 222, 230-31 (Bankr. N.D. Texas 2002).

15 I will note that Judge Roman in this District left  
16 the issue open in Credit One Bank, N.A. v. Anderson (In re  
17 Anderson) 560 B.R. 84, 88 (S.D.N.Y. 2016). Although rather  
18 than the Bankruptcy Court decide the motion, which was made  
19 to him, in the alternative under either 8007 or 8025, he  
20 decided the motion himself under 8025 after his ruling and  
21 denied the motion on the merits for a stay.

22 But I think it's important, and I believe it's  
23 consistent actually with Judge McMahon's approach, for the  
24 parties to focus on the two alternative forms of stay that  
25 the parties are seeking here: their preferred one, which is

1 through the entire appellate process, and alternatively,  
2 through the District Court's ruling.

3 Because the determination of the issues and, in  
4 particular, the three factors other than on the merits, to  
5 my mind, could be quite different depending on whether it's  
6 a stay through the District Court's ruling or a stay through  
7 either denial of cert or a ruling by the Supreme Court,  
8 which obviously would take a significantly longer amount of  
9 time.

10 And on the merits issue, obviously a trial judge  
11 that is faced with a request for a stay pending appeal is  
12 always in the awkward position of evaluating the merits of  
13 the trial judge's own opinion -- that isn't a problem for  
14 the District Judge -- and makes that review, I think, much  
15 more, in some ways at least, if on a psychological basis,  
16 more meaningful.

17 So I really do want the parties to focus on those  
18 two different durations for a stay, and so, you should  
19 address your arguments accordingly.

20 So I don't know if you decided who was going to go  
21 first, whether it's Ms. Levine or counsel for one of the  
22 three states, but one of you should go ahead.

23 MS. LEVINE: Your Honor, I'm ready to proceed.

24 Thank you. This is Beth Levine again with the Department of  
25 Justice for the United States Trustee.

1           I'll save my introductory remarks. You know why  
2 we're here. I will skip over much on the likelihood of  
3 success on your direction.

4           I wanted to say one thing, which is that Judge  
5 McMahon in Footnote 4 on Page 10 of her decision, you know,  
6 said that she considered it obvious that there are serious  
7 questions going to the merits and making the fair ground for  
8 litigation. We think that is true.

9           You know, certainly, we don't expect you to agree  
10 that you've erred. We know you disagree with our legal  
11 position. But we think there are very serious questions and  
12 that they merit appellate review and that the denial of that  
13 appellate review, if there were a dismissal based on  
14 equitable mootness, would be irreparable harm.

15           And it's not just the denial of appellate review  
16 vel non itself; it's because you have claims here that are  
17 being eliminated without consent that would be permanently  
18 irreparably gone without that appellate review.

19           THE COURT: Well, can we focus on that for a  
20 second? First, you went -- and I'm responsible for this  
21 since I told the parties not to focus substantially on the  
22 merits -- you went very quickly from that to the issue of  
23 irreparable harm.

24           And I just -- I want to be upfront with everyone.  
25 It seems to me that there are, in fact, issues going to the

1       merits that are somewhere between, you know, a mere  
2       possibility of success and a probability of success. I  
3       think many of the issues raised by the U.S. Trustee and the  
4       three states do not fall into that category; that, in fact,  
5       they are unlikely to prevail on appeal. Those go to the  
6       524(e) point, the due process point, and their assessment of  
7       the merits of the settlement.

8                  But I agree that the issue of a release of third-  
9       party claims is, in every instance, a serious issue that  
10      requires a Court to sift through complicated legal and  
11      factual considerations. And the limits, in particular, on  
12      what types of claims that would belong to a third party,  
13      i.e., not the Debtors' estate, that can be appropriately,  
14      legally enjoined requires serious parsing of the case law  
15      and is certainly something that even the Second Circuit case  
16      law recognizes as an issue where the lower court can get it  
17      wrong, as was the case in Metromedia and Carter and other  
18      decisions which recognize the underlying principle that the  
19      Court has power to enjoin third-party claims. But drawing  
20      the line as to what claims can be enjoined and what can't is  
21      something that courts can well disagree on.

22                  So on that point -- unlike on the due process, the  
23      jurisdictional points, the 524 point, frankly, even the  
24      state sovereignty point, all of which I think are unlikely  
25      to prevail on appeal -- this issue as to how released claims

1 are to be cabined is, I believe, one that does satisfy the  
2 requirement to show a strong showing of likelihood to  
3 succeed on the merits, such that there's a fair ground for  
4 litigation.

5                 Although again, as recognized, for example, by  
6 Judge Chapman in In re Sabine Oil & Gas Corp., 551 B.R. 132,  
7 143 (Bankr. S.D.N.Y. 2016), the focus on the degree of  
8 likelihood of success is tempered by the balance of the  
9 harms or the Court's assessment of the balance of the harms.

10               So I suppose the objectors can try to persuade me  
11 to the contrary, but I think that I want to turn then to the  
12 irreparable harm point that you were starting to make. And  
13 the argument you made is that the people and governmental  
14 entities that objected to the release or injunction would  
15 lose their rights if a stay was not granted.

16               And again, this goes to my direction to you all to  
17 focus on the two different times for the stay. I confess  
18 I'm having a hard time seeing how that would be the case if  
19 the stay were granted or not granted either way through the  
20 date of the District Court's ruling with the additional 14  
21 days that are added on under Rule 8025.

22               And further, I'm having a hard time, although  
23 maybe not as hard, with the argument that equitable mootness  
24 really would occur here if a stay were not granted through  
25 the date of the entire appellate process. I guess that

1 depends, in some measure, upon whether the plan is  
2 substantially consummated.

3 But as far as the release is concerned, the  
4 majority of the payments by the released parties, as you  
5 yourself point out, occurs substantially down the road, and  
6 under the plan, they have a credit only for what they've  
7 paid in the interim.

8 So it seems to me under either scenario too broad  
9 to say that these people who the U.S. Trustee says that he's  
10 speaking on behalf of would lose their rights. They would  
11 only lose it if there's equitable mootness, right?

12 MS. LEVINE: Your Honor, that is the primary  
13 concern, that is if there is equitable mootness and there's  
14 not a review on the merits, they would lose their rights  
15 that would otherwise --

16 THE COURT: Well, there's no other concern, right?  
17 I mean, it's just based on equitable mootness, nothing else.

18 MS. LEVINE: Your Honor, I think there's also a  
19 concern about what's going to happen in the interim is, you  
20 know, defendants' move to dismiss based on these releases,  
21 for example. As noted in our brief and one of the cases  
22 that's pending, one of the defense had suggested that the  
23 releases apply. This was prior to the Court's decision, so  
24 it was a different context. But we don't know how that  
25 would play out and whether cases would be dismissed with

1 prejudice in the intervening time, so I think there is that  
2 risk. But our primary concern is the equitable mootness  
3 risk that would make it irreparable if there's no longer a  
4 possibility of review on the merits.

5 THE COURT: So there are -- but that wouldn't  
6 really happen until the effective date of the plan, right?

7 MS. LEVINE: Your Honor, it's my understanding  
8 that the releases become effective on the effective date.

9 THE COURT: Right.

10 MS. LEVINE: So what we want to avoid happening --  
11 but if the appeals dismissed without a review on the merits,  
12 that effective date is going to come and go, and the Debtors  
13 have --

14 THE COURT: But I'm asking you to focus on that if  
15 and how likely that's to happen.

16 MS. LEVINE: Yes, Your Honor. So focusing first  
17 on the timing of the District Court's decision, Your Honor.  
18 Under the plan -- well, first of all, they've argued that  
19 it's not just the effective date that may cause equitable  
20 mootness. They have very specifically preserved their  
21 rights to argue that the criminal sentencing, which will  
22 happen before the effective date, can be a basis for  
23 equitable mootness.

24 THE COURT: What do we think about that? I mean,  
25 that's under a separate plea agreement; that's not under the

1 plan.

2 MS. LEVINE: Your Honor, it obviously raises a  
3 concern because they've indicated they're going to argue it.  
4 But our concern is also, you know, they've said nothing else  
5 that's happening before the effective date can constitute  
6 equitable mootness, and we've got two concerns about that,  
7 Your Honor. One is, as we've stated, you know, their  
8 stipulation about that doesn't bind the Second Circuit, it  
9 doesn't bind other parties.

10 We've had other parties that haven't signed the  
11 stipulation that have filed oppositions to motions to stay.  
12 We've asked multiple times what's happening. We haven't  
13 gotten a response. So we don't know what's going on that  
14 someone else might look to and say, you know, is the basis  
15 of an equitable mootness argument.

16 But the other thing we're concerned about, Your  
17 Honor, is --

18 THE COURT: But how could any of those things --  
19 I'm sorry to interrupt you. But how could any of those  
20 things be substantial consummation?

21 MS. LEVINE: Your Honor, I don't think there'll be  
22 substantial consummation, but under Second Circuit law, the  
23 test is a substantial or comprehensive change in  
24 circumstances. And, you know, clearly, the Debtors think  
25 that something can happen before substantial consummation

1       that would support equitable mootness because they said they  
2       might argue that based on sentencing.

3                 And the concern, Your Honor, is it may be that,  
4       you know, they have said they've structured this so that  
5       they have time between the confirmation and the sentencing  
6       to get certain things done, that they want to get certain  
7       things done before they are sentenced. We don't have  
8       clarity on what those things are.

9                 But we don't know, you know, what pre-effective  
10      date activity is going to open the door to sentencing or  
11      pre-effective date activity they're going to say is well,  
12      you know, say it's transferring assets to NewCo.

13         Transferring assets to NewCo on its own, they might say,  
14      well, that can be undone. But then after we get past  
15      sentencing, we don't know what their argument is. Is it  
16      going to be that well, now that it's been sentenced, that  
17      asset transfer can't be undone?

18                 So we don't really know how these things interplay  
19      together, which makes us very concerned about when, you  
20      know, not just the effective date, but also the sentencing.  
21      And also what else is happening and how those things work  
22      together so that if we get past sentencing, they're going to  
23      come back and say, oh, well, you know, this other pre-  
24      effective date activity on its own could be reversed, but  
25      now it can be undone. Now that bell cannot be unrung.

1           And so, for all these reasons, we have concerns  
2 about these other activities.

3           THE COURT: But look, the presumption of equitable  
4 mootness, which is when their five-step case in the Second  
5 Circuit case law comes into effect, is where the plan has  
6 been substantially consummated. Generally, courts focus on  
7 the distributions under the plan as that, or transfers to be  
8 made under the plan that cannot be unwound.

9           So far, I'm just hearing sort of vague fears, as  
10 opposed to anything that actually would give rise to any  
11 real risk at all of equitable mootness.

12          MS. LEVINE: Your Honor, we think it's a  
13 substantial risk because of what the Debtors have said  
14 regarding the impact of sentencing, but we also think that  
15 the dates here --

16          THE COURT: Let me -- I mean, Judge Kaplan dealt  
17 with this head on in the St. Johnsbury case. He says to  
18 begin with, the government's failure to concede that its  
19 appeal would be moot absent a stay does not help those  
20 opposing the motion any more than the opponents' failure to  
21 concede that the appeal would not be so moot it harms them.

22          Mootness is a doctrine grounded in constitutional  
23 considerations designed to limit courts to the resolution of  
24 actual controversies, although I think the case law has  
25 moved on since then and the focus is really, for equitable

1 mootness purposes, on the finality of bankruptcy plans.

2           And then he says the parties through additional  
3 proceeding, therefore, cannot determine even by agreement  
4 whether a case is moot; that is for the Court.

5           But again, we're talking about equitable mootness.

6 I don't think there's any argument that there would be  
7 constitutional mootness here, absent probably well after the  
8 effective date. But as far as equitable mootness is  
9 concerned, I'm just not seeing it.

10          I mean, again, the case law in the Second Circuit  
11 focuses on the five-step test where a plan has been  
12 substantially consummated. Other circuits focus on simply  
13 whether third parties' expectations, i.e., parties who are  
14 not parties to the appeal or on either side of the contested  
15 issues, would be so harmed that the Court would not exercise  
16 what it otherwise has, which is an unflagging duty to  
17 exercise its jurisdiction. And I just... I mean, how would  
18 you undermine the plan by invoking equitable mootness for  
19 things that were done before substantial consummation? It  
20 just seems like a contradiction in terms.

21          MS. LEVINE: Your Honor, as I think the St.  
22 Johnsbury case pointed out, we're in a difficult position.  
23 We don't want to argue against ourselves. We don't think  
24 equipment mootness would or should apply --

25          THE COURT: No, you don't have to --

1 MS. LEVINE: -- but the Debtors --

2 THE COURT: I'm not asking you to argue against  
3 yourselves. But I just don't... But I think here you need  
4 to show me that this harm is not just conjectural.

5 MS. LEVINE: Your Honor, the reason we think it's  
6 more conjectural is based on what the Debtors have said  
7 regarding what they're going to argue about equitable  
8 mootness, and they've pinned it, not just to the effective  
9 date, but to the sentencing date, which under the plan could  
10 be as early as November 1st, which is the day after our  
11 argument in the District Court, with the effective date  
12 really soon after that, as early as December 8th, a week  
13 later.

14 So, you know, talking about the timing and the  
15 proposals that they have offered, you know, we think  
16 certainly we should at the very least get a stay until the  
17 District Court's decision to make sure those dates don't  
18 come and go before the District Court has a chance to rule.  
19 We are going at --

20 THE COURT: Let me focus on that point. If it is  
21 clear that the District Court is going to rule before  
22 substantial consummation of the plan, before the effective  
23 date, why is a stay needed? Why should the Debtors and the  
24 other parties who are in support of the plan be precluded  
25 from laying the groundwork in case the conditions to the

1 effective date do occur, such as setting up new boards,  
2 setting up the trusts, et cetera?

3 I raised this point, you know, the first time that  
4 a stay was asked on an emergency basis, and I'm still having  
5 a hard time seeing how that works. And frankly, if one  
6 looks at Judge McMahon's order, which I'm not doing, but  
7 it's as much in support for that view also, that there  
8 really doesn't seem to be anything that's really going to  
9 really run the risk of equitable mootness until after the  
10 effective date, which it appears, at least, would occur  
11 after Judge McMahon's ruling.

12 Now, I think you acknowledged that the stay you're  
13 seeking would have to be a stay of everything, but could  
14 just be a stay of the effective date, right? Or at least it  
15 doesn't have to be a stay of everything? I don't want to  
16 put words in your mouth. You didn't agree with this to the  
17 other point. You didn't agree that it could just be a stay  
18 of the effective date. But I think you did agree that the  
19 stay of the confirmation order would not have to be a stay  
20 of all of the order in order for there to be no risk of  
21 equitable mootness, right?

22 MS. LEVINE: Your Honor, in our motion we talked  
23 about one specific thing, because one of the opponents had  
24 raised a concern about secreting assets. And you know, we  
25 tried to have this conversation with the Debtors just to

1 find out what are the specific things that you would want  
2 exempted from a stay. And we didn't get an answer to that  
3 question.

4 So if there was a question of other specific  
5 things, those are things we would have to take under  
6 consideration or have authority to agree to any other  
7 specific thing than what we put in our brief.

8 But you know, we understand that Judge McMahon is  
9 moving very, very quickly. We're all moving as quickly as  
10 we can to get the appeal decided quickly. But there's no  
11 guarantee that she is going to decide before a date certain,  
12 particularly when these states are approaching in December.

13 THE COURT: So that would argue just for staying  
14 the effective date until after her ruling, not staying  
15 everything else that the Debtor would be doing to prepare  
16 for the effective date, which isn't really --

17 MS. LEVINE: Well, Your Honor --

18 THE COURT: -- which isn't really under the  
19 confirmation order anyway, because the confirmation order  
20 doesn't really contemplate any material transactions before  
21 the effective date, I think. Right? None have been  
22 identified.

23 MS. LEVINE: Your Honor, the way to stay the  
24 effective date is to stay the confirmation order, because  
25 those are the transactions that lead up to getting to the

1 effective date and --

2 THE COURT: Let me ask --

3 MS. LEVINE: -- lead up to getting to the  
4 sentencing.

5 THE COURT: Let me ask you the question different.  
6 What transactions out of the ordinary course do you believe  
7 they confirmation order authorizes now before the effective  
8 date?

9 MS. LEVINE: Your Honor, the confirmation order  
10 grants a broad authorization to engage in the transactions  
11 that they need to implement the plan. And part of the  
12 problem is we're in the dark on exactly what they're doing.  
13 We want to maintain the status quo because equitable  
14 mootness is an existential threat to our appeal. And  
15 maintaining the status quo is the only way to protect  
16 against that risk of equitable mootness. You know, it's --

17 THE COURT: Do you have any case that stands for  
18 that proposition?

19 MS. LEVINE: I'm sorry, which --

20 THE COURT: That any risk --

21 MS. LEVINE: -- that equitable mootness is --

22 THE COURT: -- any risk of equitable mootness is  
23 enough? In fact, most of the cases say just the opposite of  
24 that. It has to be a real risk, coupled with other things,  
25 or at least something else. Now, maybe that something else

1 here may simply be the significance of ruling on the merits  
2 of the appeal.

3                   But it would still seem to me that if you had --  
4 and this is repeated in numerous rulings -- there's one by  
5 Judge Briccetti in U.S. Bank National Association v.  
6 Windstream Holdings, Inc., 2020 U.S. District LEXIS 137183.  
7 Merely invoking equitable mootness as the Appellants have  
8 done here -- a risk that is present in any post-confirmation  
9 appeal of a Chapter 11 plan -- is not sufficient to  
10 demonstrate irreparable harm. If the Court were to credit  
11 this kind of argument for every such request, it would be  
12 forced to review nearly every bankruptcy appeal on an  
13 expedited basis and, of course, grant the motion if some  
14 other factor were established. And he cites there In Re  
15 Calpine Corp., 2008 Bankr. LEXIS 217 (Bankr. S.D.N.Y. Jan.  
16 24, 2008).

17                   But there are lots of courts that say that. That  
18 you can't just say there's a risk of equitable mootness and  
19 then get a stay pending appeal. You have to actually focus  
20 on what that risk is and how real it is, and then see how  
21 it's tied into the other factors.

22                   And I'm still not seeing it as far as between now  
23 and a date within a reasonable time after Judge McMahon's  
24 ruling, which I think the drafters of the rule have said is  
25 at a minimum 14 days. And that would be just a stay of the

1 effective date. I mean, there's no discussion about how  
2 this plan could be substantially consummated before then.

3 And even then, there's the issue of who are the  
4 people who are harmed by a continued appeal? And if we're  
5 focusing just on the Sacklers, I don't think that's the type  
6 of harm for the shareholder released parties; that's the  
7 type of harm that the courts recognize is a basis for  
8 equitable mootness, because they're in the heart of the  
9 issues that are on appeal. There would have to be other  
10 third parties, legitimate parties who aren't in the dispute  
11 who were being harmed.

12 MS. LEVINE: Your Honor, you know, this sort of  
13 goes back a little bit to where I started, where we think  
14 the harm is the complete elimination of claims that becomes  
15 unreviewable if the appeals are equitably moot.

16 THE COURT: All right. I think we've covered --

17 MS. LEVINE: And --

18 THE COURT: -- this point, because again, I don't  
19 think you really answered my question on how it becomes  
20 unreviewable. I just don't -- I don't see it here. I don't  
21 think you carried your burden of proof on that point, at  
22 least through the date of Judge McMahon's ruling and the  
23 rule stay that goes into effect. And then parties can ask  
24 her if she thinks there's a basis for a further stay in the  
25 Second Circuit. And they will have had the benefit of

1 looking at the issue besides equitable mootness that you're  
2 focusing on, which is the importance of the merits, and can  
3 weigh those themselves.

4 I just -- I don't -- the release isn't going to be  
5 effective until the effective date. So to lose the release  
6 doesn't happen until the effective date.

7 MS. LEVINE: And Your Honor, we think it's --  
8 we're asking for a stay, you know, and in the alternative,  
9 at least a stay through the District Court's decision, to  
10 make sure those dates don't pass, to make sure that we can  
11 this appeal heard on the merits. We think that's critically  
12 important. We think it raises really important issues that  
13 should be heard on the merits.

14 THE COURT: All right. Well, again, I can  
15 understand that argument as far as a stay of the effective  
16 date. I'm still not seeing it as far as a stay of other  
17 actions, which would not be -- I don't believe -- authorized  
18 before the effective date. And I've already ruled, and I  
19 continue to believe, that the advance order is clearly not a  
20 basis for equitable mootness. I mean, it's just -- that  
21 would be -- for a doctrine which is already under legitimate  
22 attack, to rule that that order is a basis for equitable  
23 mootness is just -- I can't imagine it. I mean, I think  
24 that's a frivolous argument. I really can't -- it's just  
25 inconceivable.

1 MS. LEVINE: Your Honor, I appreciate your views  
2 on that. You know, it's our concern that Second Circuit's  
3 not bound, and our hands are tied a little bit because we're  
4 in the dark about what the Debtors are actually doing. We  
5 have asked them --

6 THE COURT: All right. Well, I'll --

7 MS. LEVINE: -- multiple times.

8 THE COURT: -- ask the Debtors.

9 MS. LEVINE: We haven't gotten an answer.

10 THE COURT: I'll ask the Debtors what they believe  
11 they're authorized to do before the effective date to lead  
12 to the argument that the plan is substantially consummated  
13 and, therefore, it would be inequitable for third parties,  
14 not the parties who have the benefit of the release, that  
15 you are appealing, in essence. That's the harm you're  
16 trying to address is your dispute over the legitimacy of the  
17 third-party release. And I think I do have a -- just  
18 because I... Look, the cases are reported for a reason.  
19 The lower courts follow them.

20 So, you know, one reads Charter, one reads  
21 Windstream, one reads the Chateaugay case, and Metromedia.  
22 I mean, these are MPM Silicones. These are published  
23 opinions by the Second Circuit where they lay out when  
24 something will be found to be equitably moot. And it is an  
25 equitable doctrine, and so the facts matter.

1           But, you know, I think actually the trial courts  
2 have been given the job generally to find the facts in light  
3 of the case law, and I just can't imagine that the facts  
4 before me, up at least until the effective date, would lead  
5 the Second Circuit to find that the appeal was rendered  
6 equitably moot.

7           It's just -- there's no effective date, there's no  
8 substantial consummation, there's no sale that's happening  
9 before the effective date, there's no other transaction.  
10          And it just -- it doesn't fit even within the actually  
11 fairly pro-equitable mootness case law in the circuit, which  
12 focuses on the heavy showing someone has to make against  
13 equitable mootness when a plan has been substantially  
14 consummated. This plan isn't even effective, so it's hard  
15 to believe that it could be substantially consummated.

16          Anyway, so why don't we move on to the balance of  
17 hardships and public policy.

18          MS. LEVINE: Your Honor, so on the balance of  
19 hardships, the opposing parties have rested primarily upon a  
20 harm from delay. No one questions the importance of  
21 providing relief to those who have suffered from the opioid  
22 crisis. In our view, that supports a stay. Those who  
23 oppose the plan have also suffered from the opioid crisis.  
24 They have equally pressing interests and abatement and  
25 compensation, but they would have their claims eliminated

1 entirely by the plan, not just delayed.

2 And we don't agree that a stay would cause  
3 significant delay in the context of this case, which has  
4 been pending for over two years, with litigation against  
5 Purdue and the Sackler Family that began before that, where  
6 the appeal is being expedited at a very rapid pace before  
7 the District Court. The argument on that appeal is in just  
8 three weeks. And, of course, if it went to the Second  
9 Circuit, we would seek to expedite it there as well.

10 The United States Trustee is the watchdog, the  
11 congressionally appointed watchdog, acting in the public  
12 interest to try and make sure bankruptcy is not abused.  
13 We're advocating -- we understand you disagree -- but to  
14 ensure that the plan does not transgress the Constitution or  
15 the Code, and we think there's a public interest in having  
16 these issues heard on the merits regarding these third-party  
17 releases, and having, you know, the appellate courts provide  
18 more clarity on the limits of when they're allowed and when  
19 they're not allowed.

20 The Debtors and their allies have relied a lot on  
21 the creditors' support for the plan suggests that a stay  
22 would be against the public interest. The creditors'  
23 support for the plan is not the same thing as the public  
24 interest. It just reflects the interest of the creditors  
25 that voted in favor of the plan.

1           There is a significant public interest in  
2 vindicating the rights of the minority and preventing the  
3 will of the majority from going unchecked by appellate  
4 review. And we think that permanent elimination of the  
5 claims against the consent of the people who did not want to  
6 release these claims outweighs that marginal delay, which,  
7 again, we think -- particularly focusing in on the District  
8 Court decision -- is relatively minimal.

9           THE COURT: Well, let's not focus on the District  
10 Court decision for the moment. Let's focus on when you  
11 believe that -- when do you believe that a final decision  
12 here would be made? And I'm assuming that's through the  
13 Supreme Court process.

14           MS. LEVINE: Yes. If this were to go -- if  
15 someone were to petition for certiorari, it would be to the  
16 Supreme Court for process, and of course, if the Supreme  
17 Court granted cert, that would certainly reflect that these  
18 are significant issues that were review.

19           THE COURT: So have you projected how long that  
20 would take, that process? Are we talking 2024?

21           MS. LEVINE: Your Honor, I don't know the answer  
22 to that.

23           THE COURT: Isn't that important to figure out?

24           MS. LEVINE: I don't know that there's any way to  
25 predict with any kind of certainty how quickly the courts

1 will go, other than we've committed to expediting these  
2 appeals. And you know, that's shown through our actions  
3 with how quickly we are moving in the District Court.

4 THE COURT: Well, does that apply to the Supreme  
5 Court, though? They don't take expedited appeals like this,  
6 do they?

7 MS. LEVINE: Yeah, I don't know exactly what the  
8 process is, Your Honor, but I don't think that the  
9 expediting works in the same way in the Supreme Court. So I  
10 don't have an answer for how long that would be. But, Your  
11 Honor, we do think that these issues are important and that,  
12 you know, a delay from the stay is outweighed by the  
13 elimination of these rights. And that that would be an  
14 irreparable injury for these claims to be eliminated  
15 entirely, without a full review on the merits.

16 THE COURT: And as far as the individuals' rights  
17 are concerned, you assert them -- that they would be  
18 asserted by individual under state consumer protection laws?

19 MS. LEVINE: Some of this -- well, some of the  
20 individual claims are under state consumer protection laws,  
21 Your Honor. Some are under common law. I'm not sure I  
22 quite caught your question.

23 THE COURT: I'm just trying to figure out what the  
24 claims that you're looking to protect are, as far as  
25 individuals' claims.

1                   MS. LEVINE: Direct claims, based on the  
2 individual non-debtor conduct for their own misconduct,  
3 breaching a duty directly to the Plaintiffs, such as the  
4 cases that -- the complaints that we cited in our brief,  
5 which allege claims under state consumer protection  
6 statutes, common law fraud, negligence, RICO. There's a  
7 number of claims that have been asserted along those lines  
8 that allege direct participation and direct liability, based  
9 on the individual Defendants' own misconduct.

10                  THE COURT: Okay. And that misconduct would be  
11 misconduct in being an officer or director or shareholder of  
12 the Debtors?

13                  MS. LEVINE: In the cases that we've cited, yes.  
14 I believe the individual defendants were in those roles.  
15 But the allegations are that they'd reached -- is not just a  
16 sort of veiled piercing, breach of fiduciary duty,  
17 imputation of the company's conduct, but that the  
18 individuals had breached their own duty and engaged in their  
19 own misconduct, making them directly liable to the  
20 Plaintiffs.

21                  THE COURT: Have you found any of those cases or  
22 any evidence from the confirmation hearing that shows that  
23 those allegations don't substantially or entirely overlap  
24 with the showing that would be necessary for piercing the  
25 corporate veil or other causes of action that the Debtors

1 would have?

2 MS. LEVINE: Your Honor, the factual allegations  
3 may overlap, but I mean, I think this gets to where we  
4 disagree with what the proper scope of the non-debtor  
5 releases are, and that is something that we think should --  
6 is an important issue that should be reviewed, and one of  
7 the reasons why we're seeking a stay pending appeal.

8 You know, when Metromedia talked about the cases  
9 that have -- the rare cases that have allowed these  
10 releases, they were in circumstances that were more limited.  
11 They were in class actions, like Drexel, which is this is  
12 not -- are aware they were, you know, more surely derivative  
13 claims, such as fraudulent -- you know, claims that were  
14 duplicate fraudulent transfer claims, like in Madoff or  
15 Tronox or in Manville I, where it was directly against the  
16 asset of the estate, and that in the claim was a secondary  
17 insured that was derivative of the primary insureds' claim,  
18 the debtor was the primary insured.

19 So we think that question of whether overlapping  
20 factual allegations is enough to put this within the scope  
21 of a non-debtor release and whether that's the appropriate  
22 scope is an important question, as a question that should be  
23 addressed on appellate review.

24 THE COURT: Well, no, I've already said I believe  
25 that's correct. I'm just trying to figure out here -- and

1       this is in a different context; this is balancing the harms  
2       -- the right of someone to pursue, which on the facts are  
3       duplicate claims or overlapping claims, is so strong,  
4       particularly when they would receive a recovery, at least  
5       which was found under the plan, they wouldn't receive at all  
6       without the settlement, is enough to override the harm  
7       caused by the delay.

8                  MS. LEVINE: Your Honor, we think there is harm  
9       here. The claims directly against the Sacklers or other  
10      non-debtors were never valued. And there's a harm to having  
11      the choice of whether to settle --

12                 THE COURT: I actually did value them.

13                 MS. LEVINE: -- or proofs of that claim are not --

14                 THE COURT: I don't know why --

15                 MS. LEVINE: -- taken away from you.

16                 THE COURT: I don't know why you say that. I  
17       actually did value them in the aggregate. And I considered  
18       those complaints. And I said, given the battle of the  
19       century that would ensue, the settlement was fair. The U.S.  
20       Trustee took no discovery on those issues and didn't make  
21       any case on them. Some of the objecting states did, and I'm  
22       sure Judge McMahon will read carefully the witness testimony  
23       on those points.

24                 But I have to say, I am having a hard time seeing  
25       how those claims, which really are overlapping claims as far

1 as I can tell -- and I did the best I could to cabin the  
2 release to make it clear that they would not expand beyond  
3 that -- that the people that you're looking out for would  
4 get any recovery whatsoever in the context where the  
5 settlement was not in place and there would be a litigation  
6 free-for-all.

7 Again, you have the United States getting it  
8 superpriority claim. You have individual states litigating  
9 their claims. And then that's up against a class action  
10 lawyer or two or three, back in the MDL, where there already  
11 was, by the substantial private side in the MDL, a  
12 settlement for a lesser amount, namely \$3 billion.

13 So I'm just having a hard time seeing, other than  
14 the intellectual desire to clarify this issue one way or the  
15 other, how the people who would object to the release of  
16 their claims are harmed more than the people who would be  
17 receiving the benefit of the plan distributions.

18 MS. LEVINE: Your Honor, I think we have a  
19 disagreement about what the evidence shows about that. But  
20 there's also a harm from having that choice taken away, and  
21 what we view of a violation of due process rights to be  
22 forced into a settlement that one does not agree to.

23 THE COURT: Well, the parties you're speaking on  
24 behalf of certainly had notice of the confirmation hearing  
25 and the right to hire a lawyer to make that very argument,

1 which is a lot easier to make than hiring a lawyer to  
2 compete against 48 states and the Debtors and the lawyers  
3 and their clients who make up the Ad Hoc Committee of  
4 Personal Injury Claimants.

5 If they're not prepared even to hire a lawyer to  
6 fight the plan, how do you assume that they're going to even  
7 undertake the litigation that you want to preserve for them?

8 MS. LEVINE: Your Honor, the premise that there  
9 was adequate notice, again, you know, we disagree with.  
10 That's part of our objection. And we know you disagree.  
11 And this is part of the reason why we think this needs  
12 appellate review.

13 And you know, there are parties who have filed  
14 claims that would be precluded. We think we've shown that.  
15 There are numerous cases listed in the preliminary  
16 injunction.

17 THE COURT: But they haven't objected to the plan.  
18 And you're not going to represent --

19 MS. LEVINE: Mr. Hartman has.

20 THE COURT: You're not going to represent them in  
21 the litigation, right?

22 MS. LEVINE: No, Your Honor. And of course, the  
23 United States Trustee is here not representing individuals,  
24 but representing the public interest in making sure that the  
25 bankruptcy system isn't abused. But we think, you know, you

1 can still look to that harm, the due process harm to people  
2 who are having claims eliminated, and to the public interest  
3 in having these significant important issues addressed on  
4 appeal as part of your harms balancing in addressing a stay  
5 pending appeal.

6 THE COURT: Okay.

7 MS. LEVINE: Your Honor, I don't know if you have  
8 further questions. You know, we've made our case in our  
9 briefs. Obviously, we have some disagreements, but we would  
10 stand on a request for a stay pending appeal. And I will,  
11 if you have no further questions, cede the floor to some of  
12 the other movants.

13 THE COURT: Okay.

14 MR. GOLD: Good morning, Your Honor. Matthew  
15 Gold, from Kleinberg Kaplan, representing the State of  
16 Washington. Can you hear me?

17 THE COURT: Yes.

18 MR. GOLD: May I proceed?

19 THE COURT: And see you too. Yes. You can go  
20 ahead.

21 MR. GOLD: Thank you, Your Honor. First, I just  
22 would like to touch on -- because I think it's an important  
23 point in context of the questions that Your Honor has raised  
24 -- the attempts that were made to try to resolve this matter  
25 prior to this hearing.

1           I think the key point, which Your Honor said in  
2 framing the question for us, was that it would be my wish  
3 that the schedule for the appeal is a reasonable one and  
4 does not run the risk of causing Norma's harm to creditors.  
5 I'm not going to quote every word you said, but the key  
6 point was, with a second potential look at the Appellate  
7 Court as to whether any further stay is necessary.

8           And I think that that is the point here where,  
9 with what we -- what I described earlier as our fallback  
10 position, that we are seeking to have a stay consistent with  
11 Rule 8025 that would at least take the process through a  
12 decision from the District Court, and then give a period of  
13 time for a higher court to decide whether to further extend  
14 the stay. The --

15           THE COURT: Can I represent you on that point, Mr.  
16 Gold?

17           MR. GOLD: Sure.

18           THE COURT: When talking to the U.S. Trustee's  
19 counsel, I made a distinction between a stay of the  
20 effective date, or the occurrence of the effective date  
21 under the order, which would be a specific condition to the  
22 effective date in the order and in the plan, and a stay of  
23 the order in its entirety. And it seemed to me that the  
24 latter might be warranted, but not the former. I mean --

25           MR. GOLD: Well --

1           THE COURT: -- the other way around. That the  
2 latter would not be warranted, but the former might be.

3           MR. GOLD: I think that a proper consideration of  
4 that question, Your Honor, requires a consideration of the  
5 effect of sentencing. And that is the -- and that is  
6 something that may not -- that is clearly contemplated under  
7 the confirmation order, although it may not be completely  
8 clear how it -- whether it arises under the plan or under a  
9 separate stipulation.

10           But the connection, Your Honor -- and I think the  
11 Debtor has been very clear about this -- is that they are  
12 going to press that once sentencing has occurred, they will  
13 be suffering immense harms if they are not permitted to then  
14 consummate the plan and to enter into the transactions under  
15 the plan. And so that, therefore, to enable there to be a  
16 meaningful stay of the consummation of the plan, as Your  
17 Honor has posited, there needs to be a delay of the  
18 sentencing as well.

19           If the Debtors can posit -- now, right now I'm  
20 positing what their argument is going to be, and I realize  
21 that that's a somewhat shaky limb to be on, but that's  
22 pretty much where I understand their position is going to  
23 be, so that to prevent the possibility of a shipwreck or  
24 major harms occurring if there is sentencing and not a --  
25 and they can't consummate the plan, we need to have a delay

1       in the sentencing.

2                 If the sentencing is delayed and concurrent with  
3       that a stay of the effective date of the plan, we believe  
4       then Your Honor's analysis is correct, that that should be  
5       sufficient to maintain the status quo and prevent there  
6       being a substantial consummation that would be the predicate  
7       for an equitable mootness argument.

8                 Now, even there, we're at a slight disadvantage  
9       because, as the U.S. Trustee has said, we don't know exactly  
10      what the Debtors would be doing and it would be a lot  
11      cleaner for us to accept this, if the Debtors would  
12      straightforwardly say, we agree with you; nothing else that  
13      is happening here would create a predicate for equitable  
14      mootness, along the lines of the assurances they gave to the  
15      parties in connection with the advance order, so that we  
16      would have a basis of knowing that there wasn't something  
17      going on that we're not aware of and that in our saying we  
18      don't think there's a problem, someone plays a gotcha game  
19      and says, yes, they weren't aware of this and that happened.

20                 But based on our assessment, what we're aware of  
21      being contemplated, that's the one critical point that we  
22      have to add. There has to be a delay in sentencing and then  
23      a delay in the effective date of the plan, which would  
24      happen together because the effective date of the plan can't  
25      occur without sentencing in the first instance.

1           And so the reason we were unable to reach any kind  
2       of resolution with the Debtors in trying to resolve this  
3       short of having this lengthy hearing today was that they  
4       insisted that any resolution we reached with them had to  
5       include a date certain for the sentencing to occur.

6           And so that's why we've been unable to reach an  
7       assessment with them, because they kept including the  
8       sentencing, reserving their right to argue that the  
9       occurrence of the sentencing would create an equitable  
10      mootness problem, either by itself or because of what would  
11      be entailed afterwards. They didn't get to that level of  
12      specificity. But that's why we tie those two things  
13      together.

14           THE COURT: Okay. And I appreciate that I may be  
15       asking you to say things that are contrary to your later  
16       argument that sentencing wouldn't render the plan moot. And  
17       all I can say is that you wouldn't be held to those things  
18       in the future, and I'm sure the Debtors have thought of them  
19       to.

20           So I'm having a hard time seeing how the  
21       sentencing could create equitable mootness. I mean, it's  
22       part of a plea agreement. It's scheduled in front of a  
23       different judge. I guess I could enjoin --

24           MR. GOLD: Oh --

25           THE COURT: -- the Debtors from seeking it. But

1 the agreement has this provision that they're supposed to go  
2 get sentenced.

3 MR. GOLD: Well, Your Honor, as I understand it --  
4 and again, this will be something that the Debtors are  
5 saying this is argument that they're going to make.

6 THE COURT: Right.

7 MR. GOLD: And if they say before the Court now  
8 that they would not make this argument, that might be a lot  
9 cleaner. But as I understand it, their position is going to  
10 be that once sentencing occurs, they are no longer able to  
11 operate as the companies that are currently constituted.  
12 That because they will be sentenced, they will be unable to  
13 sell product, to receive Medicare, or contributions and  
14 other things. And that therefore, they will be threatened  
15 with an immediate shutdown, a corporate catastrophe, unless  
16 they are able to go ahead with the restructurings that are  
17 contemplated under the plan, and so then that's why those  
18 two will be tied together.

19 Now, I should say that, Your Honor, we would love  
20 nothing more than to engage with the Debtors and to say is  
21 there a way to allow this to go forward, to allow some  
22 corporate restructuring to take place, to allow some  
23 payments to go to the victims of Purdue and the Sacklers  
24 that are supposed to be receiving payments under the plan.

25 We're not trying to -- that's not our goal, to

1 prevent those types of assistance from happening. And if  
2 there is a way for the parties to on one hand permit some of  
3 these things to go forward, while on the other hand  
4 preserving the right of appeal, we are very -- we have  
5 always been open to having that discussion of trying to make  
6 propositions along those lines to the parties. Or perhaps  
7 something along the lines of the emergency relief fund that  
8 was proposed during the case, but that did not occur.  
9 Something like that that could perhaps take place to allow  
10 parties to get relief.

11           What we perceive is that the parties who have  
12 refused to engage with us on this point are doing so because  
13 they want to be able to hold up the possibility of relief as  
14 their ticket to getting an equitable mootness that would  
15 preclude further appeals.

16           So if there is a way of managing to separate these  
17 things through stipulation, or an order, or something that  
18 allows some of these things to occur -- and I think Your  
19 Honor is right that perhaps they are not at all necessarily  
20 as abstract principles linked, but we believe that -- our  
21 understanding is that the way this plan has been drafted and  
22 that this plan has been put together -- and this is a plan  
23 that has been drafted and put together with a clear strategy  
24 of preserving it through equitable mootness -- that the  
25 effort has been made to tie these things together so that

1       they could not be disentangled, and so that starting down  
2       this road would necessarily create the predicates for  
3       equitable mootness. And that starts with the sentencing and  
4       then pulls in the restructuring and then the other matters  
5       that occur there.

6                  I will just note then with respect to the timing,  
7       the plea agreement took place, I'm going to say, in October  
8       or so of 2020, and was held in abeyance for a period of time  
9       to allow further proceedings before this Court, confirmation  
10      and other such things. The Debtors then, for reasons that  
11      are at least opaque to us, put in a further delay for them  
12      to do certain preparations prior to the sentencing  
13      occurring.

14                 So it's pretty clear to us that the sentencing,  
15       which we are not asking to be undone but can be held in  
16       abeyance while the issues under the plan receive proper  
17       appellate review, and so holding those matters off, the  
18       Debtor has managed to stay in this presentencing period for  
19       over a year now and contemplated further staying.

20                 So we believe that the most effective and simplest  
21       way to preserve the status quo is to have, as Your Honor  
22       said, a stay that includes the effective date plus the  
23       sentencing to avoid the shipwreck scenario. Or in the  
24       alternative, we're perfectly -- we are desirous of trying to  
25       come up with a better way to allow some benefits to go

1 through, if it will not -- if the parties can agree that  
2 doing that will not equitably moot an appeal.

3                 But so far, we have not received serious  
4 engagements on that. And apparently, the parties prefer to  
5 try to use the very real need of these victims to receive  
6 money as a kind of hostage situation where they can't get  
7 their money unless our appeals are irrevocably denied  
8 through (indiscernible) risk.

9                 THE COURT: Okay.

10                MR. GOLD: I will not -- I will move on, then,  
11 Your Honor. I will not touch on the merits particularly,  
12 because as I think Your Honor said, we agree that the  
13 standard is sufficiently flexible, that we've made enough of  
14 a showing with the merits of the appeals that we wish to put  
15 forward, to satisfy the test in the Second Circuit. And we  
16 concede that we have to meet several factors of the prongs,  
17 and it's not simply enough to have succeeded on one of them.  
18 But we believe that we've made a sufficient showing on those  
19 to move on to the other prongs as well.

20               I would just note that the irreparable harm that  
21 we will suffer here is the deprivation of the rights of the  
22 moving states to bring their independent actions under state  
23 law against the Sacklers. And that the potential loss of  
24 those claims is certainly real enough to satisfy any  
25 requirements that it not simply be mere equitable mootness,

1       but equitable mootness plus a consequence, that that's the  
2       consequence here.

3                 And then there are other cases also raised in the  
4       briefs that we believe are also compelling, that says that  
5       any time a state is prevented from enforcing its laws, it  
6       has also suffered an irreparable harm. Those two together,  
7       we believe, certainly satisfy the requirement that there be  
8       a form of irreparable harm shown here.

9                 I will then turn, if Your Honor doesn't have  
10      questions, to the question of the balancing of the harms,  
11      which is the next factor here.

12                 It feels to us that an awful lot of the arguments  
13       that the stay opponents have put forward basically can be  
14       described from the movie, "Blazing Saddles", where the  
15       sheriff who finds himself in a difficult spot -- played by  
16       Cleavon Little -- points a gun at his own head and manages  
17       to convince the parties that the threat to himself that he  
18       is posing are sufficient to allow him to be extricated from  
19       that position. And the reason I mention that here is  
20       because the harms that the stay opponents are positing here  
21       are ones that they are themselves creating to a large  
22       extent.

23                 So first, as I've touched on already, is the  
24       question of the sentencing. I believe their argument is  
25       going to be that if sentencing occurs, but they can't

1 proceed, they will suffer harm. Well, the simple answer is  
2 for them to seek to defer sentencing until the appeals have  
3 run their course.

4 Second, we have these arguments that the Sacklers  
5 have the right to terminate the agreement if a stay is  
6 entered. And I find this an outrageous suggestion, Your  
7 Honor. I will note that during the hearing that took place  
8 on October 14th on certification of a direct appeal, there  
9 was another issue regarding a Sackler termination right.

10 Mr. Huebner stated emphatically to this Court that  
11 of course he had a waiver of that Sackler termination right,  
12 and that he would not be coming into the court without  
13 having a waiver of that termination right in his pocket.  
14 And the reason for that was self-evident. How could one  
15 think that Purdue would put in jeopardy the Sackler  
16 settlement agreement, the centerpiece of the plan? But that  
17 is what Purdue is arguing right here. That they granted the  
18 Sackler a walk right.

19 I will note that this walk right was slipped into  
20 the agreement at literally the last moment, while the  
21 confirmation trial was proceeding, after the evidentiary  
22 portion of the confirmation trial had closed, after all the  
23 testimony about how wonderful a settlement this was had  
24 already been placed on the record.

25 And I will also note that Purdue did not consider

1       this walk right to be significant enough to advise the Court  
2       and other parties, oh, by the way, we've posted an amended  
3       Sackler settlement agreement, and it happens to contain a  
4       provision that will allow the Sacklers to terminate this if  
5       there's a stay pending appeal, which a possibility of  
6       request for a stay was clearly contemplated by everyone.

7                   So, now, how could this be? How is it possible  
8       that all the tremendous lawyers representing the stay  
9       opponents voluntarily put in jeopardy the centerpiece of the  
10      plan? Not because they were confident that there would be  
11      no appeal, nor that there would not be a motion for a stay  
12      pending appeal. It has to be that they could not seriously  
13      expect that the Sacklers would spurn all the benefits that  
14      they get under this plan and actually exercise this right,  
15      and rather, because they intended to use this provision as a  
16      means to bludgeon the courts into denying a stay. And we  
17      submit that that should not be permitted here.

18                  Second argument that they put forward relates to  
19      the attorneys' fees that they themselves are incurring and  
20      will incur during the period of the stay. We believe this  
21      is also an outrageous point. If they seriously believed  
22      that the size of the fees that they generate were causing  
23      harms to victims of Purdue and the Sacklers, they ought to  
24      be finding ways to limit their fees.

25                  To start with, it was not necessary for seven

1 oppositions to the stay motions filed by seven different  
2 parties to be filed. They could've coordinated a single  
3 filing. I know this could be done because the states  
4 routinely coordinate to present fewer filings to Your Honor.

5 More to the point, steps could've been taken  
6 during the case to curtail the amount of professional fees  
7 during the case, or to curtail the amount of fees that will  
8 be charged post-confirmation. But no. The only way in  
9 which the stay opponents suggest that fees ought to be  
10 controlled is by denying this stay to the Appellants. And  
11 we submit that that is too transparent to take seriously.

12 Then we reach what I believe is the far more  
13 serious concern, which is the delay in relief going to the  
14 victims of Purdue and the Sacklers. I just note that this  
15 is not a new problem. This is a problem that's been  
16 weighing on everyone through the over two years that this  
17 case has been pending. This did not suddenly become a  
18 problem. The victims of Purdue and the Sacklers needed help  
19 two years ago when the cases were filed. But that undoubtedly  
20 need was subordinated to the legal process of this case.

21 The plan opponents could have during the case  
22 established the emergency relief fund to provide faster  
23 relief to the victims. But they didn't. Now, we are in a  
24 post-confirmation pre-effective date period. There was the  
25 famous 82-day period before the plan could go effective,

1 which was put in there, as we understand it, for the  
2 convenience of the Debtors to allow them a deliberate period  
3 of time to undertake certain corporate transactions.

4                 If the harm to the parties of not getting their  
5 money sooner was a serious possibility, that period of time  
6 could've been shortened as well, but it wasn't. The only  
7 time when this delay apparently becomes intolerable is when  
8 it's used as a means to curtail the stay that we're  
9 requesting and the preservation of our appellate rights.

10               The appealing states -- and especially in this  
11 context, where we are asking for a stay -- goes through the  
12 time of the anticipated ruling of the District Court, plus a  
13 meaningful period of time to take the issue to a higher  
14 court. The incremental harm to those parties that will  
15 occur during this relatively imitated period is far less of  
16 a kind of all the terrible delays that they've had to suffer  
17 through the case and does not provide an independent basis  
18 for denying a limited stay through this time period.

19               THE COURT: Well, I'm having a hard time following  
20 that point, Mr. Gold. I mean, it's still harm, and I think  
21 that the real issue is how great a harm is it in comparison  
22 --

23               MR. GOLD: I agree, Your Honor.

24               THE COURT: -- to the countervailing harm of  
25 giving the Appellants the opportunity to try to vindicate

1       their rights on appeal.

2                    MR. GOLD: I completely agree, Your Honor. And  
3       it's a complicated issue because this is apples and oranges,  
4       if I may say. The harms that we have here are different in  
5       type, difficult to quantify, and so the Court has to engage  
6       in the kind of balancing. I'm just suggesting that the harm  
7       here will not -- we're not disputing that it really occurs,  
8       but this harm is one that the parties have lived with  
9       throughout the case because there were important legal  
10      principles or other things that were taking place. And  
11      we're suggesting that it does not outweigh here the  
12      preservation of our appellate rights.

13                  THE COURT: Well, again, that may be the case  
14      through a relatively short period after what would normally  
15      be the effective date, because distributions in some measure  
16      would be made into the trust, but not out of the trust, for  
17      a period after the effective date. But the longer you go,  
18      the more the delay really counts, because there comes a  
19      point when (indiscernible) claims start being liquidated and  
20      the NOAT procedures are established, and at that point, the  
21      money really does start going out.

22                  MR. GOLD: Well, I --

23                  THE COURT: Have your clients and the Debtors  
24      talked about when that point is likely to be?

25                  MR. GOLD: Well, as I said, Your Honor, what we

1 have attempted to do with the Debtors is to find a way to --  
2 and again, using the model that was engaged with the trust  
3 advance motion to have the parties agree to allow various  
4 steps to take place, including the ones that Your Honor has  
5 listed -- and we have had, I have to say, little engagement  
6 or appetite for engagement from the Debtors or the other  
7 parties in terms of being able to parse.

8 I do agree that part of the benefit of having the  
9 stay be limited to the period of time that we've discussed  
10 in terms of getting us to the next level is that we can  
11 analyze more concretely what steps are going to occur,  
12 rather than looking at and allowing the next courts to be  
13 able to focus on what issues would be arising then, and what  
14 could be concretely happening then, and weighing that  
15 against the harms that might occur.

16 It is certainly for the purposes of the District  
17 Court's ruling, that by all evidence, Judge McMahon is  
18 keenly aware of the importance of having a decision done  
19 quickly. And frankly, again, the other benefit is that  
20 because she was aware of this, she was able to insist on a  
21 briefing schedule to enable that all to work.

22 And if we are going to the next court, should that  
23 be necessary, then, again, the Second Circuit could be in a  
24 position to condition a stay upon an expedited briefing  
25 schedule before the Second Circuit, which no lower court

1       could meaningfully be in a position to impose on the Second  
2       Circuit, which they could do themselves.

3                   So we posit that the harm for this period of time  
4       is not sufficient to outweigh the importance of the  
5       appellate rights that are being preserved, and that the  
6       issue may have to be revisited by another court with its own  
7       timetable in place and depending on where the matters stand  
8       at that point.

9                   And as I said, we are more than willing to try to  
10      work with these parties to find a way to allow transactions  
11      to occur, to allow even payments to go to needy parties, if  
12      there can be a way to structure that to not affect the  
13      appellate rights.

14                  So now I turn Your Honor to the public interest  
15      component of the process. We submit that it is manifestly  
16      in the public interest that this plan be fully tested on  
17      appeal, not -- the Debtors seem to sometimes have the  
18      position that the only appeal that is meaningful here is  
19      appeal to the District Court. This case could have been in  
20      front of the Second Circuit already, had the Debtors agreed  
21      to certification of a direct appeal. But they chose not to.

22                  THE COURT: Well, the Circuit would have had to  
23      have taken it too.

24                  MR. GOLD: That's true, Your Honor. I'm just  
25      saying that the Debtor -- that we didn't reach that point.

1 And part of the reason why we didn't reach that point was  
2 that the Debtors at that hearing insisted that it was  
3 important that we go to the full process of first review  
4 from the Bankruptcy Court, and then review from the Court of  
5 Appeals.

6                 And so we want to -- now that we are on that path,  
7 we want to make sure that all levels of appeal are preserved  
8 and not booted out through equitable mootness. And we  
9 submit that that is manifestly in the public interest, and  
10 that it is against the public interest that parties be  
11 permitted to design plans to create equitable mootness  
12 factors in them as a means of avoiding review. I mean, Your  
13 Honor, I can state that I received emails today of CLA  
14 programs that are already being designed and marketed to  
15 teach bankruptcy lawyers how to design plans that provide  
16 non-consensual releases and that can be protected by  
17 equitable mootness. The community and the country as a  
18 whole is watching this, and it is critical --

19                 THE COURT: Equitable mootness --

20                 MR. GOLD: -- that this is --

21                 THE COURT: -- has been an issue in the -- at the  
22 circuit level for decades.

23                 MAN: I understand, Your Honor.

24                 THE COURT: And somewhat inexplicably to me the  
25 Supreme Court turned down cert this last term on two cases

1 that could've resolved that issue. That has nothing to do  
2 with this plan at all. And it would seem to me that as we  
3 just discussed, the public interest in avoiding harm,  
4 tangible harm, to the victims increases with time. And  
5 you're just ignoring that when you talk about the public  
6 interest.

7                   And again, it's well-recognized that one issue,  
8 one element of the public interest, is the finality of  
9 reorganizations. So I think it's much more complicated than  
10 you're saying here, but I also think that what you're  
11 arguing for now is well beyond what you had been arguing  
12 for, which is some form of a stay through a ruling by the  
13 District Court. Because now you're talking about staying  
14 matters through a determination by the Supreme Court, which  
15 could be in 2024. And --

16                  MR. GOLD: Allow me to clarify, Your Honor,  
17 because I understand why you might have thought that, but  
18 that's not what I meant to say. The -- I think we have been  
19 candid that we will -- that we intend to seek stays that go  
20 on to the higher levels. What I am now suggesting to Your  
21 Honor is that the stay that we would be obtaining from Your  
22 Honor would preserve our ability to seek further stays from  
23 higher courts --

24                  THE COURT: Okay. Fine.

25                  MR. GOLD: -- and that --

1                   THE COURT: Then I -- that's fine. So we're  
2 really -- I think -- look, here, the public interest point  
3 very much dovetails with the balance of harms, as far as I  
4 can see. The parties here have agreed on the form of the  
5 distribution of the money under this plan and have touted it  
6 as something that is a single achievement. When I say the  
7 parties here, I mean both the appellees and the appellants.

8                   So what we're talking about here is a dispute  
9 between the appellants and the appellees on whether more  
10 money can be obtained through this process because that's  
11 what we're talking about. We're talking about more money,  
12 and whether that warrants additional delay. And to me that  
13 just goes back to the balancing of the harms.

14                  MR. GOLD: Well, Your Honor, the -- I would just  
15 clarify a few points of what you have stated. I do agree  
16 that the appealing states participated in the design of many  
17 features of the plan, and that we do believe that a lot of  
18 those features of the plan are salutary and are ones that we  
19 agreed to together. But that was always -- those were  
20 always being negotiated based on the predicate that other  
21 issues, principally the releases, could also be  
22 satisfactorily resolved, and unfortunately, they were not.

23                  The -- I will also note that the issues that arise  
24 vis-a-vis the Sacklers, are not solely issues relating to  
25 the amount of money that can be paid. Although that is

1     certainly an important component of it, but there are other  
2     issues regarding, for instance, the Sackler agreement to  
3     have their name taken off of various institutions, about the  
4     scope of the -- of when documents can be available in the  
5     document depository -- or repository and other things that  
6     are not, that take this case beyond a mere matter of money.

7                 And I again state that the appealing states are  
8     highly anxious to try to find ways to reduce the burdens on  
9     the ones that Your Honor has identified rather than to hold  
10    them hostage as a means of avoiding appellate  
11    (indiscernible) important question. Because we -- because  
12    all of these are -- all the things that Your Honor stated  
13    are matters of public concern. But where you have a --  
14    where you have what as Your Honor has identified as non-  
15    frivolous, serious questions regarding the permissible scope  
16    of a -- of releases granted pursuant to a confirmation  
17    order, having those issues clarified on appeal we submit is  
18    a compelling public interest, notwithstanding the other  
19    matters that Your Honor has identified.

20                THE COURT: Well, those other matters are, I  
21    think, pretty eloquently laid out in the declarations of Ms.  
22    Juaire. I'm hoping I'm pronouncing that right, J-U-A-I-R-E,  
23    and Ms. Trainor, T-R-A-I-N-O-R.

24                MR. GOLD: Your Honor, I will --

25                THE COURT: I guess I've heard you and I

1 appreciate what you've said, Mr. Gold, about the State's  
2 willingness to work with the appellees on intermediate steps  
3 that minimize that countervailing harm that they detail.

4 I guess the point that I need to press is, are the  
5 three states prepared to accept some risk of equitable  
6 mootness as part of those steps. The U.S. Trustee  
7 apparently takes the position that it's not, which seems  
8 rather bizarre to me and contrary to the case law. But I  
9 don't know whether what you're offering here is just couched  
10 by saying of course we can't take a risk of equitable  
11 mootness, or is it willing to take some risk?

12 MR. GOLD: Well, Your Honor, our -- we -- first,  
13 we are agreeing to accept some -- our issue is not -- our  
14 view is not identical to the U.S. Trustee, which as you've  
15 obviously seen from the briefing that has been submitted.  
16 We have not taken a separate appeal from the advance order.  
17 We're not pursuing that. We are accepting that.

18 While there is in theory some risk of equitable  
19 mootness from that, we don't consider it to be a significant  
20 enough one that we are pursuing that. And so we are  
21 exercising some judgment in terms of what risks of equitable  
22 mootness we are willing to take and which not.

23 We also recognize that the framework that was  
24 adopted with respect to the trust advance order had a -- and  
25 in fact, also the structure that Judge McMahon adopted with

1 respect to her ruling involved having the various parties to  
2 the appeal stipulate that they were not going to use these  
3 matters as the basis for an argument for equitable mootness.  
4 Now, we recognize that that is not bulletproof, that it's --

5 THE COURT: No, I actually think it is.

6 MR. GOLD: And the higher court could --

7 THE COURT: I --

8 MR. GOLD: The higher court could make its own  
9 determination --

10 THE COURT: Yeah, I --

11 MR. GOLD: -- but again, we --

12 THE COURT: -- think it is pretty bulletproof. I  
13 mean, again, my quote from Judge Kaplan was focusing on  
14 constitutional mootness, which is really a different issue  
15 --

16 MR. GOLD: Yes.

17 THE COURT: -- as opposed to equitable mootness.

18 It would seem to me very hard for anyone to rule that it was  
19 equitable to hold something as causing mootness when the  
20 very party that would benefit from that had stipulated that  
21 it wouldn't. That would seem --

22 MR. GOLD: Right.

23 THE COURT: -- at the height of not being  
24 equitable.

25 MR. GOLD: Your Honor, I have said very much the

1 same in my analysis of that question, although it's more  
2 meaningful coming from Your Honor than it is from a mere  
3 lawyer. The point I'm making is that if we -- so, if the  
4 parties -- what we have been proposing was that the parties  
5 stipulate that they would not seek to use the steps that we  
6 are suggesting that we would be willing to negotiate with  
7 them as the basis for an equitable mootness argument.

8                 And while that is not nearly as bullet proof in  
9 the context of payments going to parties as it is in the  
10 context of establishing trusts or other such matters, we are  
11 certainly willing to seriously consider taking the risk that  
12 some other party might raise those things, notwithstanding  
13 the party's stipulation. But we think that having the  
14 parties stipulate to that would go a long way to allow that  
15 to occur.

16                 That's far from the situation where if we say  
17 we're willing to allow certain things to go forward knowing  
18 that the other parties, like say with the sentencing where  
19 the Debtors have said let there be no mistake. When  
20 sentencing occurs, we are going to insist that that has  
21 equitable mootness concerns. That's a very different  
22 analysis for us than something where the Debtors have  
23 stipulated that they are not going to raise equitable  
24 mootness.

25                 So if the -- all I'm suggesting is that if these

1       parties -- if their principal concern is in getting aid to  
2       the victims, then they should be willing to work with us to  
3       waive equitable mootness arguments and allow the payments to  
4       go forward. If on the other hand --

5                 THE COURT: No, that's fine. I understand your  
6       point. Okay?

7                 MR. GOLD: Okay, Your Honor. The -- Mr. Goldman  
8       is going to be addressing the issues regarding the  
9       declarations that have been submitted, so I will not further  
10      extend this hearing by stating them myself. And the --  
11      unless Your Honor has any questions, I don't think --

12                THE COURT: Well --

13                MR. GOLD: -- there's anything --

14                THE COURT: -- are one of you going to address the  
15      bond issue?

16                MR. GOLD: I can do that, Your Honor. The -- we  
17      submit that this case is governed by the plain language of  
18      the rule that says a bond or other security is not required  
19      when an appeal is taken by the United States, its officer,  
20      its agency, or by direction of any department of the federal  
21      government.

22               And we have here the -- that is our circumstance.  
23      We are dealing with appeals that have been simultaneously or  
24      substantially simultaneously filed by the U.S. Trustee,  
25      which fits the category of the United States, its officer

1 agency, and by the states. We are raising substantially  
2 similar issues, or I would say that the U.S. Trustee has  
3 issued a broad panoply of issues that include the issues  
4 that we are raising on our appeal, and that based on that,  
5 no bond can be required on this consolidated appeal.

6           Certainly if the -- if no bond is applied or a  
7 stay is granted for the U.S. Trustee, there should be no  
8 bond for -- because the same stay will be in effect, and  
9 it's the same stay that will be protecting the U.S. as well  
10 as the states.

11           We also -- I don't have much to add to our  
12 argument that there are other cases that recognize an  
13 analogy between sovereign states and the U.S., although the  
14 rule does not specifically mention them, and that therefore  
15 finds it inappropriate to impose bonds on the states by  
16 analogy. But that's -- though we finally -- we would simply  
17 submit that the cases that the stay opponents founded were  
18 -- had nothing to do with our circumstances, had to do with  
19 bonds being required of non-government actors, and provide  
20 no illumination on what the Court should be doing.

21           THE COURT: So what do you make of the committee  
22 notes to Rule 8007(c) and (d), the 2014 committee notes,  
23 which state that (c) and (d) retain the provisions of the  
24 former rule to condition the granting of relief on the  
25 posting of a bond by the Appellant except when that party is

1       a federal government entity?

2                    MR. GOLD: Well, Your Honor, I will make two  
3 points here. I think that that -- first, I would say that  
4 that comment is not directed to the circumstance where there  
5 are simultaneous appeals by multiple parties, and that the  
6 -- I would secondly point out that there is substantial case  
7 law saying that what the Court should be looking at is the  
8 language of the rule itself rather than the committee notes  
9 that provide distinctions that were not included in the  
10 language of the rule itself, and that because the U.S.  
11 Trustee is entitled to an unbonded appeal here, it --  
12 there's -- there should be no bond. There'll be no point in  
13 having an additional bond when it's the same appeal.

14                  THE COURT: So the general rationale for exempting  
15 the United States from the bonding requirement is that most  
16 judgments, and this is consistent with 28 U.S.C. 24  
17 something -- the U.S. Trustee cites it -- is that the United  
18 States is good for it because it's a judgment against the  
19 United States, and the United States is always good for it.

20                  Your interpretation of this rule would mean that  
21 if there was a judgment against the United States and  
22 against third parties, the third parties would have the  
23 benefit of the United States being good for its portion of  
24 it, and that they would have -- they could just have a free  
25 ride on that, and the Plaintiff should take the risk?

1           MR. GOLD: Well, Your Honor, I'm not sure what the  
2 judgment would --

3           THE COURT: No, I'm just talking about --

4           MR. GOLD: -- would be --

5           THE COURT: -- your interpretation of the rule,  
6 which would include, I think, that scenario, which doesn't  
7 seem to me to be a -- an interpretation that Congress would  
8 want.

9           MR. GOLD: Well, Your Honor, when -- since we are  
10 dealing here with states, and I don't believe that there's  
11 any serious issue regarding collectability --

12           THE COURT: Actually, Judge Posner thought there  
13 was in *Lightfoot v. Walker*, 797 F.2d 505 and 506 through 07  
14 (7th Cir. 1986). So, anyway. But I guess there is the  
15 issue as to what we've just been talking about is the  
16 balance of the harms, and that balance may become  
17 significantly greater as time goes on. Before then, the  
18 Debtors have attempted to quantify that in the DelConte  
19 declaration.

20           But I'm not sure -- well, it's really a question  
21 for the Debtors as to the delay by three months, what does  
22 that mean? But I think what it means is it's more on the  
23 back end than the front end where there's significant loss.  
24 But I don't think there's any doubt that the cost for a  
25 lengthy delay of, you know, several months to a year or two

1 really is dramatic here in terms of dollars and cents. So  
2 it would seem to me that, as time goes by, the need for a  
3 bond grows dramatically to offset the vindication or not of  
4 the Appellant's right on appeal.

5 MR. GOLD: Well, Your Honor, I guess that gets  
6 back to the point that we discussed before why it may make  
7 more sense to have Your Honor stay -- take us through the  
8 relative short term when the costs are relatively contained  
9 and lower and allow a later court that -- a higher court  
10 that can have a better sense of how long it will be taking  
11 on the appeal resolve that issue.

12 THE COURT: Okay.

13 MR. GOLD: Thank you, Your Honor. I have nothing  
14 further to add at this point. I may have rebuttal points  
15 after the Debtors or another party's presentation.

16 THE COURT: Okay.

17 MR. GOLDMAN: Your Honor, Irve Goldman, Pullman  
18 and Comley for the State of Connecticut. May I be up next?

19 THE COURT: Yes, that's fine.

20 MR. GOLDMAN: Thank you, Your Honor. I first  
21 wanted to just for Connecticut adopt the arguments that we  
22 made by Mr. Gold for Washington and affirm that, you know,  
23 the principal form of relief that we are seeking at this  
24 point is our fallback, or what was previously described as a  
25 fallback position.

1           We are looking for a stay until 14 days after  
2        Judge McMahon issues her ruling, which I would note may very  
3        well come after December 8th, which is what the Debtors  
4        described as the earliest point when the effective date can  
5        occur, which is seven days after the 75th day after the date  
6        of the confirmation order.

7           And it seems unlikely that it will come after that  
8        date because we have oral argument, as Your Honor knows, on  
9        November 30th, and Judge McMahon has advised us that she  
10       starts a two-defendant criminal trial on December 7th. So  
11       that would give her less than a week to get out what I would  
12       anticipate is a very complex decision. So we would project  
13       that it would likely come after that trial has concluded.  
14       But I just want to circle --

15           THE COURT: What's on trial? It's oral argument.  
16       Oh, the criminal trial.

17           MR. GOLDMAN: Yes, correct, Your Honor.

18           THE COURT: Well --

19           MR. GOLDMAN: That's what we were advised.

20           THE COURT: Okay.

21           MR. GOLDMAN: And if I could just circle back for  
22       a moment to this apprehension that we have of equitable  
23       mootness based on the Debtor's indication that they'll argue  
24       the criminal sentencing will, you know, be the fulcrum for  
25       that in a stipulation that was filed with the District Court

1 on October 20th that dealt with their commitment not to  
2 argue that anything pursuant to the advance order or in the  
3 preparatory stages leading up to the effective date, they  
4 would not argue with the basis for equitable mootness.

5 It carved out in paragraph 2 the following  
6 provision. The stipulation does not address the criminal  
7 sentencing of Perdue or the effect or consequences of such  
8 sentencing on these or other appeals. So currently, they  
9 have signaled the intention to argue that, and I think the  
10 stay of the confirmation order would be the most effective  
11 way to prevent that from happening.

12 The reason I say that is because the plea  
13 agreement itself provides that the parties, meaning Perdue  
14 and USDOJ will agree to request that the sentencing hearing  
15 take place no earlier than 75 days following the date of  
16 confirmation. This contemplates a joint request. And so  
17 that if there is a stay of the confirmation order, there  
18 would be no reason for any party of the Debtors or the  
19 United States to request a scheduling of the sentencing  
20 hearing for the very reason that the Debtors have argued  
21 that if they are sentenced and thereby become a convicted  
22 felon, that would put their continued operation at jeopardy.

23 So I think the most effective way to deal with  
24 that would be to stay the order. And I think Mr. Gold also  
25 touched on this as part of the calculus of determining

1       whether there was irreparable harm. We contend the Court  
2       should not only consider the risk of equitable mootness, but  
3       the consequences that would ensue to the states if their  
4       causes of action are eliminated, which is unquestionably  
5       their property, not property of the estate. And in an  
6       equitable mootness scenario, that property will have been  
7       taken away without appellate review of whether the taking  
8       was proper.

9                   I know Your Honor has concluded that the states  
10      will likely do better or will do better financially under  
11      the plan than they would if they were permitted to go  
12      against the Sacklers and other third parties. But that does  
13      not account for the character of these release police power  
14      claims as a deterrent to future wrongdoers and simply  
15      assumes incorrectly that their value is purely financial.

16                  Now, if I can turn to the balance of the harms,  
17      and specifically the declarations that have been submitted  
18      by the various parties. As Your Honor is aware, we've made  
19      some discreet, detailed objections to the admissibility of  
20      some portion of the declarations, and which of course must  
21      follow the Rules of Evidence. Everyone's trying to  
22      establish a record here, and so applying the Rules of  
23      Evidence is important in this context.

24                  And under the Rules, the testimony offered by a  
25      declaration has to be based on personal knowledge, not

1       hearsay. The sufficiency of personal knowledge has to be  
2       established by what is in the declaration. It can't contain  
3       conclusory statements or arguments. It has to set forth  
4       specific facts. And to the extent a lay opinion is offered,  
5       it has to be based on the declarant's own person knowledge  
6       and must not be based on specialized knowledge. And all the  
7       declarations, to one degree or another, fails to satisfy one  
8       or more of those requirements.

9                   Mr. DelConte's declaration, for example, talks  
10          about operational risk to the Debtors. He first says that  
11          the State could result in delay in bringing about public  
12          initiatives to market. He says "could". He doesn't say  
13          what initiatives are being planned to go to market during  
14          the period of any stay, no facts establishing what his  
15          personal knowledge of what the initiatives are. He's  
16          obviously not a member of Perdue's public initiative group.

17                 Granted, he is a financial advisor for the  
18          company, but I think here he is being used as a type of all-  
19          purpose as an expert for all things Perdue. And I don't  
20          think that he can be used to just say in a conclusory  
21          fashion some unspecified initiatives will be delayed during  
22          a period of the stay we're requesting. In part four of the  
23          declaration --

24                 THE COURT: Well, they would certainly be delayed  
25          if the Debtors weren't able to engage in any business, right

1 because of the criminal plea?

2 MR. GOLDMAN: Well, if they pled -- correct. If  
3 they were a convicted felon, according to the Debtors, that  
4 would restrict -- eventually, maybe not automatically as I'm  
5 told, but eventually it would lead to the termination of  
6 their licenses and the ability to do business unless the  
7 properties could be transferred to NewCo at that point.

8 But as I had indicated, Your Honor, if Your Honor  
9 stays the order for the period we're requesting, it is  
10 highly unlikely that that criminal sentencing will take  
11 place during the period of that stay. And again, those  
12 unspecified initiatives that he says aren't -- will be  
13 delayed --

14 THE COURT: That's not really an evidentiary  
15 objection. You're just objecting to the fact that it  
16 doesn't say very much, and I get that. I understand that,  
17 but that's not an evidentiary objection.

18 MR. GOLDMAN: Then I'll move on, Your Honor, to  
19 what I think is an evidentiary objection. It's part 4 of  
20 the declaration, which is a recitation of what Mr. DelConte  
21 believes could be the operational risks if the stay is  
22 granted. Based on how upset the employees, vendors, and  
23 customers would be if there was a delay occasioned by the  
24 stay, clearly that's based on what he was told the Debtors  
25 told their customers, vendors, and employees.

1           And certainly, Mr. DelConte is not competent to  
2 testify as to how other parties, namely the customers,  
3 vendors, and employees, would react to a stay of limited  
4 duration, particularly when they have certainly hung in  
5 there and not walked away during the two-plus years that  
6 this case is undergoing Chapter 11. There's certainly no  
7 basis for believing that now suddenly that the -- whether a  
8 confirmation order has been appealed, that they wouldn't  
9 tolerate a few additional months of delay.

10           In fact, if anything, there was greater  
11 uncertainty in terms of what would happen with the --

12           THE COURT: Mr. Goldman, can I interrupt you? Are  
13 you testifying now --

14           MR. GOLDMAN: Certainly.

15           THE COURT: -- or are you making argument based on  
16 your assessment of how people think?

17           MR. GOLDMAN: Well, that is argument, Your Honor.

18           THE COURT: And that's how I would treat this.

19           MR. GOLDMAN: And --

20           THE COURT: This is his prediction based on his  
21 knowledge of the Debtor's business of what would happen.  
22 Not what will happen, but his prediction.

23           MR. GOLDMAN: Well, again, I think that that -- he  
24 wasn't offered as an expert, and I think he is testifying  
25 based on what he was told. And --

1           THE COURT: Well, that's what you're saying too.

2           I'm just saying it's a prediction.

3           MR. GOLDMAN: Well, Your Honor, I'm not offering  
4           my argument as testimony yet, but he is.

5           THE COURT: Well, only for this --

6           MR. GOLDMAN: So --

7           THE COURT: -- I will treat only for that purpose  
8           is what he reasonably believes based on his knowledge of the  
9           company.

10          MR. GOLDMAN: Let me move on to Mr. Gard. And in  
11          paragraph 3, again, this really goes over what Mr. DelConte  
12          testified to, and that it's his belief that a delay, though  
13          materially, would give us Perdue's residual value and  
14          talking about the uncertainty of the bankruptcy process.  
15          Again, he -- this is lay opinion. It's not supported by  
16          facts establishing it's within his personal knowledge.

17          And this is in the province of experts to say what  
18          Perdue's residual value might be given the uncertainty and  
19          delay of -- and stay of the limited duration that we're  
20          requesting. And in paragraphs 14 and 16, he offers the  
21          prediction that as a result of the delayed distributions  
22          during the stay, it's quite possible that additional  
23          Americans will die, and then suggest that a stay will allow  
24          Americans to needlessly die, who would not have died but for  
25          a stay.

1           Now, this is obvious argument as well and not  
2 fact. I mean, evidence of widespread death as a result of  
3 stay of limited duration has got to be based --

4           THE COURT: Well, again --

5           MR. GOLDMAN: -- on more than --

6           THE COURT: -- it depends on what the length of  
7 the stay is. I just -- look, on your first point, the only  
8 example that he gives for the effect of a stay is if the  
9 plea goes forward without the plan being implemented. And  
10 to me that is a meaningful effect. To the extent he's  
11 talking about other effects on keeping senior employees, I  
12 agree with you.

13           I don't think he's really -- unlike Mr. DelConte,  
14 he's not really in a position, you know, other than anyone  
15 else or different than anyone else to talk about that point.  
16 But on the plea point, I understand his point.

17           And then, look, the testimony is based upon I  
18 think an undisputed fact that roughly 200 opioid-related  
19 overdose deaths occur, and that those deaths have been  
20 increasing at remarkable percentage rates over the last  
21 couple of years. And I think he and -- he is perfectly  
22 positioned to discuss that point given his job, which he's  
23 required to assess how best to deal with that issue for his  
24 state.

25           And I take, again, his prediction that at some

1 point -- and he doesn't really say when that point is, but  
2 at some point, a stay can lead to additional deaths if it  
3 results in a meaningful delay of funds. I don't see how  
4 anyone could dispute that.

5 MR. GOLDMAN: Your Honor, I do -- the point I'm  
6 trying to make here is that Mr. Gar and the other  
7 declarations are trying to draw a causal connection here  
8 then because distributions will be delayed, that will result  
9 in grievous harm. And there just -- that really is in the  
10 province of experts.

11 What will happen, they haven't said the amount of  
12 funds that are going to be delayed. What would otherwise be  
13 disbursed and used by the various constituents --

14 THE COURT: The record is --

15 MR. GOLDMAN: -- during period of --

16 THE COURT: The record is crystal clear that every  
17 dollar counts because there is no surplus. If that weren't  
18 the case, then your client's lawsuits are meaningless. This  
19 is a really strange exercise, Mr. Goldman, I have to say.

20 MR. GOLDMAN: Well, I make --

21 THE COURT: And I guess --

22 MR. GOLDMAN: -- they're --

23 THE COURT: -- what you're saying is your clients  
24 really don't think this money counts?

25 MR. GOLDMAN: No, that is not --

1           THE COURT: Is that what you're --

2           MR. GOLDMAN: -- what I'm saying, Your Honor.

3           THE COURT: -- ultimately saying here in terms of  
4 saving lives and addressing the opioid crisis?

5           MR. GOLDMAN: No, it is not, and I would  
6 acknowledge that it certainly does count. The point I'm  
7 trying to make is that they are trying to translate that  
8 into grievous harm based on not knowing what the amount is  
9 going to be disbursed during this limited duration and for  
10 what purposes.

11          THE COURT: But he wasn't responding to just a  
12 limited duration. The motion sought a stay through the  
13 entire appeal process through the Supreme Court. So these  
14 declarations address through the end of 2023 and through the  
15 end of 2024. I agree with you. If you're looking for or if  
16 I'm considering a shorter injunction, then this information,  
17 although still meaningful because if anyone dies, that  
18 pretty important.

19          MR. GOLDMAN: Yes.

20          THE COURT: Plus all of the other societal harms  
21 that flow from not having the funding start. But if the  
22 funding isn't really going to start in any event until --  
23 let's pick a date. And I'm not talking about the effective  
24 date now, I'm talking about when funding would actually  
25 start. Let's say that's January 1, then your point is a

1 point on argument, not an evidentiary point, which is that  
2 this declaration doesn't say that there's any harm  
3 specifically before January 1 because it doesn't establish  
4 that the funding would start then -- before then.

5 MR. GOLDMAN: Well, that is what my argument is  
6 directed to.

7 THE COURT: All right, but --

8 MR. GOLDMAN: -- Your Honor. I understand --

9 THE COURT: -- I don't think that's an evidentiary  
10 point. I think that's an argument. That's a point you can  
11 make in argument.

12 MR. GOLDMAN: Very well, Your Honor. I'll -- I  
13 will move on. And I would echo what Mr. Gold had said is  
14 that even beyond that date, we would welcome any sort of  
15 interim measures for disbursing funds for abatement and  
16 other purposes, similar to the ERF. An ERF2, if you will --

17 THE COURT: Well, the ERF didn't happen --

18 MR. GOLDMAN: -- and could even be --

19 THE COURT: -- so but I take your statement now  
20 seriously.

21 MR. GOLDMAN: Thank you, Your Honor.

22 THE COURT: Okay.

23 MR. GOLDMAN: I was just going to make the point  
24 it could be implemented pursuant to 363(b) and not pursuant  
25 to the plan to remove any idea that it would be -- cause

1       equitable moot.

2                  THE COURT: Okay.

3                  MR. GOLDMAN: Just moving onto the declarations  
4       that the UCC submitted, I think we -- from the two members  
5       who have experienced firsthand the devastating effects of  
6       the opioid epidemic, I think that, you know, it has to be  
7       acknowledged that of all the people who have a right to  
8       express an opinion on what will occur due to the opioid  
9       epidemic if a stay is issued, is these two people.

10                 However, that does not make certain parts of their  
11       declarations admissible, which is really what we have the  
12       objection to. I think, you know, they have to be given all  
13       the solicitudes for the personal loss they've suffered and  
14       admiration for what they have turned that into in terms of  
15       positive giveback. And I hope the objections or challenges  
16       to certain portions of their declarations will be taken in  
17       that vein. They're simply technical in nature in terms of  
18       establishing what record is made on these proceedings.

19                 THE COURT: Well, again, I mean, I think you're  
20       objecting to one of the declarants saying that various forms  
21       of treatment have stopped over the last year or the last  
22       several months for want of funding. And asking me to draw  
23       an inference that, under the plan, similar occurrences  
24       wouldn't -- would be prevented in the future, I think she --  
25       again, I think that the witness can make a prediction of

1 that. You know, take it for what it's worth.

2 She's much closer in my mind to the facts that she  
3 outlines than just someone who isn't looking at it from the  
4 outside. But ultimately, I think it's the same point, which  
5 is it depends on when the funds start flowing and what can  
6 only make an educated prediction, which is certainly what  
7 the members of the UCC, including these two people, did and  
8 are doing. So that's how I treat those types of statements.

9 MR. GOLDMAN: I would just reiterate the point,  
10 Your Honor. There is going to be evidence that there is  
11 incalculable loss, which is the way it's phrased in one of  
12 the declarations. And I really think it should be the  
13 province of expert testimony. It is based on some  
14 specialized knowledge as to a prediction of what is going to  
15 occur and (indiscernible).

16 THE COURT: Well, but again, I -- look, I guess it  
17 depends on what you mean by the term "incalculable". You  
18 could certainly calculate the monetary costs of someone  
19 dying and their relatives having to take care of their  
20 children. But it is perfectly legitimate to say that  
21 actually isn't calculable. It may be calculable for  
22 purposes of posting a bond, but I don't think these two  
23 declarations are submitted for that purpose, for determining  
24 what the amount of a bond would be.

25 I think they're submitted for the point, which I

1 view as one that is adequately supported, that where you  
2 have this number of deaths due to opioid overdoses occurring  
3 on a daily basis, and you have insufficient funds as  
4 acknowledged by all of the lawsuits, including by the State  
5 of Washington and the State of Connecticut, that the more  
6 money you have, the fewer people will die. I mean, I don't  
7 see how you can dispute that.

8 And maybe it's one person. Maybe it's 100, but to  
9 me that's incalculable, and it's -- it pretty -- I think it  
10 does offset in terms of the balance of the harms, someone's  
11 right to pursue their appellate rights to the Supreme Court  
12 where the Supreme Court has denied certiorari on these  
13 various issues multiple times in the last decade. So again,  
14 that applies primarily, if not entirely -- and I'll hear the  
15 Debtors on this, of course, and the other parties, including  
16 the UCC's counsel, to the request for an injunction through  
17 the entire appellate process.

18 It may not apply in a meaningful way to an  
19 injunction through a ruling by the District Court where it's  
20 not clear to me that money would be flowing in any event  
21 during that period as opposed to personal injury claims  
22 being liquidated, as opposed to the 14 days when the  
23 abatement procedures after the effective date are supposed  
24 to be submitted, etc.

25 But I just -- I don't understand how in one breath

1 the State Attorneys General of Connecticut, Washington, and  
2 Maryland can say that their rights to decide for themselves  
3 how to pursue monetary claims against the released parties  
4 are of critical importance without focusing on the  
5 consequences of the delay caused by the -- that right.

6 MR. GOLDMAN: Well, Your Honor, it's one of the  
7 reasons why we did restrict and scale back the request  
8 that's before you now.

9 THE COURT: Okay. But I'm not going to --

10 MR. GOLDMAN: Which is a --

11 THE COURT: I'm not going to exclude anything in  
12 these two declarations other than, again, where obviously  
13 the declarant is making a prediction or stating her view as  
14 to the cause of something. It's not for the truth, but  
15 rather for her evaluation of that cause or prediction, which  
16 is what people who serve on unsecured Creditors' committee,  
17 including this one, that net 200 times and over 700 separate  
18 communications does.

19 MR. GOLDMAN: So except, Your Honor, that is all I  
20 have.

21 THE COURT: Okay. All right.

22 MR. EDMUNDS: Your Honor, if I --

23 THE COURT: Go --

24 MR. EDMUNDS: This is the --

25 THE COURT: Why don't you go ahead, Mr. Edmunds --

1 MR. EDMUNDS: Oh, I'm sorry. Go ahead.

2 THE COURT: -- and then I'll hear from Mr.  
3 Underwood?

4 MR. EDMUNDS: Okay. I just -- I -- thank you,  
5 Your Honor. I will just try to hit on some points that go  
6 to the second part of my argument that haven't been said so  
7 far to try to make it quicker. But I think that one issue  
8 that's been identified is the critical importance of the  
9 sentencing that it may have in creating a possibility of  
10 equitable mootness. And people have talked about already  
11 and argued that there is a chance there, including from some  
12 of the effects of the sentencing upon the Debtors, that may  
13 produce the grounds for equitable mootness may create  
14 irreparable harm.

15 But there's one other thing that people haven't  
16 talked about yet, and that -- and I am not an expert, but I  
17 have some experience with the difficulty of changing a  
18 sentence once it's imposed. There are constitutional,  
19 statutory, and federal criminal procedures, doctrines and  
20 issues that arise that may make it hard to undo a sentencing  
21 once it's in place. And I think that that may be one of the  
22 sources for the Debtor's clearly apparent position that, you  
23 know, that they will not agree that this -- to any  
24 stipulation against the equitable mootness of the effect of  
25 the sentencing of Perdue in the District of New Jersey.

1           I think that that's a huge issue that happens  
2 before the effective date that could be significant in its  
3 effects. And I don't pretend to know everything about it.  
4 I don't know the criminal doctrines.

5           THE COURT: Let's just move on. Okay. You raised  
6 the point, but there's no reason talking about it further if  
7 that's the extent of your knowledge. So we should move on.

8           MR. EDMUNDS: Well, I think -- I mean, I think,  
9 you know, the basics of it, the due process clause, the  
10 double jeopardy clause, Federal Rule 35, and certain  
11 provisions of the U.S. Code do place limits on it. I think  
12 that that's -- I mean, in part, it's hard to anticipate  
13 where that will go in advance, and everybody has that same  
14 difficulty. So I think that's an issue there, and I think  
15 others have talked about the immediate effect on Perdue and  
16 its business.

17           The -- our -- moving on, our motion raised other  
18 issues of irreparable harm that are not related to -- and we  
19 did not rely on the possibility of equitable mootness. We  
20 talked about in our original motion in September, the cost  
21 to the estate of going forward with a plan that may be  
22 altered or reversed on appeal. And part of that was related  
23 to the trust advances issues, but it's also related to the  
24 fact that if you look at the fee statements that are coming  
25 in, a whole lot of money is being spent on attorneys' fees

1 from the estate to reimburse the pursuit of the plan, things  
2 that may --

3 THE COURT: Mr. Edmunds, I've never seen that as a  
4 basis for irreparable harm to an Appellant. Ever. And --

5 MR. EDMUNDS: I think that the --

6 THE COURT: -- frankly, it goes to the assessment  
7 of merits. So I guess to me, that just doesn't make sense,  
8 that argument.

9 MR. EDMUNDS: I mean, I -- the point I would make,  
10 Your Honor, is that if potentially millions in fees are  
11 expended from the estate in pursuit of implementing the  
12 plan, that's money that the estate doesn't get back. It may  
13 not -- in fact, I'm -- I agree it would not equitably moot  
14 an appeal, but --

15 THE COURT: It's not anything of an equitable  
16 mootness.

17 MR. EDMUNDS: But it is still irreparable harm.

18 THE COURT: It's not a basis for irreparable harm.  
19 It's not -- cite me one case on that point.

20 MR. EDMUNDS: We really don't have a case, Your  
21 Honor. It's just --

22 THE COURT: Then please move on.

23 MR. EDMUNDS: -- logical that if the estate --

24 THE COURT: That is not a basis for irreparable  
25 harm. It just isn't.

1                   MR. EDMUNDS: All right. I will move on. The  
2 other irreparable harm that exists, though, is I think the  
3 possibility of implementing the plan and changing  
4 relationships, and then you're having to roll it back if  
5 it's changed or if it's reversed.

6                   THE COURT: Is that another word for mootness.

7                   MR. EDMUNDS: No.

8                   THE COURT: No?

9                   MR. EDMUNDS: I don't think it is, Your Honor. I  
10 think that there are things that the Court has ruled, and  
11 Debtors have stipulated that don't constitute irreparable  
12 harm that are happening -- or that don't constitute a ground  
13 for equitable mootness that are happening right now that do  
14 constitute a potential irreparable harm. How significant  
15 they are --

16                  THE COURT: Like what?

17                  MR. EDMUNDS: -- is I think --

18                  THE COURT: What are you talking about?

19                  MR. EDMUNDS: They are, to the best of my  
20 understanding, going about forming structures, registering.  
21 I understand that there is regulatory activity that is  
22 involved on the sort of licensing side. They are -- and  
23 they're continuing their operations, moving forward with  
24 operations amid uncertainty. And there's been a lot of, I  
25 guess, question in the papers of whether there's evidence of

1 the effects of that uncertainty on the business.

2 But I would point out that these are the very  
3 things that they use to justify their first day motions.

4 And the -- in docket number 3, the declaration of John Lowne  
5 changing things --

6 THE COURT: So can I interrupt --

7 MR. EDMUNDS: -- changing their cash management --

8 THE COURT: -- you? So is --

9 MR. EDMUNDS: -- systems.

10 THE COURT: Is the State of Maryland not amenable  
11 unlike the State of Washington and the State of Connecticut  
12 to permitting new code to be formed, for example? The types  
13 of stipulations that Mr. Gold and Mr. Goldman were referring  
14 to.

15 MR. EDMUNDS: I think I'd have to -- we are  
16 amenable to some form of agreement, but I think I would have  
17 to look at the precise contours of that and make an  
18 evaluation as to how serious it was. So not as I sit here  
19 today, I don't think I can agree to that without some sort  
20 of detail about what it is.

21 You know, it -- there are risks and there are  
22 harms inherent in anything that happens, and I think it  
23 requires sort of a precise evaluation as to whether we would  
24 agree to that. And I'm just not -- I don't even know  
25 exactly what the requirements or what the permissions would

1       be.

2                 THE COURT: Well, the general concept would be  
3       that -- and I believe Mr. Gold laid this out -- that the  
4       appellees would not argue equitable mootness based upon a  
5       transfer of the Debtor's business as provided for under the  
6       plan to NewCo and making the initial distribution under the  
7       plan. Either under the plan or in the form of a 363 motion.

8                 MR. EDMUNDS: Your Honor, I mean, I think that the  
9       -- things that significant, there may be ways you could --  
10      nuances that you can remove from it, but I think that things  
11      that significant carry with them the possibility of  
12      irreparable harm. Both from the possibility of mootness and  
13      from the sheer fact that you might be unwinding, which  
14      independent of equitable mootness will cause some amount of  
15      loss. And it may not add up to the amount of loss that  
16      would --

17                 THE COURT: Let me make sure I understand --

18                 MR. EDMUNDS: -- could be substantial  
19      consummations.

20                 THE COURT: -- this. You lost below, right? You  
21      lost. You're now seeking a stay pending appeal, and yet  
22      you're arguing that if you win, which is an "if", the cost  
23      of unwinding itself is irreparable harm? That's really what  
24      you're saying?

25                 MR. EDMUNDS: I think that there are costs

1       associated with going forward now, both to the estate and to  
2       everyone else, that warrant consideration as part of the  
3       balance of hardships that --

4                   THE COURT: So you're saying irreparable harm  
5       would --

6                   MR. EDMUNDS: -- you know, that the Court has to  
7       undertake.

8                   THE COURT: You're saying irreparable harm is  
9       literally proceeding with the order itself.

10                  MR. EDMUNDS: I think -- again, I would have to  
11       look at the details of the --

12                  THE COURT: Mr. Edmunds --

13                  MR. EDMUNDS: -- specific exceptions.

14                  THE COURT: -- look, do you have anything more to  
15       say on any --

16                  MR. EDMUNDS: Yeah, that's usually --

17                  THE COURT: Do you have anything more to say --

18                  MR. EDMUNDS: I do.

19                  THE COURT: -- on this point or any other point?

20                  MR. EDMUNDS: I do, Your Honor. I mean --

21                  THE COURT: All right.

22                  MR. EDMUNDS: -- I will try to move on from it,  
23       but let -- but I would say -- I would note that the very  
24       hardships that I'm talking about are written throughout  
25       their first-day motions and in the declarations that they

1 submitted in support of that. They talk about changing  
2 structure and changing organization and changing management.

3 THE COURT: But that's before they won, and your  
4 state is appealing it. It's a big difference, so move on.  
5 Honestly.

6 MR. EDMUNDS: I think the hardships --

7 THE COURT: You know, this wasn't made in your  
8 objection.

9 MR. EDMUNDS: -- as a matter of fact, so --

10 THE COURT: This wasn't made in your motion or  
11 your reply, and if it was, it would've just been devastated.  
12 So move on. This is just silly.

13 MR. EDMUNDS: It was -- just to be clear, Your  
14 Honor, it was in our motion. And we did not rely on  
15 equitable mootness, but I will move on.

16 I would also just talk briefly about the issue of  
17 the irreparable harm that the appellees raised, the  
18 objectors raised. I think the Court is correct that we all  
19 see it as getting more money for the abatement, for the  
20 opioid crisis, and to address the opioid crisis is  
21 important. But there are other trades that are made in  
22 pursuit of this plan that I think make it hard for them to  
23 establish that the harm that they suggest will occur will  
24 actually occur from a short stay --

25 THE COURT: Okay. We covered --

1 MR. EDMUNDS: -- to the appellate process.

2 THE COURT: We covered this, Mr. Edmunds. I -- we  
3 -- we've covered this point. And in fact, I generally  
4 agreed with the other -- with your colleagues on this. So I  
5 don't think we need to go over this again.

6 MR. EDMUNDS: Well, I'd just say that there is the  
7 deterrence effect and there are the other, I think, benefits  
8 from doing more, that the State of Maryland at least sees  
9 from proceeding to do more to enforce its laws. And I think  
10 that those have sort of a canceling effect on, you know, any  
11 hardship that -- concrete hardship that could be raised by  
12 the other parties.

13 So with that, I will -- I think those are the  
14 critical points, and I'll rely on others for their previous  
15 arguments.

16 THE COURT: Okay. Thank you.

17 MR. BASS: Judge Drain, this is Mr. Bass, Ronald  
18 Bass. May I come in?

19 THE COURT: Well, I -- someone was actually in the  
20 queue before you. Let's do Mr. Underwood first.

21 MR. BASS: Oh, okay.

22 THE COURT: And then we'll -- I'll hear from you.

23 MR. BASS: Okay. Okay.

24 MR. UNDERWOOD: Thank you, Your Honor. Allen  
25 Underwood, on behalf of Canadian municipalities -- certain

1 Canadian municipalities and First Nation creditors.

2 Very briefly, I'd like to again adopt the  
3 positions of Connecticut and Washington as stated here and  
4 in their papers. I think what's very important and what  
5 we've emphasized throughout this case is that the Canadian  
6 municipalities and First Nations are a little different than  
7 the states with regard to certain legal issues. And that  
8 has an impact on, A, what Judge McMahon is deciding but it  
9 also has an impact on the irreparable harm issue that we're  
10 -- I think we're discussing. There's no question that the  
11 Canadian municipalities have read direct claims against non-  
12 debtor, shareholder released parties.

13 THE COURT: I think there's a substantial  
14 question, and that's what I found in my ruling.

15 MR. UNDERWOOD: I believe under Canadian law, they  
16 have claims under the Competition Act, that -- it's a fairly  
17 broad act that enables direct claims against -- and this is  
18 I guess a fundamental problem, Judge, is that we've got a  
19 corporate structure that has parallel ownership.

20 It's not -- it's not like a typical subsidiary  
21 relationship. One -- is controlling multiple --  
22 corporations. In effect, the shareholder -- whether through  
23 non-debtor entities that are U.S. entities or direct action  
24 on boards -- are controlling those entities. And under  
25 Canadian law, there's a basis for direct claim against those

1 parties.

2 Obviously the problem or the question or the  
3 interpretation of the plan and whether or not the release as  
4 granted occupies the territory fully -- that's the  
5 structural problem -- the appeal is we believe meritorious.  
6 And ultimately -- irreparable harm which is that ultimately  
7 these Canadian creditors stand to lose the claims they may  
8 have against U.S. non-debtor entities or U.S. released  
9 shareholders -- confirmed plan.

10 It's a structural problem. It's a structural  
11 problem that the debtors and the Sacklers created when they  
12 created their corporate structure. That's all it is. I  
13 wish I could change it.

14 THE COURT: Well, all I will note is I don't think  
15 you addressed this legal argument on the nature of the  
16 Canadian creditors' claims anywhere in your motion.

17 MR. UNDERWOOD: I actually believe that there is a  
18 reference.

19 THE COURT: Where is it?

20 MR. UNDERWOOD: Within -- certainly within my  
21 reply. I actually quote a portion of the brief. I think --  
22 let me pull up the page that referenced this issue. It's  
23 cited in the reply, Your Honor. And it's more than alluded  
24 to in the actual motion.

25 And to remind you, Your Honor, the motion was

1       actually filed in advance of the briefing before the  
2       district court. So I believe if we look at, yeah, Page 4,  
3       Paragraph 8.

4                     THE COURT: Okay. I see it.

5                     MR. UNDERWOOD: So there is a colorable basis for  
6       a claim by my clients against non-debtor, third-party  
7       released parties. And irreparable harm, as we cited in the  
8       reply and I think in the moving papers, is the loss of that  
9       financial claim or right.

10                  So that's a principal question that I think in the  
11      first instance you're looking for which is what is the  
12      irreparable injury in the absence of a stay. And that is  
13      obviously the concern.

14                  I think in terms of the resolution of the matter,  
15      I think Your Honor is very thoughtful on this question of a  
16      longer stay versus a shorter stay, a stay through finality  
17      versus a stay more or less governed by a Rule 8025. And  
18      certainly I think that the Canadian appellants take the  
19      position that a stay 14 days -- through 14 days after the  
20      rendering of the district court decision is more than  
21      adequate at this time.

22                  But I do think it is a thoughtful question by Your  
23      Honor because honestly the circumstance where a trial court  
24      would be looking at whether or not to stay its own decision  
25      for longer than any determination that might be made by an

1 appellate court would be a circumstance where the trial  
2 court recognized that there's some aspect, be it  
3 constitutional or structural, in the plan that would be  
4 jeopardized were it not stayed, meaning that there's  
5 something about it that deserves finality. And I would  
6 leave that question to Your Honor's best judgment.

7 But I would also repeat that in terms of the stay,  
8 the lesser of the two alternatives that Your Honor described  
9 is certainly -- is certainly acceptable to the First  
10 Nations, without waiving whatever Your Honor might decide  
11 about a longer or a larger stay.

12 I think there's a fundamental interesting question  
13 with regard to the sentencing and the plea agreement, and it  
14 is a problem. And I think in terms of it, I've read the  
15 plea agreement many times. I see it as little more than a  
16 financial settlement, and that's what we do in this court.  
17 And ultimately I'm not aware of due process issues that  
18 would bar a stay through the date of sentencing with regard  
19 to the defendants.

20 I think it makes a huge amount of sense because  
21 whether or not the sentencing gives rise to equitable  
22 mootness is going to impact what may happen subsequent to  
23 the appellate process because obviously you've got your  
24 superpriority claim that may come into effect if for any  
25 reason the terms of the plan are modified such that -- you

1 know, such that the plea is -- the plan isn't funded. So  
2 that would be the concern.

3 So although certainly the Canadian First Nations  
4 agree that the lesser of the two stays that Your Honor had  
5 explained would be sufficient here, I would request that the  
6 Court be mindful of the fact that the sentencing will have a  
7 material impact on this case and, depending upon the results  
8 of the appellate process, it may completely impact whether  
9 or not the assets of the debtor can be liquidated and how,  
10 if it came to that -- I don't think anybody wants it to come  
11 to that, but if it did, the fact that the sentencing had  
12 gone forward might be a problem if it's not a basis for  
13 equitable mootness.

14 So ultimately, Your Honor, I mean, I think that's,  
15 you know, by in large the points that I wanted to make or  
16 things that perhaps I wanted to highlight from our concern.  
17 Ultimately I think the harm that we have here is an  
18 interesting circumstance of -- so effectively the IACs are  
19 non-debtor parties.

20 Those are the assets that in part, over time, will  
21 fund the trust in the United States. My clients are  
22 presently stayed from pursuing those assets. Whether or not  
23 that remains to be the case will be the subject I suppose --  
24 and the determination before the CCAA court in Canada which  
25 is pending for December 1. And that's another example.

1           I'm not sure if it's irreparable harm. But it is  
2       an instance of another intervening deadline with regard to  
3       an international matter where it might be worth the  
4       consideration of the Court of the fact that a stay here  
5       would probably relieve that Canadian court of a difficult  
6       decision. And maybe I'm wrong. I don't know. But that  
7       would be my take on it.

8           So, but ultimately I think the debtor has  
9       ultimately the benefit of these IAC assets. These are  
10      assets that ultimately my clients would be seeking to  
11      recover from if they're permitted to do so by way of appeal  
12      or before the CCAA court.

13           And I'm making this argument with reference to the  
14      bond issue because, first of all, I'm not aware of the  
15      debtor having an affirmative claim against the CMFN.  
16      Frankly if they're sovereigns, there's a question of whether  
17      or not there would be an applicable need for a bond under  
18      that circumstance.

19           But ultimately what's interesting is that it's  
20      arguable that the debtors in fact have a lien on Canadian  
21      assets by virtue of the settlement such that I would say  
22      whether or not Your Honor finds a need for posting of a bond  
23      by any other appellate creditor here, ultimately because of  
24      the fact that these Canadian assets are dedicated under the  
25      existing plan and settlement and trust to the debtor, that I

1 think there's a strong argument that the debtor is protected  
2 and there should be no need for an appellate bond with  
3 regard to the Canadian creditors here. That's all I have to  
4 say --

5 THE COURT: I'm sorry. What Canadian assets are  
6 you referring to?

7 MR. UNDERWOOD: Purdue Canada. At a bare minimum,  
8 Purdue Canada because it's dedicated to -- you know, to sale  
9 and contribution to the debtor. I can't -- I can't speak,  
10 and don't want to speak directly to the extent to which  
11 Purdue Canada has been securitized pursuant to those  
12 settlement agreements. But it may have been.

13 THE COURT: But the bond would be to protect  
14 against the damage, if any, caused by the delay or any other  
15 factor that the stay would occasion. So it would be  
16 something beyond what the debtors already have.

17 MR. UNDERWOOD: Right. But that's presuming that  
18 there is -- I think the argument would be that -- and I do  
19 think there's some case law to this effect, that, in effect,  
20 the debtors already have a form of a lien. I agree --

21 THE COURT: But it's not a lien on your clients'  
22 assets. It's their own assets.

23 MR. UNDERWOOD: It's not --

24 THE COURT: They already have it. They already --  
25 no, but they already have it. The bond would be to bond

1 against damage that your clients would cause.

2 MR. UNDERWOOD: Right. I would -- I would differ.

3 But thank you, Your Honor. I appreciate your --

4 THE COURT: Well, I mean, that was the result in

5 the Adelphia case. Okay. Just 361 B.R. 337, S.D.N.Y.

6 (2007). Excuse me. Okay. Thank you, Mr. Underwood.

7 MR. UNDERWOOD: Thank you, Your Honor.

8 THE COURT: Okay. Mr. Bass, are you still there?

9 MR. BASS: Yes. I'm here. I'm here, Your Honor.

10 THE COURT: Okay. All right.

11 MR. BASS: Well, I also filed a motion for a stay.

12 Go ahead. What were you saying? I apologize.

13 THE COURT: No. I can hear you fine.

14 MR. BASS: Oh, okay. I had filed a motion for a  
15 stay, and I have gotten an order from Judge McMahon to have  
16 my briefing on the 19th. So I asked her an extension of  
17 time. So I'm asking you wait until she hear my motion -- I  
18 mean my brief, then we can proceed. So that's what I'm  
19 waiting for, her order of an extension of time.

20 THE COURT: Okay. Well --

21 MR. BASS: Besides -- one more thing. And I'm  
22 trying to get that merged. The cases that I have in the  
23 bankruptcy court with the Mallinckrodt to merge it with this  
24 here so she can handle both of them -- both of them, both of  
25 the cases.

1           THE COURT: All right. Okay. Anything else?

2           MR. BASS: No. I'm just waiting for -- you know,  
3 grant me the -- that order to stay as well as adopt the  
4 position --

5           THE COURT: I'm sorry. I heard you through, "As  
6 well as you adopt," and then I couldn't hear the rest.

7           MR. BASS: No. I said adopt the position of  
8 Lauren (ph), the attorney, the female attorney who came on,  
9 I said I am adopting -- I am adopting her position.

10          THE COURT: Okay.

11          MR. BASS: -- against the shareholders and, you  
12 know --

13          THE COURT: Okay. All right. Well, on your first  
14 point, the briefing schedule set by Judge McMahon on your  
15 appeal of the confirmation order is not the subject of a --  
16 it's not something that I can stay. It's not my order, and  
17 it's not really covered by the bankruptcy rules. That's  
18 something you'll have to take up with her --

19          MR. BASS: Right.

20          THE COURT: -- whether you get an extension or  
21 not. So that's not really an appropriate subject for a stay  
22 that I would be considering.

23          MR. BASS: Okay.

24          THE COURT: And the same goes for your desire to  
25 have the district court consider together your appeal of the

1 confirmation order and the other litigation that was the  
2 subject of your motion that I heard back in mid-October.

3 MR. BASS: Right.

4 THE COURT: And I denied that motion in an order  
5 entered on October 15th that's at Docket Number 3958.

6 MR. BASS: Right.

7 THE COURT: But again, if any of that litigation  
8 is to be consolidated with your appeal, that's really up to  
9 Judge McMahon. It's not -- it's not something that I could  
10 rule on.

11 MR. BASS: Oh, all right.

12 THE COURT: Okay. Okay. I think the only movant  
13 that I haven't heard from is Ms. Isaacs, who adopted the  
14 motion filed by the State of Washington, and of course we've  
15 heard the State of Washington and the State of Connecticut  
16 at length. So I don't know if you have anything further,  
17 Ms. Isaacs, to say. No? All right.

18 It's quarter to 2:00. We've obviously been going  
19 for a long time. I'm going to take a break for lunch, and  
20 be back at 2:30, at which point I'll hear from the  
21 objectants and, if warranted, brief rebuttal. And then I'll  
22 give you my ruling.

23 (Recess)

24 THE COURT: Okay. Good afternoon. We're back on  
25 the record In re Purdue Pharma, LP, et al, and the motions

1 by various parties, various Appellants, for a stay pending  
2 appeal of my confirmation order in the so-called advance  
3 order or preparations order. And we're turning to the  
4 objectors at this point.

5 MR. KAMINETZKY: Good afternoon, Your Honor.

6 Benjamin Kaminetzky, of Davis Polk, for the Debtors. I see  
7 Ms. Isaacs is on the line.

8 THE COURT: Okay.

9 MR. KAMINETZKY: Do you want to --

10 THE COURT: Well, I had asked whether Ms. --  
11 before we broke, I had asked Ms. Isaacs whether she wanted  
12 to add anything to her motion, which adopted the motion by  
13 the State of Connecticut and the State of Washington and  
14 didn't get a response. So, Ms. Isaac, I don't know if you  
15 have anything more to add to what you filed? You're on  
16 moot.

17 MS. ISAACS: I'm sorry. Thank you for taking the  
18 time to hear me this afternoon. I understand you called me  
19 before lunch break.

20 THE COURT: Yes.

21 MS. ISAACS: There's been multiple emails going  
22 back and forth. I am having a great deal of difficulty with  
23 the Clerk's office in getting the Zoom links and getting  
24 onto Zoom. As for anything to be added at this time, I  
25 stand with the Trustees and all of the states that are in

1 disagreement with what's going on with the appeal. And  
2 that's all I have.

3 THE COURT: Okay. Thank you. All right. So I'll  
4 hear briefly from the objectants and, again, I read the  
5 objections and all the other pleadings. I would like to  
6 focus again primarily, I think at this point, on the shorter  
7 term stay, the alternative request by the movants for a stay  
8 through the ruling by the District Court of some or all of  
9 the confirmation order, or perhaps just the effective date.

10 I also note that I have a number of declarations,  
11 which we've already discussed during the discussion of  
12 Connecticut and Washington's motion. I don't know if you  
13 want to -- I mean, different people have put up these  
14 different witnesses, but I don't know if you want to deal  
15 with those first or you have a time when you want to  
16 introduce those declarations. I leave that up to the  
17 objectors also.

18 MR. KAMINETZKY: Thank you, Your Honor. Again,  
19 Mr. Kaminetzky, of Davis Polk, for the Debtors. So I guess  
20 I could move for the admission of Mr. DelConte's  
21 declaration, just to get that over with at this point. I  
22 could address --

23 THE COURT: Okay.

24 MR. KAMINETZKY: It sounds like the Court has  
25 already ruled on, I guess it was the motion to exclude that

1       testimony. I'm happy to respond to the points you've made -

2       -

3           THE COURT: No, I --

4           MR. KAMINETZKY: -- but it's sounds like we've  
5       done that already.

6           THE COURT: I did. I ruled on that. So is Mr.  
7       DelConte available?

8           MR. KAMINETZKY: Yes, Your Honor. He's here.

9           THE COURT: Okay. Can you put him on the screen?

10          MR. KAMINETZKY: Yes. I'm told any second now.

11          THE COURT: Okay.

12          MR. KAMINETZKY: You know, he was in his -- I'm  
13       sorry.

14          THE COURT: Okay. Can you hear me, Mr. DelConte?

15          MR. DELCONTE: I can. Can you hear me?

16          THE COURT: Yes, I can. Thank you. And see you  
17       as well.

18          MR. DELCONTE: Can you hear me?

19          THE COURT: Yes.

20          MR. DELCONTE: Okay.

21          THE COURT: And I can see you too. So, Mr.  
22       DelConte, you submitted a declaration intended to be your  
23       direct testimony in connection with the objection to the  
24       stay motions. It's dated October 22, 2021. Would you raise  
25       your right hand, please? Do you swear to tell the truth,

1 the whole truth, and nothing but the truth, so help you God?

2 MR. DELCONTE: I do.

3 THE COURT: Okay. And it's D-E-L-C-O-N-T-E, J-E-  
4 S-S-E?

5 MR. DELCONTE: That's correct.

6 THE COURT: Okay. So, Mr. DelConte, as I said,  
7 you submitted a declaration in connection with these matters  
8 on October 22, 2021. Sitting here today, November 9th,  
9 knowing that it would be your direct testimony, is there  
10 anything in it that you wish to change?

11 MR. DELCONTE: No, sir.

12 THE COURT: Okay. Does anyone want to cross-  
13 examine Mr. DelConte on his declaration? And again, I've  
14 limited that declaration to the extent that I ruled so in  
15 the colloquy with Mr. Goldman. Okay. Mr. DelConte, I had a  
16 question for you. Do you have your declaration there?

17 MR. DELCONTE: I do.

18 THE COURT: Okay. In your declaration, you  
19 discuss the timing of payments under the plan and describe  
20 them in Paragraphs 7 through 9 and 12 through 21, and also  
21 payments to fund the NewCo under the plan in Paragraph 22.  
22 And then in Paragraph 26, 27 and 28, you do that present  
23 value calculation based on your assessment of the delay in  
24 distributions that would result from a stay of three months  
25 through 6, 9, 12, 18 and 24 months. Do you see that there?

1 MR. DELCONTE: Yes, I do.

2 THE COURT: Okay. My question is, assume for the  
3 moment a stay through the date of a ruling by the District  
4 Court of the effective date of the plan, and then tack on 14  
5 days to that. So assume that would be sometime, let's just  
6 say, in the third or fourth week of December. Obviously,  
7 I'm making a prediction on how the District Court might  
8 rule. The court might rule later than that; might rule  
9 earlier than that. When you say three months, what are you  
10 tracking off of as the effective date?

11 MR. DELCONTE: I'm tracking off of the end of the  
12 year, which a good proxy for when, you know, I think the  
13 earliest that we could potentially emerge would be. So a  
14 three-month delay in this case would be delaying emergence  
15 from December 31st to the end of March.

16 THE COURT: Okay. And --

17 MR. DELCONTE: 2022.

18 THE COURT: I got it. And the distributions that  
19 would be -- that you track as coming in on the effective  
20 date for that period, are any of those distributions to the  
21 end-users of the money, or are those distributions to the  
22 trust and to NewCo?

23 MR. DELCONTE: Yeah, those distributions that  
24 we're tracking, and these are the distributions to -- both  
25 the Federal government and the creditors are in public

1       trusts. Those are just the timing of those payments --

2                  THE COURT: So there would be a distribution to  
3       the Federal government --

4                  MR. DELCONTE: -- to those trusts, not -- we  
5       haven't taken into account any -- yeah, I mean, there's the  
6       \$225 million payment to DOJ and there's a \$25 million  
7       payment to other Federal entities, in addition to the  
8       trusts; \$600-some-odd million would be distributed to the  
9       creditor of the public trusts. And we're tracking the  
10      payments to those trusts. We haven't done anything to take  
11      into account payments from those trusts ultimately to the  
12      end-users.

13                 THE COURT: Okay. All right. Then is there some  
14      amount that would also go to fund NewCo, or is that just  
15      there already, in essence?

16                 MR. DELCONTE: Yeah, I mean, that money is  
17      currently sitting at OldCo or PPLP, and at emergence, \$200  
18      million of that would go to NewCo. As far as the harms that  
19      we've looked at here, we've only been looking at harm as it  
20      relates to the distributions that would ultimately go to  
21      either the Federal government or the various trusts. We  
22      haven't taken into account anything that the (sound drops)  
23      distributed to NewCo.

24                 THE COURT: Okay. All right. Those are my only  
25      questions. Thank you. I don't know if you have any

1 redirect on that, Mr. Kaminetzky? No?

2 MR. KAMINETZKY: I do not, Your Honor. Sorry.

3 THE COURT: Okay. Your testimony is complete, Mr.  
4 DelConte. You can go off screen now.

5 MR. DELCONTE: Okay. Thank you very much.

6 (Declaration of Jesse DelConte Admitted Into  
7 Evidence)

8 MR. KAMINETZKY: Okay, Your Honor. Shall I  
9 proceed?

10 THE COURT: Yes.

11 MR. KAMINETZKY: Okay. Again, Benjamin  
12 Kaminetzky, of Davis Polk, for the Debtors. So, Your Honor,  
13 I'm going to take your guidance, of course, and at first  
14 I'll focus on what we'll call the short-term period between,  
15 let's call it, now and the District Court's ruling.

16 And Your Honor, what we've done is we've provided  
17 and have been willing to provide complete protection to the  
18 movants against all risk of equitable mootness in the near  
19 term, which would allow for Judge McMahon to decide the  
20 pending appeals on the merits and would have eliminated the  
21 need for today's hearing, but we're already here. And all  
22 that we ask for is an escape hatch for the movants to  
23 renotice the motion in a proper forum if there's any risk  
24 that mootness were to arise in the future in a situation  
25 that we quite frankly don't expect to happen.

1           And this is exactly what Your Honor suggested we  
2 do, which was to try to "hit the sweet spot," based on a  
3 reasonable prediction of when the District Court might rule.  
4 So let's be crystal clear on where we are right now and what  
5 it is that the movants have refused to accept.

6           The Debtors and the other plan proponents have now  
7 made the following six unilateral concessions in writing,  
8 signed, which provides everything the movants can get out of  
9 this hearing. Now, Your Honor noted that the movants need  
10 to show harm, not just conjecture -- I wrote those words  
11 down -- but we have eliminated even conjecture. What do I  
12 mean by that?

13           Every single party that intends to present  
14 arguments or evidence to the District Court on appeal. That  
15 includes the Debtors, the UCC, the AHC, the MSGE, the NAS  
16 group. Both sides of the Sackler Family have stipulated in  
17 writing to you, to the District Court, that they will never  
18 argue before any court that the appeals of the confirmation  
19 orders have been rendered equitably moot by the actions  
20 taken in advance of the effective date in furtherance of the  
21 plan, pursuant to both the confirmation order and the  
22 advance order. Okay?

23           This agreement is set forth in stipulation and was  
24 filed on October 20th on the District Court's docket. The  
25 Debtors have agreed that the effective date will not occur

1 until the earlier of seven days following a decision by the  
2 District Court on the appeals and December 30th. In  
3 addition, Sir, the Debtors have the --

4 THE COURT: Can I --

5 MR. KAMINETZKY: Sorry.

6 THE COURT: Can I just stop you there? So, on the  
7 stipulation, the movants have said that you've carved out  
8 arguing equitable mootness with respect to the sentencing  
9 and its effects.

10 MR. KAMINETZKY: Yes. And that's -- we test in  
11 the next point, Your Honor.

12 THE COURT: Okay.

13 MR. KAMINETZKY: We have agreed that we will not  
14 request that the criminal sentencing take place before  
15 December 20th. Now, under the plan, as Your Honor knows,  
16 the sentencing hearing could otherwise occur as of December  
17 1st. But let's just pause for a second on that, just so  
18 it's clear.

19 The plea and sentencing is pursuant to a separate  
20 agreement with the DOJ, not the plan and confirmation.  
21 There was some confusion about that, but that's not  
22 something that's addressed under the plan. That's something  
23 we agreed to to the DOJ. But lest you think we're hiding  
24 anything, we've also agreed that we'll file a notice on the  
25 docket -- and obviously, it will be on the New Jersey

1       court's docket -- when the criminal sentencing hearing is  
2       scheduled.

3                   And lest you think we're hiding anything and not  
4       being transparent, the sentencing hearing has not been  
5       scheduled, and suffice it to say that scheduling a  
6       sentencing hearing in a U.S. District Court can take several  
7       weeks. And we haven't asked -- we haven't reached out yet  
8       to schedule that sentencing hearing.

9                   So isn't something that could happen in the dead  
10      of night without any notice. This is a sentencing hearing  
11      in a very public case. There'll be plenty of notice. And  
12      we've agreed already in writing that the earliest it  
13      possibly could occur is December 20th. But again, that date  
14      -- we haven't even reached out to obtain a sentencing date.  
15      And when I say we, I mean we and/or the DOJ.

16                  THE COURT: Well --

17                  MR. KAMINETZKY: Okay. So that's number --

18                  THE COURT: Okay. Why don't --

19                  MR. KAMINETZKY: -- four. The --

20                  THE COURT: Why don't you go through all the  
21      points, and I'll come back to questions I have.

22                  MR. KAMINETZKY: Okay, good. Number four, the  
23      Debtors will provide no less than 14-days' notice of the  
24      actual effective date. And that was something Judge McMahon  
25      asked us to do, and we obviously have agreed to do it. I

1 already talked about that we'll file on the docket when the  
2 criminal sentencing has been scheduled.

3 And finally, the plan opponents agree that the  
4 movants may renew their stay motions or file a new motion as  
5 of the earlier of the District Court's decision on appeal  
6 and December 15th.

7 So these concessions provide the movants complete  
8 protection from the risk of equitable mootness until  
9 December 20th at the earliest and would either allow the  
10 District Court to decide the appeals on the merits, or if  
11 contrary to everyone's expectation, Judge McMahon's ruling  
12 is delayed, tee up the stay motions at a later point in  
13 time, before any risk of mootness becomes imminent.

14 We've built everything in so that the two things  
15 that could possibly render -- you know, arguably render  
16 anything equitably moot, we've built into the stipulation  
17 that we've provided, protection that they could come back to  
18 court and make any -- renew this motion.

19 So there's literally -- I mean, the only harm that  
20 they could articulate --

21 THE COURT: Well --

22 MR. KAMINETZKY: -- in the short-term stay or in  
23 the short-term period is the equitable mootness, and we have  
24 taken it off the table.

25 THE COURT: So could I explore that for a minute

1 or two?

2 MR. KAMINETZKY: Please.

3 THE COURT: I expect you heard me initially having  
4 some doubt as to how the sentencing, when it occurs,  
5 arguably give rise to equitable mootness. And I was told  
6 one thing, and perhaps two. First I was told that if the  
7 sentencing occurs, there will be tremendous pressure to go  
8 effective at that point, because the Debtors, as opposed to  
9 NewCo, which only exists under the plan if the plan goes  
10 effective, would not be able to continue on in their  
11 business. What is your response to that?

12 MR. KAMINETZKY: That might very well be the case.

13 THE COURT: Okay.

14 MR. KAMINETZKY: That the -- again, it's not  
15 necessarily two seconds later, but there's certainly a risk  
16 of that.

17 THE COURT: Well, how --

18 MR. KAMINETZKY: And that is why we're not --

19 THE COURT: How soon afterwards does that happen?

20 MR. KAMINETZKY: Well, I'm not sure. I don't  
21 think it's necessarily up to us.

22 THE COURT: Okay.

23 MR. KAMINETZKY: I'm not the expert in this area.  
24 But I'm not here to argue that the sentencing isn't a very  
25 big deal. I'm here saying that there's no risk that that

1 could happen under the stipulation that we've provided, or  
2 are willing to provide, or have provided to the other side  
3 without giving them an opportunity to come back and get a  
4 stay, if necessary.

5 Obviously, if we're in that position and Judge  
6 McMahon hasn't ruled yet, we'll take that into account and  
7 most likely extend that date. We're not --

8 THE COURT: Well --

9 MR. KAMINETZKY: -- here trying --

10 THE COURT: I'm sorry. What is the harm to the  
11 Debtors and the other Appellees of delaying the sentencing,  
12 or having the Debtors request a sentencing hearing date that  
13 would be, say, at the end of December? Is there some  
14 difference between December 20 and December 31, or...?

15 MR. KAMINETZKY: No, there's no -- if you want  
16 another 10 -- put it to December 31, we're happy to do this.  
17 The issue here, Your Honor, is we all are expecting -- and  
18 if you were at Judge McMahon's hearing, we heard it -- she  
19 put this -- what she called a "rocket docket." We all  
20 expect her to rule promptly.

21 The only risk we are protecting -- you know, why  
22 can't I just get up and say we'll give them -- you know,  
23 we'll stipulate until Judge McMahon's ruling. In all likely  
24 circumstances, that's what we're doing. We just feel as  
25 fiduciaries, you know, who knows what could happen. So we

1 want some outside date that if Judge McMahon, for whatever  
2 reason, doesn't rule by then, we could come back to you or,  
3 you know, we could see where we are.

4 We just can't right now say, you know, we'll wait  
5 until Judge McMahon's ruling. Although, you know, that's  
6 where we all expect to be. Judge McMahon, again, she's  
7 scheduled oral arguments November 30th. Right after doing  
8 that, she said, "And I have a criminal trial starting on  
9 December 7th." The implication of that, I thought, was that  
10 she's going to try to rule very promptly. And that's why  
11 we've set the dates the way they are, December 20th,  
12 December 30th.

13 But, you know, those are all -- and that's why we  
14 just want the back-up drop-dead date. But again, we all  
15 expect -- and the purpose of the stipulation is to give them  
16 comfort that nothing will happen until Judge McMahon rules,  
17 both the effective date and the sentencing.

18 THE COURT: So, can we --

19 MR. KAMINETZKY: And once we've -- Your Honor,  
20 this is -- I'm sorry.

21 THE COURT: The proposal is, as you've repeated  
22 just now, that the agreement is that the effective date  
23 would not occur until the earlier of the District Court's  
24 ruling or December 30, which places the onus on the movants  
25 to seek a ruling within the 14-day notice period that you've

1 agreed to, assuming that a ruling isn't forthcoming by  
2 December 30, right? That's really what you --

3 MR. KAMINETZKY: Right, that's --

4 THE COURT: That's what you're suggesting.

5 MR. KAMINETZKY: Yes, because -- and again, the  
6 burden is on -- let's just -- I'm not asking for a favor,  
7 Your Honor.

8 THE COURT: Right.

9 MR. KAMINETZKY: The burden is on them. Like, a  
10 stay isn't the natural state of being. A stay is  
11 extraordinary, and they have a burden. Their only burden,  
12 the only harm that they could talk about -- and again, we're  
13 limiting this to the interim period as equitable mootness.  
14 We have taken it off the table until, you know, Judge  
15 McMahon rules, for all intents and purposes. We think we're  
16 done, then.

17 And again, if there's an issue or, the only thing  
18 that we've added is a -- you know, let's say something  
19 happens and Judge McMahon doesn't rule, yes, the burden  
20 would be on them. But that's fair because we don't expect  
21 that to happen and they can't -- sitting here today, they  
22 can't meet their burden.

23 First of all, equitable mootness alone shouldn't  
24 count. But even assuming it does, and even -- and we heard  
25 Your Honor loud and clear, that Your Honor wants meaningful

1 appellate review. So do I. We've given them meaningful  
2 appellate review until Judge McMahon rules.

3 And at that point in time, Your Honor -- and I  
4 could go through the case law; Your Honor already did it --  
5 basically, that's all you could give them at this hearing,  
6 because under the vast majority of rule, with the exception  
7 of a single case that the U.S. Trustee found, is that Your  
8 Honor's kind of jurisdiction, or Your Honor's ability to  
9 impose a stay, or Your Honor's stay dissolves after the  
10 District Court rules.

11 So we're giving them, with one exception, until  
12 Judge McMahon rules. With the safety valve that the Debtors  
13 need and as plan fiduciary needs, is if something goes  
14 sideways and for some reason Judge McMahon hasn't ruled, we  
15 could come back to you at that time.

16 THE COURT: Are there other actions...? Let's say  
17 I just stayed the effective date and not the plan itself --  
18 I mean, the confirmation order itself; I stayed one of the  
19 conditions to the effective date, which would -- until the  
20 District Court ruled or December 30, whatever was earlier --  
21 are there steps that would involve either -- let me just  
22 turn to the applicable section -- the transfer of material  
23 assets under the plan or distributions to creditors before  
24 then --

25 MR. KAMINETZKY: No, no, no.

1           THE COURT: -- i.e. substantial consummation?

2           MR. KAMINETZKY: No, no and no. What we're doing  
3 now, as we've always said, we're setting up trusts, paying  
4 professionals, seeking regulatory approvals. There's no  
5 transfer of assets until the effective date. We're setting  
6 up for that effective date when the transfers actually  
7 occur. That's why it was giving ice in winter to say that -  
8 - you know, for us to make clear and stipulate again and  
9 again and again that we won't make any equitable mootness  
10 argument with respect to any actions pursuant to advance  
11 this order pertaining to the confirmation order, you know,  
12 with a sentencing that we talked about otherwise.

13           THE COURT: And --

14           MR. KAMINETZKY: So the answer is --

15           THE COURT: And that's all part of you and the  
16 Other Appellees' stipulation, that those sorts of things --

17           MR. KAMINETZKY: Stipulated to it --

18           THE COURT: Would not --

19           MR. KAMINETZKY: -- filed it on the docket.

20           THE COURT: You would not argue equitable mootness  
21 based on those sorts of things?

22           MR. KAMINETZKY: Absolutely. That's black and  
23 white. We've said it. It's filed upon the docket in the  
24 District Court, and we sent a signed version of it to the  
25 other side as well and to Your Honor.

1           Again, Your Honor, it may be a -- for us, it's an  
2 important point. If we remove the equitable mootness risk,  
3 which is the only risk or the only harm that they've  
4 identified, they are not entitled even to the short-term  
5 stay, period. And we've done that.

6           And we've taken into account anything that they've  
7 identified, including, obviously, the effective date and the  
8 sentencing, by giving them comfort that we won't seek  
9 sentencing before December 20th. If you want us to move  
10 that to December 31st, we're happy to do that as well.

11           But again, we don't control the sentencing. The  
12 District Court does. All we can say is we won't seek to  
13 schedule it until then. But again, all that we're looking  
14 for is some sort of safety valve that we think won't be  
15 necessary, because we think Judge McMahon is -- she's  
16 indicated that she realizes how exigent this is.

17           THE COURT: So I just want to make sure.  
18 Originally, I think you said that you would request that the  
19 current sentencing will not take place before December 8,  
20 but then you said December 20.

21           MR. KAMINETZKY: No, it's December -- we've agreed  
22 not to... I'm sorry. We've agreed not to seek to have the  
23 sentencing hearing occur before December 20th. That's in  
24 the current stipulation that we had sent over.

25           THE COURT: Okay. And --

1 MR. KAMINETZKY: December 8th was the earliest.

2 Just the dates are a little -- December 1st was the --

3 THE COURT: That was the earliest that it could  
4 happen.

5 MR. KAMINETZKY: It could happen. Exactly. As  
6 opposed to -- but this in a further agreement. But we're  
7 happy to -- there's nothing written in stone about December  
8 (indiscernible). But all we're trying to do is give Judge  
9 McMahon time that she needs to rule without any risk of  
10 equitable mootness between now and then. And once we've  
11 done that, they have what they need, all the harm that  
12 they've identified has been dealt with, and we should be  
13 done. It's really as simple as that.

14 THE COURT: Okay. Well, why don't I hear from  
15 counsel for the U.S. Trustee on this point.

16 MR. KAMINETZKY: Okay. All right. I'll be back.

17 MS. LEVINE: Your Honor, my video takes just a  
18 second.

19 THE COURT: No, that's fine, Ms. Levine.

20 MS. LEVINE: I'll go ahead and start. I don't  
21 know what's going on with my video. It'll come up soon.

22 But, Your Honor, I think what I've heard is that  
23 there is an agreement that there should not be equitable  
24 mootness, at least before the District Court rules. And  
25 where there is a difference of opinion is what would cause

1 that to happen. And you know, with respect to the  
2 stipulation that they've sent, it's really unclear to us.  
3 You know, that was an offer that they had sent, which we did  
4 not agree to for various reasons, including that it  
5 purported to limit our ability to seek stay relief.

6                   And we're, again -- you the concern here is  
7 sentencing, which as you've heard, they do intend to argue  
8 sentencing will constitute equitable mootness, and we don't  
9 know what -- they've offered to have that, I guess, as early  
10 -- no earlier than December 20th. That's part of the  
11 stipulation, but it's attached to conditions that would  
12 limit when we could seek further state relief. That would  
13 prevent us from going back to court until December 15th,  
14 just five days before then.

15                  THE COURT: Well, let's say it's December 30th  
16 instead, so you have a full 14 days.

17                  MS. LEVINE: Your Honor, we were willing to  
18 discuss a stipulation in the context of trying to get to a  
19 consensual resolution --

20                  THE COURT: No, no. I'm just --

21                  MS. LEVINE: -- and we weren't --

22                  THE COURT: -- focusing on the merits. I'm trying  
23 to figure out what's the harm in that, in what has just been  
24 proposed with the change that the sentencing also would  
25 occur no earlier than December 30. So you pretty much know

1       that the 14 days to renew the stay motion would be in mid-  
2 December, if there hasn't been a ruling by them. And you'd  
3 tea that up before the 30th.

4                  MS. LEVINE: Your Honor, our concern is twofold.  
5 You know, one is making sure that we get a ruling before  
6 that day comes, with plenty of time to seek a further stay.  
7 You know, I know you disagree about this, but we do have  
8 concerns about the other activities that are going on. And  
9 the only way to ensure that someone doesn't come in and say  
10 those other activities don't cause equitable mootness is a  
11 stay. And the only sure way to ensure that they're not  
12 going to request a sentencing date that then ends up falling  
13 before a ruling by the District Court is a stay of the  
14 confirmation order. That's the only sure way we know of.

15                  THE COURT: I don't understand -- I guess --

16                  MS. LEVINE: And the --

17                  THE COURT: You're saying because there's an  
18 outside date for the effective date, which would be December  
19 30 in the proposal, right?

20                  MS. LEVINE: Well, it's the sentencing, Your  
21 Honor, that they say that they're going to --

22                  THE COURT: Well, both dates. But December 30  
23 could be a date before the District Court rules.

24                  MS. LEVINE: It could be, yes. And that would  
25 undermine sort of the whole project, which is to make sure

1 we're getting a ruling before there is --

2 THE COURT: But the U.S. Trustee was making  
3 emergency motions for a stay while I was still on the bench  
4 ruling on the plan. The U.S. Trustee is perfectly capable  
5 of making this motion. In fact, it's already done so, and  
6 we've already had a hearing on it. So it wouldn't seem to  
7 me that hard when you have 14-days' notice to do it.

8 MS. LEVINE: We certainly could go back to the  
9 Court if we have to go back to the Court, Your Honor. We  
10 don't see the harm in entering the stay now, though, to  
11 prevent that additional motion practice, which will cost  
12 everyone resources, you know, particularly if the stay is  
13 less than what we are asking for, but is just through the  
14 date of the District Court decision.

15 THE COURT: That's all you're going to get.

16 MS. LEVINE: You know, that --

17 THE COURT: You're not going to get any more than  
18 that, Ms. Levine. So I don't think you should worry about  
19 giving up anything on this point.

20 MS. LEVINE: I got that impression, Your Honor.

21 THE COURT: Okay.

22 MS. LEVINE: So, you know, what we're talking  
23 about balancing is, you know, that short amount of time,  
24 that short amount of delay, to ensure that the District  
25 Court is able to rule on the merits, which I think --

1           THE COURT: All right. So let me just ask Mr. --

2           MS. LEVINE: -- everybody agrees on this is  
3 something that should happen.

4           THE COURT: -- Mr. Kaminetzky. Your concern is  
5 really just if something happens that is unexpected, that  
6 delays Judge McMahon from ruling, right? I mean, that's  
7 really why you've put this earlier of District Court ruling  
8 or December 30, right?

9           MR. KAMINETZKY: Exactly. We did --

10          THE COURT: So --

11          MR. KAMINETZKY: -- I mean, again --

12          THE COURT: I mean, if that happens -- I mean, I  
13 don't what it would be. Maybe, you know... I don't know  
14 what happens. But I think what Ms. Levine is saying is why  
15 can't the Debtors come back to me and say it's a port for us  
16 to have the effective date go forward now?

17          MR. KAMINETZKY: The answer is, Your Honor, just  
18 that's not what the law is. The law --

19          THE COURT: Because it --

20          MR. KAMINETZKY: -- isn't that --

21          THE COURT: It would shift the burden. You're  
22 saying it would shift the burden.

23          MR. KAMINETZKY: It shifts the burden. Yeah, the  
24 burden is on them to show -- and I'm now quoting from the  
25 Calpine case, how it has to be neither remote nor

1 speculative, but actual and imminent. There is no harm.

2 THE COURT: Okay.

3 MR. KAMINETZKY: The only harm they've articulated  
4 is equitable mootness, and we've taken that off the table.  
5 They are not entitled to a stay. We've written it in blood  
6 seven or eight times that we've eliminated any risk to them.  
7 And if the unexpected happens, I'm fine with -- you know,  
8 December 15th they could file their new motion. We'll wait  
9 until December -- the earliest sentencing date is December  
10 31st, which means that the effective date -- the earliest  
11 one has to be seven days later. They have all the time in  
12 the world if the risk becomes actual and imminent. But it  
13 isn't, because we've agreed to take that off the table.

14 THE COURT: So when -- I'm just trying to figure  
15 out how the 14-days' notice of the effective date would tie  
16 into a December 30 sentencing date and a December 30 end  
17 date to the voluntary stay. When would you give that  
18 notice?

19 I guess you'd get -- can I interrupt you? I guess  
20 what you would do -- correct me if I'm wrong -- is you would  
21 fairly soon, I suppose, reach out to the District Court in  
22 New Jersey and say, can you give us a sentencing hearing  
23 sometime between December 30 and the next available date  
24 thereafter. Right? So you know when that would be? And  
25 then you would -- then you would --

1 MR. KAMINETZKY: Yes, Your Honor. We can't --

2 THE COURT: And then you would say in your --

3 MR. KAMINETZKY: We can't go --

4 THE COURT: Then you would say in your notice,  
5 we're giving you more than 14-days' notice. We're giving  
6 you a notice that we plan to go effective whatever date is  
7 after that sentencing hearing that you have to go effective?  
8 Or would it be the date of the sentencing hearing?

9 MR. KAMINETZKY: Well, it's both, Your Honor. We  
10 would give them notice of the sentencing hearing when it's  
11 scheduled. And obviously, it hasn't been scheduled yet.  
12 So, you know -- and Your Honor knows how busy District  
13 Courts are. So we'd give them immediate notice of that.  
14 They'll then know for sure that we can't go effective until  
15 after that date. The earliest is seven days after that date  
16 under the plan. And then they have plenty of notice of both  
17 the sentencing hearing, which won't happen overnight, as  
18 well as the effective date that will happen there after.

19 THE COURT: So is the sentencing hearing date,  
20 though, the key date, because the puzzle really does  
21 arguably change -- that's the missing piece of the puzzle as  
22 far as mootness is concerned? So really, the notice of the  
23 effective date is less important than the noticing of the  
24 sentence date?

25 MR. KAMINETZKY: Correct. And I mean, perhaps,

1 yes, maybe perhaps, but the answer is they're going to have  
2 plenty of notice of the sentencing date. And there's a  
3 reason we're not playing games, Your Honor. We're not ready  
4 to be sentenced yet. We still have work to do that's --

5 THE COURT: Right. Well, so --

6 MR. KAMINETZKY: -- you know, to get ready for  
7 this --

8 THE COURT: So I could require that you provide  
9 not only 14-days' notice of the actual effective date, but  
10 also 14-days' notice of the sentencing date.

11 MR. KAMINETZKY: I have no problem with that. I  
12 mean, again, it's in the District Court's discretion. But  
13 like --

14 THE COURT: No, I mean -- but I --

15 MR. KAMINETZKY: -- no problem here.

16 THE COURT: I'm assuming the District Court will  
17 give you at least 14-days' notice, right?

18 MR. KAMINETZKY: I certainly expect that to be the  
19 case. I think it would be quite -- in a public case like  
20 this, for a company like Purdue to be sentenced, I assume  
21 the District Court will give plenty of notice to everyone,  
22 including the public. So there's nothing happening here in  
23 secret. This isn't the type of, you know, equitable  
24 mootness that you're scared that wires will be sent out in  
25 the middle of the night. This is the most public events

1       that you could imagine is the sentencing of Purdue Pharma in  
2       a United States District Court.

3                 And again, Your Honor, we're happy to -- I can  
4       repeat this -- we're all thinking -- you know, we all think  
5       that Judge McMahon, when she indicated in reading between  
6       the lines that she's going to rule quickly, so setting  
7       December 30th and January 7th is really not a problem. We  
8       just feel we need the protection of some outside date, just  
9       in case who knows what.

10              THE COURT: Okay. All right.

11              MR. KAMINETZKY: And Your Honor, Ms. Levine came  
12       back to these, you know, mysterious other things that are  
13       happening. But we've already dealt with those mysterious  
14       other things that are happening. How many times does Your  
15       Honor have to rule that there's just simply no equitable  
16       mootness possibility there? And again, we've stipulated it,  
17       and every plan proponent has stipulated that we will never,  
18       ever, ever make the argument that that would be to equitable  
19       mootness, any of those activities.

20              THE COURT: Okay. All right. Does any other  
21       movant have anything to say on these points? Any other stay  
22       movant?

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

25              THE COURT: Yes.

1                   MR. GOLD: Just a couple of brief observations,  
2 Your Honor. The first is it seems to me, given the  
3 construct of the Debtors' (indiscernible) that there would  
4 be no additional burden on the Debtor, and it would make  
5 perfect sense for them to provide us with substantially  
6 immediate notice a time when a request is made of the  
7 District Court for sentencing to occur, rather than saying  
8 send a date and -- I mean, if they're making a request to  
9 the District Court, they should be able to tell everyone  
10 that they have done so right then and there, or  
11 substantially (sound drops) thereafter, regardless of when  
12 that occurs.

13                   The second thing is that I still find in the  
14 Debtors' proposal a subtle rewriting of Rule 8025, which  
15 Your Honor discussed earlier, which provides for a two-week  
16 stay following the ruling of the District Court, rather than  
17 --

18                   THE COURT: That still applies. That still  
19 applies. This is just -- this just takes you up to the  
20 District Court ruling.

21                   MR. GOLD: I understand. I just... It just  
22 seems, to us, cleanest when not creating confusion to say  
23 that whatever Your Honor grants would be coterminous with  
24 the stay that comes from under Rule 8025, rather than having  
25 to have anyone puzzle out what happens if one stay applies -

1 - ends earlier, and another stay does not.

2 THE COURT: Well, to me, the way to do that is to  
3 say it's... First of all, the Debtors are not proposing a  
4 stay here. They're proposing a stipulation that would  
5 obviate the need for a stay. And that at that point, you  
6 know, you have the District Court ruling. And then 8025  
7 comes into play.

8 MR. GOLD: Okay. Well, the Debtors' stipulation  
9 did not contain anything that said that it was not -- it was  
10 possible we were concerned in reading it that it might be  
11 intended to be a derogation of whatever rights --

12 THE COURT: No.

13 MR. GOLD: -- under 8025 --

14 THE COURT: I understand, but I don't --

15 MR. GOLD: -- and not --

16 THE COURT: Well, no one even mentioned 8025, but  
17 I understand that point. But I think that that would be  
18 clear from my ruling here.

19 MR. GOLD: Okay. And Your Honor, I mean, the only  
20 other thing which I will suggest is it's hard for me to  
21 believe that anyone wants to be deliberately setting a  
22 deadline that runs to New Years Eve, or immediately, giving  
23 a few days after that, if parties are going to be having to  
24 run in for emergency applications would make a certain  
25 amount of sense, given that the Debtors have conceded that a

1       few days here or there is not going to make a meaningful  
2       difference in this context.

3                  Other than that, I have nothing to add on this  
4       point, Your Honor.

5                  THE COURT: Okay.

6                  MR. GOLDMAN: Your Honor, may I just add one  
7       additional point? Irv Goldman, Pullman & Comley, for the  
8       State of Connecticut.

9                  THE COURT: Sure.

10                 MR. GOLDMAN: I think Your Honor hit directly on  
11       the head that the important date here, especially if the  
12       District Court has ruled by December 30, is the criminal  
13       sentencing date. Although they've agreed to postpone asking  
14       for that to be held to December 30 or December 31, if it  
15       does actually fall on that date, I think it does make it --  
16       and this follows up on Mr. Gold's point -- somewhat of a  
17       difficulty in trying to get an emergency stay motion over  
18       the holiday season, running up to December 30th. So I think  
19       it does, for that reason, make (sound drops) sense to have  
20       that pushed out so we're not running into the holidays.

21                 THE COURT: Well, I'm assuming you would make it -  
22       - you would file it and get a date a couple weeks before  
23       then. But I understand the hearing time. Understand that  
24       point, I don't think any court is particularly excited to  
25       have a hearing, although I think it would probably be

1 shorter than this one, on the New Year's Eve.

2 MR. GOLDMAN: Yes. That's all I had, Your Honor.

3 THE COURT: Okay. All right. Okay, so, look, I  
4 think obviously there is a lot more that the objectors want  
5 to get in the record for this hearing. But I do think that  
6 the Debtors' proposal, with some tweaking, really does make  
7 a lot of sense in the interim, particularly given Mr.  
8 DelConte's testimony that the money itself wouldn't be  
9 flowing even to the trusts until the beginning of 2022, and  
10 wouldn't thereafter, at least for a while, be going out --  
11 at least for a couple of weeks -- be going out to third  
12 parties in the form of the abatement payments. And probably  
13 a little bit longer for the personal injury claimants, which  
14 is the offsetting harm that the objectors have highlighted,  
15 and rightfully so.

16 So, why don't I throw out -- and people can be  
17 thinking about this while I hear the rest of the argument --  
18 that the Court's ruling would be to deny the stay request,  
19 on the conditions that the effective date not occur until  
20 the earlier of the issuance of the District Court's ruling  
21 and January 7th. That the Debtors will not seek a  
22 sentencing hearing to occur any earlier than January 7th,  
23 and that they will provide notice, not only of when that  
24 hearing is scheduled, but also their request for one to the  
25 Appellants. And that the movants may renew their stay

1 motion on at least 14-days' notice. And of course, that  
2 would also be accompanied by the stipulation that's been  
3 signed that the Appellees will not argue that any of the  
4 other actions that would be taken leading up to either the  
5 District Court ruling or January 7 would serve as a basis  
6 for equitable mootness.

7 So you all can mull that over, but I don't know if  
8 you want to go into additional argument, Mr. Kaminetzky, or  
9 does that conclude your argument? In which case, I'll hear  
10 from the other objectants. I think you're on mute still.

11 MR. KAMINETZKY: I am on mute. I have a double  
12 mute because I don't trust just one mute. But here's --  
13 well, Your Honor, we have -- if Your Honor wants me to  
14 address the longer stay, if that's still on the table, then  
15 I have a lot to say about that in terms of irreparable harm  
16 and the other prongs. If not, then I'll save that for,  
17 hopefully, never. But it's really up to you.

18 We do have a -- you know, we have a lot to say on  
19 the three-hour argument that the other side had on  
20 irreparable harm and the balances of harms and public policy  
21 and bond and all of that. So, Your Honor, I don't want to  
22 do something that you're not -- you don't want us to do, but  
23 we're happy to make that record or not make that record.

24 THE COURT: Well, unfortunately, where I know  
25 where I'm coming out, at least some of the movants, not all

1 of them, really are, I think, still actively pursuing as an  
2 alternative the stay through the conclusion of the appellate  
3 process. So I think we should, albeit maybe so as to  
4 preserve the record, at least get in the witness  
5 declarations and hear brief argument on the irreparable harm  
6 and balance of the harms and public policy points for, or  
7 with respect to, movants' request for a stay beyond the  
8 dates that I have posited, which again would be the earlier  
9 to occur of the District Court's ruling and January 7th,  
10 although that wouldn't be a stay. That would be a denial of  
11 the motion on the conditions that these agreements be made  
12 by the Appellees.

13 MR. WAGNER: Your Honor, Jonathan Wagner, from  
14 Kramer Levin, on the issue of the declarants -- on behalf of  
15 the Ad Hoc Committee. Our declarant, Mr. Guard, has to  
16 leave by 4:00 --

17 THE COURT: Okay.

18 MR. WAGNER: -- to pick up his son.

19 THE COURT: Okay.

20 MR. WAGNER: So can we swear him in now and have  
21 him attest to his declaration?

22 THE COURT: Yes, that's fine.

23 MR. WAGNER: That's fine.

24 THE COURT: And I see him there on the screen.

25 So, Mr. Guard, would you raise your right hand, please? Do

1 you swear or affirm to tell the truth, the whole truth, and  
2 nothing but the truth, so help you God?

3 MR. GUARD: I do.

4 THE COURT: Thank you. And it's John M. G-U-A-R-  
5 D?

6 MR. GUARD: Yes, sir.

7 THE COURT: Okay. So, Mr. Guard, you submitted a  
8 declaration intended to be your direct testimony on these  
9 motions for stay pending appeal. It's dated October 22,  
10 2021. Knowing again that it would be your direct testimony,  
11 is there anything in it sitting here on November 9 that you  
12 want to change?

13 MR. GUARD: No, Your Honor.

14 THE COURT: Okay. Does anyone want to cross-  
15 examine Mr. Guard? Okay. I have reviewed Mr. Guard's  
16 declaration. I believe it's quite clear. I have, in part,  
17 limited it, as I ruled in my colloquy with Mr. Goldman, in  
18 light of Connecticut and Washington's objection to its  
19 admissibility. But otherwise, I'll admit it now. It's just  
20 direct testimony. So, you can sign off, Mr. Guard.

21 MR. GUARD: Thank you, Your Honor.

22 THE COURT: Okay.

23 (Declaration of John M. Guard Admitted Into  
24 Evidence)

25 THE COURT: I think other objectors also submitted

1 declarations that they may want to move the admission of  
2 now. Mr. Jorgensen and the Committee's two witnesses, Ms.  
3 Juaire and Ms. Trainor.

4 MR. HURLEY: Your Honor, if I may, it's Mitch  
5 Hurley, on behalf of the Official Committee of Unsecured  
6 Creditors.

7 THE COURT: Okay.

8 MR. HURLEY: Your Honor, my colleague, Arik Preis,  
9 is going to argue the objection to the stay motion on behalf  
10 of the UCC. I'm taking the virtual podium here only to  
11 offer into evidence the declarations of Ms. Juaire and Ms.  
12 Trainor.

13 Both witnesses are members of the UCC, who have  
14 dedicated countless uncompensated hours to these cases.  
15 Both agreed during the course of the cases to cease their  
16 ordinarily outspoken public advocacy relating to Purdue.  
17 Both have suffered unthinkable personal loss as a result of  
18 the opioid epidemic. And both have responded by devoting  
19 virtually all of their time helping others (indiscernible)  
20 community.

21 As such, the ICC submits these witnesses have  
22 unique knowledge and insights in matters of great relevance  
23 to the exercise the Court is undertaking on the stay motion,  
24 and that those insights should be a part of the record.

25 The states of Washington and Connecticut were

1 alone in objecting to admission of the declarations of Ms.  
2 Juaire and Ms. Trainor, and then only with respect to  
3 several discrete statements included in those declarations.

4 My understanding is that the Court already has  
5 overruled the objections of Washington and Connecticut, as  
6 explained in more detail by the Court earlier in these  
7 proceedings today. And I therefore will not address further  
8 those objections, unless Your Honor has questions for me.  
9 And both of the witnesses are present and available to  
10 affirm their declarations, if Your Honor wishes.

11 THE COURT: Just to be clear, I didn't completely  
12 overrule the two states' objections. I granted them to the  
13 extent that I found that each declarant was predicting or  
14 offering a rationale for the exact effect of the delay of  
15 payments under the plan and/or stating their belief as to  
16 why certain sources of abatement have shut down over the  
17 last several months.

18 I admit them for predictions by a reasonably  
19 informed person who has dedicated, as you said,  
20 substantially all of their time to these types of issues,  
21 and who have in each case involved them to a significant  
22 degree in understanding and interacting with others like  
23 them, who have devoted themselves as well to abatement of  
24 the opioid crisis.

25 So, why don't we start with Ms. Juaire? She can

1 go on the screen. Okay. Would you raise your right hand,  
2 please? Do you swear or affirm to tell the truth, the whole  
3 truth, and nothing but the truth, so help you God?

4 MS. JUAIRE: I do.

5 THE COURT: And it's Cheryl, C-H-E-R-Y-L, Juaire,  
6 J-U-A-I-R-E?

7 MS. JUAIRE: Yes.

8 THE COURT: Okay. Ms. Juaire, you submitted a  
9 declaration in connections with these motions for a stay  
10 pending appeal that was intended to be your direct  
11 testimony. It's dated October 21, 2021. Sitting here today  
12 on November 9, is there anything in it that you would wish  
13 to change?

14 MS. JUAIRE: No.

15 THE COURT: Okay. Does anyone want to cross-  
16 examine Ms. Juaire? Okay.

17 I have read the declaration and I don't have any  
18 questions on it. It's quite clear to me, and I will admit  
19 it as Ms. Juaire's direct testimony subject to the  
20 limitation on admission that I previously articulated.

21 So thank you, Ms. Juaire, and you can sign off at  
22 this point.

23 MS. JUAIRE: Thank you.

24 THE COURT: Okay. And then can we bring Ms.  
25 Trainor on the screen? Good afternoon. Would you raise

1 your right hand, please? Do you swear or affirm to tell the  
2 truth, the whole truth, and nothing but the truth, so help  
3 you God?

4 MS. TRAINOR: I do.

5 THE COURT: Okay. And it's K-A-R-A T-R-A-I-N-O-R?

6 MS. TRAINOR: Yes.

7 THE COURT: And Ms. Trainor, you submitted a  
8 declaration in connection with this set of motions for a  
9 stay pending appeal. It's dated October 21, 2021, and it's  
10 intended to be your direct testimony.

11 Sitting here today on November 9, is there  
12 anything in it that you wish to change?

13 MS. TRAINOR: No.

14 THE COURT: Okay. Does anyone want to cross-  
15 examine Ms. Trainor on her declaration? Okay.

16 And again, I've reviewed it and I found it to be  
17 quite clear and subject to the limitation on admissibility  
18 that I previously noted, I will admit it as Ms. Trainor's  
19 direct testimony. I don't have any questions of her, so  
20 thank you and you can sign off, ma'am.

21 MS. TRAINOR: Thank you.

22 THE COURT: Okay.

23 MAN 1: Thank you, Your Honor.

24 THE COURT: Okay. I think there were two other  
25 declarations, one by Mr. Jorgensen and then one that came

1 out very recently, which may or may not be necessary given  
2 my ruling on the objections to admissibility by the State of  
3 Connecticut and the State of Washington, but I think that's  
4 Mr. Jorgensen. And a declaration by another official from  
5 Arkansas, which I'm looking for and can't find at the moment  
6 -- here it is, I have it -- Mr. Lane.

7 MR. LIESEMER: Yes, Your Honor. This is Jeffrey  
8 Liesemer on behalf of the multi-state governmental entities  
9 group. We had filed the declaration of Mr. Jorgensen, and  
10 if we could proceed, I can see if we can bring him up.

11 THE COURT: Yes. If you could pull him on the  
12 screen, that'd be fine.

13 MR. LIESEMER: And while we are waiting for Mr.  
14 Jorgensen to appear, I just did want to remind Your Honor  
15 that Washington and Connecticut had raised certain  
16 evidentiary objections to the declaration of Mr. Jorgensen,  
17 similar to the other declarants.

18 And we filed the declaration of Mr. Kirk Lane  
19 yesterday to respond to the narrow point that was raised by  
20 the two states, and Mr. Lane's declaration is at Docket  
21 4075.

22 THE COURT: Okay, right. I have it here now.  
23 Okay. I see Mr. Jorgensen now. Would you raise your right  
24 hand, please? Do you swear or affirm to tell the truth, the  
25 whole truth, and nothing but the truth, so help you God?

1 MR. JORGENSEN: I do.

2 THE COURT: And it's Colin, C-O-L-I-N, Jorgensen,  
3 J-O-R-G-E-N-S-E-N?

4 MR. JORGENSEN: Yes, Your Honor.

5 THE COURT: Okay. So, Mr. Jorgensen, you  
6 submitted in connection with the motions for stay pending  
7 appeal. It's dated October 20, 2021. It's intended to be  
8 your direct testimony in support of the multi-state  
9 governmental entities group in opposition to those motions.

10 Knowing that and sitting here today on November  
11 9th, is there anything in it that you would wish to change?

12 MR. JORGENSEN: One thing, Your Honor, an update.

13 THE COURT: Okay.

14 MR. JORGENSEN: In Paragraph 12 on Page 5-6 of my  
15 affidavit, I cite the number 515 drug overdose deaths in  
16 Arkansas for 2020.

17 THE COURT: Right.

18 MR. JORGENSEN: And since I wrote and signed the  
19 declaration, I've learned that the updated final number is  
20 547 overdose deaths in Arkansas in 2020.

21 THE COURT: Okay.

22 MR. JORGENSEN: I can source that for you if you  
23 want.

24 THE COURT: I think you should do that for you,  
25 yes.

1                   MR. JORGENSEN: Okay. So I found that number on  
2 the Arkansas Drug Director's website, which is  
3 artakeback.org. There's a news button you can push. And  
4 when you go into that, it's the most recent post on the  
5 website is from October 28th, just less than two weeks ago,  
6 and that article, the last sentence in that articles cites  
7 the number 547 drug overdose deaths in Arkansas in 2020.

8                   When I saw that, I knew that must mean they have  
9 arrived at a final number, and I reached out to Kirk Lane,  
10 who is the Arkansas Drug Director, and I asked him to source  
11 that for me. And he sent me several reports from the  
12 Arkansas Department of Health, which maintains these final  
13 numbers and death certificates and things.

14                  And I reviewed the reports and saw that they  
15 consistently all cited the number 547 as the number for  
16 overdose deaths in Arkansas in 2020.

17                  THE COURT: Okay.

18                  MR. JORGENSEN: It doesn't change much in  
19 substance for my affidavit. It's just the more accurate  
20 number now with that update.

21                  THE COURT: Okay, thank you. Does anyone want to  
22 cross-examine Mr. Jorgensen on his declaration? Okay.

23                  Again, I've reviewed his declaration carefully.  
24 It, like other declarations that I've already admitted into  
25 evidence, cites the CDC estimates for drug overdose deaths

1       in 2020, and also as we've just heard, focuses on the State  
2       of Arkansas for that sad statistic.

3                 I will admit Mr. Jorgensen's declaration, subject  
4       to admitting Mr. Lane's declaration, and the limitations  
5       generally as to any assumptions as to other parties' actions  
6       that would derive from third parties as being only Mr.  
7       Jorgensen's analysis or prediction.

8                 But I will note that his task here, I believe,  
9       qualifies him to make such predictions and analyses, given  
10      his role on behalf of the AAC; that is the Association of  
11      Arkansas Counties.

12                 So you can sign off Mr. Jorgensen.

13                 MR. JORGENSEN:     Thank you, Your Honor.

14                 THE COURT:     Okay. And then can we pull up Mr.  
15      Lane?

16                 MR. LIESEMER:     Your Honor, Mr. Lane's declaration  
17      goes to a very narrow point. Washington and Connecticut had  
18      asserted that the document that is attached to Mr.  
19      Jorgensen's declaration as Exhibit 1 did not fall under the  
20      public records exception to the rule against hearsay. We  
21      provide Mr. Lane's declaration to give assurance that it  
22      does meet the public records exception. And so, he's not  
23      speaking to any of the four prongs regarding the motion to  
24      stay, so it's a very narrow point.

25                 If Your Honor does not need Mr. Lane's declaration

1 to admit all of Mr. Jorgensen's declaration, including the  
2 exhibit, then I think we can dispense with that. We do not,  
3 because of the narrow issue, we do not have Mr. Lane on  
4 standby.

5 THE COURT: Okay. All right, well, let me ask Mr.  
6 Goldman and Mr. Gold. Having seen Mr. Lane's declaration,  
7 would you still challenge the admission of the report that's  
8 attached as Exhibit 1 to his declaration, the Naloxone Saves  
9 Program report?

10 MR. GOLDMAN: Your Honor, Irv Goldman. No, no  
11 objection.

12 THE COURT: So I will admit Mr. Lane's declaration  
13 for that purpose.

14 Okay. I think those are all the witnesses, so I'm  
15 happy to go back now for brief oral argument by the  
16 objectants, although again, I've reviewed the pleadings.

17 MR. LIESEMER: Your Honor, I'll just be very brief  
18 and turn it over then to the other plan proponent objectors.

19 Let me just say two things: one is with respect  
20 to, you know, your tentative rulings or what have you.  
21 That's all fine, except for -- I'm just a civil litigator  
22 that plays in Bankruptcy Court from time to time.

23 I am told that Your Honor's suggestion or  
24 requirement that we provide notice of even a request for  
25 sentencing, that is something that perhaps we should not

1 agree to, given that this is an agreement between the U.S.  
2 Attorney's Office and the Debtors, and we're not sure how  
3 the U.S. Attorney's Office would feel about that; number  
4 one.

5 Number two. If we're talking about just a request  
6 for sentencing and not the sentencing date itself, we'll be  
7 getting in front of the U.S. District Court. I mean, if  
8 we're calling up the clerk of the court and asking for a  
9 sentencing date and that somehow triggers a requirement to  
10 tell the world that we've done so, that seems like kind of  
11 stepping on the toes of the New Jersey District Court.

12 And finally and most importantly, Your Honor, is  
13 I'm told that the sentencing schedule is going to be  
14 scheduled plenty in advance of any hearing, reporting  
15 likely, you know, 30-45 days. I can't guarantee because I  
16 don't have the judge's calendar. But this again isn't  
17 something that happens overnight; this is something that the  
18 public is going to be invited to.

19 So we believe that, you know, giving notice as  
20 soon as it's scheduled will give plenty of time for anyone  
21 to do whatever they feel they need to do to protect their  
22 rights.

23 THE COURT: Okay.

24 MR. LIESEMER: And then on the balance of harms,  
25 we'll rely on Mr. DelConte's declaration and the extensive

1 discussion of the cataclysmic harms that could occur to the  
2 Debtors should this thing delay the -- should confirmation  
3 be -- sorry -- emergence be delayed for any significant  
4 period of time.

5 But I will turn it over to the various creditors'  
6 group to make the principal argument with respect to the  
7 balance of harm, the public interest, as well as the bond  
8 issue.

9 THE COURT: Okay.

10 MR. PREIS: Good afternoon, Your Honor. This is  
11 Arik Preis from Akin Gump Strauss Hauer & Feld on behalf of  
12 the Official Committee. Can you hear me? Are there any  
13 issues?

14 THE COURT: I can hear you and see you fine.

15 MR. PREIS: Okay.

16 THE COURT: Although you seem to be inside a  
17 filing cabinet. I don't know, it looks -- I'm worried for  
18 you, but that's okay. Now I see you're in a conference  
19 room.

20 MR. PREIS: So I want to do this, if it's okay, I  
21 want to address my oral argument first and then, hopefully,  
22 that will inform my response to your proposal from a little  
23 while ago about how you would propose resolving the issue  
24 through a stipulation.

25 Can I proceed in that manner?

1           THE COURT: Sure.

2           MR. PREIS: Okay. And I'm going to, if I've  
3 hesitated, it's because I want to try to speak through some  
4 things, and so, it may take me a second to (sound glitch)  
5 over.

6           In general, obviously, the Official Committee  
7 vehemently opposed the movant's request. We actually spent  
8 quite a bit of time with them trying to avoid this hearing  
9 because we thought the offer we gave them gave them the  
10 functional (sound glitch) of what they were asking.

11          They insisted on having the hearing. And lest any  
12 of us forget, I won't belabor this, but during the course of  
13 this hearing, approximately 30 people have died due to  
14 opioid overdose. But notwithstanding our views regarding,  
15 you know, the impropriety of this hearing, we must do what  
16 we can to protect the interests of the 630,000 claimants who  
17 are waiting to receive their money, that roughly 96 percent  
18 of voting claimants who voted in support of the plan and  
19 then 10 ad hoc groups who all expressed support and objected  
20 to the stay motion.

21          So I'm going to pensively just address harm to the  
22 movants and then the public interest.

23          On harm to the movants, I'm not going to address  
24 equitable mootness; you addressed that already. The only  
25 real other argument that the movants made is that the three

1 state attorney generals argue that if a stay is not granted,  
2 their ability to enforce their police power will be  
3 irreparably harmed.

4 That's misguided for two reasons. First, it needs  
5 to be repeated that there's absolutely nothing, has been  
6 nothing, and will never be anything that stops anyone from  
7 criminally prosecuting any of the Debtors receiving the  
8 relief. Attorneys general and those that can bring the  
9 criminal prosecution has had this (sound glitch) for more  
10 than -- forever, and they've been investigating the Sacklers  
11 for more than three years, and they had the right to gain  
12 access to every piece of evidence the UCC and the NCSP  
13 uncovered in one of the most thorough investigations ever in  
14 the history of bankruptcy. If they thought they had a  
15 viable criminal case, they would have brought.

16 Instead, they've gone out of their way to confuse  
17 people, including their citizens, by blaming Your Honor for  
18 issuing an order that gives permanent immunity to the  
19 Sacklers, which they therefore cry -- used to cry  
20 irreparable harm.

21 General Tong ordered on September 20th that the  
22 Bankruptcy Court's ruling let the Sacklers off the hook by  
23 affording them permanent immunity from lawsuit that would  
24 hold them accountable for the damage they've caused.

25 General Ferguson in Washington ordered on

1 September 2nd, the confirmation order let the Sacklers off  
2 the hook by granting them permanent immunity from lawsuits  
3 in exchange for (sound glitch) profits they made from the  
4 opioid epidemic.

5 In fact, they well know that this is the  
6 creditors' plan. If the states and municipalities that  
7 drives the public (sound glitch), the NAS, the third-party  
8 payers, the ratepayers, the hospitals who all overwhelmingly  
9 voted in favor of the plan. They know this, but it's easier  
10 for them to blame Your Honor and this Court.

11 Second, it cannot be the case that these three  
12 AGs' ability to enforce (sound glitch) is irreparably  
13 harmed, while the ability of no other attorney general  
14 across the United States is similarly harmed. Indeed, we  
15 actually are forgetting that there are five other state  
16 attorneys generals who are vigorously appealing the  
17 confirmation order and the District of Columbia which have  
18 not joined in the request for a stay. They all looked at  
19 the facts and circumstances of the case and determined  
20 there's no irreparable harm to the citizens of their state  
21 if the plan is permitted to be effective without a stay.

22 Said another way, 94 percent of the AGs  
23 representing 95 percent of the population chose to follow  
24 the whim of 96 percent of the voters. So why is every  
25 single creditor, other than three AGs, not seeking an

1       extraordinary remedy of a stay? Obviously, the answer is  
2       the irreparable harm.

3                     A lot has been written about this. Your Honor  
4       said you read the papers. I'm not going to belabor some of  
5       this, but I just want to note a few things.

6                     You mentioned the CDC estimates. You mentioned  
7       how they've gone up in the past year. The simple answer is  
8       they're losing the fight in the opioid epidemic. But the  
9       daily deaths, approximately 204, are opioid (sound glitch).

10                  There are currently more than 1.6 million  
11       Americans estimated to be suffering from OUD. By some  
12       estimates, the annual cost of dealing with the opioid  
13       epidemic is \$78 billion. Each day that funds are held back,  
14       there are real-world and life-and-death consequences.  
15       Abatement programs go unfunded, overdose reversal medicine  
16       does not get distributed, community centers are not (sound  
17       glitch). I could go on and on and on.

18                  The point is, as Your Honor said earlier, every  
19       day and every dollar makes a difference.

20                  The three AGs and the U.S. Trustee are unswayed.  
21       They give three responses. First, they argue that they're  
22       working hard to get their appeals heard quickly, so a little  
23       delay is tolerable. Second, they argue that the cases have  
24       been delayed for two years by the UCC, among others, and  
25       therefore, a few more months isn't going to matter in the

1 big picture or a few days. They argue the new National  
2 Opioid Settlement that's bringing in lots of money, and  
3 therefore, not getting money from the Sacklers isn't as bad  
4 as it may seem.

5 These are dangerous arguments. Let's start with  
6 the first one. No delay is tolerable.

7 The attorney general from the State of Missouri  
8 recently stated that the number of opioid overdose deaths is  
9 like a plane going down every day, a month, a year. As Miss  
10 Juaire and Miss Trainor explained in their declarations,  
11 they see the devastation every day.

12 Indeed, our office has fielded more than 500  
13 calls, letters, and emails from victims over the past two  
14 years and returned each one. We've listened to their  
15 stories, we've grieved with them, we've attempted to explain  
16 the injustice being done.

17 Indeed, yesterday, just as an example, I took a  
18 call from Robert Bernhoff, a resident of the State of  
19 Washington, who was in a 2009 ski accident, was prescribed  
20 Oxi and was on it for three years and it changed and ruined  
21 his life. Now why do I mention him? It turns out he was a  
22 fifth grade teacher in 2006 for Attorney General Ferguson's  
23 niece, and he asked that I note his unhappiness and the  
24 State of Washington's attempt to (sound glitch) distribution  
25 of funds.

1           If the U.S. Trustee and the attorney generals get  
2 their wish and we're stayed for even six months, and  
3 assuming that that's all it is, there will be 36,000 more  
4 deaths; that's 1 percent of the population of the State of  
5 Connecticut.

6           As Mr. Guard said in his declaration, it's  
7 unconscionable that the remote chance that some (sound  
8 glitch) creditor could recover some money from the Sacklers  
9 on some distant day or that some known creditors could  
10 receive additional money after years of litigation could  
11 justify the additional death of a single American; Paragraph  
12 14 of his declaration.

13           The second argument that the movants make is that  
14 the case has already been delayed for two years by the UCC,  
15 among others, and therefore, incremental delay should be on  
16 us and shouldn't be a big deal. We don't believe those  
17 arguments even merit a response, but I just want to point  
18 out a few things.

19           First, the UCC has done virtually everything in  
20 its power since the day it was appointed to move (sound  
21 glitch) out for abatement and victim compensation. We all  
22 know what happened with the ERF. We saw the potential that  
23 this looks to be a long case, and we tried very hard to get  
24 money out to community organizations two years ago.

25           Everyone knows, now in hindsight, look at how

1 important that money could have been if the DOJ, among  
2 others, was one of the biggest opponents to the ERF.

3 Second, I won't go through everything that's  
4 happened over the course of the last two years. But to be  
5 clear, there was six months of mediation, of which three  
6 months was just public and public negotiations and three  
7 months of public and private negotiations, six months of  
8 mediation with the Sacklers, another three or four months to  
9 document the deal, and the elongated confirmation hearing.

10 All that has occurred with the movants sitting  
11 there and watching and being part of every little piece of  
12 it. I'm not criticizing them, but they couldn't say that  
13 the past two years, because the case has lasted two years,  
14 that in some way that another few days isn't going to make a  
15 difference.

16 The movants' third rationale, and admittedly only  
17 Generals Tong and Ferguson make this harmfully misleading  
18 argument, is that there's money from other sources coming  
19 in, and so the Purdue money -- not getting the Purdue money  
20 now is tolerable. Specifically, AGs Tong and Ferguson  
21 trumpet the National Opioid Settlement with three  
22 distributors and Johnson & Johnson, 26 billion over 15  
23 years. Without a doubt, the UCC applauds these efforts,  
24 although ironically, the State of Washington hasn't agreed  
25 to it.

1           But what the AGs don't say in their papers, and  
2 indeed, they haven't said publicly in anything we can find,  
3 is that not one dollar of the 26 billion goes to private  
4 side claimants. That's not an accident.

5           But why am I raising that here? Washington and  
6 Connecticut makes such a big deal about the NOS in their  
7 papers, and they say that the money is coming in, but they  
8 don't say that 1.4 billion of the Purdue money goes to  
9 claimants who are getting zero from the National Opioid  
10 Settlement. It's something they don't want to admit.

11           Moreover, it's just innate to say that an (sound  
12 glitch) claimant because they're getting money from the NOS  
13 and tolerate some delay in getting the Purdue money. The  
14 cost of the opioid crisis is \$78 billion a year.

15           As Your Honor said on August 23rd and during the  
16 confirmation hearing, it just seems really boneheaded to say  
17 this 4.25 billion won't pay off from all the opioid (sound  
18 glitch), you shouldn't take it.

19           With that, Your Honor, I'll turn to the public  
20 interest program.

21           The U.S. Trustee states that the co-op with the  
22 U.S. Trustee and the public interest are, "one in the same"  
23 because the government's interest is the public interest.  
24 The U.S. Trustee further states that when the government is  
25 the movant, the public interest and irreparable injury fact

1       (sound glitch), despite through a number of cases for that  
2 proposition.

3                  Let me respond in four ways. First, not one case  
4 that the U.S. Trustee cite stands for the proposition that  
5 when the U.S. Trustee is the movant that the federal  
6 government's interest is the one being implicated for  
7 confirmation over (sound glitch).

8                  Knowing this, in its appellate papers, the U.S.  
9 Trustee has started referring to itself as the government,  
10 as opposed to the Office of the United States Trustee.  
11 We're not disputing that the U.S. Trustee's website says  
12 that it's a component arm of the DOJ. But perhaps the U.S.  
13 Trustee has not cited any cases where the U.S. -- because  
14 the U.S. Trustee is never a creditor. And therefore, it's  
15 role as a so-called (indiscernible) doesn't merit its  
16 interest being equated with the public for the purpose of  
17 this analysis.

18                  In other words, no one with the (sound glitch) to  
19 say that such an extraordinary remedy that should only be  
20 granted in the most narrow of circumstances. Perhaps courts  
21 should be wary of holding up the will of actual creditors  
22 for the desires of a non-creditor.

23                  Second, under the facts and circumstances of this  
24 case in particular, it's inexplicable that the U.S. Trustee  
25 is taking the position that its interest are those of the

1 government. To be clear, there are other federal government  
2 interests in this case, and not one of them has brought a  
3 motion for a stay pending appeal.

4 Even the DOJ, who is unimaginably -- imaginably  
5 filed amicus briefs all but appealing the confirmation order  
6 and objecting to confirmation has not asked (sound glitch)  
7 pending appeal. The DOJ settled its civil claims for 225  
8 million. They settled their criminal claims for 225  
9 million. They settled their unsecured claims for 65  
10 million. The various governmental agencies settled their  
11 issues with Purdue and other private side claimants and  
12 public side claimants by taking 4 percent of the amount that  
13 was going to go to PIs and taking and transferring it to  
14 themselves.

15 So the case where every governmental entity that  
16 is a creditor has already settled with Purdue and the  
17 Sacklers and the other plaintiffs is either getting money on  
18 the effective date or has already received such money. It's  
19 pretty difficult to believe that the U.S. Trustee, which is  
20 not a creditor, nor does it act in any interest other than  
21 what it perceives to be others' interest, to take the  
22 position its acting as the government.

23 Third, (sound glitch) for one moment that the U.S.  
24 Trustee could credibly argue that their interests are those  
25 of the government. In that instance, the question is, is

1 the government's interest really coterminous with the public  
2 interest in this case. Let's consider the following  
3 factors.

4 First, between 2008 and 2017, the Sackler's family  
5 took approximately 11 billion out (sound glitch). Of this  
6 amount, 4 billion went straight to the federal government in  
7 the form of taxes. That makes the federal government not  
8 only the biggest recipient of Sackler money in the last 13  
9 years, but the transferee of an alleged fraudulent  
10 conveyance. Yet, the federal government has not once  
11 offered to make this money available for opioid abatement  
12 for victims of (sound glitch).

13 Second, the DOJ settled their civil differences  
14 with the Sackler family in 2020 in return for a cash payment  
15 of 225 million. They received the money. They refused to  
16 agree that the money would be earmarked for opioid abatement  
17 and compensation or in ERF.

18 Third, they settled their criminal claims against  
19 Purdue in 2020 in return for 225 million and an unsecured  
20 claim of 25 million. Unlike every single other opioid  
21 claimant in the case under the plan, the DOJ refused to  
22 agree that their money would be used for abatement or victim  
23 compensation.

24 Fourth, in 2007, in return they received -- they  
25 settled their differences with Purdue in return for 634

1 million, none of which was earmarked for abatement or victim  
2 compensation, and Purdue's agreement to comply with the CIA  
3 for five years. The terms of the CIA are publicly  
4 available. To be clear, Purdue was required to maintain a  
5 reporting to the federal government. During those five  
6 years, Purdue generated the most money they did and took out  
7 the most money out of Purdue during the 2008 to 2012 period.

8 Yet, after all public and private companies, they  
9 were done with mediation, the federal government, through  
10 its agency, entered to negotiate and demanded and took 25  
11 million for personal injury claim and transferred that to  
12 federal agencies. The DOJ's settlement with Purdue contains  
13 a clause (sound glitch) under certain conditions, one of  
14 which will occur if the U.S. Trustee prevails in its appeal,  
15 the DOJ (sound glitch) a \$2 billion priority claim ahead of  
16 all the other opioid claimants.

17 So again, not only if their appeal wins do the  
18 claimants not get anything, but the DOJ takes all of it.  
19 (sound glitch) negotiations of the ERF, the DOJ argued  
20 vigorously against the ERF. During the UCC's investigation  
21 of the Sacklers, the DOJ refused to insert itself on the  
22 claims (sound glitch) in any discovery dispute regarding the  
23 documents uncovered in the DOJ's investigation.

24 In other words, when given the chance to help the  
25 public by joining forces with the UCC and the (sound

1       glitch), the DOJ didn't do anything.

2                     And perhaps most egregiously, the U.S. Trustee  
3       argues that the due process rights of PIs have been violated  
4       because of the imposition of the non-consenting third-party  
5       releases. Unbelievably, the U.S. Trustee went out and tried  
6       to recruit personal injury victims who will join their  
7       brief; apparently, their first foray into speaking to  
8       personal injury victims in this case.

9                     Yet, nowhere in their papers did they explain the  
10      reality that if they are successful in their appeal, it's  
11      almost certain that every single one of the Debtors' 140,000  
12      personal injury victims will receive close to zero, if not  
13      zero, in their own litigation.

14                  Fourth, the Official Committee contends the public  
15      interest in this case overwhelmingly supports denying the  
16      stay for the reasons of the irreparable harm that I  
17      mentioned earlier, the overwhelming support of the voters,  
18      the overwhelming support of the ad hoc group.

19                  Indeed, I think it's fair to say that there's  
20      never been a case where the public interest is so  
21      overwhelmingly opposed to the (sound drops).

22                  Your Honor, with that, I'd like to address the  
23      proposal that you made about 15 minutes ago.

24                  THE COURT: Okay.

25                  MR. PREIS: If I understood your proposal earlier,

1 Your Honor said that it'll be -- a condition to the  
2 effective date is that it will be the earlier of January 7th  
3 and the District Court ruling; is that correct? Do I have  
4 that right?

5 THE COURT: Well, first, I have not -- this  
6 proposal does not contemplate the entry of a stay. What it  
7 contemplates is the denial of the stay motions without  
8 prejudice to the future right to bring them on the  
9 conditions of the denial and that it lays out the  
10 conditions.

11 And the first condition is, in fact, that the  
12 appellees would agree that the effective date would not  
13 occur until the District Court's ruling and January 7.

14 MR. PREIS: So if I understand that correctly and  
15 if the Debtors are not permitted to seek a sentencing  
16 hearing earlier than January 7th, which was I believe  
17 another condition, then it's possible if, as we all heard  
18 Judge McMahon say that she -- you know, she has a trial  
19 coming up on December 7th, and we kind of read between the  
20 lines that Her Honor may rule before that.

21 Then between, let's call it December 7th and  
22 January 7th -- now actually, it's really January 14th  
23 because we can't go into (sound glitch) until seven days  
24 after the criminal sentencing, you would be delaying (sound  
25 glitch), but because by those terms. Is that correct? I

1 want to understand if that's what you meant.

2 THE COURT: Well, yes, correct. And that's  
3 primarily to give the movants the opportunity to renew their  
4 motion.

5 MR. PREIS: Again, (sound glitch) that will be 37  
6 days -- I'm sorry -- 30 days, 37 because (crosstalk).

7 THE COURT: Well, except that under Rule 8025,  
8 unless Judge McMahon shortened it, there would be 14 days  
9 added on to the December 7th date, so you'd be at December  
10 21.

11 MR. PREIS: Right. Which is I think why in the  
12 original proposal, we get offered December 20th, which I  
13 understand was not December 21. The only reason I'm raising  
14 this is because part of our argument, the irreparable harm  
15 (sound glitch). And I know Mr. Kaminetzky said, you know,  
16 being December 20th to December 30th is okay. And then, you  
17 know, there was some discussion about the holidays, so let's  
18 move it to January 7.

19 In effect, we've now elongated almost more than  
20 half a month before -- if it turns out that Judge McMahon  
21 actually rules by December 7 and we're able to get a  
22 sentencing hearing by December 20th, we will move their  
23 effective date by 17 or 18 days at the very least. And  
24 again, from our perspective, every day matters.

25 THE COURT: Well, except -- let me address that

1 because, again, I fully accept that there is almost  
2 immeasurable harm in not getting the plan distributions to  
3 PI claimants and to the state and governmental entities for  
4 the purpose of abatement, and the other entities, the Indian  
5 tribes and the hospitals and the like.

6                 But based on my understanding of the plan and Mr.  
7 DelConte's testimony, the money wouldn't actually go to them  
8 until sometime after the effective date and probably weeks  
9 after the effective date.

10                 So I think that the real issue where the balancing  
11 of the harms comes into play or the real time comes into  
12 play is where the movants would seek a stay after the  
13 District Court's ruling, pending appeal to the Second  
14 Circuit.

15                 MR. PREIS: I don't dispute your reading of Mr.  
16 DelConte's declaration. But isn't what all you've done is  
17 just move the same period back (sound glitch).

18                 THE COURT: I did. I moved it a week from the end  
19 of the year to January 7th, and that's basically because --  
20 or arguably two weeks from December 21 to January 7, and  
21 that's basically because I have some concerns about imposing  
22 a hearing date on Judge McMahon around New Year's Eve or  
23 around the Christmas holiday, so that's the only reason.

24                 And it didn't seem to me, given the testimony,  
25 that the delivery of the distributions beyond the trusts

1 would happen any slower because of that.

2 MR. PREIS: I'm sorry, that wasn't my point. I'm  
3 sorry.

4 What I was trying to say is if all you've done is  
5 move the initial distribution date back from December 21 to  
6 January 14th or whatever it is, then that same period,  
7 between the time the money first goes to the trust and the  
8 money goes out, that same increment just gets added whenever  
9 the money first goes out (sound glitch).

10 So that delay, that lag from the time the money  
11 goes to the trust to the time it actually goes out, that  
12 occurs no matter when the money (sound glitch) mid-January,  
13 then you have a delay of (sound drops).

14 So the fact that there's -- you understand what  
15 I'm saying or am I not making myself clear?

16 THE COURT: No, I do. I understand. For example,  
17 the 14 days for the states to deliver their final NOAT  
18 allocation would start running from the effective date,  
19 which would be those 14 days later. I do see that.

20 MR. PREIS: Yes, that was my point. And that's  
21 why when I said every day mattered, so it is actually by  
22 moving everything back 17 days, it has a real effect. So  
23 anyways, that was my first point.

24 My second point is --

25 THE COURT: Well, could I interrupt you for a

1 second? I guess for mootness purposes, it doesn't really  
2 help to change it to the distribution date, as opposed to  
3 the effective date because the effective date is also the  
4 date when you transfer it to the trusts and set up NewCo,  
5 the benefit company.

6 So I'm thinking out loud, but I think you may have  
7 offered a solution of just making it the distribution date,  
8 but I don't think that works for mootness purposes.

9 MR. PREIS: Yeah.

10 THE COURT: Okay.

11 MR. PREIS: The second point, and I know Mr.  
12 Kaminetzky raised this, this idea of having to give public  
13 notice of when the Debtors even request the notice.

14 THE COURT: No, I understand. I understand that  
15 point. I don't think that really helps very much in any  
16 event. I mean, the key thing is when the District Court  
17 schedules it.

18 MR. PREIS: Correct, yes.

19 THE COURT: Right.

20 MR. PREIS: Okay, that was it. Okay, that was it,  
21 Your Honor. That's all I had. Thank you.

22 THE COURT: Okay.

23 MR. FOGELMAN: Your Honor, may I briefly respond  
24 to Mr. Preis's, frankly, outrageous accusations against the  
25 government?

1           THE COURT: I think you have a right to do that,  
2 Mr. Fogelman.

3           MR. FOGELMAN: Your Honor, I just want to say  
4 about everything Mr. Preis said was a mischaracterization or  
5 just absolutely blatantly untrue. That time, Your Honor, is  
6 all entirely irrelevant as to whether a stay should be  
7 granted.

8           And, you know, I'm happy to go into everything one  
9 by one if Your Honor would like. Again, I don't think any  
10 of this is even relevant, but just to give one brief  
11 example. The government, you know, submitted a letter to  
12 the Court at Mr. Preis's urging, when the government first  
13 was in settlement negotiations with the Sacklers and Mr.  
14 Preis raised the issue about providing those funds toward  
15 abatement.

16           And we clearly explained to the Court on the  
17 record that the government is constrained in how it can  
18 respond by the Miscellaneous Receipts Act. And that, in any  
19 event, while we couldn't direct those monies towards an  
20 abatement fund, you know, the largest recipients of civil  
21 recoveries are federal health care agencies that provide  
22 billions of dollars towards opioid use disorder treatment.

23           So for Mr. Arik to stand up there and make the  
24 statements he made is absolutely outrageous, Your Honor, and  
25 completely irrelevant.

1 I'm not going to -- sorry.

2 THE COURT: Anyway, I think it is largely  
3 irrelevant. The only way it is relevant or the remarks  
4 about the role of the federal government in the case and in  
5 history of prior settlement really goes to what the U.S.  
6 Trustee's public interest argument is.

7 And in that sense, I think the U.S. Trustee has  
8 been clear, in front of me at least, that it's not focusing  
9 on anything other than its party in interest right as a  
10 watchdog over the bankruptcy system, not on the other  
11 interests of the federal government.

12 And on that point, Mr. Preis is basically just  
13 saying that, you know, the watchdog is, in his view, barking  
14 at the wrong person. But I think we should just cut it off  
15 at this point.

16 MR. FOGELMAN: Thank you, Your Honor.

17 THE COURT: Okay. Should I hear from the ad hoc  
18 group of states and other plaintiffs?

19 MR. WAGNER: Yes, Your Honor. Jonathan Wagner  
20 from Kramer Levin Naftalis & Frankel, representing the ad  
21 hoc committee of governmental and other contingent  
22 litigation claimants. Can you hear me?

23 THE COURT: Yes.

24 MR. WAGNER: I'll make some introductory remarks  
25 and then address the issues of irreparable harm, balance of

1       hardship, and public policy. And I'll address a long-term  
2       stay and short-term stay, and I'll try not to repeat the  
3       arguments that have been made today.

4           It's important to remember that the committee  
5       represents dozens of governmental agencies and entities.  
6       And despite the handful of state objections and the U.S.  
7       Trustee's objection, far more government entities support  
8       the plan and oppose a stay than seek a stay; it's really far  
9       more.

10           And there's a super-majority of states who support  
11       the plan and 97 percent of the non-federal domestic  
12       governmental entities who voted on the plan voted in favor  
13       and there's a good reason for that and Your Honor has  
14       recognized that in the confirmation decision. The sooner  
15       the money is allowed to be spent on abatement, the better  
16       the citizens of those states and those supporting states and  
17       local governments will be.

18           And despite suggestions to the contrary, the  
19       dissenting states, their citizens will benefit as well.  
20       They'll get their fair share of the monetary recovery, and  
21       they'll get non-monetary benefits as well.

22           So let me now turn to irreparable harm, balance of  
23       hardships, and public interest. In terms of a long-term  
24       stay, that issue has been addressed in Mr. Guard's  
25       declaration, which Your Honor I know has read and read

1 carefully, and it's been addressed in the other declarations  
2 as well.

3 And just to sum up at Paragraph 16 of his  
4 declaration, "The abatement plan is designed to save lives,  
5 and any delay in funding the abatement plan will thwart that  
6 critical goal." And between now and June, there's close a  
7 billion dollars that's supposed to be allocated with respect  
8 to abatement. That's a serious amount of money.

9 In terms of a short-term stay, I make three  
10 points. Most of the points on the short-term stay have been  
11 made already, including with respect to equitable mootness --  
12 - that's clearly off the table -- the mechanics of the  
13 sentencing, and also the suggestion that somehow the Court  
14 can cherry pick the settlement here and have it rejigger.  
15 This was a settlement that was really a herculean task to  
16 achieve, and it was carefully constructed and can't easily  
17 be pulled apart.

18 The three points I want to make on the short-term  
19 stay are as follows. First, burden matters, and here the  
20 burden is squarely on the movants, and they have not  
21 satisfied their burden.

22 Second, a stay, even a short-term stay, creates a  
23 cloud and to give one -- and an unnecessary cloud. And just  
24 to give one example, the committee has been interviewing  
25 potential board members for the MDT, the NOAT, and for

1 NewCo. And I think it's not a stretch to say that the more  
2 there's a delay in the effective date of the plan, the more  
3 the candidates -- some of them are very prominent people --  
4 may be reluctant to sign on.

5 And then the final point I want to make with  
6 respect to the short-term stay is that the Court has to  
7 exercise its equitable powers sparingly. That's, in many  
8 cases, just give you a couple, United States against Veres,  
9 1989 U.S. District Lexis 7069 at \*17, "A court should  
10 exercise its equitable powers sparingly." And the same  
11 point is made in many bankruptcy cases, In re Rix 2015 B.R.  
12 Lexis 3988 at \*6.

13 And in light of the safeguards that have been  
14 offered here, it would be an improper exercise of the  
15 Court's equitable powers to grant a stay.

16 The last point I want to make, and I hope this  
17 isn't a point that Your Honor has to address, is the bond.  
18 I don't think Your Honor needs to get into the issue of  
19 whether the U.S. Trustee needs to post a bond because the  
20 states do. And Your Honor made the point, citing the  
21 advisory committee language and other opponents of the stay  
22 have cited the cases, that made clear that the states can't  
23 piggyback on any rules that might apply to the U.S. Trustee.

24 That's all I have, Your Honor, unless you have any  
25 questions.

1           THE COURT: Okay. Well, I guess -- look, what  
2 I've been considering is not a stay, but an order denying  
3 the motion on conditions, so that would obviate the need to  
4 deal with a bond. And, you know, I don't think that your  
5 side of the issue would prefer a stay with a bond to that,  
6 right?

7           MR. WAGNER: Certainly not.

8           THE COURT: Okay, all right. Thank you.

9           MR. WAGNER: Thank you.

10          THE COURT: I'm also assuming, because I would  
11 also, if I were to grant a stay, condition it on the ongoing  
12 commitment as the appellants have already committed, to  
13 pursue all appellant relief on an expedited basis. But I'm  
14 assuming they will continue to do that based on their  
15 statements and their understand of the importance of  
16 resolving these issues promptly.

17          MR. LIESEMER: Your Honor, may I be heard very  
18 briefly?

19          THE COURT: Sure.

20          MR. LIESEMER: Jeffrey Liesemer on behalf of the  
21 MSGE Group.

22          Your Honor, when Judge McMahon ruled on the United  
23 States Trustee's emergency motion for a stay before she  
24 denied it without prejudice and she did so on the condition  
25 that the appellees, which included the MSGE Group, enter

1 into a stipulation saying that all of the preparatory  
2 actions under the advance order are not a basis for invoking  
3 equitable mootness. She ordered the Debtors to impose a 14-  
4 day advance notice requirement on any effective date, and  
5 she also said that the appeals would proceed on a rocket  
6 docket.

7 And on that basis with those guardrails in place,  
8 Judge McMahon said that the U.S. Trustee's speculation about  
9 the possibility of equitable mootness did not rise to the  
10 level of irreparable harm, and I would submit that it's the  
11 same today. There really hasn't been any material change.  
12 The movants haven't identified anything that changes the  
13 situation from the time that Judge McMahon has ruled.

14 And in addition to that, we have the Debtor, who  
15 has offered up even additional guardrails, and Your Honor is  
16 now contemplating guardrails as well insofar as denying the  
17 stay motions with conditions.

18 So no showing with respect to irreparable harm and  
19 specifically equitable mootness has been made, and I think  
20 the motions can be safely denied on that basis, subject to  
21 the guardrails, which Judge McMahon found to be sufficient  
22 as is.

23 With respect to a longer-term stay, we share Your  
24 Honor's concerns that that would clash with Rule 8025 and  
25 essentially read Rule 8025 out of the bankruptcy rules. And

1 so, therefore, if there were a stay in place if they did  
2 make their showing, then it would have to be limited up  
3 through the District Court's ruling.

4 And with respect to the other elements, with  
5 respect to balance of harms and the public interest and the  
6 bond in the event that there would be an unlimited stay to  
7 allow the appellate avenues to be exhausted, we simply stand  
8 on our papers and on Colin Jorgensen's declaration.

9 Your Honor understands the point as time  
10 progresses, the financial and human toll increases, and that  
11 puts a big weight against any stay. And with respect to  
12 public interest, there is public interest in settlements and  
13 the finality of reorganizations and, above all, finding one  
14 way to resolve this public health crisis.

15 So we join the other opponents in opposing any  
16 stay pending appeal. Thank you.

17 THE COURT: Thank you.

18 MR. SHORE: Your Honor, Chris Shore from White &  
19 Case on behalf of the ad hoc group of individual victims.

20 I want to -- and I've been feverishly kind of  
21 working on my notes to address what I think is the issue  
22 here, both respect the long-term stay, short-term stay, and  
23 the idea of a denial of motions with conditions.

24 Let me start here. Look, we tried to address the  
25 issue outside of Court with respect to essentially a denial

1 of the stay without conditions. The appellants refused, so  
2 now we have two pending motions with two separate requests:  
3 one is a pending motion for a stay through the District  
4 Court decision plus 14 days, and another is a request from  
5 the U.S. Trustee for a stay through all appeals.

6 I think you need to deny both of those on the  
7 merits with findings and conclusion. And you ask, why can't  
8 I just do this simply if we prevail at the District Court on  
9 the appeal, and we think we will -- we wouldn't be here  
10 fighting this and have fought for the plan if we didn't  
11 think we will -- there is going to be another hearing.  
12 Whether that is in the end of December or the beginning of  
13 January, someone's bringing a motion in front of Judge  
14 McMahon for the big stay, the one that nobody can control,  
15 which is the time between when the Second Circuit appeal  
16 gets docketed and when the Second Circuit rules.

17 So there is a fact of a hearing coming up. And as  
18 one of the very creditor constituencies who isn't either  
19 funded by taxpayers or by the estate, we simply can't have  
20 10-hour hearings all the time on these subjects without  
21 getting work-product which can be used in subsequent  
22 hearings.

23 So my request is that we actually make use of the  
24 evidentiary record that's here, not just throw this to Judge  
25 McMahon to deal with with her busy docket and to have a

1 whole other hearing, evidentiary hearing, which she may not  
2 even have the time for given the announcement of what her  
3 schedule is.

4 So let me turn to the merits on why you should  
5 deny the stay and what the specific findings I'm talking  
6 about. Let me just address very briefly the likelihood of  
7 success because no one touched on this. I'll only say this:  
8 The order that was presented to you reflected what the  
9 Debtors conceded, not what anybody else did. We all became  
10 appellants after that hearing, or at least we became  
11 appellants after that hearing over the objection of the U.S.  
12 Trustee and we all joined the argument. So that's a  
13 technical argument that you can get rid of.

14 I want to focus on only one event: The day that  
15 the Debtors are ready to consummate their plan but can't  
16 because of some existing stay or the existence of some  
17 conditions and how we protect the individuals, just the  
18 individuals, from the harms accrue from that day forward. I  
19 think those harms accrue whether the stay is short or  
20 whether the stay is long, and I want to address an issue  
21 that Mr. Preis raised on that (sound glitch).

22 Let me start here. You know that at the beginning  
23 of the hearing that (sound glitch) rules are set up so that  
24 (sound glitch) did this. It's not, I don't think, because  
25 the Bankruptcy Court is likely to agree or disagree that its

1 own findings are subject to appeal or not, but rather  
2 because the Bankruptcy Court is in the best position,  
3 understanding who the parties are, what they're looking for,  
4 what they're promising, and what the harms are in the event  
5 there is or is not a stay.

6 So even if Judge McMahon were to rule before an  
7 available exit and contemplate a further stay, this Court's  
8 view of what (sound glitch) stay, that is a stay that would  
9 exist through a Second Circuit ruling or a cert denial may  
10 prove critical to her own analysis, which is likely have to  
11 be conducted on a short notice brief period if and when that  
12 (sound drops).

13 As to the harm calculus here, as we pointed out in  
14 our objection, it's not a one-size-fit-all analysis. Each  
15 applicant must make its own case based upon its own harmed  
16 balanced against the harms to the others and the public.

17 The U.S. Trustee is in a different position than  
18 the states. First, they allege no harms to themselves.  
19 They have no economic (sound glitch) in the outcome of this  
20 (sound drops). Two, the U.S. Trustee's claim, I think as  
21 part of the public interest prong, is that there's a  
22 societal harm of the erosion of constitutional rights of  
23 individuals who allegedly have direct claims against the  
24 Sacklers, which are being released for no compensation.

25 I'm not going to repeat arguments I made at the

1 last hearing regarding this no compensation argument. I'll  
2 just say that the intention is both counterfactual in light  
3 of the TEPs and inflammatory. But their whole analysis  
4 centers on the harm to these hypothetical individual Sackler  
5 claimants.

6 Now, as we pointed out in our objection, we  
7 represent probably the bulk of individuals who would  
8 otherwise have the right to bring claims against the  
9 Sacklers in light of the fact that 35,000 of our group  
10 didn't vote on the plan and several hundred voted no.

11 But I think the U.S. Trustee misses the mark when  
12 they attack our group for what seems to be a criticism that  
13 we do not speak for every victim. We have never purported  
14 to speak for every victim. We've only purported to speak  
15 for our group, and we have spoken, sometimes in a loud  
16 voice, on behalf of those who've authorized us.

17 In contrast, not one victim has authorized or come  
18 forward in support of the U.S. Trustee's motion for a stay.  
19 And the important part here is not the authorization piece;  
20 it's the lack of identification of the individuals who may  
21 be harmed and a quantification of that harm.

22 At the last hearing, Your Honor spoke directly to  
23 the U.S. Trustee about trauma and what you viewed as the  
24 narrow window that it provides for direct claims against  
25 non-debtor fiduciaries and shareholders. The time for them

1 to come forward with proof of harm was now. What followed  
2 was not proof, but an attempt to cite to complaints that  
3 allege claims squarely within (indiscernible) and Madoff.

4 There was a reference today to the Hartman  
5 pleading, which they did not include. I don't know how they  
6 expect Your Honor to make the analysis that everyone of  
7 these circuit court says is you need to look at the  
8 substance of the claim, not the label, to determine whether  
9 they are derivative claims or individual claims. I've  
10 reviewed the complaints. They are all classic-looking  
11 derivative claim. You can't just say something is a  
12 consumer rights claim when, in fact, it is just dressed up  
13 as a breach of fiduciary duty claim by directors and  
14 officers.

15 So this is a stay hearing where they are supposed  
16 to come forward with evidence. Just saying that someone has  
17 alleged it in a complaint does not quantify the harm of  
18 denying that. There is no articulation -- these claims are  
19 worth \$30, these claims are worth \$100, these claims are  
20 worth a billion dollars. There is none of that in the U.S.  
21 Trustee's application.

22 So what we are left with on their application in  
23 the harm calculus is on the one side, the constitutional  
24 rights of unidentified individuals with unquantified claims  
25 that are hypothetically, but not proven, to be non-

1 derivative, all of which can be asserted and against and  
2 recovered from the TADPs that will be funded by the  
3 Sacklers. That's what their harm is.

4                   Balanced against that and what the remainder of my  
5 analysis focuses on and the real harms of real individuals  
6 that accrue the moment the Debtors are ready to consummate  
7 the plan, which could be December 14th, it could be January  
8 6th, whatever, were contemplating that they won't be able to  
9 do that because there is a pending order of court, whether  
10 written as a stay or a denial of a stay with conditions.

11                  And let me pause here because people are just  
12 getting it wrong with respect to the harms. There are two  
13 harm prongs and two things to be balanced. The applicant on  
14 a stay needs to prove irreparable harm to them. They also  
15 need to prove the lack of any harm to individuals. It's  
16 their burden. And we're not talking about irreparable harm  
17 because people aren't focusing on, and I think Your Honor  
18 was alluding to it, what a bond means.

19                  The bond is the source of recovery for people who  
20 were harmed by the imposition of a stay. None of these  
21 applicants have come forward and said regardless of whether  
22 there's a bond, you can feel free to sue me if I turn out to  
23 be wrong and I lose on appeal after a three-month delay.  
24 That's not how bonds work.

25                  Now, as to the harm for the individuals, which

1 need to be protected, some of those harms are mathematically  
2 certain. Under the plan, the personal injury victims don't  
3 ride with the ups and downs of the Debtor. We get a fixed  
4 (sound drops). Whether the plan is funded in December 2021,  
5 January 2022, January 2023, or some other time, the fund and  
6 this plan remains in place, the amount paid stays the same,  
7 which means there is a certain loss of the time value of  
8 money.

9                 And to amplify what Mr. Preis said, with respect  
10 to the individuals, once the trusts get funded, then the  
11 notices -- remember, we had the hearing on the advanced  
12 payments so that we can get the notices out immediately --  
13 the notices go out. In addition, all the expenses, the  
14 frontloaded expenses of the trust, can get paid. Then as  
15 soon as someone gets a form, they can check a quick pay and  
16 it can go back and we can start the distribution process.

17                 So if the plan is delayed 14 days, the initiation  
18 of that process starts 14 days later, the first payment that  
19 goes out is 14 days after that. So there is a demonstrable  
20 harm in any stay of the effective date of the plan beyond  
21 the date that the Debtors are ready to go forward.

22                 There are also mathematically certain but  
23 unquantifiable fees of just the cost of continuing in the  
24 bankruptcy case. The advantage of an effective date is  
25 people can go pencils down with respect to issues that are

1 ongoing in the case. And again, we are not a state funded  
2 or taxpayer funded, my participation in hearings like this  
3 is just coming out of creditor recoveries.

4 I won't touch, because Mr. Preis did it so well,  
5 the harm in delaying abatement funds. But in a world in  
6 which a stay is in place for only 14 days, the Debtors are  
7 told cool it 14 days and 10 -- let's leave aside debts  
8 payment -- 10 new injuries occur, who's paying for that?  
9 Why is it the Debtors responsibility? They wanted to start  
10 the process of getting money out to people. The applicants  
11 came forward and said, hold your horses, I've got  
12 hypothetical rights that need to be protected here in the  
13 interest of (sound glitch) and 10 new injuries occurred, the  
14 United States Trustee is not stepping forward and saying  
15 don't worry, we'll take care of those people.

16 But the real risk here, and which nobody is  
17 articulated and which I think Your Honor needs to tell to  
18 Judge McMahon, is the risk to the deal. Right? Now let me  
19 start -- I'm still trying to wrap my head around a public  
20 use of the plea bonds, a little example, but the personal  
21 injury victims are not holding a gun to anybody. We have no  
22 power over this situation. And unless and until the Debtors  
23 are ready to consummate this plan and the Sacklers are  
24 willing to fund, we're not getting anything. We can't  
25 compel anybody to do anything.

1           And as to the risks of harm, the Court has a  
2       detailed exhaustive record of the difficulties they faced  
3       getting to consensus in these cases, the hard fought triumph  
4       of the deal coming together, especially for victims, through  
5       direct cash payments and the use of essentially all but the  
6       U.S. Government's money for abatement.

7           This Court, not the District Court or the Second  
8       Circuit, is in the best position to understand and  
9       articulate the risks to Debtors, that it should articulate I  
10      believe in findings and conclusions, when their effective  
11      date gets stayed.

12       And the risk is what happens if something stops  
13      the effective date of the plan. First, if this deal were to  
14      fall apart prior to an affirmance, right? We get in a  
15      situation where someone delivers a termination of the deal,  
16      right, and then we find out we were right all along. And  
17      were this case to liquidate, there's unopposed evidence that  
18      everybody gets nothing. The liquidation analysis results in  
19      a zero for individuals.

20       That's not hypothetical. Remember Mr. Preis said  
21      to you with respect to the super-priority admin claim, the  
22      U.S. Government has not committed that in the event that the  
23      confirmation is -- or sorry -- the plan does not go  
24      effective, they won't set forth their super-priority  
25      administrative claim. In other words, there is a real

1 possibility if this deal doesn't get to closure that all of  
2 the money goes to the United States. Does anybody really  
3 want to be responsible for that?

4 The Court's also in a unique position to  
5 understand what basis what a big case like this puts forward  
6 in terms of harms, the potential harms, to a deal in an  
7 uncertain period. First, plans face market risks. During  
8 this case, the Dow had its second biggest percentage drop  
9 ever. Is anybody really committing that if the Dow goes up  
10 30 percent that we're all going to let the Sacklers walk  
11 away with that additional bounty, or if the Dow goes down 30  
12 percent, the Sacklers are still going to be willing and able  
13 to fund?

14 Plans face regulatory risk, right. I mean, those  
15 risks in all fields that occurred or what they're talking  
16 about there, let's get the Sacklers out of jail for free  
17 deal, regulations change and what was possible at one point  
18 in time may not be possible later. Again, is that really  
19 going to happen between December 14th and January 7th?  
20 Probably not, though not certain. But if we're talking  
21 about informing Judge McMahon of what could happen between  
22 January and August, that matters.

23 Plans face legislative risks. Nobody here, by the  
24 way, none of the appellants here is committing that they  
25 would not be pursuing any legislation that could have an

1 impact on this case.

2                   Plans face political risk, especially in this case  
3 in which half the creditor body are elected officials. The  
4 notions that come or others will all stay in the deal as  
5 their political landscape changes is not certain.

6                   And as Your Honor noted during the confirmation  
7 hearing, this settlement is around a shifting landscape of  
8 judicial precedent that exists, all of which at any given  
9 time will empower somebody who cut the deal to say they got  
10 a bad deal and somebody else to say they got a good deal.

11                  Obviously, the risks increase over time. But  
12 nobody is promising anything if they are wrong in the law  
13 and it takes long enough for us to prove that to the  
14 Appellate Court that the plan falls apart and we have to  
15 start over. Nobody is assuring that a plan which is  
16 consummable on December 14 will still be consummable on  
17 January 14th.

18                  So how does this play out? Again, I think the  
19 U.S. Trustee, given their role, statutory role, and the  
20 absence of any direct harm to them and the fact that they're  
21 purporting to speak on behalf of individuals and have yet to  
22 articulate who they're speaking for, what their claims are,  
23 and what they're worth should have their application denied  
24 on the merits with prejudice right now with specific  
25 findings about their lack of proof, with one caveat.

1           They've taken the position that they have zero  
2 responsibility to post the bond. I don't need to get into  
3 that argument at this late date. They have zero economic  
4 responsibility if they're right.

5           So deny their motion. But they can be clear,  
6 nothing prevents the U.S. Trustee from piggybacking off a  
7 stay that is awarded to some other party, and nothing  
8 prevents the U.S. Trustee from volunteering to post a bond  
9 to protect for a month.

10          So what does a bond look like with respect to the  
11 other applicants? I don't think any stay is necessary. I  
12 think a denial of the stay with conditions isn't necessary.  
13 But we have no objection to this Court giving Judge McMahon  
14 until January 7th to rule.

15          But if the Debtors are ready to consummate before  
16 January 7th, they should provide a notice, everybody, 14  
17 days that we're ready to consummate. And that will give the  
18 applicants the opportunity to post a bond in that window if  
19 they want to have a stay or they can go to Judge McMahon if  
20 they're riding on her stay, that is your stay is requiring  
21 and she still hasn't ruled, that gives them an opportunity  
22 to raise that with (sound drops).

23          Even with respect to this short bump, right.  
24 That's our only source of recovery for both catastrophe and  
25 the mathematically certain funds that accrue. We shouldn't

1 equate an opportunity for a meaningful appellate review with  
2 a free opportunity for appellate review. And I tend to that  
3 that if and when the states are forced into a position of  
4 having to post a bond, they'll think long and hard about  
5 their pursuit of further appellate relief beyond Judge  
6 McMahon.

7 To form an amount, I'm not -- I can't quite figure  
8 out how best to create the right dynamic for that. But it  
9 seems to me that if the Court set a per diem or a bond for  
10 the period between the time the Debtors are ready to rule  
11 and when Judge McMahon are ready to exit and when Judge  
12 McMahon rules, that will precipitate a discussion with Judge  
13 McMahon about when she is able to rule. And it will allow a  
14 ready calculation. If she says I can't do it by the 7th, I  
15 can do it by January 30th, that's 23 days of per diem  
16 (indiscernible). And I tend to think, as I said, that  
17 sparks a conversation about how this is going to proceed  
18 forward.

19 As to the larger bond, I guess if Your Honor is  
20 not contemplating extending beyond the time that's necessary  
21 for her to rule, it still, as I said, provides context if  
22 you were to provide findings and conclusions that there are  
23 real harms, demonstrable harms, and the manifest risk of  
24 catastrophic harms that need to be protected with a bond.  
25 Again, subject to upward or downward revision by Judge

1 McMahon and subject to what other parties use. But we're  
2 talking about (indiscernible) in the hundreds of millions of  
3 dollars or billions. Because if the risk were to manifest  
4 itself, something comes out that causes somebody to walk  
5 away from this deal and we end up in a liquidation scenario,  
6 nobody wants to wear the risk of having stopped a plan which  
7 would have provided (indiscernible) to people and that  
8 turned out to be legal, but nonetheless was frustrated  
9 because there was an open-ended stay in place.

10 Not one of the states has come forward and say  
11 they didn't have the wherewithal to post a bond. And again,  
12 a bond only sets the outside amount of the damages which get  
13 compensated. If it turns out that they have to post a \$500  
14 million bond and only a million dollars is proven to be the  
15 actual damages, so be it. Then only a million dollars gets  
16 compensated out of that. But we don't set a bond based upon  
17 a hope that the debtors will be able to consummate in this  
18 fixed 12-month window that the Second Circuit is going to  
19 need to be able to issue what we all hope will be a ruling  
20 which sets forth in chapter and verse exactly what the rules  
21 are with respect to non-debtor reliefs.

22 The last point on these conditions. Conditions  
23 run both ways. And this is why I think that the denial with  
24 conditions on the Debtor which you are raising now is a bit  
25 fraught. Conditions run both ways, right? The appellants

1 here will be taking an opportunity of having an additional  
2 14 days to do whatever they're going to do. Are they  
3 allowed to legislate in that period? Are they allowed to  
4 exercise their police powers in that period? Are they, as  
5 Mr. Kaminetzky hinted to, able to stand in front of the  
6 district court in New Jersey and argue that the Court should  
7 adjourn that hearing? Right? Which would be the setup date  
8 for how this goes forward. Are they required to commit to  
9 move quickly as well? Are they free to argue in front of  
10 the Second Circuit that they really need 90 days to file a  
11 (indiscernible).

12 I just think lifting it and saying a denial with  
13 conditions opens up a whole debate about what they're  
14 allowed to do that I think (indiscernible) with a denial of  
15 these motions on the merits or -- or if they want a stay, a  
16 stay with an interim bond requirement, that is a shot bond  
17 requirement and an understanding going forward of what that  
18 stay -- that bond is going to look like if we are getting a  
19 ruling, you know, at the end of December or the beginning of  
20 January.

21 THE COURT: Okay.

22 MR. SHORE: And other than that unless Your Honor  
23 has any questions, that's all I have.

24 THE COURT: Okay.

25 MR. ISRAEL: Good afternoon, Your Honor. Harold

1 Israel on behalf of the NAS Committee. May I be heard very  
2 briefly?

3 THE COURT: Sure.

4 MR. ISRAEL: Thank you, Your Honor. The NAS  
5 Committee, another entity that is not funded by the  
6 taxpayers, represents the most innocent victims of the  
7 opioid crisis, the NAS children, will focus its argument  
8 exclusively on the irreparable harm and the public interest  
9 in light of Mr. Shore and Mr. Preis' arguments which they  
10 adopt.

11 The appellants in this case have made clear that  
12 they will go to the ends of the earth to prevent the plan  
13 from becoming effective. In the meantime, the opioid crisis  
14 rages across the country.

15 A stay will mean, ironically, that the Sacklers  
16 will retain all of their money, except of course what they  
17 have to pay the professionals, while compensation to the NAS  
18 children and the other personal injury victims will be  
19 delayed indefinitely if not forever. There will also be a  
20 delay of billions of dollars of abatement funds that would  
21 otherwise be used to combat the opioid crisis and a delay in  
22 making vital documents available to the public through the  
23 document repository.

24 For what reason? So that the appellants can exact  
25 vengeance on the Sacklers without any regard to whether

1 there will be any corresponding benefit to the personal  
2 injury victims, including the NAS children, of the opioid  
3 crisis.

4 To be clear, the NAS Committee had hoped for a far  
5 larger settlement. However, the plan, including the  
6 settlement and the third-party releases and the  
7 corresponding public interest must be viewed in reality.  
8 The NAS class voted overwhelmingly in favor of the plan, and  
9 Kara Trainor, a parent of an NAS child, outlined in great  
10 detail in her declaration why she supports the plan,  
11 notwithstanding her personal situation. The appellants  
12 ignore this massive support of both the voters and Ms.  
13 Trainor in their pleadings.

14 Simply put, a stay of the confirmation order  
15 delays implementation of what could be lifesaving programs  
16 for opioid victims, current and future, and compensation for  
17 some of the neediest people in the country. For what? So  
18 perhaps the U.S. Government can get an additional \$2 billion  
19 at the expense of all other claimants, a result worse than  
20 the tobacco litigation? Or so three states or five states  
21 can make life miserable for the Sacklers by litigating  
22 against them for the foreseeable future, resulting in no  
23 compensation to the NAS children and the other opioid use  
24 victims and allowing the Sacklers to retain billions of  
25 dollars that would otherwise go for abatement? Who wins in

1 this case?

2 Vengeance is not a purpose of the Bankruptcy Code  
3 and will not compensate the NAS children or the other opioid  
4 victims, will not fund research and other abatement  
5 strategies, will not make millions of opioid-related  
6 research documents available to the public domain. It will,  
7 however, allow the Sacklers to retain more of their wealth  
8 than they would under the plan. It cannot be said that such  
9 a result is in the public interest. Thank you, Your Honor.

10 THE COURT: Okay, thank you.

11 I don't know if any other objectant wants to  
12 speak. I forgot to ask Mr. Kaminetzky if he could update me  
13 on the termination right that was addressed in the pleadings  
14 and in Mr. Gold's argument.

15 It seems to me that, at least with respect to the  
16 type of relief I am contemplating, it's highly unlikely that  
17 that termination right would be exercised. But I'd like  
18 your thoughts on where it stands, whether it's been waived  
19 through the date that you've proposed and the like.

20 MR. KAMINETZKY: Apologies, Your Honor, for that  
21 dramatic camera movement.

22 The answer is I don't -- we have not had that  
23 discussion. Maybe you should ask the Sackler. This is  
24 something that was heavily negotiated and it's in there,  
25 it's part of the agreement. I would suspect that it won't

1 be a problem given the short term that we're talking about.  
2 But kind of following up, I mean, it's in there, and it's  
3 their right to waive it or not.

4           Unlike the previous way that we talked about  
5 before when it came to the direct certification, I don't  
6 have an answer sitting here whether or not they'd waive, but  
7 I certainly hope that they would.

8           Maybe it's time to mention just to underscore --  
9 and maybe this is the appropriate time in the changing  
10 landscape. During this hearing, actually, the Oklahoma  
11 Supreme Court reversed the J&J judgment, saying that public  
12 nuisance statute doesn't apply in this area to legally-  
13 manufactured products. And this comes on the heels of the  
14 California decision earlier this week going the same way.

15           But let me just leave it at that. And, you know,  
16 I assume you could direct this to the Sacklers.

17           THE COURT: Okay. Well, do I have the two sides  
18 of the Sacklers' counsel on the call?

19           MR. UZZI: Your Honor, it's Gerard Uzzi of  
20 Millbank on behalf of the Raymond Sackler Family.

21           THE COURT: Afternoon.

22           MR. UZZI: As it relates to -- go ahead, Your  
23 Honor, I'm sorry.

24           THE COURT: I was going to say, first of all, I'm  
25 not sure whether the denial of these motions as I've posited

1 it would trigger the termination right. But assuming it  
2 did, would that brief extension be something that your  
3 clients would be prepared to assert as a termination right?

4 MR. UZZI: Well, Your Honor, just before I get to  
5 that, just to check a box. As it relates to what Mr.  
6 Kaminetzky raised on the issue of certification, that has  
7 been waive. I think, frankly, we had formally memorialized  
8 it (indiscernible).

9 THE COURT: Right.

10 MR. UZZI: As it relates to -- I think the  
11 termination right you're referring to now is that three  
12 months after confirmation date -- there has not been a  
13 request made of our clients to waive that. So I'm not in a  
14 position today to say (indiscernible) specifically on that  
15 issue. And right now we are anticipating at least that the  
16 court is going to rule before then, the district court is  
17 going to rule before that time.

18 Your Honor, I don't want to speculate as to if and  
19 when I do consult with my client as to what they'll say  
20 other than to say we've come this far, Your Honor. There is  
21 certainly not a desire to abandon this at this point.

22 THE COURT: Okay, thank you.

23 Ms. Monaghan, I know you represent the other side  
24 of the Sackler family.

25 MS. MONAGHAN: Correct, Your Honor. On behalf of

1 the so-called Side A of the family, we are in the same  
2 position as Mr. Uzzi is in that no request was made of us  
3 for a waiver. That said, we're not looking to walk away  
4 from the settlement in any regard. I just haven't actually  
5 gotten instruction from my clients on the questions they  
6 have put to us.

7 THE COURT: Okay, thanks. Okay. I said that I  
8 would be willing to hear a brief rebuttal, but I really want  
9 this to be very brief, not a rehash of arguments that have  
10 previously been made, if anyone wants to speak in rebuttal.

11 MS. LEVINE: Your Honor, this is Beth Levine. My  
12 computer is going very slowly right now, so hopefully we'll  
13 get video in a second. I did just want to speak briefly. I  
14 will try not to repeat anything. I wanted to address a  
15 couple of things that have been raised that I think are  
16 inaccurate.

17 You know, there was a suggestion that it is  
18 somehow improper for us to seek a hearing because while we  
19 tried to negotiate a consensual resolution, it didn't work.  
20 And we did as part of that effort suggest why don't you give  
21 us -- you know, if you've got a list of things you have  
22 exempted from the stay, tells what they are. And, you know,  
23 it didn't work.

24 THE COURT: I am not blaming either side for the  
25 fact of this hearing. I had the opportunity after the

1 appellees sent me an email requesting a chambers conference  
2 to meet and see if a settlement could be obtained. And I  
3 just concluded it was of more benefit to have a full record.

4 MS. LEVINE: Thank you, Your Honor. There were  
5 suggestions or allegations that the United States Trustee is  
6 taking the position it's taking because it's trying to get  
7 the, you know, \$2 billion. And that is just an absolutely  
8 baseless allegation. I think if Your Honor wanted to hear  
9 more about that, Mr. Fogelman could address it. But I think  
10 it's enough to say that that's baseless. We've taken this  
11 position on the non-debtor releases the whole time. It's  
12 not just some way to try and get back that money.

13 With respect to the United States Trustee's role,  
14 I think you've recognized in your comment that, you know, we  
15 are not representing the government in its creditor role,  
16 but we are representing the government in the government  
17 interests. We obviously have a disagreement on where the  
18 public interest is. You know, we've talked about the harm.  
19 I don't want to repeat myself but, you know, we don't  
20 represent individual victims, White & Case doesn't represent  
21 individual victims. They've acknowledged they don't  
22 represent anyone. There are individuals who have come  
23 forward and objected. There have been over 200,000 people  
24 who voted no. So we've cited some of those examples. Ms.  
25 Isaacs, for example, Mr. Hartman. And we did include the

1       complaints in our request for judicial notice, including Mr.  
2       Hartman's complaint.

3                 With respect to the suggestion that we might  
4       voluntarily post a bond, we don't have the authority to do  
5       that, so we think that's just not a factor to be considered.

6                 THE COURT: Well, I would consider it in the sense  
7       of it's a factor to consider in balancing the harms. Not as  
8       something that I could require, but the absence of one may  
9       make it harder to balance the harms in your client's favor.

10                MS. LEVINE: I do think it's interesting with  
11       respect to this question of the termination right. There  
12       are two questions. One is just as a factual matter; my  
13       understanding is that termination right doesn't come into  
14       play if there has been a delay because of licensing delays.  
15       And we don't know what the status is, but we think it's  
16       interesting that the Debtor's proposed the stipulation  
17       without checking on that. But we don't think, as we put in  
18       our papers, that that is likely to happen. And it does not  
19       sound like it is based on what's been said here today.

20               Lastly, you know, obviously we are here on our  
21       motion. We're asking for a stay at least until the district  
22       court's decision. But with respect to the order it sounds  
23       like you are considering, you made a comment that I wanted  
24       to clarify, which is whether you're suggesting you would  
25       enter or include in your order a limit on the ability to

1 seek a stay from the district court.

2 THE COURT: No, I don't remember saying that.

3 MS. LEVINE: Okay. Then I may just have not heard  
4 that correctly.

5 THE COURT: It's just the opposite. You would  
6 have the ability to seek a stay from the district court  
7 after you get the notice.

8 MS. LEVINE: Your Honor, it's been a long day. I  
9 don't want to repeat what we've said. Obviously we disagree  
10 with a lot of what the stay movants had said, but we will at  
11 this point stand on our papers and I will cede the floor to  
12 any other movants who had something to add.

13 THE COURT: Okay.

14 MR. EDMUNDS: Your Honor, if I may just for less  
15 than a minute. Brian Edmunds for the State of Maryland. I  
16 would just point out some of the overarching themes that  
17 have been presented to you, that we are a state and we are  
18 charged with protecting our public and believe that we are  
19 doing that in appealing. And I think that some of the  
20 arguments that would give to us the status of essentially a  
21 private creditor are what requires us to appeal. I think  
22 that it's our job, and we do this, to protect. And we are  
23 spending money now on the opioid crisis on trying to abate  
24 it. And I think that our -- I think it's important to  
25 remember that and recognize that, that we wouldn't be doing

1       this and pursuing an appeal if we didn't think that we were  
2       serving the public. And that's all I have, Your Honor.

3                 THE COURT: Okay.

4                 MR. GOLD: Your Honor, Matthew Gold, Kleinberg  
5       Kaplan. Can you hear me?

6                 THE COURT: Yes.

7                 MR. GOLD: Thank you. Your Honor, I too will be  
8       very brief. First, I just want to note that the argument  
9       that Mr. Preis made, and we've heard this several times  
10      about how criminal liability is not being affected by this,  
11      is a total red herring. No one has ever contended the  
12      criminal liability was implicated by this, but that's not at  
13      all the point. The states have a significant statutory  
14      scheme that involves both criminal and civil penalties for  
15      which to go against wrongdoers. And among other things,  
16      there are different burdens of proof. And that's why the  
17      states have both criminal and civil laws that play in this  
18      area.

19                 And it's not for Mr. Preis or the Debtors to say  
20      you have your criminal remedies, that's enough, you don't  
21      need those other ones, in the first instance. And secondly,  
22      for us to be pointing out that the result of this settlement  
23      and this plan is to give the Sacklers complete immunity of  
24      their opioid-related obligations on the civil side does not  
25      mean that we're implying that it has anything to do with the

1       criminal liability. And it's valuable enough that the  
2       Sacklers have been insisting on it. So I think that's just  
3       simply a matter of misdirection.

4                     Second, I just want to note Mr. Shore, after  
5       making a statement about how we needed to not engage in  
6       speculation and to needed concrete matters, engaged in a 10  
7       to 15-minute series of speculations and hypotheticals about  
8       various risks without evidence about them occurring, but  
9       simply as speculation that this might happen and that might  
10      happen as risks involved of Court's resolution. We submit  
11      that those are not germane for these purposes and have no  
12      demonstrated basis other than just speculation.

13                  Third, I just want to note that this morning, I  
14      stated for the record, and not for the first time, that  
15      states are extremely willing to try to find a way to  
16      mitigate the harms to parties and allow the appeals to  
17      proceed. I heard not a whisper, complete crickets from all  
18      the objecting parties with respect to engaging with us on  
19      that point. And we can't do it by ourselves.

20                  THE COURT: I know you can't do it by yourself,  
21      but you can't do it without Maryland and the U.S. Trustee,  
22      too. And they're not willing to do that. So, I mean, it's  
23      good for your two clients, but it would be a waste of time  
24      if they are not prepared to do it. And I took away from  
25      their candid comments that they aren't.

1           MR. GOLD: Okay. We will review the issue with  
2 them, Your Honor.

3           THE COURT: Okay.

4           MR. GOLD: Thank you for that comment.

5           THE COURT: If they were, that would be great.  
6 But that's not the record before me.

7           MR. GOLD: Okay. Thank you, Your Honor. I have  
8 no further comments.

9           THE COURT: Okay. All right. I have before me  
10 three motions for a stay pending appeal, a first day motion  
11 by the United States Trustee for a stay pending appeal of  
12 two orders, the Court's order confirming the Twelfth Amended  
13 Chapter 11 Plan in these cases, and secondly, the Court's  
14 so-called Advance Order permitting the Debtors to take  
15 certain procedural steps and spend a relatively modest  
16 amount of money to be more ready to effectuate the  
17 transaction under the plan if and when the effective date  
18 occurs.

19           The other two motions are first by the states of  
20 Washington and Connecticut, and second by the State of  
21 Maryland, which seek a stay pending appeal over the  
22 confirmation order.

23           Three other appellants have joined in one or the  
24 other of those motions, and in respect of one of them have  
25 supplemented the joinder to some extent. So Mr. Bass has

1 joined in the other motions, although it is clear to me both  
2 from his filing and his remarks today that his focus really  
3 was not on a stay pending appeal of the confirmation order --  
4 - he hasn't joined in or appealed the advance order -- but  
5 rather to have the briefing schedule and hearing schedule  
6 with respect to his appeal delayed by the district court.  
7 And I have explained to him that that really is a decision  
8 for the district court to make.

9 I also have a motion and a joinder by certain  
10 Canadian Creditors, Municipality, and First Nations  
11 Claimants that has joined in the other motions, although I  
12 don't believe that they have appealed the advance order.  
13 And that they primarily focus, if not exclusively focus on  
14 the issues raised by the states. And I have Ms. Isaacs'  
15 motion, which literally adopts the State of Washington and  
16 the State of California -- I'm sorry, the State of  
17 Connecticut's motion.

18 When I address the State of Washington and the  
19 State of Connecticut's motion, I will also be addressing,  
20 therefore, Ms. Isaacs' motion. And similarly, when I  
21 address the first three motions that I mentioned, I will be  
22 addressing the Canadian claimants' motion except when I  
23 briefly address their unique issues on the prong in the  
24 standard for evaluating motions for a stay pending appeal,  
25 focusing on the need for a strong showing that the movant is

1 likely to succeed on the merits of the appeal.

2 The movants have the burden of proof with respect  
3 to their motions for the stay pending appeal, and that has  
4 been characterized as a heavy one. And the grant of a stay  
5 pending appeal has been characterized as extraordinary  
6 relief. See In re General Motors Corp., 409 B.R. 24 (Bankr.  
7 S.D.N.Y. 2009 with regard to the first point, and In re  
8 Sabine Oil & Gas Corporation, 551 B.R. 132, 142 (Bankr.  
9 S.D.N.Y 2016) on the second point.

10 The grant of a stay pending appeal is an exercise  
11 of judicial discretion dependent on the circumstances of a  
12 particular case, id Sabine Oil, 548 B.R. 681 and In re  
13 General Motors, 409 B.R. 30. They are, again, treated as an  
14 exception, not the rule, and are granted only in limited  
15 circumstances, In re Brown, 2020 WL 3264057, at \*5 (Bankr.  
16 S.D.N.Y. June 10, 2020).

17 To satisfy its burden to obtain a stay pending  
18 appeal, the movant needs to establish a proper balance in  
19 its favor of the following four factors; whether the movant  
20 has made a strong showing that it is likely to succeed on  
21 the merits, whether the movant will be irreparably injured  
22 absent a stay, whether a stay will substantially injure the  
23 other parties interested in the proceeding, sometimes  
24 referred to as the assessment of the balance of harms, and  
25 four, where the public interest lies. See Nken v. Holder,

1 556 U.S. 418, 434 (2009) and Kelly v. Honeywell Int'l, Inc.,  
2 933 F.3d 173, 188-184 (2d Cir. 2019).

3                 The Honeywell case is an important gloss on the  
4 first factor requiring a strong showing that the movant is  
5 likely to succeed on the merits of the underlying appeal by  
6 its focus on the need for that showing to show a fair ground  
7 for litigation. A number of courts have phrased this as a  
8 showing regarding the success on appeal somewhere between  
9 possible and probable. Again, see Brown, 2020 WL 3264057 \*7  
10 and Sabine Oil, 548 B.R. 683, 684, which also notes in Judge  
11 Chapman's opinion that the probability of success that must  
12 be demonstrated can be viewed as inversely proportional to  
13 the amount of irreparable injury that the movant will suffer  
14 absent of the stay. In other words, more of one excuse is  
15 less of the other, id at 684.

16                 I will briefly address the first prong, which,  
17 along with the prong of a showing of irreparable harm, are  
18 the two factors that are viewed as most critical in the  
19 analysis, Nken v. Holder, 556 U.S. 434. See also Uniformed  
20 Fire Officers Association v. De Blasio, 973 F.3d 41-48 (2d  
21 Cir. 2020).

22                 This analysis of the merits by the court that  
23 issued the order upon which the appeal is based is one that  
24 places that court in the position of looking at its ruling  
25 objectively as one would from the outside to see whether

1 there are fair grounds for litigation of the appeal. And  
2 depending on the strength, or lack thereof, of a showing of  
3 irreparable harm, perhaps more than that to warrant a stay.

4 Obviously the Court's determination of the issues  
5 before it that are the subject of the movants' appeals was  
6 carefully undertaken by me after a lengthy trial and set  
7 forth in a 155-page written memorandum of decision. The  
8 issues on appeal I believe do not all warrant a finding of a  
9 strong showing likely to succeed on the merits or of likely  
10 success on the merits somewhere between possible and  
11 probable. Again, recognizing the sliding scale for this --  
12 for purposes of this stay pending appeal determination.

13 Certain of the issues raised I believe are clear  
14 under applicable Second Circuit law and a real stretch by  
15 the appellants. Those include the so-called due process  
16 argument, the so-called 524(e) argument, the analysis of the  
17 merits of the settlement, and the argument that the Second  
18 Circuit should change its law from how it is currently  
19 articulated.

20 As far as the due process argument is concerned,  
21 the United States Trustee has argued that the plan, with its  
22 injunction of certain third-party direct claims against the  
23 released parties, violates the due process clause by taking  
24 those claims without the right to a hearing and a trial,  
25 citing and relying on large measure upon Ortiz v. Fibreboard

1 Corp., 527 U.S. 815 (1999).

2 As far as the notice point is concerned, I made  
3 extensive factual findings as to the notice that was  
4 provided and was received by those who are creditors of the  
5 Debtors. I will note my view that the plan itself and the  
6 underlying claims that have been identified by the U.S.  
7 Trustee apply to release or enjoin direct third-party claims  
8 that overlap with in a highly meaningful way claims of the  
9 Debtors or against the Debtors. And therefore, such notice  
10 would be sufficient. I will note further that there is no  
11 absolute right to a trial beyond the trial that the court  
12 held as to the bona fides of the settlement with its right  
13 to object, which was preceded by a right to vote on the plan  
14 and to object to the plan generally, including the  
15 classification scheme set forth in the plan.

16 That scheme and the right to vote and the review  
17 by the bankruptcy court clearly distinguishes the bankruptcy  
18 process as recognized by the Second Circuit that would  
19 encompass certain types of releases of third-party claims  
20 from the fact pattern and concerns raised by the Supreme  
21 Court in Ortiz, where there was a concern that those that  
22 would be bound by a non-opt-out settlement were not  
23 adequately represented because of conflicts of interest,  
24 where there was no vote, and no plan process including the  
25 right to object to classification and voting, and ultimately

1 the court's review of the proposed settlement in that  
2 context.

3 The Supreme Court largely recognized this fact in  
4 Ortiz itself, recognizing that its general view as to due  
5 process was qualified by a special remedial scheme, quoting  
6 Martin v. Wilks, 490 U.S. 755, 762, Note 2 (1989), which  
7 specifically referenced the bankruptcy legislative scheme.

8 I believe the bench ruling sufficiently dealt with  
9 the inapplicability of the 524(e) argument, including citing  
10 well-reasoned opinions by other circuit courts on it.

11 As a factual matter, I will note that the U.S.  
12 Trustee took no discovery in connection with the  
13 confirmation hearing or generally in the case as a whole and  
14 largely played the role of a kibitzer on the evidence during  
15 the trial, offering no witnesses of its own. And to the  
16 extent it does, or the U.S. Trustee does object to the  
17 analysis of the merits of the settlement, I find it highly  
18 unlikely that that analysis would prevail on appeal.

19 As far as the moving states' arguments on the  
20 merits that overlap with the ones that I just raised, I  
21 won't address them again. But I will note that I believe I  
22 comprehensively dealt with their classification arguments  
23 and their voting arguments and that the evidence in my  
24 analysis of recoveries under 1129(a)(7) clearly establishes  
25 that the plan would satisfy the best interest test even if

1       one considered the rights that they were being required to  
2       give up to pursue third-party claims against the released  
3       parties, although that was an alternative holding.

4                  The U.S. Trustee's and the states' other  
5       arguments, however, I believe if there was a strong showing  
6       of irreparable harm, would satisfy the first prong of their  
7       burden of proof. The U.S. Trustee is clearly wrong that  
8       personal injury claimants and other creditors are receiving  
9       nothing on account of their third-party claims against the  
10      released parties. It is clear that it is the settlement of  
11      those third-party claims that enables the entire plan and  
12      the distributions under the plan, without which they would  
13      receive in my view as I found based on the analysis of the  
14      evidence, including the rights of the United States in the  
15      DOJ settlement to a super-priority claim and the limited  
16      recoveries that they would have in the free-for-all  
17      litigation that would ensue, literally no recovery.

18                  The plan treats personal injury claims as  
19       receiving a distribution based on the liquidation of the  
20       underlying claim against the Debtor. That does not mean  
21       that the personal injury claimants are not receiving value  
22       on account of their third-party claims, but it reflects I  
23       believe that their third-party claims are overlapping, and  
24       though entitling them perhaps to a direct recover as opposed  
25       to a recovery through the Debtor, viewed as derivative

1 claims under the analysis by the circuit in the Tronox case  
2 as well as by other courts that have distinguished claims  
3 that may be direct but are asserted because of harm to all  
4 of a debtor's creditors as opposed to individual creditors  
5 as discussed in the Tronox case, which is referenced and  
6 discussed at some length in my opinion. See also the  
7 discussion in Deutsche Oel & Gas S.A. v. Energy Capital  
8 Partners Mezzanine Opportunities Fund A, LP, U.S. Dist.  
9 LEXIS 181000 (S.D.N.Y. September 20, 2020), and In re CIL  
10 Limited, 2018 Bankr. LEXIS 354 (Bankr. S.D.N.Y. February 9,  
11 2018).

12 As I also noted in the memorandum in support of  
13 the order, the circuit has now made it clear,  
14 notwithstanding the citation by the U.S. Trustee of Johns  
15 Manville Corp. v. Chubb Indemnity Insurance Company, 606  
16 F.2d 135, 153-154 (2d. Cir. 2010), that the evaluation is  
17 only in respect of in rem claims. As stated and discussed  
18 at length in the Quigley case, the Court's power extends to  
19 in personam claims as long as the factors laid out by the  
20 Circuit are satisfied after a searching inquiry by the  
21 Court.

22 However, those factors have been the subject of  
23 different analyses over the years as to what is properly  
24 subject to an injunction of a direct third-party claim. And  
25 I believe that it is that issue, i.e. how those claims are

1 cabled between the clear instance where they should not be  
2 enjoined as discussed in the Manville III opinion, and where  
3 they should be.

4 I have tried to narrow those so that it does  
5 reflect in the plan that such claims are only those where  
6 there is a substantial or an entire overlap. And I believe  
7 that the factual record of the claims that the U.S. Trustee  
8 purports to be protecting reflects just that overlap, i.e. a  
9 lack of direct fraud as opposed to allegations of extensive  
10 control over an enterprise that itself engaged in fraud or  
11 other violations of consumer law which would apply to all  
12 creditors, to protect all creditors of the debtors.

13 While I believe there is less of a fair ground for  
14 litigation on the second point which is raised only by the  
15 moving states, namely that notwithstanding there being any  
16 specific protection for them in the Bankruptcy Code, their  
17 status as a governmental entity takes them out of the reach  
18 of this particular plan injunction. Notwithstanding that,  
19 the injunction at this point given the creditors' other  
20 agreements applies just to the creditors' right to pursue  
21 monetary claims against the third parties.

22 The state creditors have argued that the deterrent  
23 effect of pursuing those claims is a valid governmental  
24 interest, which to some extent it is. But I believe that it  
25 is going far too far to state that that interest requires

1 them to decide whether there would be a trial or not of such  
2 claims where they overlap with the claims against the  
3 Debtor's estate and by the Debtor's estate, as I believe  
4 they are cabined under the plan.

5 I will note that the moving states have at times  
6 argued that that public interest extends to their right to  
7 take discovery and engage in a trial, but I will also note  
8 that they have touted in this motion the benefits of the so-  
9 called national settlement in the multi-district litigation  
10 in which two of the three of them are parties where there  
11 has been no trial by them, and I believe far less discovery  
12 that occurred in this case, that they would have and did  
13 have direct access to. But with that also I believe that  
14 that package of issues is an issue for consideration  
15 appropriately under the first prong of the test for  
16 obtaining a stay pending appeal.

17 The other most critical factor is whether the  
18 movant will be irreparably injured absent the stay. For all  
19 intents and purpose, although the movants have each  
20 attempted to argue other injuries, the injury that they  
21 posit as an irreparable injury is the risk that during the  
22 course of their appeals, the plan would be so far  
23 consummated that the appeals would become equitably moot.

24 The equitable mootness doctrine is at one level  
25 fairly well established in the Second Circuit, although

1 throughout the country there is a wide variation on how  
2 courts look at it. I say at one level because the courts  
3 have also made it clear that, "The doctrine is deployed in a  
4 pragmatic and flexible fashion and must be responsive to the  
5 specific factors presented in a particular case ultimately  
6 to focus on as a prudential matter whether a court should  
7 dismiss a bankruptcy appeal when even though effective  
8 relief could conceivably be fashioned, implementation of  
9 that relief would be inequitable." See Beeman v. BGI  
10 Creditors' Liquidating Trust (In re BGI, Inc.), 772 F.3d  
11 102, 107-08 (2d Cir. 2014) and GLM DWF Inc. v. Windstream  
12 Holdings Inc. (In re Windstream Holdings Inc.), 838 Fed.  
13 Appx. 634 (2d Cir. Feb. 18, 2021). Where a plan has been  
14 substantially consummated, the circuit presumes that an  
15 appeal is equitably moot. And in that circumstance, a party  
16 seeking to overcome that presumption may do so only by  
17 demonstrating that five factors are met. But that of course  
18 is only where, again, a plan has been substantially  
19 consummated under the Bankruptcy Code, id In re Windstream  
20 Holdings Ind., 838 Fed. Appx. 634, 636.

21 The course by a vast majority have held that the  
22 possibility of equitable mootness standing alone does not  
23 constitute irreparable harm. Rather, it is a form of  
24 prejudice which with some other consideration can constitute  
25 equitable harm. Again, taking into account the equitable

1 nature of the request for relief, i.e. the stay pending  
2 appeal, it would seem to me that that other factor can be  
3 any one of the three other factors, i.e. the very importance  
4 and seriousness of the appeal on the merits and the harm or  
5 lack of harm to other parties and/or the public interest,  
6 which includes both a sense of the importance of the  
7 finality of bankruptcy plans where they are complicated and  
8 involve delicately-negotiated and extensively-reviewed  
9 compromises as against the public interest in literally  
10 getting an appeal right beyond the trial court  
11 determination. See for example the discussion of this topic  
12 in *In Re Adelphia Communications Corp.*, 361 B.R. 337, 347-  
13 348 (S.D.N.Y. 2007) and *In re St. Johnsbury Trucking*  
14 Company, 185 B.R. 687 (S.D.N.Y. 1995), both of which cases  
15 considered some balancing of the other factors in addition  
16 to the risk of equitable mootness.

17 And on the other side of the equation, the  
18 discussion in *In re Windstream Holdings Ind.*, 2020 U.S.  
19 Dist. LEXIS 167183 (S.D.N.Y. August 3, 2020) where the  
20 district court makes the clearly correct point that merely  
21 invoking equitable mootness as the appellants have done  
22 here, a risk that is present in any post-confirmation appeal  
23 of a Chapter 11 plan, is not sufficient on its own to  
24 demonstrate irreparable harm. That's id at Page 7 quoting  
25 *In re Calpine Corp.*, 2008 Bankr. LEXIS 217 (Bankr. S.D.N.Y.

1 January 24, 2018). See also *In re W.R. Grace & Company*, 475  
2 B.R. 34 -- I'm sorry, I have the wrong cite. It's at Pages  
3 207 through 08 (D. Del. 2012), affirmed 729 F.3d 332 (3rd  
4 Cir. 2013).

5 In the cases where courts have taken seriously the  
6 risk of equitable mootness, they have either, as in the  
7 Adelphia case, had grave doubts about the merits of the  
8 appeal and believe that they needed to be addressed, or the  
9 harm to the other parties was offset by the need for an  
10 appeal where there was other irreparable harm besides  
11 mootness that would occur if the appeal were not heard.

12 As for the mootness issue as irreparable harm and  
13 irreparable harm in general, the allegation of irreparable  
14 harm and the showing of it must be neither remote nor  
15 speculative, but actual and imminent. The possibility of  
16 irreparable harm is too lenient. *Nken v. Holder*, 556 U.S.  
17 434-435 and *In re Sabine Oil & Gas Corp.*, 551 B.R. 143.

18 Here, the appellants are in two different camps as  
19 far as the relief that they are seeking from me. The U.S.  
20 Trustee has clearly asked for a stay pending appeal  
21 throughout all of the appeals, i.e. through potentially  
22 determination of its appeal by the Supreme Court. It has a  
23 fallback position in which it asks for a stay through the  
24 district court determination on the appeal plus some  
25 additional time.

1           The moving states I think are much more focused on  
2        a short-term stay. And based on their remarks during oral  
3        argument, I believe they would confine their motion to such  
4        a request.

5           As I stated during oral argument, and I won't  
6        repeat the cases that I cited, it seems to me that  
7        Bankruptcy Rule 8025 effectively limits the bankruptcy  
8        court's ability to issue a stay pending appeal of a district  
9        court's order. The provisions of Rule 8007 and Rule 8025 do  
10      not entirely mesh, as noted by the district court in Credit  
11      One Bank N.A. v. Anderson (In re Anderson), 560 B.R. 84, 88  
12      (S.D.N.Y. 2016). But as I've previously cited, there are  
13      plenty of cases where bankruptcy courts have limited their  
14      stays because of Rule 8025 up to the date of the district  
15      court's ruling.

16           I believe that is appropriate here not only  
17        because of Rule 8025, but also because of the distinctly  
18        different factual considerations underlying a request for a  
19        stay pending appeal in these appeals and in these cases for  
20        a stay pending appeal through the district court's ruling  
21        and a stay thereafter.

22           The district court has made it clear that it is on  
23        a fast track to determining the appeal, which it will hear  
24        oral argument on at the end of November and may well rule on  
25        by the end of the first week of December. Moreover, the

1 appellees have stipulated and will be prepared to add to  
2 that stipulation based on the record at oral argument that  
3 they will not cause the effective date to occur, that is the  
4 effective date of the plan, until the earlier of the  
5 district court's ruling, which under Rule 8025 and results  
6 in, unless the district court orders otherwise, a 14-day  
7 stay and December 31.

8 They have also stipulated that they will not argue  
9 equitable mootness to a subsequent appellate court, whether  
10 that's the Second Circuit or the Supreme Court based on  
11 actions taken prior to the effective date of the plan,  
12 including in respect of the advance order.

13 Based on my review of the plan in addition to that  
14 stipulation, it is highly unlikely that the plan would  
15 permit any actions to be taken prior to the effective date  
16 that would come anywhere close to the types of transactions  
17 that give rise to equitable mootness under the law of the  
18 Second Circuit. That includes coming anywhere close to  
19 achieving substantial consummation of the plan under the  
20 Bankruptcy Code.

21 The appellees have further stipulated that they  
22 will give the appellants, including the movants, 14 days'  
23 notice of their actual efforts to cause the effective date  
24 to occur, of the actual effective date that is, or the  
25 projected effective date.

1               Finally, they have stated -- and again, this would  
2       be a condition for my order -- that they would render the  
3       movant's equitable mootness arguments moot by agreeing that  
4       the hearing on the sentencing of the debtors under the DOJ  
5       settlement agreement, that that hearing would be no earlier  
6       than December 31, which it is clear is the actual date that  
7       will be one where there is ample notice, clearly more than  
8       14 days' notice, to the appellants, including the moving  
9       parties here.

10               Given all of the foregoing and the burden of proof  
11       as to irreparable harm that the movants have, I conclude  
12       that they have not established irreparable harm with respect  
13       to a stay which I believe is the only appropriate stay that  
14       I could grant, which is to the date of the district court  
15       ruling and a reasonable outside date wherein there would be  
16       sufficient notice for the movants to renew a stay motion in  
17       the district court.

18               The Debtors have suggested December 31 for that  
19       outside date, and it has been suggested to me by the movants  
20       that that date, being New Year's Eve and during the holiday  
21       season, may place an undue burden on the district court in  
22       scheduling a stay hearing, and to a lesser extent a burden  
23       on the parties. However, again, it appears more likely to  
24       me, although of course this is entirely up to the district  
25       court, that the district court will rule before December 31.

1 And I believe that the scheduling issue can be dealt with by  
2 saying the earlier of the district court's ruling and  
3 December 31 or such later date. I'm sorry, subject to the  
4 district court's calendar. So if the district court is not  
5 available at or around December 31 to hear a potential  
6 renewed stay motion depending on the district court's ruling  
7 and when that occurs, then it would be the later date for  
8 the district court to hold the hearing.

9 Clearly, the parties here have already prepared  
10 their stay motions. Indeed, the U.S. Trustee prepared four  
11 of them, which are all in my pleading binder. And we have  
12 had an extensive record for this hearing. I believe under  
13 those circumstances it's not a burden for them if the  
14 district court can schedule a stay hearing if they decide to  
15 make a stay motion after the district court's ruling by the  
16 outside date of December 31 if the district court had not  
17 ruled by then.

18 Otherwise, the appellate process would be governed  
19 by Rule 8025. And accordingly, I believe that a key element  
20 on the conditions that I just stated for the movants  
21 prevailing on the request for a stay pending appeal has not  
22 been met.

23 I will also address, however, the last two prongs  
24 that the movants would have to show, namely that there is no  
25 substantial injury to other parties interested in the

1 proceeding and where the public's interest lies.

2 As far as there being no substantial harm to other  
3 parties interested, the record here is clear and I believe,  
4 frankly, uncontroverted that there is to the contrary  
5 substantial harm to the Debtor's creditors, the vast  
6 majority of whom have either not objected to the plan and/or  
7 voted in favor of the plan affirmatively in each instance,  
8 the vast majority that is.

9 After the Debtors are ready to have the effective  
10 date of the plan occur, and it appears to me that that would  
11 not be realistically before December 31, although perhaps a  
12 week before they could be ready, after that date when they  
13 are ready, every day that they do not implement the  
14 effective date which starts the process of liquidating  
15 personal injury claims and making distributions on them and  
16 making the initial distributions for abatement purposes  
17 seriously causes harm to the creditors. It is clear to me  
18 that the personal injury creditors bargained for a rapid  
19 payout, which is reflected not only in their bargaining for  
20 a fixed, upfront sum of several hundred million dollars, but  
21 also the procedures they've adopted for consistent with due  
22 process and the burden of proof a streamlined option to  
23 liquidate one's proof of claim.

24 Similarly, the roughly up to a billion dollars  
25 minus the funds going to the personal injury creditors would

1       be going out shortly after the effective date through 2023  
2       for abatement purposes, as well as the \$225 million payment  
3       to the United States, which although not specifically  
4       earmarked for abatement purposes, United States has  
5       represented the vast majority of which will go to hospitals  
6       and other care facilities. This is amply testified to by  
7       Mr. Guard as far as the payments are concerned at Paragraphs  
8       9 through 13 of his declaration as well as at Paragraphs 7  
9       through 9 and 12 through 21 and in the summary at Paragraph  
10      25 of Mr. DelConte's declaration. That declaration also  
11      address in Paragraph 22 and 23 the funding of Newco and  
12      setting it up as a public benefit company to focus on  
13      developing products at a reasonable price to combat the  
14      opioid crisis.

15                  As Mr. Guard eloquently summarized, many states  
16       have been litigating these issues since, well -- I'll quote  
17       him, because it's actually quite telling -- for as long as  
18       five years before the commencement of the bankruptcy case in  
19       addition to the two years of this bankruptcy case. I  
20       believe that that length of time was necessary to satisfy  
21       the due process Iridium and Metromedia factors as well as to  
22       negotiate the intricate intercreditor deals in the plan.  
23       The additional time of a stay pending appeal after the  
24       district court's ruling is necessary only to have further  
25       appeals. There is nothing else that would hold up the

1 payment of the money.

2 As Ms. Juaire and Ms. Trainor eloquently have  
3 testified, that payment is, if made, to be put to use both  
4 for the immediate needs of the individual victims and for  
5 abatement purposes at a time when every dollar counts. And  
6 as time passes, the problem only gets worse.

7 As testified to by Mr. Guard and Mr. Jorgenson,  
8 opioid deaths have been increasing over the last two years  
9 at a very disturbing level, roughly 30 percent nationally,  
10 such that in the last year of March to March, roughly 200  
11 opioid-related overdose deaths occur each day.

12 I agree with the states of Washington and  
13 Connecticut that if the parties could all agree that those  
14 initial distributions could be made and the parties who are  
15 appealing would take the risk on equitable mootness with  
16 regard to those distributions, that would be all to the  
17 good. But the U.S. Trustee and the State of Maryland do not  
18 seem to be prepared to agree to such a resolution to get  
19 money out promptly.

20 So on the one hand, we have that clear, tangible  
21 harm. On the other hand, post the date when the Debtors  
22 would be ready to go effective, which, again, would be at  
23 the end of this year, we have tangible harm as described in  
24 the Juaire, Trainor, Guard and Jorgenson declarations,  
25 contrasted with the legitimate but non-economic harm of

1 having extra layers of appeal.

2                   The public interest factor in some respects  
3 dovetails with the foregoing analysis. The U.S. Trustee  
4 states that it is protecting the interests of those who did  
5 not object to the plan but did not affirmatively accept it  
6 and those who did object to the plan. It has not, however,  
7 provided any information to me that would indicate that  
8 those parties would effectively be able to pursue their  
9 claims against the released parties to recover anything and  
10 would not -- and in addition would not recover any amounts  
11 from the Debtors.

12                  The vindication of that public policy, i.e.  
13 protecting the minority, at some point -- and I believe that  
14 point comes soon after the Debtors are ready for the  
15 effective date, although maybe with enough time to have an  
16 expedited appeal to the circuit depending on the seriousness  
17 of the issues on appeal -- is sufficient to carry the day on  
18 the public policy point. But those issues can be addressed  
19 by the district court if there is a motion for a stay after  
20 its ruling.

21                  In light of its assessment of all four factors,  
22 including the first factor, the likelihood of success on  
23 appeal, and with the benefit of this record which, again, is  
24 extensive with extensive evidence offered by the party that  
25 doesn't have the burden of proof on this issue, the

1 objectants, with no evidence offered for what I'll refer to  
2 as the longer stay issue of the balance of harms by the  
3 movants.

4           The other public interest factor I have been told  
5 is the deterrence factor. I will note, however, that at  
6 some point the public's desire to get paid may well outpace  
7 that deterrence factor, particularly where, again, the issue  
8 is one simply of a fight over money and the movants can  
9 simply not close their eyes to the fact that their  
10 litigation alternatives are ones where they already with  
11 regard to other defendants that they have pursued have  
12 resulted in settlements rather than trials and where the  
13 effect of a lengthy stay would prevent the release of the  
14 document repository which can be used not only by the public  
15 and academics, but also to actually fight the remaining  
16 trials and litigation that's pending against other parties.

17           Counsel for the Ad Hoc Committee of Personal  
18 Injury Claimants has suggested that I require at this point  
19 the posting of a bond by the states and the non U.S. Trustee  
20 appellants. Of course the posting of a bond to protect the  
21 appellees from the adverse effects of a stay is the norm  
22 rather than the exception. And even where the Court has  
23 believed that there are not just possible but quite probable  
24 issues on the merits, it has required the posting of a bond,  
25 and a substantial bond pending appeal. See *In re Adelphia*

1           Communications Corp., 361 B.R. 337.

2                 The U.S. Trustee I believe correctly points out  
3                 that Rule 8007(d) exempts the federal government from a bond  
4                 requirement. And while that language is not entirely clear,  
5                 I believe that that is the case. However, that does not  
6                 help the U.S. Trustee on the issue of the harm to other  
7                 parties or the balancing of the harms since it offers  
8                 nothing in return for the risk that it will have been wrong  
9                 and have pursued a lengthy appeal process that results in  
10                 the substantial delay of payments that literally save lives  
11                 and families.

12                 8007(d) says nothing about any other entity,  
13                 including any other governmental entity being exempt from  
14                 the bond requirements. And in fact, there is meaningful  
15                 caselaw on that point or under the analogous Federal Rule of  
16                 Civil Procedure 62. The fact that state courts don't impose  
17                 a bond on other states I believe is irrelevant, as noted by  
18                 more than one of the objectors. A federal statute including  
19                 the Bankruptcy Code as interpreted by the bankruptcy courts  
20                 will defeat a state's interest in enforcing its law and in  
21                 protecting appellees if in fact it obtains a stay. The  
22                 basic principle was set forth in *Butner v. United States*,  
23                 440 U.S. 45, 48 (1979). And, in fact, in other cases bonds  
24                 have been imposed on states. I cited one of those during  
25                 oral argument, *Lightfoot v. Walker* 797 F.2d 505 (7th Cir.

1       1986), a decision by Judge Posner. See also Cayuga Indian  
2       Nation of New York v. Pataki, 188 F. Supp. 2d 223 (S.D.N.Y  
3       2002) and PAO Tatneft v. Ukraine, 2021 U.S. Dist. LEXIS  
4       102179, 6-7 (D.D.C. June 1, 2021). That latter decision  
5       also is authority for requiring the Canadian entities to  
6       post a bond.

7           Again, I do not believe a bond is required with  
8       respect to the order that I will grant, which denies the  
9       stay request. But I am denying the U.S. Trustee's request  
10      for a broader stay, i.e. one that would last through the  
11      entire appellate process because it is not posting a bond.  
12      And I would deny a similar request by the movant states  
13      because they have not offered to post a bond where it is  
14      clear that there would be substantial harm to third parties  
15      occasioned by delay after the date when the Debtors have  
16      acknowledged they will, and only by that date, be ready to  
17      go effective with their plan.

18           Counsel for the Ad Hoc Committee of Personal  
19       Injury Claimants has also suggested that I oppose additional  
20       reciprocal conditions on my not granting the motion,  
21       reciprocal to the conditions that I am imposing on the  
22       debtors and the other plan proponents. They would basically  
23       go to any efforts by the movants to delay emergence other  
24       than of course through the appellate process. That would  
25       include continuing their commitment to an expedited

1 appellate process, not seeking to adjourn the sentencing  
2 hearing before the district court in New Jersey and the  
3 like.

4 I am not prepared to impose those conditions.  
5 However, I will reserve the appellee's right to revisit  
6 those conditions if such delaying tactics are undertaken. I  
7 don't believe they will be because I believe they are  
8 antithetical to the stated goals of the movants to expedite  
9 the appeal process and get money out to claimants. But if  
10 that proves not to be the case, then I will lift the  
11 conditions that I am imposing as a quid pro quo to my not  
12 granting the stay motions.

13 I noted that the Canadian claimants' motion  
14 essentially rides along on the mootness point with the other  
15 three motions that I have described. On the merits point,  
16 it addresses arguments unique to the Canadian claimants  
17 based on their assertions that they are sovereign entities  
18 and therefore that their rights cannot be constrained. I  
19 have clearly disagreed with that in my confirmation ruling.

20 I will also note that the objections to the  
21 Canadian claimants' points on this argument are well taken.  
22 Canadian claimants, not all of them, but Canadian claimants  
23 in their group have filed proofs of claim in these cases on  
24 behalf of all of the claimants, which would subject them to  
25 the court's jurisdiction. Moreover, the claimants' rights

1       are not specifically protected under the Bankruptcy Code.  
2       They fall into the waiver of sovereign immunity for  
3       governmental entities.

4                 And again, I believe that the comprehensive  
5       bankruptcy scheme recognized by not only Ortiz but also  
6       Butner and the circuit in Manville IV, 606 F.3d 135, all  
7       contemplate that those types of rights can be constrained by  
8       the Court even where they pertain to or limit the ability to  
9       pursue claims that are direct claims, at least where those  
10      direct claims overlap with claims assertable by all  
11      creditors and based on actions that are primarily actions  
12      through the Debtors.

13                 So I will look for an order consistent with my  
14       ruling. I will not require a notice of when the Debtors are  
15       asking for a hearing date, but only a notice of the hearing  
16       date (indiscernible) the hearing date. I will not extend  
17       the outer date for their condition beyond December 31, but  
18       that will be subject to the district court's schedule,  
19       obviously tying into the commitment that has already been  
20       given by the appellees of a 14-day notice of the actual  
21       effective date, which is all tied to giving the movants time  
22       to renew their motion for appeal -- I'm sorry, for a stay  
23       pending appeal, excuse me.

24                 All right, are there any questions on what the  
25       order should say?

1                   MR. FOGELMAN: Your Honor, this is Larry Fogelman  
2 on behalf of the United States. May I make one comment?

3                   THE COURT: Okay.

4                   MR. FOGELMAN: It's really -- it's just a  
5 clarification of one of the comments that Your Honor made.  
6 While it's true that almost all of our civil recoveries for  
7 the federal healthcare agencies that do help treat opioid  
8 use disorder, I just -- and that includes the \$225 million  
9 from the Sackler settlement which will be a civil claim.  
10 And that was addressed in the letter that we filed with the  
11 Court. I just want to clarify that the \$225 million asset  
12 forfeiture recovery under the plea agreement, that's  
13 required by statute to go to the asset forfeiture fund  
14 (indiscernible). I think Your Honor had said that the asset  
15 forfeiture amount goes to the federal healthcare agencies.  
16 So I just wanted to make that clarification for the Court.

17                  THE COURT: Okay. Thank you.

18                  MR. FOGELMAN: Thank you.

19                  THE COURT: All right. So are there any questions  
20 on the order? No?

21                  MR. KAMINETZKY: We will do our best, Your Honor.  
22 I think we understand.

23                  THE COURT: I don't want the parties to spend an  
24 enormous amount of time negotiating this order. If there is  
25 a disagreement about what the parties think I said, you

1 should promptly send me the alternative proposed orders with  
2 the second one blacklined to show the changes and I'll enter  
3 the one that I believe is consistent with my ruling.

4 MR. KAMINETZKY: We will do so, Your Honor.

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

6 (Whereupon these proceedings were concluded at  
7 6:32 PM)

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

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

5

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8                 Sonya Ledanski Hyde

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20                 Veritext Legal Solutions

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24

25                 Date: November 12, 2021

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