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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-23649-rdd

Adv. Case No. 19-08289-rdd

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In the Matter of:

PURDUE PHARMA L.P.,

Debtor.

- - - - - x

PURDUE PHARMA L.P., et al.,

Plaintiffs,

v.

COMMONWEALTH OF MASSACHUSETTS et al.,

Defendants.

- - - - - x

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United States Bankruptcy Court
300 Quarropas Street, Room 248
White Plains, NY 10601

March 18, 2020
10:05 AM

B E F O R E :
HON ROBERT D. DRAIN
U.S. BANKRUPTCY JUDGE

ECRO: N. RAI

1 HEARING re Notice of Agenda /Agenda for March 18, 2020

2 Omnibus Hearing Document#: 959

3

4 HEARING re Debtors' Motion for Authorization to Enter into
5 Supply Agreement [ECF No. 879]

6

7 HEARING re Motion to Authorize / Motion of Debtors for Entry
8 of an Order (I) Authorizing the Assumption of a Certain
9 Unexpired Lease and (II) Further Extending the Debtors
10 Deadline to Assume or Reject Certain Unexpired Leases with
11 the Prior Written Consent of the Lessors under such Leases
12 (ECF #898) Document #: 898

13

14 HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma
15 L.P. et al v. Commonwealth of Massachusetts et al Motion to
16 Extend Time/ Motion to Extend the Preliminary Injunction
17 (ECF #146) Document #: 146

18

19 HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma
20 L.P. et al v. Commonwealth of Massachusetts et al
21 Memorandum of Law in Support of Motion (ECF #147)

22

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1 HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma
2 L.P. et al v. Commonwealth of Massachusetts et al
3 Declaration of Benjamin S. Karninetyz in Support of Debtors'
4 Motion to Extend the Preliminary Injunction (ECF # 148)
5
6 HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma
7 L.P. et al v. Commonwealth of Massachusetts et al
8 Objection to Motion (The Non-Consenting States' Voluntary
9 Commitment and Limited Opposition in Response to Purdue's
10 Motion to Extend the Preliminary Injunction) (related
11 document(s)146) filed by Andrew M. Troop on behalf of Ad Hoc
12 Group of Non-Consenting States (ECF #150)
13
14 HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma
15 L.P. et al v. Commonwealth of Massachusetts et al Objection
16 to Motion/ Restatement of Limited Objection and Response of
17 Tennessee Public Officials to Debtors Motion to Extend the
18 Preliminary Injunction for Richard Sackler (related
19 document(s)146) Document #: 152
20
21 HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma
22 L.P. et al v. Commonwealth of Massachusetts et al
23 Reply of the Raymond Sackler Family to the Objection of the
24 Non-Consenting States to the Debtors' Motion to Extend the
25 Preliminary Injunction [ECF No. 154]

1 HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma
2 L.P. et al v. Commonwealth of Massachusetts et al
3 Reply Memorandum of Law in Support of Motion to Extend
4 Preliminary Injunction [ECF No. 156]

5

6 HEARING re Adversary proceeding: 19-08289-rdd Purdue Pharma
7 L.P. et al v. Commonwealth of Massachusetts et al Reply of
8 the Doctor Mortimer Sackler Family Former Directors to the
9 Objection of the Non-Consenting States to the Debtors'
10 Motion to Extend the Preliminary Injunction [ECF No. 157]

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25 Transcribed by: Sonya Ledanski Hyde

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11 ALSO PRESENT TELEPHONICALLY:

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14 SYDENHAM ALEXANDER
15 JOSE AUFFANT
16 MICHAEL BAIRD
17 BROOKS K. BARKER
18 AGUSTINA BERRO
19 SHEILA BIMBAUM
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13 NATASHA LABOVITZ
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15 ALEX LEES
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17 MARK LIGHNER
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P R O C E E D I N G S

THE COURT: This is Judge Drain, and except for my clerk and the Ecro operator, I'm speaking to an empty courtroom, but I know I have many people on the phone as I directed in light of the present health crisis and the number of people who've expressed an interest in this hearing and in this adversary proceeding in particular that's on the agenda. I did not want people sitting elbow-to-elbow in the courtroom, and I appreciate that everyone has, in fact, appeared by phone, which should generally be the approach going forward until further notice.

So I'm not going to take everyone's appearance now. If you speak, however, I would ask you to identify yourself and the clients you're representing. So do I have someone on the phone for the Debtors.

MR. HUEBNER: Good morning, Your Honor. Marshall Huebner of Davis Polk on behalf of the Debtors. Can the Court hear me clearly?

THE COURT: Good morning. So I have the agenda for today's hearing. The first two matters are uncontested. I had a busy couple of days yesterday and Monday and did not have the chance to review these motions until yesterday afternoon. I don't have any issues with them. Does anyone have anything further to say on them? They are the supply agreement motion and the lease assumption motion. Okay.

1 Hearing no one, I will enter orders granting both of those
2 motions. You can email those to chambers.

3 MR. HUEBNER: Thank you, Your Honor. So I think
4 that that brings up the third and only remaining item on the
5 agenda. And so if it would be the Court's pleasure, and
6 that can be fairly clearly (indiscernible) proposed to
7 proceed.

8 THE COURT: Okay, that's fine. And that's the
9 motion to extend the preliminary injunction that's currently
10 in effect in the Purdue Pharma LP et al v. Commonwealth of
11 Massachusetts adversary proceeding. I have a form of that
12 proposed extension, which would be the eighth amended order.
13 I've reviewed the pleadings on this, I believe, which are
14 listed on the agenda, so you should assume that, but the
15 parties can go ahead with whatever they want to say as well.

16 MR. HUEBNER: Sure, Your Honor, so let me pick it
17 up. I will actually be far briefer than I normally am,
18 which may or may not be saying much, in light of the context
19 and obviously the extraordinary situation. Let me first
20 thank the Court and all of the people connected to chambers
21 and to the Court for obviously helping to keep our
22 governments running, and I hope Your Honor extend my
23 personal wish that every person on this call stays good and
24 healthy and well and provision in these genuinely
25 unprecedented times.

1 With respect to preliminary matters, Your Honor, I
2 will only give (indiscernible) update on (indiscernible)
3 matter on which mediation is well underway. The mediators,
4 as they promised they would, walk back multiple full days
5 per week for the balance of March and a chunk of April, and
6 I believe some times -- 6, 7, 8, 9, 10 hours a day, I
7 believe that the various parties and during that
8 (indiscernible) court date and if (indiscernible).

9 THE COURT: Okay. Well, I hope they're practicing
10 social distancing, but I'm grateful that they are proceeding
11 with that effort, notwithstanding the health crisis.

12 MR. HUEBNER: Yeah. So, Your Honor, I will be
13 relatively brief. Obviously, you know, obviously (audio
14 distortion) must include a motion in the case -- I'm sorry
15 (indiscernible).

16 THE COURT: Mr. Huebner, can I interrupt you? I
17 think you're going to have to speak a little slower. The
18 phone, it's harder to pick you up because you're on the
19 phone.

20 MR. HUEBNER: Is this actually better?

21 THE COURT: Well, I'll let you know. I think so.

22 MR. HUEBNER: Okay. I will also speak more
23 slowly.

24 THE COURT: Yes, that is better.

25 MR. HUEBNER: Okay, terrific.

1 THE COURT: Okay.

2 MR. HUEBNER: So, Your Honor, I guess to begin
3 with, our view, and we filed relatively detailed books and
4 papers and the trial papers, is that the case for the
5 preliminary injunction today is actually even stronger than
6 it was in October when the Court first entered it. Back
7 then, we were just beginning this venture today with
8 obviously, you know, hundreds of interested governmental
9 parties and thousands or tens of thousands of interested
10 parties overall.

11 And I think it is fair to say that the preliminary
12 injunction has actually done almost everything that we very
13 much hoped it would in terms of replacing (indiscernible)
14 destructive litigation chaos, disagreeing prior to the first
15 weeks in the Debtors' bankruptcy and during the first weeks
16 of the bankruptcy and it's facilitated a lot of important
17 progress.

18 Very quickly, since the Court knows it, there is
19 substantial information sharing going on certainly from the
20 Debtors. There has already been substantial information
21 always is current and is substantial information sharing
22 from the shareholders; otherwise, I'm sure we will talk
23 about later today. There's certainly more to come on both
24 of those fronts, and I think no one is alleging to the
25 contrary.

1 We now have the former U.S. Secretary of
2 Agriculture and Iowa Governor Thomas Vilsack as the
3 voluntary injunction monitor. The bar date, as Your Honor
4 knows, perhaps the most reticulated bar date administering
5 program possibly in U.S. Bankruptcy history is now well
6 underway. And then, of course, the mediation, which as the
7 Court knows well, you know, there's been herculean efforts
8 by multiple parties who had vastly different views on the
9 structure of mediation, (indiscernible) mediation, number of
10 mediators, and really (indiscernible) imaginable.

11 And, ultimately, yet again, were able to hobble
12 together a fully consensual motion for a critical issue that
13 the Court has been focused on since the opening moments of
14 the case.

15 That said, though, the Debtors, of course, like
16 other parties, are not fully satisfied with the progress
17 that had been made to date on the variety of issues in the
18 case, and we continue to work in the days remotely but
19 nonetheless tirelessly to try to prevent them. I genuinely
20 believe, or I obviously would not say it, that virtually
21 none of the items that have been progressed since the case
22 began -- and I'm leaving out, obviously, many more items
23 large and small, both that have been the subject of
24 successful motions and have not needed court approval.
25 Virtually, every one of those things would have not only

1 been impossible, but probably even unthinkable
2 (indiscernible) climate without, you know, a space within
3 which to try to work collectively the next months.

4 So where are we today? So perhaps in its own
5 testament enforcing the (indiscernible) rate them with
6 respect to how it helped us craft the initial injunction,
7 there is not a single party, zero, objects to a 180-day
8 extension with respect to the Debtors, and we shouldn't let
9 that go by without stopping and noting it because that is
10 itself a remarkable accomplishment that bears testament to
11 what we have accomplished.

12 With respect to the shareholders, there are a
13 total of two objections: one from what I'll call the
14 Tennessee objectors, who seek to pursue the essentially
15 single lawsuit against a single Sackler; and then there's
16 the objection of (audio distortion) states request authority
17 to pursued only on behalf of themselves, only in their
18 current lawsuits with respect to nine of the dozens of
19 Sackler parties that either are or eventually could be
20 defendants.

21 So while we have two very important things to
22 resolve, it should be noted that there is also a tremendous
23 amount that are uncontested and that I think bears at least
24 a quick mention. So let me turn to those very quickly, and
25 then actually just turn the podium over to other people who

1 would like to speak.

2 The consenting states (audio distortion)
3 unsurprisingly spent most of my time, seeks permission for
4 only themselves and for no one else to litigate against nine
5 members of the Sackler family through the motion to dismiss
6 stage of their action, including any appeals that might be
7 taken from the trial court resolution of those motions that
8 are available.

9 Our briefing is actually quite complete, I think,
10 Your Honor, so I will be very quick and make a few points.
11 One, we believe their fundamental premise that resolution of
12 these motions to dismiss will advance the case. It's just
13 simply flawed and not correct at all. We actually think
14 there would be, in fact, nothing to advance these cases, but
15 rather will retard their development substantially.

16 The Court certainly knows better than anyone on
17 the phone what the motion to dismiss is and what it is not.
18 It takes all facts given as true. It is a preliminary
19 pleading that normally leads to lots of appeals, then
20 summary judgment and obviously a trial. And I think we
21 covered this at length (audio distortion) about how with all
22 the money, a small number of motions to dismiss in either
23 parties' favor is highly unlikely to fundamentally change
24 anyone's view, so that'd be point number one.

25 Number two is that we think the requests is just

1 completely unfair and inappropriate and actually goes
2 extreme directly against the very core of what a bankruptcy
3 proceeding is and what collective action and approach is and
4 what the quality of treatment and fundamental fairness in
5 the bankruptcy context is all about.

6 As Your Honor knows, that is from the papers, they
7 request authority only for themselves to essentially advance
8 their own litigations and bring them much more close to the
9 trial phase. The ECT, which obviously speaks for creditors
10 and the consenting states which speaks for the other half of
11 the states, you know, you got to understandably make the
12 point that it cannot possibly be right that only a tiny
13 number of plaintiffs get to progress their litigations on
14 the issue of (audio distortion) and engagement potentially
15 in a Chapter 11.

16 The issue of preferential treatment, the issue of
17 if the case falls apart being sort of ready to go to trial
18 where obviously hundreds and probably thousands of entities,
19 governmental and private, who would sorely (audio
20 distortion) and unjust that they are not able themselves
21 either commence new actions against the Sacklers or advance
22 their actions the Sacklers, and I see no reason to give
23 super-priority beyond all imagining preference to the
24 dissenting states.

25 Number three is the mediation and allocation and

1 the forward progress in the case. Again, you know, I don't
2 know more than anyone else, but it is very difficult to
3 imagine that the progress they may have been making will not
4 be potentially quite substantially derailed by the fact
5 that, you know, that 24 consenting states will be turning
6 their attention to state court litigation and discovery and
7 jurisdictional discovery and motions to dismiss.

8 And, frankly, I think that many other creditors
9 see the perceived extreme unfairness that some entities can
10 proceed with their litigation, but the other hundreds or
11 thousands cannot, will inevitably change the atmosphere for
12 everybody, including my insured. The pleadings already tell
13 us, and it makes perfect sense, perceptions of extreme
14 unfairness. And I think also, frankly, have a very
15 deleterious effect on the mediation itself, which is so
16 important and is proceeding in terms of other issues in the
17 case and the Court and many others believe is
18 (indiscernible).

19 Number four, Your Honor, is from this fundamental
20 risk to the bankruptcy case for a different reason, which is
21 if you were to read their pleadings, you would think, you
22 know, sort of like you're heading out to the store, you'll
23 be back in a week. This really (audio distortion) discovery
24 outside of this Court. But, of course, that's actually not
25 the real world.

1 The 22 action that they would like to pursue here
2 comprised (audio distortion) of pages of pleadings just to
3 complete themselves. Your Honor, there have been 7,500
4 separate individual allegations in the Complaint at issue.
5 In 14 of the actions, the defendants, Sackler defendants
6 have not even filed a motion to dismiss yet at all; there's
7 nothing (audio distortion). And in six of the others, for a
8 total of 20 to 22, briefing is not complete.

9 So we're essentially talking about a multi-(audio
10 distortion) to litigate motions to dismiss to conclusion.
11 I'm thinking one of the two shareholder family brief, they
12 bring statistics from the official courts in some way that
13 it takes almost three years on average to go from sort of, I
14 guess, briefing and initially through appeal on motions to
15 dismiss in each state court systems. It's just even to talk
16 about a one year or two year, let alone a three-year period,
17 to proceed in parallel with the bankruptcy case, it's just
18 simply untenable.

19 This case and this company, these assets, the cash
20 list to the assets cannot possibly support a detour and the
21 lack of full drive even, you know, a third or a quarter or
22 maybe less would actually attain (audio distortion).

23 The last thing, Your Honor, I'll make, which is
24 number five, is that the notion that this is really just
25 litigation against the Sacklers is, of course, just not

1 correct. This is, make no mistake, litigation against the
2 Debtors and (audio distortion) liability in virtually every
3 possible way. So the notion that the Debtors could sit by
4 and just sort of, you know, find out later what happened is
5 obviously just completely not possible. Virtually every
6 single one of the hundreds and hundreds of counts in these
7 Complaints that the Sackler's never saw or caused or
8 directed, et cetera, Purdue to do things, and this is data
9 that some could various parties' pleadings.

10 So I'll end with that, except to note that this
11 Court has already ruled on this very issue. It's already
12 been argued and resolved. On Page 167 of the Court's
13 transcript ruling on the preliminary injunction last fall at
14 (audio distortion) the Courts specifically found that the
15 Debtors could not possibly sit by and let motions to dismiss
16 or related things against the family that, in essence,
17 determine risks and the (audio distortion) to the company be
18 determined without full participation.

19 So we don't think it's (audio distortion), but we
20 understand obviously that if states are over you, they tend
21 to do very well in motions to dismiss and that that would
22 change the negotiating landscape and we get it. We all
23 understand sort of what their aims are here and the view on
24 the part of the parties that the shareholders are simply not
25 changed enough and that things need to change if it's a

1 different deal. This is just, there's no world in which the
2 Debtors could ever see that this is (audio distortion) way
3 to do that.

4 The last point, Your Honor, I want to make is
5 because (audio distortion) is on Pages 13 and 14 of their
6 brief, they talk about third-party releases and the fact
7 that they believe that they in (audio distortion)
8 jurisdiction. Very oddly, of course, they cited off (audio
9 distortion). What they don't cite is one actually governing
10 law in this jurisdiction, which obviously the Court knows
11 extremely well (indiscernible), I guess is (indiscernible).
12 In Paragraph 26, they cite the U.S. -- United States amicus
13 brief in (indiscernible), but don't point out either that
14 that was this Court's ruling, that the Court was affirmed by
15 Judge McMahon, (audio distortion) this injunction that Judge
16 McMahon found that the majority of circuits have ruled in
17 favor of (indiscernible), and that Judge McMahon was
18 affirmed by the Second Circuit.

19 So, you know, the notion that they try to get at
20 is sort of the planned structure that's being contemplated
21 here is presumptively, quote, "unlawful" to use their words,
22 closed quote, it'd have to be taken with a boulder of salt
23 in the direction throughout the side be controlling the
24 precedent to this Court, which among other things, arises
25 out of this Court's rulings in several matters.

1 But, again, that's on for today. It just was kind
2 of a strange detour. I did not want the Court to think in
3 any way, shape, or form that the Debtors struck, you know,
4 leaving the nanogram that may be about (audio distortion)
5 third-party releases. The citation to, you know, (audio
6 distortion) into the Defendants' states brief.

7 Your Honor, with respect to Tennessee, you know,
8 I'll be very brief. I feel that while I certainly respect
9 the positions they are taking, I think that it's literally
10 identical to the positions that they took almost verbatim in
11 last rounds, and there's just nothing new here for their
12 flatly incorrect and unsupported allegations that no
13 progress is being made or has been made in the cases.

14 They're aware they've got the knowledge to say
15 that no creditor has changed their view on any topic or has
16 made progress with the Debtors, beyond that it's shown not
17 record evidence and, obviously, we have briefings largely
18 completed on these very arguments before Judge McMahon. We
19 imagine when we need them at the right time, our papers go
20 into much more detail on Tennessee. And so, unless the
21 Court has any questions and under the circumstances, I would
22 propose to stop there.

23 THE COURT: Okay.

24 MR. HUEBNER: So in terms of, like, order of
25 operations, Your Honor, I guess there are -- I'm assuming

1 that it would be the Court's preference that those are in
2 favor of the relief will probably go next and then the two
3 objectors go last and then we'll sort of see if anything
4 needs to be addressed on a rebuttal. Does that seem like
5 that's the way to proceed?

6 THE COURT: That's fine. Although if parties who
7 are in favor of the relief just want to note that and save
8 any of their powder for rebuttal, that's fine too.

9 MR. HUEBNER: Sure. So let me -- and there's no
10 magic to any of this, but I'm going to get either of the
11 shareholder representatives who want to be heard next.

12 MR. UZZI: Yes. Thank you, Marshall, and thank
13 you, Your Honor. This is Gerard Uzzi of Milbank on behalf
14 of the Raymond Sackler family. I do have on the phone with
15 me my partner Alex Lees, as well as my co-counsel, Greg
16 Joseph from the Joseph Hague firm.

17 Your Honor, we did file a statement in support,
18 but more importantly, a reply submission by the non-
19 consenting states. We don't have anything further to add
20 with respect to that or to the comments made by Mr. Huebner.
21 Obviously, if you have any questions for us, we're happy to
22 answer those. However, we may ask to be heard with respect
23 to rebuttal or any comments that are made that we feel
24 should be responded to.

25 THE COURT: Okay. Well, I have a question both

1 for you and counsel for the other Sackler parties that
2 responded and, frankly, also for the Debtors and maybe the
3 committee. Obviously, the Judge sees only a small portion
4 of the case when there are hearings. There is a statement
5 in the non-consenting states pleading, and maybe a
6 suggestion in Tennessee's pleading, that negotiations over a
7 plan, and in particular the related parties' role in that
8 plan, are at an impasse, which I take to mean they're over.

9 My sense of this case is that that would be a
10 premature statement based upon my understanding that,
11 although a tremendous amount of information has been shared,
12 there is still more information to be provided and analyzed.
13 And the issue of allocation as between the states and other
14 parties may well have a major bearing on the related party
15 Sackler aspect of the plan.

16 So I'm just going to ask you. Do you believe that
17 those negotiations regarding the related parties, and that's
18 the defined term in the injunction, are at an end?

19 MR. UZZI: No, Your Honor. You know, I think that
20 to put it in the broader context, there's a lot of --
21 there's several constituencies in this case. And I can't
22 speak for the non-consenting states, you know, whether --
23 what they believe they will ever do as the case progresses.
24 We have been working with the parties, all of the parties,
25 including the UCC, including the consenting states.

1 There's a tremendous amount of what I'll call
2 diligence going on right now. A lot of it relates to BIACs,
3 but there's also diligence that is quasi-discovery going on
4 right now that relates to parties, at least the UCC's
5 assessment, I think of the overall deal. I think that, you
6 know, there are some gaining items. I think that allocation
7 is a gaining item as it relates to any exit of these Chapter
8 11 cases.

9 I think you'll hear from the UCC, and I don't want
10 to speak for them, but we allude to it in our papers as well
11 that with respect to the information sharing, neither party
12 are behaving in good faith, but we do have some differences.
13 We're hoping to resolve those behind the scenes, as is
14 typical in these cases. But as is typical in any case I've
15 ever been in, I think we expect to have some issues we'll
16 have to bring before you.

17 So I think it's premature, we'll say. But to say
18 that the case is at an impasse, I don't know whether the
19 consenting states, frankly, I can't speak for how they feel,
20 but we don't feel that way, Your Honor.

21 THE COURT: Okay, thank you.

22 MR. HUEBNER: Your Honor, we asked the Debtors for
23 their view as well. And I want to be careful here because
24 obviously we are, you know, on the one hand, the owners of a
25 fraudulent transfer and the breach of fiduciary claims

1 automatically as a matter of law as of the filing date.
2 I've never had, you know, and as I think the Court well
3 knows by now, we view ourselves in many ways as facilitator
4 and so, you know, deal advancer. And obviously, I'm not
5 going to speak for the consenting states or the Sacklers to
6 their views opposite another (audio distortion) value.

7 But I would say this, I was very surprised at a
8 minimum to see the phrase we are at an impasse. You know,
9 there is obviously an order of operations here that I
10 believe that many people share. And I think that, you know,
11 many of us were of the view and had only agreed on the
12 (audio distortion), which involved extended conversations
13 about who is participating and who is not yet participating,
14 who is admission to a party and who is not.

15 I think that the overall kind of that then shown
16 was the approach was that we would be doing (indiscernible)
17 allocation first if at all possible. We're also working on
18 several governmental issues which are being worked on day
19 and night, although they're not mediated issues per say, and
20 that if and when the kind of governmental and creditor world
21 has figured out how to resolve things or share things or
22 (indiscernible) approach things among themselves, and in the
23 interim is concerned and diligence, including by the
24 Debtors.

25 I don't want the shareholders to just not forget

1 the special committee is getting part of the work, in itself
2 has a fair number of information requests out that are in
3 the process of being satisfied that that would be the
4 appropriate juncture to turn to, you know, potentially an
5 additional round or multiple rounds because, you know,
6 negotiations or deal structurings of the shareholder deal.

7 We understood so well that, you know, right now,
8 there is not a critical mass of creditor support to get this
9 deal in its exact incarnation over the line, but a bunch of
10 things have to happen, frankly, for months I think before we
11 at least are really to say we are at an impasse and a
12 radical change of circumstance to see how we might not
13 achieve a deal.

14 MS. MONAGHAN: Your Honor, this is Maura Monaghan
15 from Debevoise & Plimpton. I'm Mr. Uzzi's counterpart for
16 the other side of the shareholders clerk, and I just would
17 echo what Mr. Uzzi and Mr. Huebner had said that we believe
18 that any statement that the discussions are at an impasse
19 (audio distortion). And, otherwise, we stand by our papers
20 and are prepared to answer any questions.

21 THE COURT: Okay, thank you.

22 MR. PREIS: Your Honor, this is Arik Preis from
23 Akin Gump Strauss Hauer & Feld on behalf of the committee.
24 Can we go now as we're next in order?

25 THE COURT: Sure.

1 MR. PREIS: Okay. Let me just first answer the
2 question you just asked about the factors and about the
3 negotiations being at an impasse. Without getting into
4 (indiscernible) these protective discussions, the only thing
5 I will say is I have no idea why the consenting states would
6 say that negotiations are at an impasse. We'll just leave
7 it at that.

8 THE COURT: Okay.

9 MR. PREIS: Your Honor, with respect to the
10 injunction, we actually made two rather short submissions
11 with respect to the Debtors motion. The first was a
12 statement in support, which we prepared prior to the
13 consenting states filing on Thursday night, and we filed
14 that on Friday and noted in our submission, we'd addressed
15 the consenting states submission separately. We then filed
16 a short statement on Monday in response to the consenting
17 states submission.

18 THE COURT: Right. I've read both of them.

19 MR. PREIS: Okay, great. I'm going to very
20 briefly speak about our submission in response to the
21 consenting states, and we think it's important for you to
22 hear from the creditor fiduciary. Many of the things that
23 Mr. Huebner said, I'll try not to repeat and my promise to
24 be pretty brief. We then are, you know, going to have my
25 partner, Mr. Hurley, address that submission on Friday,

1 especially now that Mr. Uzzi just foreshadowed for you
2 something about what we will say about discovery.

3 That's basically the explanation as to the fact
4 that, and though our initial case stipulation still remains
5 in effect, there are certain parts of it that are no longer
6 going to be in effect during the injunction period, extend
7 the injunction period if you grant it. And Mr. Hurley will
8 address for you the things that Mr. Uzzi just foreshadowed
9 with regard to discovery so that you can understand how we
10 see that period going.

11 With respect to consenting submission, Your Honor,
12 the UCC does not support the relief requested, because
13 basically it would create a number of outcomes that do not
14 benefit the unsecured creditor body as a whole. There are
15 four reasons for that, and some of these again are things
16 that Mr. Huebner said that I just want to elaborate on a few
17 of them.

18 First, if the non-consenting states request is
19 granted, they would obtain a significant head start in the
20 race to judgment against the Sacklers and gain an unfair
21 advantage in the event the Debtors are unable to confirm a
22 plan that has third-party releases for the Sacklers. In
23 other words, all the thousands of claimant would be
24 initially stayed would be significantly disadvantaged
25 because they'd have to sit and wait.

1 Moreover, by something we said six months ago,
2 that the Sacklers can conclude that their motions to dismiss
3 were likely to be denied, in which case, they might settle
4 if one or more of the non-consenting states knew to avoid an
5 adverse ruling; thereby, potentially redistributing value
6 away from all unsecured creditors into only the non-
7 consenting states.

8 Absent these (indiscernible) by the non-consenting
9 states and every other litigant with claims against the
10 Sacklers would be (indiscernible). Any recovery of claims
11 in those actions would be contributed back into the Debtors'
12 estate to be allocated in accordance with the plan, the non-
13 consenting states request resulting in a material (audio
14 distortion) fair to all other creditors.

15 Second, as Mr. Huebner mentioned, there's still a
16 lot of work they've required in this case to determine
17 whether parties support the settlement framework or they
18 don't; and if they don't, the (indiscernible) in support.
19 Mr. Hurley's going to address, their approaches to the
20 motion process potentially on discovery.

21 If the non-consenting requesting states is
22 granted, the Sackler focus will shift to responding from
23 responding to the committee's discovery to engaging in
24 litigation and discussions of the non-consenting states,
25 which is even more unpalatable given that we're now engaged

1 in allocation mediation.

2 If the non-consenting states approach were
3 adopted, the Debtors in non-consenting states would have to
4 devote significant time and resources in assisting defending
5 state litigation instead of allocation medication, again,
6 which would have the potential to harm all outcomes.

7 Third, as Mr. Huebner mentioned, and I just want
8 to put a final point on this, we're involved in allocation
9 medication. The non-consent states, like everyone even
10 talking about mediation has supreme confidence in the merits
11 of their claim. But if only they're allowed to seek
12 favorable rule and no one else, then only they will be able
13 to use that in the allocation mediation. And as you can
14 imagine, one tool the mediators may use when accepting
15 claims is going to be the likelihood of success in
16 litigation. If they had that tool and no one else did, then
17 all us creditors in mediation would be (audio distortion).

18 Finally, one thing that the non-consenting states
19 (indiscernible) to justify their relief, and I don't know
20 that Mr. Huebner hit on this point, is that the non-
21 consenting states believe that if they can continue with
22 their litigation, they will bring into the public domain
23 information regarding the strength of their claims, but up
24 until now, it's been kept confidential.

25 If the decision's up to date in those motions to

1 dismiss has not resulted in substantial additional public
2 disclosure, and we think this public disclosure is what they
3 would like. And, frankly, we are -- at some point in this
4 case, we've all talked about the fact that there will be
5 public disclosure. They should work with the official
6 committee in uncovering more evidence against Purdue and the
7 Sacklers in procedure and practically for everyone, all
8 creditors who are participating.

9 And with that, Your Honor, I'd like to let Mr.
10 Hurley address why we support the injunction. But more
11 specifically, why certain parts of our stipulation are no
12 longer continuing with regard to discovery, again, what Mr.
13 Uzzi had foreshadowed that we would discuss with regard to
14 how discovery is going to go forward.

15 THE COURT: Okay.

16 MR. HURLEY: Thank you, Your Honor. Good morning,
17 it's Mitch Hurley with Akin Gump on behalf of the official
18 committee. Your Honor, the official committee does support
19 extension of the injunction by 180 days for all the reasons
20 identified in our March 13th submission. I won't repeat
21 them all. As Mr. Preis emphasized, again, one of the key
22 reasons was that we believe that outside litigation would
23 distract the Debtors and the Sacklers from what we think
24 they should be focused on in these cases. That includes but
25 isn't limited to making comprehensive disclosures of

1 documents and information relating to their liability in the
2 states claims against the Sacklers and other third parties.

3 The official committee has been focused on getting
4 disclosures from the Sacklers and others for months. I
5 mean, in our papers and Mr. Preis noted again, we're
6 approaching a point where we think court intervention will
7 likely be required, at least with respect to the Sacklers
8 side. Procedurally, we're at a bit of an eventual
9 situation. Under the case stipulation among the official
10 committee, the Debtors and the Sacklers, the official
11 committee was not permitted to serve compulsory discovery
12 until January 19th.

13 The situation did contemplate a voluntary process
14 and we'd all work together to try and obtain voluntary
15 disclosures for a period. So, for instance, the official
16 committee served informal voluntary requests on the Debtors
17 in October, on the Debtors and the Sacklers on November 25th
18 and January 2nd, and a handful of follow-up requests in
19 February and March.

20 The Sacklers have actually taken the position that
21 documents in the immediate possession of certain Sackler
22 affiliates and advisors are not in their possession, custody
23 or control. So we, the official committee also provided
24 those same requests to Norton Rose, who the Sacklers
25 identified as counsel for IATs, and to counsel for some

1 other family advisors while reserving the official
2 committee's right to argue that the Sacklers themselves are
3 obligated to gather and produce documents in the immediate
4 possession of their advisors and affiliates.

5 We have met and conferred on multiple occasions
6 with Debevoise for what's been referred to in the case as a
7 side aid to the Sackler family on the Mortimer side; Milbank
8 for the side B or Richard's side, and with Norton Rose on
9 behalf of the IATs. Some, but not all, of the meet and
10 confer sessions have included representatives of the
11 consenting states and of the Debtors. The official
12 committee has also met and conferred with the Debtors on
13 multiple occasions regarding our requests to the Debtors.

14 The process continues and we hope to narrow many
15 of the parties' disputes; that is clear there will be
16 disputes. And when ready, we as official committee want to
17 be able to que those disputes up for resolution as
18 efficiently as possibly, while, of course, preserving the
19 official committee's ability to serve additional requests if
20 necessary or appropriate.

21 As of yesterday, we've begun discussing options
22 for how best to proceed with Milbank and the lawyers and the
23 Debtors. And to their credit, everyone we've spoken with so
24 far has been open to the idea of a streamlined approach.
25 And considering that the parties' formal discovery has been

1 served, have gone very far down the meet and confer wave
2 already, there are a few issues that we can find where
3 producing parties have not yet had an opportunity to serve
4 formal objections and responses; that's, of course, the
5 requests have been to date have been involved and informal
6 and for the same reason the committee does not yet have a
7 formal discovery device on which to base a motion to compel.

8 Frankly, everyone preliminarily agrees -- and
9 this, of course, is subject to caveat that people haven't
10 had a chance yet to completely work through this or maybe at
11 all with their clients yet. But I think some of in the
12 initial calls with counsel, people were generally in
13 agreement that we should address these issues before
14 embarking on motion practice to try to do it in a way that
15 is expedited given the work that's already been done so
16 we're not going back to square one.

17 We talked yesterday about pockets where the
18 official committee could effectively only serve its
19 outstanding voluntary requests, actually including a few
20 additional requests, with the (indiscernible) party serving
21 objections in response on an accelerated basis, which would
22 give the parties for some additional meet and confer work
23 and then be able to proceed promptly getting us to motion
24 practice.

25 So ordinarily, of course, to get authorization to

1 serve formal requests, we've moved via 2004. From the
2 committee's perspective, part of what we want to do if
3 possible is to avoid having a 2004 hearing on the issuance
4 of the discovery itself. Given where we are in the process,
5 it seems like that would be a wasteful delay, instead of
6 admit that (indiscernible) request had been in the
7 possession of the responding parties for months.

8 We have considered a few ways for proceeding that
9 we think would be more efficient and have talked, again a
10 very preliminary basis, with counsel for the other parties
11 about them. If first, of course, if the official committee
12 were permitted to serve 2004 ex parte, that's one way for
13 the parties to potentially move swiftly to objections and
14 responses on an accelerated basis and motion practice if
15 necessary.

16 Alternatively, we spoke very preliminarily with
17 Milbank yesterday about the possibility of some kind of
18 stipulation permitting formal service of requests and
19 objections and responses. And in that conversation and
20 result of some preliminary talk about potentially
21 streamlining the motion practice itself maybe by going via
22 Debtor breach, for instance, rather than formal motion by
23 notice of the motions to compel. And the committee would be
24 open to considering those kind of ideas and really any
25 practical way of making the process more streamlined and

1 efficient.

2 A couple of final points. The official committee
3 is, of course, as Mr. Huebner just referenced, not the only
4 party-in-interest that has asked for disclosures from the
5 Sacklers. The Debtors have separately asked the Sacklers to
6 produce some documents. The Debtors also participated
7 alongside the official committee in meet and confers with
8 the Sacklers and have interest in obtaining many of the same
9 documents from the Sacklers as the official committee. The
10 ad hoc group of consenting states likewise has asked that
11 the Sacklers provide copies to them of anything that it's
12 produced to the official committee and has participated in
13 some of the meet and confers.

14 Our hope would be that whatever procedure we land
15 on would permit the Debtors and the consenting states to
16 move side by side, if they so desire, with the official
17 committee in seeking to resolve this kind of first round of
18 discovery disputes.

19 I want to note also that the official committee
20 does have a voluntary request out to the Debtors, and to the
21 extent weren't able to resolve those disputes, we would hope
22 we could bring them to the Court's attention by a similarly
23 streamlined process. But we suspect that if we are unable
24 to resolve disputes with the Debtors, it would probably be
25 on a little more extended timeline before we bring disputes

1 to the Court's attention. I think we're probably a little
2 bit closer with the Debtors to get into (indiscernible).

3 So finally, I just want to be that this is not the
4 end of the official committee document discovery efforts, of
5 course. It's highly likely that when the official committee
6 starts to get more of the documents that they asked for,
7 some follow-up discovery requests will be required, and then
8 we have a sufficient discovery record. And that'll give the
9 official committee to seek depositions with important
10 witnesses.

11 What we're talking about now, formalizing and
12 resolving disputes concerning the outstanding voluntary
13 discovery and will not be the end of our efforts. It's a
14 really important part of the process. And we had been very
15 gratified by the response of counsel for the other parties
16 to date and the interest they have shown and arriving at a
17 practical efficient approach to getting through this kind of
18 first stage.

19 And, of course, to the extent the Court has any
20 comments or guidance it wishes to share on process in
21 particular, we'd be very happy to hear. So that is my
22 update, and with that, I will move before Your Honor. Thank
23 you.

24 THE COURT: Okay.

25 MR. ECKSTEIN: Your Honor, this is Kenneth

1 Eckstein. Would it be appropriate for me to be heard
2 briefly at this point?

3 THE COURT: Well, I'm going to hold you off for a
4 second, Mr. Eckstein, because I want to just address the
5 discovery point that was raised because I have a couple of
6 questions and then perhaps a couple of thoughts on it.

7 Obviously, if either the Debtors or the Sacklers'
8 representatives disagree with the posture that has been
9 described to me of where we are in the process by committee
10 counsel, you should let me know. But at least from reading
11 the pleadings, it does appear to me to be the case that
12 there has been extensive voluntary production consistent
13 with the parties' agreements, but that there are some
14 disputes that may not be resolvable simply between the
15 parties as to what more should be produced in that phase of
16 document production, including from third parties.

17 So all parties have talked about, somewhat
18 generically, the need for Court intervention. My thought on
19 that request is really twofold. First, it may be simplest
20 if the parties have actually identified, or will in the
21 coming day identify, the specific issues that they can't
22 agree on to raise them with me in a discovery conference
23 even before there is any formal discovery vehicle, because I
24 can give you my preliminary view, which would in all
25 likelihood be the final view too if someone forced a ruling

1 as to where I would come out on those issues. And I think
2 that would save considerable time and money if you actually
3 identify the areas where you're at some disagreement and
4 haven't been able to resolve them in your meet and confer
5 process.

6 Secondly, my practice and the practice of my
7 colleagues is to enter Rule 2004 orders ex parte if, on the
8 face of it, they lay out cause. We generally will then be
9 fairly liberal with requests to quash. But, again, if
10 someone thinks that you need a formal vehicle, in part
11 because you're just not sure what you want and you want to
12 force someone to actually produce everything beyond what's
13 already been produced that's responsive, I would suggest you
14 go down that route and then promptly arrange for a
15 conference if there is a disagreement about how to respond
16 to the Rule 2004 order.

17 My general practice with discovery disputes is to
18 have the parties, as you've done here, meet and confer and
19 use their best efforts to resolve it. And if you can't,
20 email chambers brief letters explaining your positions and
21 requesting a conference, which I will hold and go over the
22 issues. It's rare that those conferences are even on the
23 record.

24 So I would encourage you to streamline this even
25 more than you have been discussing. To the extent that you

1 already know what the disputes are going to be, just raise
2 it with me even before you file any documents by email to
3 chambers, you know, letters -- obviously copying the other
4 side -- or jointly, and we'll have a conference on it. And
5 if you believe that you need to illicit a formal response,
6 you can do that through a Rule 2004 ex parte motion and
7 order.

8 Although, again, I would urge you to, as you say
9 you're doing, so I'm not -- think I'm surprising you here,
10 look only for stuff that has not yet been produced and
11 identified promptly any issues that you may have and we'll
12 have a conference in the context of that formal vehicle.
13 And if the conference doesn't work, I'll have a ruling on
14 the record with a hearing.

15 MR. HUEBNER: So, Your Honor, we would also share
16 the Debtors' views on Mr. Hurley's remarks. I mean, to be
17 fair, they were quite extensive and (audio distortion) their
18 entirety of it. In general terms, I would say strongly
19 agree with the core principles, which are, you know, a year
20 (indiscernible) those arguments, which is all about
21 efficiency and cost reduction and moving sort of
22 structurally and well and (audio distortion) would sort of
23 want the protective motion. It's all about collective
24 action and sort of the (indiscernible) of settlement. And
25 hearing that, you know, frankly, the parties are directed to

1 crystallize their disputes and then when a person thinks
2 just call, that the court would not recall, but I do recall,
3 you know, my encouraging words at the first day hearing
4 were, "For god's sake, please don't just file papers; just
5 call us, we're waiting by the phone 24 hours a day." And we
6 can probably narrow issues dramatically, if not resolve
7 them, if people would just call us and tell us whatever
8 needs to be discussed, so that's the thoughts we always
9 bring.

10 And as Your Honor also heard, the Debtors and the
11 committee are actually, you know, have been sharing a lot of
12 stuff and are much farther along, and I think the
13 probability is certainly not zero by any stretch and I don't
14 want to suggest that. I don't think we need the Court's
15 intervention between the Debtors provisional information and
16 if they just shared published, I think right now appears
17 much lower and (audio distortion) situated and that's okay.

18 So I don't want to say more on that. I don't want
19 to go by point by point. But the overall view of more
20 information is going to be needed. We need a highly
21 efficient process, additional talking to chambers a lot
22 first and then talk to the Court if (indiscernible) of
23 pleadings begin (audio distortion), which the Debtors very
24 strongly agree.

25 THE COURT: Okay.

1 MR. UZZI: Your Honor, it's Gerard Uzzi of Milbank
2 again on behalf of the Raymond Sackler family. I'm not
3 going to split hairs on nuances, even if I could with
4 anything that Mr. Hurley said, I think we agree. I think
5 what we're guided by here is an effort to be efficient and
6 an effort to advance these cases, and it's in that spirit
7 that we've had conversations that are not surprisingly
8 consistent with the suggestions that the Court just made.

9 I think we would like the opportunity, you know,
10 to crystallize a little bit better where the disputes are.
11 And it's always my experience when you make that effort, the
12 disputes become narrower, and then have the opportunity to
13 bring, you know, crisp disputes in front of you if we need
14 to. And I think we likely will, but I'm also optimistic if
15 we do, it will be -- well, hopefully narrow. But that's a
16 long way of saying I don't have an issue with anything Mr.
17 Hurley said.

18 THE COURT: Okay.

19 MS. BALL: Your Honor, this is Jasmine Ball from
20 Debevoise & Plimpton for the other side of the family.
21 We'll just concur with what Mr. Uzzi said, that we don't
22 have an issue with the idea of trying to crystallize our
23 disputes and doing it efficiently.

24 THE COURT: Okay, very well. I'm not by the phone
25 24 hours a day, but I am by it enough where I actually read

1 my emails so that if, after you've finished the meat and
2 confer process and you still have concrete discovery issues,
3 I would urge you to send me a letter or letters by email and
4 we'll set up a call to discuss them, preferably before any
5 motion papers have been filed; although, again, I understand
6 that a party may want to have some sort of final mechanism
7 to ensure that everything that's been produced is responsive
8 and that nothing's been held back, but maybe your
9 stipulations can deal with that as well as a court order.

10 So as far as the discovery resolution process, I
11 think we're all in the -- discovery dispute resolution
12 process, I think we're all on the same page, which is the
13 parties meet and confer, try to resolve all the issues. To
14 the extent they can't, be in a position to describe them to
15 the Court before filing any sort of discovery request, and
16 we'll see if we can resolve them on a call there after.

17 So, Mr. Eckstein, I cut you off, but you were
18 going to speak next.

19 MR. ECKSTEIN: Your Honor, thank you very much. I
20 didn't mean to interrupt the flow of the discussion on this
21 discovery.

22 THE COURT: That's fine.

23 MR. ECKSTEIN: I'll be happy to speak now. This
24 is Kenneth Eckstein from Kramer Levin on behalf of the ad
25 hoc committee. Your Honor, I trust that you saw that we've

1 filed a brief pleading, and I'd like to just make a few
2 remarks to elaborate on the thinking of the ad hoc committee
3 on this motion.

4 THE COURT: Right.

5 MR. ECKSTEIN: I appreciate that, Your Honor.
6 This is an important motion, Your Honor, and I want to
7 impress upon the Court that the decision by the ad hoc
8 committee not to object to the relief was not a simple
9 decision. And as we said in our pleading, we sympathize and
10 share many of the views that have been expressed both by the
11 official committee and by the ad hoc committee of non-
12 consenting states.

13 And in particular, we believe that there needs to
14 be significantly more progress made in the near term in
15 connection with a resolution of the agreement reached with
16 the members of the Sackler family, with the implementation
17 of a restructure and support agreement, and with -- New York
18 needed to file a plan and disclosure statement in the near
19 term.

20 That said, we concluded that we would not object
21 to this relief. And one of the things that influenced us
22 greatly in this case is the fact that the parties in this
23 case have all effectively agreed upon and implemented a
24 mediation process that we believe is an extremely
25 constructive step toward resolution in this case. And

1 without getting into any of the substance of the mediation,
2 I'm encouraged by the fact that the mediation is up and
3 running quite actively and we believe the most useful step
4 that all of the parties in this case can take in the near
5 term to make real progress.

6 That said, we are quite focused on the fact that
7 more work does need to be done in connection with the
8 resolution of the settlement with the Sacklers. And toward
9 that end, we've agreed with the Debtors that we would extend
10 out the deadline in our term sheet for the filing of a
11 restructure and support agreement to early July.

12 And we're mindful, Your Honor, of the fact that
13 their deadline right now to file a plan is late July, and we
14 believe that both of those deadlines are important. And we
15 trust that the outcome of this motion today is not going to
16 in any way undermine, we think, the important deadlines that
17 remain in this case and that are going to be respected.

18 So on balance, Your Honor, with those admonitions,
19 we've determined not to object to the relief. We are very,
20 very mindful, however, of the concerns raised by the non-
21 consenting states regarding the vital public interest that
22 is at stake in this case, and we encourage all the parties
23 to really double down on trying to move this case toward a
24 point where there is broad and substantive consensus in the
25 next several weeks and months.

1 Thank you, Your Honor.

2 THE COURT: Okay. All right. I think that was
3 everyone who filed pleadings, with the exception of the 24
4 so-called non-consenting states and the State of Tennessee.
5 So unless someone else wants to speak, I'll hear from them
6 now.

7 MR. TROOP: Thank you, Your Honor. This is Andrew
8 Troop from Pillsbury on behalf of the non-consent state
9 court. Your Honor, I apologize in advance if you hear
10 construction in the background.

11 THE COURT: No, I don't hear any noises, so you're
12 coming through clearly.

13 MR. TROOP: Okay. Okay, but you might because
14 they just turned on the power saw.

15 THE COURT: Okay.

16 MR. TROOP: Which we need to get done to shelter
17 in place or socially distant apart for a while. Your Honor,
18 I get it, right, apparent to you that our request was not
19 intended to be more than a small step to advance for these
20 prior actions was limited and there were interruption to be
21 tried for running process, leaving you with control over the
22 extent or amount of discovery and how intrusive it might be,
23 and to not harmed the Debtors in any way.

24 But it does emanate from -- and I'm not going to
25 repeat our last visit on these issues, significantly, you

1 know, or much at all. But it does reflect it back that
2 states believe federal actions are different than your
3 regular creditor claims, and the idea that practically
4 states would get any real advantage in terms of timing and
5 have actions proceed through the motion to dismiss stage.
6 It was to be private litigants that the Sacklers could
7 settle with us separately practically makes no sense, Your
8 Honor.

9 And ultimately, given the limited relief debt or
10 carveout that debt that non-consenting states asked for it
11 in respect -- in exchange or the voluntary commitment stand
12 down for the entire period, vis-à-vis the Debtors and all
13 related parties other than the nine Sacklers is appropriate.
14 To take two things here that out of order from the outline,
15 Your Honor, just because it came up.

16 This group represents this group, and the idea
17 that we should ask for relief for everyone is inappropriate.
18 But, of course, if others wanted that relief, they could
19 jump on and be heard as well. In that regard, in fact, Your
20 Honor, we made a proposal to share 20 slots, so to speak,
21 with other governmental agencies or entities, and they
22 declined the offer.

23 This is really designed to address the second
24 point I'm going to make now, which is the entire discussion
25 about impasse. Your Honor, I went back and read a pleading

1 while you were discussing the question of impasse. And
2 apparently it wasn't clear enough, but we thought we tried
3 to make it very clear that the impasse was there (audio
4 distortion) is completely diametric view about the legal
5 liability of the state claims against the Sacklers, and that
6 in argue a resolution of that issue won't advance the
7 Chapter 11 process.

8 There seems to be some sense by parties here --
9 and forgive me for getting a little colloquial, but that the
10 non-consenting state groups and the Sacklers can't walk and
11 chew gum at the same time. It is not only possible, but
12 it's routine that a litigation proceeds that parties
13 participate constructively in settlement and on mediation
14 processes, and we can do that as well. These are not
15 mutually exclusive, and as I said, they often advance
16 successful consensual resolution.

17 Your Honor, we do think, and we propose this
18 alternative, this potential, this plausible way to deal with
19 the restriction of truly important state law, state rights
20 to enhance the bankruptcy process and not make it
21 interminable.

22 Your Honor, there's a lot of hinting about this in
23 both the Debtors' pleadings and Mr. Uzzi's statements today,
24 but our group has been extremely constructively engaged and
25 committed to the Chapter 11 process. Let me give you a few

1 examples, some of which we talked about a little bit, but
2 I'm (audio distortion) we're fully engaged, exchanging
3 draft, negotiating the hard points being referenced in the
4 Debtors' pleading, but with the goal to quickly come to
5 consensual resolution.

6 On discovery, the UCC noted that we've been
7 involved with meet and confer. We horned our way into that
8 process, Your Honor, because we don't want to duplicate
9 efforts. We want to coordinate, we want to ensure an
10 efficient process, and I think if asked the committee would
11 acknowledge that hard discussions with them have been
12 helpful. And they crafted their own thinking about
13 discovery and narrowing the issues.

14 With the Debtors, Your Honor, we met last week
15 with the Debtors' special committee lawyers for basically
16 the same purpose. Please advise us, keep us up to date,
17 tell us where you are in your analysis of the Debtors'
18 claims against the Sacklers; all critical information for us
19 to be able to move decisions, but not exclusive.

20 And on mediation, Your Honor, as Mr. Huebner
21 noted, that was fully consensual. We were part of that 12
22 consensus, and we've been fully engaged. So far, we've
23 actually participated in two sessions with the mediators --
24 I'm not going to give anything mediation confidential away -
25 - and they're working hand in glove with the ad hoc

1 committee in connection with the mediation process to
2 advance it, to define it, to be able to forge consensus
3 among us. And, hopefully, with luck and hard work,
4 consensus among all parties and on many of the types of
5 issues in this case and not just allocation.

6 But, Your Honor, these are police power actions,
7 and you know we don't agree with your prior ruling that
8 wouldn't have applied to you to the other actions. You
9 know, these actions are more than just, you know, regular
10 police power seat, there are lawsuits, you know, they're
11 high powered lawsuits, all right. You know, people have
12 died from this crisis and now (indiscernible) one family
13 alleged to be the root cause of much of this.

14 What we've tried to present is an opportunity for
15 the Court not to fully enjoin these actions where there's a
16 plausible alternative, one that allows police power to be
17 exercised and one that respects to a significant extent the
18 coordinated and collective that we're all trying to achieve
19 through the Chapter 11.

20 THE COURT: Okay. I want to go back to --

21 MR. TROOP: Your Honor?

22 THE COURT: I'm not sure I fully heard you on your
23 point about what this group met by impasse. I think -- and
24 pardon me, it's because I may not have heard you clearly, is
25 this group was concerned about the Sacklers' position that

1 they have no legal liability. Did I hear that right?

2 MR. TROOP: That's correct, Your Honor. And we
3 are quite clear to say that our proposal is intended to
4 break this log jam, this log jam over liabilities issue.
5 It's not to say that there aren't discussions going forward
6 with the Debtors on a plan of reorganization, on allocation,
7 on things that are going on in the case, but it is to say
8 that there's a fundamental difference here that is rooted in
9 state police power.

10 THE COURT: But can I just --

11 MR. TROOP: And, Your Honor, that sort of goes to
12 the (audio distortion).

13 THE COURT: I want to just focus -- I'm sorry, Mr.
14 Troop, I just want to just focus on the impasse point.
15 Because the argument -- and I appreciate here that the
16 argument or the issue here is cast as a narrow one, which is
17 that everything can be enjoined except for proceeding to
18 motion to dismiss in 24 lawsuits. And you've clarified that
19 you actually offered to let other states that are not in
20 your group have that type of relief within the rubric of 24
21 lawsuits.

22 But I want to make sure I understand the benefit
23 from that. I would understand if there was a true impasse,
24 but it seems to me that at this stage in the case where
25 information is still being exchanged and analyzed, that,

1 frankly, if I were on one side of this, I would say in my
2 settlement negotiations I don't have liability, just as your
3 clients will say you absolutely do have liability. Because
4 there's no reason yet because of all of the other moving
5 parts, i.e., the fraudulent transfer, breach of fiduciary
6 duty, valuation and allocation analyses to get out ahead of
7 one's self.

8 Point two is there already have been motions to
9 dismiss decided. Your pleading cites two where your clients
10 have wone and none where, as against your clients, the
11 Sacklers have won, although I understand from other
12 pleadings that at least in one other state, the Sacklers
13 have won. But in any event, just on motions to dismiss,
14 they're batting only 333, which gets you in the hall of fame
15 in baseball, but not necessarily in settlement discussions
16 if you're just focusing on motions to dismiss.

17 So I just don't see why, other than perhaps
18 optics, permitting or having a process where there would be
19 24 motions to dismiss to go on really achieves anything as
20 far as the ultimate result, which is negotiating a
21 resolution and breaking an impasse, which, frankly, I don't
22 think exists now, but I don't see how these would break an
23 impasse in the future. Although I suppose if the Sacklers
24 won many of them, it might; but on the other hand, losing a
25 motion to dismiss, as we all know, is just a start.

1 MR. TROOP: Your Honor, first off, I agree with
2 you. I think that this could maybe be taken with and
3 pursuing this path. But it does reflect that the core stake
4 value is at the heart of policing regulatory powers, right,
5 and that is if something should be regulated, if people's
6 conduct should be regulated, if people should be found to
7 have broken the law and that's what should happen.

8 And if courts find that's not what happened, it's
9 not appropriate, there wasn't a violation, states take that
10 risk and that happens to, that's the core state value here.
11 What is being imposed on that value is the bankruptcy
12 preference and in the 547 sense, right, the bankruptcy
13 policy, if you use that word instead, to encourage
14 consensual resolutions and the State has said clearly that
15 these would be the Debtors. We will see three within this
16 process, but the line that we have to draw here is with
17 respect to the (indiscernible) with respect to the third
18 parties where there is an extremely important stake value at
19 play and in light of my -- I hear you and others about
20 Motions to Dismiss and I don't completely agree, Your Honor.
21 As I said, we're taking some risk, there are purely legal
22 questions at play here, preemption, (indiscernible) director
23 and if that (indiscernible) issue gets broken either way, it
24 could have some impact on how the case may proceed and Your
25 Honor, I (indiscernible) analysis success will

1 (indiscernible), but I also don't think that doesn't mean
2 you don't learn a lot from a ruling on 12(b)(6) Motion and I
3 may get accused of testifying here, but it's my personal
4 experience.

5 Just last week, we had a \$200-300 million
6 complaint dismissed, admittedly with leave to repleive, but
7 dismissed where a key allegation was that our client engaged
8 in a bribe and the Court found that the well pled facts in
9 the Complaint failed to articulate a bribe. That's a very
10 important ruling.

11 THE COURT: Well, I agree but --

12 MR. TROOP: (indiscernible)

13 THE COURT: But there's a big distinction between
14 winning a Motion to Dismiss and losing one. Clearly, if you
15 lose one and the Court hasn't given you a road map on how to
16 amend your Complaint, it's the end of the game. But if you
17 win and it's fact based, then obviously it's not based on
18 the end of the game because the facts are taken as true, as
19 properly pleaded in the Complaint. So, I don't know. I
20 mean, there already are two Motions to Dismiss that have
21 survived. There are two litigations that have survived the
22 Motion to Dismiss. I'm not sure what another 22 will add to
23 that, although of course, it's a step and it's a step that
24 the Defendants would have to take seriously. But I guess
25 I'm still struggling to see, particularly since this is

1 civil litigation and people are still focused on the payment
2 of money, how this is somehow central to the police power or
3 overrides the adverse effect on the bankruptcy case.

4 MR. TROOP: Your Honor, the fact that money might
5 be at issue in many of these cases, is no different than the
6 false claim act. The police power acts because the
7 underlying conduct that's being challenged and found to
8 comply or not with legal requirements provides a road map
9 not only to the Debtor but to others and the Code -- I
10 understand you used your bona fide power, but 352(b)
11 recognizes that distinction by allowing those kinds of
12 claims to go forward and to cause the monetary amounts to
13 end up back in the case. But we all know that, Your Honor.
14 The issue here is, whether -- it's two-fold, Your Honor, and
15 again, we tried to craft this in a way that both highlights
16 the independent police power purpose in proceeding
17 (indiscernible), in proceeding with these actions and to do
18 it in a way which we think will not harm the course of the
19 case. The main facts have benefits for it, and we'd ask you
20 to consider that carefully.

21 As I started off, I do hope you appreciate
22 (indiscernible) thoughtful and focused and to advance and
23 Your Honor, regardless of the result here today, if the
24 voluntary approach doesn't work, as we said in our papers,
25 we stand on our prior objections and substantively and

1 legally, there was no additional evidence presented here
2 today and we will make our decisions accordingly. But no-
3 one needs to think that we're not showing (indiscernible)
4 fully engaged and fully devoted to see if there's a way to
5 reach a resolution in this case. But, even in that context,
6 Your Honor, the limiting states in the prosecution of the
7 police power actions is extreme acts and this practical,
8 plausible, limited alternative is a fair one under all the
9 circumstances.

10 Finally, Your Honor, just to make the numbers
11 clear, 24 states, plus the District of Columbia, others 25,
12 24 asserted claims against (indiscernible) -- I'm sorry, 22
13 asserted claims against (indiscernible) could have been
14 decided so that only 20, not 24 that might proceed.

15 THE COURT: Okay. Thank you.

16 MR. HUEBNER: Your Honor, if I might suggest,
17 before we turn to Tennessee because I think that is
18 adequately separate. I think it has 180 seconds
19 (indiscernible), by the way, that's probably all I need or
20 all I would burden the parties with me asking for. If that
21 meets the Court's desires.

22 THE COURT: Okay.

23 MR. HUEBNER: So, Your Honor, we get it, right?
24 And we understand and we understand that, at some point, the
25 current tools that we're all (indiscernible) may not be

1 sufficient to get us to a deal and other things may be
2 needed. And we fully respect that the objectors here are
3 sovereigns and sovereigns are different and we respect that.
4 But, at the end of the day, I think nothing you have heard
5 even touches the many points that we and the Creditors'
6 Committee and, to somewhat of a lesser extent, the
7 consenting states, have made, so let me just say nine things
8 very quickly.

9 One, it will not advance the case. It will be a
10 massive setback by taking us out of a collective action,
11 hopefully pressurized situation, which is exactly
12 (indiscernible) which Your Honor ruled in October and you
13 talked, at great length, about the collective action
14 (indiscernible) of the federal system, including the quality
15 of treatment and the quality of position. Including among
16 governments because they're not the only governments in this
17 case.

18 Two, it will take years, which they had nothing to
19 say to. It's three years according to the statistics that
20 were provided to take Motion to Dismiss and in 14 of the 20
21 cases, there haven't even been motions filed yet.

22 Three, it will likely destroy the mediation. I
23 have no doubt, zero doubt, that this mistreatment of clients
24 will absolutely show up tomorrow morning for the mediation
25 with all the same purpose they would have had otherwise.

1 But that wasn't our point. The point is there are many
2 parties and the parties see asymmetry and feel unfairness
3 and feel that others are getting a leg up or trying multiple
4 routes while they're constrained to one route. It just
5 changes things fundamentally.

6 Four, we already discussed it. I just don't see
7 that we're at an impasse. There hasn't even -- and we're
8 not going to get into substance, but there hasn't even been
9 bids and asks and bids and asks. We're just doing other
10 things right now in terms of setting the table to create a
11 climate for what is probably the final stage issue in this
12 case.

13 Five, there's no distinction at all about how this
14 will break the (indiscernible) as the Court has made clear.
15 Some may win, some may lose. Everyone's got to appeal,
16 everyone has passionate views. I doubt there's too many
17 parties who would say, "I hereby pledge that I will be down
18 forever by the Motion to Dismiss outcome and I will not
19 appeal the initial Court's plans by plans without merit."

20 Six, the police power issue was addressed, at
21 great length, back in October, and I actually don't even
22 think was pre-briefed right now, but obviously the
23 Bankruptcy Code has very well-trodden law, only where
24 appropriate and in special circumstances for having the
25 federal system and the unitary equality of treatment

1 approach override even police powers. And here, as Your
2 Honor noted, only money at this point is at issue.

3 Eight, any Motion to Dismiss will fully and
4 completely involve the Debtors, which they also utterly
5 failed to address at all. The nature of every single claim
6 is that the Sacklers controlled, directed, forced, caused,
7 appeared Purdue. No-one is saying that the Sacklers
8 themselves took suitcases of Oxycontin and went and sold it
9 themselves. And so, this is litigation against the Debtors,
10 and it will divert the estate itself massively
11 (indiscernible) or not the actual moving parties on the
12 Motions.

13 And the last point is the unfairness. This
14 hearing is the first I've ever heard that "20 slots were
15 offered to others". Again, I don't begrudge. People are
16 welcome not to tell us stuff and drop it in the hearing if
17 they choose to, but the unfairness, even if they said,
18 (indiscernible) we'll only take 4 slots, we'll give away 20.
19 That 20 individual creditors chosen by someone out of the
20 potential thousands who already -- hundreds -- I think it's
21 upwards of 600, who have sued the shareholders and thousands
22 who, I'm sure, would love to, get to progress to litigation.
23 Even if it's not the intent of the Defendant states to
24 essentially jump all the way to trial when everyone else
25 can't even file complaints yet, it is an outcome of being

1 allowed to progress your litigation while others are frozen
2 solid by a federal court injunction.

3 So, I understand the motivating egos, which is, at
4 this point, we're relatively far away from seeing a pathway
5 to getting to a deal. There are a lot of very, involved,
6 passionate, caring people trying to advance this thing
7 towards appeal and the Debtors respectfully have heard
8 nothing that changes their view that the limited objection
9 to this critical motion will do that and everything that we
10 have heard leads us to believe that will be extraordinarily
11 damaging to further progress.

12 THE COURT: Okay.

13 MR. TROOP: Your Honor (indiscernible) for
14 honestly 60 seconds. On the injunction issue, those private
15 creditors are enjoined by virtue -- automatically by virtue
16 of the Automatic Stay.

17 THE COURT: I'm sorry. That just didn't come
18 through on the phone, Mr. Troop. You'll have to say it
19 again.

20 MR. TROOP: My apologies, Your Honor. The notion
21 that there are thousands of private creditors that will be
22 disadvantaged. They are disadvantaged because of the way --
23 because they are automatically stayed. The balance here,
24 Your Honor, is between -- is about whether states should be
25 stayed where the Code doesn't otherwise do that. And that's

1 the balance (indiscernible). And to be perfectly clear, the
2 offer was made to the other governmental agencies through
3 the ad hoc committee of states and municipalities. So there
4 -- I guess just so there's no confusion in the Court's mind.

5 MR. HUEBNER: Your Honor, unfortunately there is
6 confusion. This is about third parties, not the Debtors and
7 the other parties are not stayed by the Automatic Stay.
8 That is flatly incorrect. They are stayed only by this
9 Court's injunction. We're talking about their request to
10 continue against the shareholders, not against the Debtors,
11 which they have agreed not to do and that is an issue
12 related to the injunction, not the Automatic Stay. So, it's
13 not the Code that stops these actions against the
14 shareholders, it's this Court's injunction.

15 MR. TROOP: That's a really interesting point Mr.
16 Huebner and you're right. I should have made the
17 appropriate distinction. Your Honor, when I first
18 practicing law, there was a judge, he has passed away since,
19 (indiscernible) and he issued a decision, admittedly many
20 years ago in 1984, but it involved a case where the Debtors
21 were seeking to protect their officers and directors from
22 lawsuits -- a lawsuit being pursued by the federal
23 government with response -- in connection with
24 (indiscernible) for trust fund taxes. And Judge
25 (indiscernible) struggled with the competing federal policy

1 between Chapter 11, the organization and police power
2 actions against non-Debtors. And he resolved that by
3 saying, is there an alternative that can accommodate
4 policies and the answer to that is yes, that is if the
5 Sacklers could seek bankruptcy relief. They could seek
6 protection of the Bankruptcy Code and they could then be
7 required to engage in the open communal effort by statute
8 and by code.

9 And so, again, Your Honor, I apologize for my
10 overstating before, but the point here is actually further
11 underscored that it is not simply if for these power
12 actions. It's the Debtor that's been enjoined, but against
13 the power third parties who haven't sought bankruptcy
14 protection. And in that case, Your Honor, in case you ever
15 want to look at it, is entitled -- it's found at 40(b)R531
16 and it's called (indiscernible). And Judge (indiscernible)
17 a short, but simple balancing test here as to how do you
18 accommodate the competing policies and his answer is a very
19 rational one.

20 THE COURT: Okay.

21 MR. TROOP: Thank you, Your Honor.

22 THE COURT: All right. We don't need to go
23 further on this. I've already cited the rationale for 105
24 injunction here in my prior ruling and the authorities that
25 supported it, including the statute's legislative history

1 itself and cases such as Penn Terra Ltd. v. Department of
2 Environment Resources 733(f)2d, 267 Third Circuit 1983.

3 So, is someone on the phone for the State of
4 Tennessee?

5 MS. STADLER: Yes, Your Honor. This is Katherine
6 Stadler appearing for the Tennessee District Attorney.

7 THE COURT: Good morning.

8 MS. STADLER: And I will keep my remarks brief.

9 THE COURT: Okay.

10 MS. STADLER: Mr. Huebner is mostly correct, that
11 the legal basis of our argument on jurisdiction under 28USC
12 1334(a) is the same as the arguments that Your Honor
13 rejected nearly six months ago and we articulate them here
14 merely to preserve the arguments that we have made on appeal
15 of that decision and don't intend to rehash them. But the
16 statement that nothing has changed in the last six months
17 about the arguments that the State -- the District Attorneys
18 of Tennessee are making, is not entirely correct.

19 Two things have changed; one, six months have
20 passed and even the supporting states and unsecured
21 creditors are getting restless with the level of disclosure
22 and transparency being provided with regard to the Sackler
23 related parties. We hear a lot in these cases about
24 efficiency, cost control, interest in consensual resolution.
25 What we are not hearing is, one of the other primary

1 purposes of the Bankruptcy Code and bankruptcy protection is
2 to provide transparency so that constituents, claimholders,
3 interested parties, are able to see how the bankruptcy
4 process guarantees that the extraordinary relief of the
5 bankruptcy code is not handed out without very specific
6 compliance from Debtors and without very specific
7 disclosures from Debtors that are made in exchange for the
8 Bankruptcy Code's protection. That is the interest that is
9 not advanced when all of the discovery, all of the document
10 exchange happens off-line, behind closed doors, as part of
11 an ex-party process.

12 The Tennessee District Attorneys and other public
13 officials here need to answer to their constituents if they
14 are going to consent to a Plan of Reorganization that
15 absolves individual non-Debtor wrongdoers. They need to
16 explain to their constituents what it is that has satisfied
17 them that agreeing to that is in the best interest of the
18 citizens they represent. And that is the objective that is
19 not being met through the process that we've been discussing
20 all morning.

21 The second thing that's changed --

22 THE COURT: Can I interrupt you on that point?

23 MS. STADLER: -- is that the Debtors have now --

24 THE COURT: Ma'am, can I interrupt you on that
25 point?

1 MS. STADLER: Yes.

2 THE COURT: I don't know the answer to this. Is -
3 - in the Tennessee action, as I understand it, you are at
4 the Summary Judgement stage, right?

5 MS. STADLER: That's correct. Mm hmm.

6 THE COURT: Was -- so I'm assuming there had been
7 fairly substantial discovery in that action?

8 MS. STADLER: No. In fact, the discovery, in the
9 form of request for admission, was not answered and so the
10 basis for the Summary Judgment Motion is deemed admission of
11 the factual assertions as set out in the Request for
12 Admissions to Richard Sackler.

13 THE COURT: Okay, you haven't had discovery in the
14 Tennessee action that's been -- other than Request for
15 Admission?

16 MS. STADLER: With respect to the individual
17 claims against Richard Sackler, that is correct.

18 THE COURT: Were there any confidentiality
19 stipulations with respect to discovery in the Tennessee
20 action?

21 MS. STADLER: That I am not sure. Our co-counsel
22 from Tennessee is on a listen-only line and she would be
23 able to answer that question. I wonder if there's a way she
24 could raise her hand and answer that question.

25 THE COURT: I don't know the answer,

1 unfortunately, to that.

2 MS. STADLER: Oh, I just got a text from her. She
3 says, "Yes. Yes, there are confidentiality protections in
4 place." I apologize. We are bankruptcy counsel, not
5 Debtor's counsel.

6 THE COURT: No, that's fine.

7 MS. STADLER: She says, "There is a
8 confidentiality agreement in place."

9 THE COURT: Okay. So, when you're discussing the
10 level of disclosure and transparency in the bankruptcy case,
11 are you suggesting that there should not be similar
12 agreements here as part of the development of the facts?

13 MS. STADLER: No, I'm not suggesting that at all.
14 What I'm suggesting is that the concessions and the benefits
15 that the non-Debtors in the bankruptcy case are seeking to
16 obtain through this process requires some corollary
17 disclosure on their part. The confidentiality as part of
18 the litigation and negotiation process is one thing, but at
19 the end of the day, the non-Debtor related parties,
20 including Richard Sackler, are going to need to voluntarily
21 disclose something about their financial condition.
22 Something about the extent of the wealth that they have
23 extracted from the opioid trade.

24 THE COURT: Okay. All right.

25 MS. STADLER: There is no suggestion that we would

1 not honor confidentiality. The suggestion is, that, as part
2 of a deal in either the State Court litigation or in the
3 bankruptcy, there has to be some disclosure from the non-
4 Debtor parties and that's not happening.

5 THE COURT: Okay and I'm going to ask you the same
6 question I've asked everyone else, do you believe that we're
7 at the point here in this case where we're at an impasse on
8 such a deal or are the facts still being developed and the
9 outcome still subject to negotiation?

10 MS. STADLER: I don't think the word "impasse"
11 came from our documents.

12 THE COURT: No, it didn't. I'm just asking you
13 the question.

14 MS. STADLER: Yes. I don't think that I would
15 characterize that way with the important caveat that there
16 are groups of non-consenting State and local government
17 officials, there's an ad hoc committee and that counsel for
18 that group is participating directly in the process of
19 negotiating discussion. And pursuant to the Protective
20 Order that is in place, certain categories of information
21 are not available to the general public and are limited to
22 certain identified participants in those groups. So, I
23 can't speak with an extreme authority about the impasse or
24 no impasse.

25 What I do know is that you have even the states

1 that are consenting to the proposed Settlement and to the
2 extension of the injunction, are telling the Court that they
3 are weary of any construct under which non-Debtor Defendants
4 may seek to obtain indefinite respite from litigation
5 without the provision of meaningful concessions and the real
6 prospect of a negotiated resolution in exchange. That is
7 directly from the Ad Hoc Committee of Consenting States'
8 Reply at Docket #158. That doesn't sound, to me, like a
9 group of government entities that are satisfied with the
10 level of non-Debtor disclosure that they're getting through
11 the process.

12 MR. HUEBNER: Your Honor, may I be heard on behalf
13 of the Debtor.

14 THE COURT: No, I don't think counsel is finished
15 yet.

16 MR. HUEBNER: Oh, I'm sorry. I apologize. Please
17 forgive me.

18 THE COURT: Okay.

19 MS. STADLER: Well, no. I wanted to address the
20 two things that have changed. But I just want to reiterate
21 the overall purpose of our arguments and our disputes and
22 what we're arguing and what we're not arguing. No-one is
23 disputing that the Bankruptcy Code has proven itself as a
24 tool for the management of unmanageable liability and the
25 Order Reliquidation and Distribution of Assets to Tort

1 Victims.

2 What is in dispute is whether the Bankruptcy
3 Code's protection should extend insulate individual, not
4 corporate wrongdoers, who have extracted billions in
5 personal wealth from the widespread suffering and staggering
6 social costs opioids have inflicted. The bankruptcy
7 certainly can -- the Bankruptcy Court certainly can enjoin
8 action against individual non-Debtors if the litigation has
9 a conceivable effect on the Debtors' restructuring. And
10 with this proceeding and the appellate proceedings that stem
11 from it, this Court is defining the outer limits of the
12 conceivable effects to us, creating new law that will
13 determine whether the Bankruptcy Courts have become a haven
14 for wrongdoers after all.

15 The arguments we have heard today are -- can be
16 distilled as follows: anything that might distract the
17 Debtors or the related parties from a protected, largely
18 private restructuring negotiation process, has a conceivable
19 effect and triggers the Bankruptcy Court's jurisdiction to
20 stop State Court litigation and exercise of police powers
21 under State Statutes that have no other basis for federal
22 jurisdiction. And that is what the Tennessee District
23 Attorneys say can't be the conclusion without a substantive
24 evidentiary record of the bases for jurisdiction, which
25 would include discovery of the non-Debtor parties. A 2004

1 or a deposition of Richard Sackler to determine the basis
2 for his denial that he's subject to the jurisdiction of the
3 Tennessee Court and in support of his ultimately substantive
4 contribution to a consensual Plan of Reorganization.

5 THE COURT: I'm sorry. I just didn't follow that.
6 When you -- in the pleading, you asked -- you said that
7 there needed to be discovery as to the basis for
8 jurisdiction. But I didn't understand that to mean that it
9 would be discovery as to whether Tennessee would have
10 jurisdiction over Richard Sackler. Would that -- that's the
11 discovery you're talking about?

12 MS. STADLER: No, I'm sorry. That was -- that was
13 inartfully stated. No. The discovery we're asking for in
14 this Court, as a prerequisite to a determination about this
15 Court's jurisdiction over the Tennessee cause of action has
16 to do with the conceivable effects of continued litigation
17 against Richard Sackler on the bankruptcy restructuring
18 process. There is a parallel stayed at the moment disputing
19 the Tennessee Court over whether he is subject to personal
20 jurisdiction in Tennessee. The federal court concluded and
21 ordered --

22 THE COURT: And I -- okay. Right. So, it's
23 really -- you think that it should be discovery as to the
24 role that Mr. Sackler would play in the Debtor's
25 reorganization?

1 MS. STADLER: Yes, as a basis for this Court's
2 jurisdiction. That's correct.

3 THE COURT: Okay. Now, he has agreed with the
4 Debtors and with the consenting group to be among those that
5 would fund a Chapter 11 Plan with, on its face, substantial
6 assets. The evaluation of that Agreement obviously has been
7 under way since the injunction was entered back last Fall.
8 There is a suggestion in the pleading that there needed to
9 be an identity of interest between Mr. Sackler and the
10 Debtors or some form of indemnification to establish
11 jurisdiction. But is that what -- I'm still trying to
12 figure out what discovery you're asking for other than the
13 analysis that's actually ongoing, which is the support as a
14 negotiation matter of the Agreement that he's already
15 entered into.

16 MS. STADLER: Right. First, let me be clear. The
17 indemnification obligation of a Debtor is one of any number
18 of factors that can establish the basis for jurisdiction or
19 related to jurisdiction. It is, in many of the cases, it is
20 established as a point of fact and a fact-finding in the
21 record. That doesn't mean that that's the only way or that
22 the Court has to have to find an identity of interest.
23 There are other ways shared. Insurance, for example, if the
24 non-party is directly participating in the operation of the
25 Debtor in Possession, there are other factors that the law

1 recognizes.

2 THE COURT: Such as a statutory --

3 MS. STADLER: The indemnification though --

4 THE COURT: I'm sorry. Such as a statutory right
5 of contribution?

6 MS. STADLER: Right. That would fall under the
7 general umbrella of the indemnification obligation, but
8 since we're at the discovery question, it needs to be asked.
9 Whether there is a statutory or contractual indemnification
10 obligation, we have heard representations from the Debtors
11 and the Sacklers that no payments are being made to any of
12 the Sackler family members pursuant to any Indemnification
13 Agreement or obligation. And the question that has not been
14 answered is, has Richard Sackler permanently waived his
15 entitlement to indemnification from the Debtors? The term
16 sheet on file suggests that he may have because one of the
17 conditions of the Settlement Agreement reached before the
18 bankruptcy case was filed was that the non-Debtor parties
19 waive all of their claims against the estate. But we don't
20 know. The question has been posed, it hasn't been answered
21 and we think it's a crucial question that needs to be
22 answered to establish the jurisdiction of this Court because
23 if Richard Sackler has waived any right of indemnification
24 has as as part of an agreement, leading to this bankruptcy
25 case or an agreement in principal outlining the settlement

1 term sheet, that's very relevant as to whether the action
2 against him has a conceivable effect on the bankruptcy case.

3 THE COURT: You're aware that the Tennessee
4 statute that's the basis for the claim against him has a
5 contribution provision in it?

6 MS. STADLER: I am.

7 THE COURT: Okay. And you're also aware, I think,
8 because you said, that the Agreement is an agreement in
9 principal?

10 MS. STADLER: I am.

11 THE COURT: Okay. So, I think we should move off
12 of that point. But, I guess, then beyond that, you're
13 looking to take discovery as to the identity of interest
14 between the Sacklers and the Debtors?

15 MS. STADLER: Well, in this case, our argument is
16 that, to establish jurisdiction, that discovery would be
17 necessary.

18 THE COURT: Okay, but doesn't that confuse --

19 MS. STADLER: (indiscernible) determination was
20 already made.

21 THE COURT: Doesn't that confuse the notion of
22 whether the Automatic Stay would apply under Queenie vs.
23 Nygard as opposed to jurisdiction under 28USC 1334 and 157?

24 MS. STADLER: It's an interesting question, Your
25 Honor (indiscernible)

1 THE COURT: No, I mean, I -- there's nothing in
2 the caselaw that talks about an identity of interest other
3 than in the stay context. There's nothing in the
4 jurisdictional caselaw that talks about an identity of
5 interest. The Supreme Court in the Celotex case doesn't
6 talk about an identity of interest. It talks about a
7 conceivable effect.

8 MS. STADLER: No. Correct. It talks about a
9 conceivable effect and the identity of interest or the
10 specific indemnification obligation can be one
11 (indiscernible) of that effect. That's correct.

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

13 MS. STADLER: No, Your Honor. Thank you.

14 THE COURT: Okay.

15 (Crosstalk)

16 MR. HUEBNER: Can I interject with one technical
17 comment? I don't mean get in the way of the argument.

18 THE COURT: Sure.

19 MR. HUEBNER: I just wanted to make it clear on
20 the record -- I just want to make it clear on the record
21 because sometimes, (indiscernible) is not as clear, that the
22 argument that was just presented was made on behalf of
23 District Attorneys for certain local governments in
24 Tennessee and it was not on behalf of the State of
25 Tennessee. The State of Tennessee is a member of the ad hoc

1 group and I just didn't want there to be confusion in the
2 transcript.

3 THE COURT: Okay. That's helpful. I think I may
4 have contributed to that by referring to the State of
5 Tennessee.

6 MR. HUEBNER: That's why I thought it would be
7 useful for me to interject. I appreciate it, Your Honor.
8 Thank you.

9 THE COURT: Thank you.

10 MR. HUEBNER: So, Your Honor, I will try to be
11 brief and efficient. Number one, this is a -- essentially,
12 as a reminder, we have this argument and this is now on
13 appeal and I think that appeal will hopefully be decided in
14 a relatively near term and then we will know what the
15 District Court thinks about these particular injunctions as
16 to these specific counts.

17 Number two, I feel a little bit like I dialed into
18 the oral argument in a different case in certain parts of
19 what I just heard. The (indiscernible) secretive, private
20 process -- all we have done, almost every single work day
21 for the last six months and most weekend days, is interact
22 with various groups of creditors and procure and share and
23 meet and design and get information and diligence of all
24 kinds. Again and again, I've been a lawyer for two counties
25 in one state purports to speak to the state of mind of the

1 creditor body as a whole for sovereign states in both camps.
2 And again, that's just -- it's just inappropriate and
3 there's no basis for doing that.

4 With respect to, at some point the Sacklers need
5 to describe or someone in the world deserves to know what
6 they took out of Purdue, I'd just remind counsel that the
7 Debtor has published, on the docket in the public domain, a
8 365-page report listing to the penny, every single dollar
9 that went out to the shareholders of the dividends or
10 distributions, for a more than 10-year period, totaling
11 \$10.4 billion with extraordinary detail. But any suggestion
12 that there is some sort of secretive, improper protection
13 from information being facilitated by this Court is frankly,
14 somewhere between untrue and offensive.

15 The next issue, and the (indiscernible) for
16 wrongdoers is also just inappropriate. I'd remind everyone
17 that our initial injunction and UCC Debtor Shareholder
18 (indiscernible) Stipulation contains things, that as the
19 Court noted, could likely never have been obtained by any
20 domestic litigant, including at this stage, anti-secretion
21 provisions, consent to jurisdictions by multiple foreign
22 parties who may have limited to no ties in the United States
23 and material financial disclosure that everyone
24 acknowledges, while there's more to come, has been provided
25 a detail on an initial basis.

1 With respect to the sub-position, no-one ever
2 called me and asked about this. I'm not sure who they think
3 they asked about whether any of the Sacklers have already
4 permanently waived their rights to indemnity or a stay of
5 all contribution rights. The Court, I think, already dealt
6 with that point. The answer is no and it's pretty simple.
7 All we have, at this point, although it's very important, is
8 an unsigned, non-binding, term sheet filed on the docket,
9 that if this deal were to be fully documented and go
10 through, ultimately one of its many provisions that there
11 would be a waiver in the future. But of course, Your
12 Honor's point was, as always is true, the right one, which
13 is, that's actually not the jurisdictional test here for
14 what we're talking about with respect to related to
15 jurisdiction.

16 As we said at length in our papers, which is why I
17 could not speak to it at all -- the identity of interest,
18 leaving aside indemnity and mandatory contributions, is
19 established about a hundred times over by their own
20 Complaint, which makes clear that their allegations are
21 entirely about the conduct of Purdue that they believe was
22 caused, facilitated, directed, encouraged, by Richard
23 Sackler. So, you don't need to take our word for it, you
24 just need to take their word for it by reading their
25 Complaint and once again seeing, as I said before in the

1 different context a few minutes ago, that this litigation is
2 really all about the harm that Purdue allegedly caused
3 within this case, one specific Sackler, that's sort of an
4 alleged puppeteer or mastermind.

5 And let me just say one last thing, because I
6 think the Court probably knows it, but I think it's worth
7 saying out loud. Our fiduciary duty is to maximize value,
8 minimize costs and try to get these cases done and transfer
9 as much value as we can as quickly as we can to
10 stakeholders, creditors, governments, etc. If the Debtors
11 and their professionals and the special committee were to
12 come to believe that the path that we are on, which involves
13 both very importantly things into which the Court and the
14 public -- the entire public, not just stakeholders, have
15 visibility, including mediation, were no longer likely -- or
16 no longer had a reasonable hope or had led to an actual
17 impasse, I think we would be among the first people to come
18 to the Court, as we may do on individual issues, as well as
19 the case as a whole and say, "Your Honor, we no longer see a
20 path to a resolution", including, for example, because of
21 the burden requirements which are rather high for a
22 (indiscernible) in the case. And that's our job and that's
23 our duty.

24 So, I do want to give the Court, and all parties,
25 both objectors and supporters alike, complete comfort that

1 if we had meant that only our view matters, but that if we
2 come to be of the view that there is truly an impasse in
3 this case, we actually have an obligation as a matter of
4 federal law, to come to the Court and try to figure out what
5 new -- either new or new roads we might lay down together to
6 get through that impasse and on the other side.

7 And so, Your Honor, I think that's probably about
8 all you need to hear from me today on this Motion. Let me
9 end where I began, which is, I don't feel -- we have a
10 stream to cross for sure with the two objections, but I
11 don't want the river that we've crossed already to be lost.
12 (indiscernible), no-one is objecting to the injunction
13 against the Debtors' being extended for 180. No-one is
14 objecting to the injunction against most of the related
15 parties. We're down to one request for nine people, one
16 request for only one of those nine.

17 Our final point on the form of Order, Your Honor,
18 despite the fact that there are objections from the
19 consenting states, we try to always, sort of, do the right
20 thing as best we know how. And so the form of Order both,
21 again, allows them to choose to voluntarily comply if, as we
22 hope the injunction is extended, so that they don't have --
23 I won't to speak for them -- for whatever their issues were
24 last time and they made a lot of sense with being
25 involuntarily enjoined and even though, again, this was just

1 something we voluntarily drafted in, we once again put in an
2 off ramp because we understand that 180 days is not a short
3 time. The only thing that's going to be needed here because
4 this is, in fact, one of the most complex Chapter 11 cases
5 yet filed as Your Honor well knows. There will be, you
6 know, probably tens of thousands of Creditors asserting
7 probably trillions of dollars of claims.

8 But nonetheless, you know, we could have just
9 sought a flat injunction for six-months period. We didn't
10 put in the same offramp that ultimately led us to a --
11 after, you know, Your Honor's rulings -- a consensual form
12 of order the first time, so we're trying to be standup and
13 give people what we think is the right package, even if we
14 had to have a contested hearing and we're not backing away
15 that irrespective of the Court's ruling. The form of order
16 we submitted that provides for those two, hopefully,
17 attractive enhancements within the rubric of 180-day period
18 are things that we fully intend and are willing to have part
19 of the package.

20 THE COURT: Okay. All right. Anything else?
21 Okay. I have before me the Debtors in this case's motion to
22 extend the preliminary injunction that has been in effect
23 now for several months in this case. That injunction goes
24 beyond the automatic stay under Section 362(a) of the
25 bankruptcy code in two respects.

1 First, because the Debtors, I think, wisely
2 decided not to engage in a count-by-count or state-by-state
3 or governmental-entity-by-governmental-entity analysis of
4 the applicability of the exception to the automatic stay
5 under 362(b)(4), the so-called police and regulatory
6 exception, they are seeking to obtain an injunction on the
7 terms of the proposed order to protect themselves. It is
8 not coextensive with the automatic stay because the
9 injunction includes important voluntary agreements and
10 undertakings by the Debtors, but it would largely serve the
11 function of a Section 362 stay, albeit that it's under
12 Section 105 of the bankruptcy code.

13 The proposed order consistent with the order
14 originally entered by the Court addresses legitimate
15 concerns that the states and governmental entities had with
16 respect to the ongoing enforcement of their police and
17 regulatory power, including, among other things, voluntary
18 restrictions on how they engage in their business and the
19 appointment of a monitor. In addition, as the Debtor's
20 counsel just said, the proposed order like the prior
21 versions of it, also permits governmental entities to agree
22 to the order as opposed to having a precedential order that
23 would be imposed upon them under Section 105 of the
24 bankruptcy code.

25 Secondly, the injunction seeks to -- or would --

1 continue to enjoin litigation against the so-called related
2 parties, largely the Sackler family members, that were
3 pending and would be arising thereafter throughout the
4 country based on their role with Purdue and the other
5 Debtors -- a so-called third-party preliminary injunction.

6 The injunction, as I said, has been in place since
7 October and was the subject of extensive briefing and
8 hearings back in October of 2019, and I issued a fairly
9 brief bench ruling at the time, starting at page 253 of the
10 transcript of that October hearing that laid out the basis
11 on which I determined to -- that one should evaluate the
12 motion and my determination to grant it, albeit with the
13 changes that I directed and were made in the proposed order.
14 I won't repeat that ruling today. Rather, it appears to me
15 that I instead should analysis the facts as they apply today
16 under the same standard that I articulated at the October
17 hearing.

18 The motion is largely unopposed. First, no party
19 has objected to the continuation of the injunction as to the
20 Debtors. I will state a caveat to that. The so-called non-
21 consenting states have stated in their pleading that they
22 agree to the foregoing and the extension of the injunction
23 to the related parties for another 180 days on the condition
24 that motions to dismiss be permitted to go forward with
25 respect to nine related parties by up to 20 of the states.

1 And it's not clear to me whether, if I deny that portion of
2 that objection, they are objecting to the extension of the
3 injunction to the Debtors. But, again, in my ruling on the
4 initial request dated back on October 11, 2019, again,
5 starting at page 253, I gave the basis for the issuance of
6 such relief on an uncontested basis and I believe that that
7 case law and rationale continues to apply, including, as far
8 as the Debtors are concerned, the fact that thousands of
9 ongoing litigations would severely disrupt the constructive
10 process that has ensued since the issuance of the injunction
11 in October. As I stated then, in addition to the disruptive
12 effect of that litigation, the Debtors and their Creditor
13 constituents, which are diverse, need to address several
14 important tasks before they collectively can make the most
15 of this Chapter 11 case, not the least of which is a
16 reasonable allocation of the Debtor's resources and
17 potentially the resources of the related parties who have in
18 a term sheet with the so-called governmental group agreed
19 to, on their face, substantial contributions to a Chapter 11
20 plan -- how those resources that is should be allocated to
21 Creditors and to alleviating what each Creditor has asserted
22 which is the adverse effects of allegedly improper uses of
23 opioids throughout the nation.

24 In addition, substantial work needed to be done
25 with respect to estate causes of action, potentially,

1 against the related parties, as well as, of course, due
2 diligence on the proposed settlement. It was my belief then
3 and continues to be my belief now that if that work is not
4 conducted, the ongoing litigation, particularly given the
5 Debtor's agreement to turn over all of their value to a as-
6 yet to be defined Creditor body in an as-yet to be defined
7 allocation, would cease and go to waste.

8 Those critical issues, to me, were barely
9 addressed in the litigation over the last few years, and any
10 meaningful settlement of such litigation, I believe, would
11 have to address them, because otherwise the defendants would
12 not obtain meaningful finality. I believe the fact that no
13 one is seeking, I believe, to undo the injunctive relief for
14 at least the next 180 days is a testament to that Debtors
15 and the other key constituents in this case pursuing, in an
16 orderly and reasonable way, those tasks. I will note that I
17 do have a declaration of one of the Debtor's counsel, Mr.
18 Kaminetsky, which lays out in more detail than I have just
19 done the work that has ensued since the issuance in October
20 of the preliminary injunction on each of those matters. No
21 one has contested those statements and I believe it's also a
22 matter that I can take judicial notice of based on the
23 hearings before me since October.

24 Frankly, if it takes six months to a year to have
25 a final ruling on a motion to dismiss in one litigation, one

1 would expect that it would take more than six months --
2 hopefully not more than a year, particularly with the
3 talented professionals on all sides here -- to undertake in
4 a meaningful way the tasks that I just outlined. And one
5 hopes to further negotiate a Chapter 11 plan that allocates
6 the Debtor's resources and to the extent a settlement can be
7 negotiated, the related parties' resources fairly.

8 There are two objections to the motion styled as
9 limited objections. I will deal first with the limited
10 objection of the Tennessee counties which seeks to pursue
11 through determination of liability a pending lawsuit against
12 Dr. Richard Sackler one of the related parties. The
13 objection is premised on two arguments. The first I've
14 largely addressed, again, in the October 11th bench ruling.
15 The Tennessee plaintiffs contend that this Court lacks
16 jurisdiction under 28 U.S.C. Section 1334(a) to issue an
17 injunction here under Section 105(a) of the bankruptcy code.
18 I had previously considered that argument and ruled against
19 it on October 11th, and it is now up on appeal to the
20 district court. Apparently, the same judge who I favorably
21 cited in concluding that at a minimum I had related to
22 jurisdiction under Section 1334 and the conceivable effect
23 test articulated by the Second Circuit, then most recently
24 in *SPV OSUS Limited v UBS AG* 882 F3rd 333 340 2nd Circuit
25 2018. I would only add three things to that point.

1 First, I neglected to cite, although I should have
2 cited, Celotex Corp v Edwards 514 U.S.300 at 307 through
3 311, 1995. The Supreme Court found at least related to
4 jurisdiction existed in the bankruptcy court which enjoined
5 the drawing by a third party on a surety bond where no
6 conditions to the draw remained. Although the bond itself
7 was not property of the estate, the Supreme Court found
8 related to jurisdiction because of the conceivable effect
9 that that draw would have on the Celotex bankruptcy case,
10 including among other things, its effect any potential
11 future settlement with insurers.

12 Secondly, I would note that one of the case I
13 cited for the general proposition that a court has
14 jurisdiction over a third party injunction, In Re
15 (indiscernible) SARL 592 VR 504 through 05 -- I'm sorry --
16 504 -- excuse me -- STNY 2018 was affirmed in December at
17 792 Fed Appendix 99 December 20, 2019.

18 Finally, although this I did not address at all,
19 it appears to me that not only do I have related to
20 jurisdiction, but given the ultimate basis or a primary
21 basis here for the injunction of continued litigation, that
22 is Debtor-related litigation, against the related parties is
23 their agreement with the settling governmental entities to
24 fund a plan that I have arising in jurisdiction under 2080
25 U.S.C. Section 1338(a). As the Second Circuit said in

1 Elliott v GM LLC -- I'm sorry -- yeah, LLC -- In re Motors
2 Liquidation Company 829 F3rd 135 153 2nd Circuit 2016, circ.
3 denied 137 Supreme Court 1813 2017, quote, at a minimum, a
4 bankruptcy court's arising in jurisdiction includes claims
5 that are not based on any right expressly created by Title
6 XI but nevertheless would have no existence outside of the
7 bankruptcy. The injunction here of course if based on 105
8 which would arising under jurisdiction, but also, the
9 underlying basis for the injunction primarily is to enable
10 there to be time to do due diligence on and finally
11 negotiate the proposed settlement with the related parties
12 including Richard Sackler and to see whether, if that
13 particular settlement cannot be negotiated, some other
14 settlement under which they would be similarly contributing
15 meaningful amounts under a plan could be negotiated and
16 approved as part of a Chapter 11 plan.

17 Of course, there are other grounds for
18 jurisdiction here, including the fact that the complaint
19 against Richard Sackler is in almost every paragraph
20 premised upon his role at Purdue and his causing allegedly
21 Purdue to take the actions under which he is now being sued.
22 And, secondly, the fact that under the applicable Tennessee
23 statute, if he were found to be liable ultimately, he would
24 have a right of action for contribution against another
25 person subject to liability under this Chapter, Tennessee

1 Code Annotated 29-38-112. Both of things I believe as
2 conceded by counsel for the Tennessee plaintiffs also with
3 support at a minimum related to jurisdiction.

4 So clearly, the bankruptcy court has subject
5 matter jurisdiction to issue an injunction here. The
6 Tennessee plaintiffs also contend that the current status of
7 this case warrants not extending the injunction and
8 permitting them to pursue Richard Sackler in the pending
9 litigation. Frankly, the argument for this, I believe,
10 shows why the injunction should be extended. It is premised
11 in large measure on the notion that a party who has the
12 benefit of a third-party injunction needs to engage in a
13 significant level of disclosure supporting his, her, or its
14 significant contribution to the Chapter 11 case.

15 At oral argument, counsel has stated that there
16 has not been a level of transparency in that the Tennessee
17 counties are restless about the level of disclosure in the
18 case. At the same time, I believe it's acknowledged that
19 that transparency ultimately needs to be, quote, at the end
20 of the day when a proposed third-party injunction to release
21 is up for confirmation. In the meantime, the record is
22 crystal clear that there has been substantial disclosure and
23 that that disclosure is ongoing, not only with respect to
24 the role that the related parties including Richard Sackler
25 played when they were controlling parties at Purdue which

1 goes to the heart of the Tennessee litigation, but also to
2 facilitate due diligence on their settlement proposal and
3 the estates and the other parties and interests, including
4 the official creditors committee and other major
5 constituents in the case need to conduct to evaluate the
6 settlement in the context of estate causes of action or
7 potential estate causes of action against the related
8 parties.

9 The notion that such disclosure should immediately
10 be flushed out to the public, I think, is belied by every
11 party and interests' willingness to enter into an agreed
12 protective order and the use of such protective order as in
13 discovery generally, including, I gather, in the Tennessee
14 action itself. The record, I believe, is clear that in
15 addition to the disclosure that has occurred thus far and
16 will be continuing, the injunction itself also contemplates
17 a level of monitoring and compliance that would not be
18 achieved without the injunction and agreements by the
19 related parties with respect to accepting the Court's
20 jurisdiction, an issue that still exists in Tennessee, and
21 agreeing not to make transfers as laid out in the
22 injunction.

23 Clearly when one balances the harms and applies
24 the other factors that need to be applied for a 105
25 injunction of the bankruptcy case as laid out by, among

1 other courts, Lautenberg Foundation v Picard, In re Bernard
2 L. Madoff Investors Securities LLC 512th at Appendix 18 2nd
3 Circuit 2013 and In re Lyondell Chemical Company 402 BR571
4 587 through 589 Bankruptcy STNY 2009. See also Caesars
5 Entertainment Operating Company v BOKFNA In re Caesars
6 Entertainment Operating Company 808 F3rd 1186, 1188 through
7 1189 7th Circuit 2015, namely whether there's a likelihood
8 of successful reorganization, whether there's an imminent
9 irreparable harm to the estate in the absence of an
10 injunction, whether the balance and harm tips in favor of
11 the moving party, and whether the public interest weights in
12 favor of an injunction. Each of those factors has been
13 established.

14 I conclude that there is a likelihood of a
15 successful reorganization here. We are in the early stages
16 still of that process but the parties are doing what they
17 need to do as have been previously identified in October and
18 that process does not happen overnight. It requires
19 significant legal and business resources as well as the good
20 faith commitment of key constituents to use the information
21 generated to negotiate in good faith.

22 Secondly, there is imminent and irreparable harm
23 to the estate. In the absence of an injunction, I believe
24 that if the Tennessee litigation were to proceed, the
25 Debtors would need to get involved and other parties would

1 rightfully say at that point, we need to do -- we need to be
2 involved, too. We need to have our litigation proceed.
3 There's nothing fundamentally different in the Tennessee
4 County litigation than hundreds of other litigations pending
5 against the Sacklers.

6 For the same reasons that I found in October, if
7 the focus of these cases turns to litigating the merits
8 which would take years, it would be disastrously diverted
9 from the tasks that have been undertaken and that are going
10 to be continued to be undertaken with the benefit of the
11 injunction in this case. As I noted, the balance of harm
12 tips in favor of the Debtors here and it's really not just
13 the Debtors. It's all of the Creditors as well. On the
14 other side are the parochial interests of the two Tennessee
15 counties but obviously, if I lifted or didn't extend the
16 injunction as to them, everyone else would have the same
17 right to be involved which creates the chaotic effect of
18 moving the focus of this case away from allocation of the
19 value and the due diligence related to it to simply
20 establishing liability at a time when substantial amounts of
21 value have already been offered.

22 Obviously where a governmental entity is involved
23 I take seriously whether the public interest weighs in favor
24 of an injunction against that public entity. On the other
25 hand, it's recognized that such an injunction may be issued

1 and the standard for analyzing it generally is the same as I
2 ruled again in the bench ruling in October. See, generally,
3 Penn Terra Limited v Department of Environmental Resources
4 733 F2nd 267 3rd Circuit 1983 and the legislative history of
5 Section 362(b)(4). Here, the interests alleged, since it's
6 acknowledged that only liability would be established, is, I
7 believe, an interest in transparency and I believe that as
8 committed to by the Debtors at the initial hearing on the
9 injunction, there will be transparency as to what happened
10 here upon confirmation of a plan and thereafter, so that
11 reporters, professors, and the public will have a record
12 that they can analyze. In the meantime, proper transparency
13 is taking place in this case as far as the due diligence
14 that I've already described.

15 So I will deny the objection by the Tennessee
16 plaintiffs. The remaining objection is by the so-called
17 non-consenting states. The states are careful to point out
18 that they do not seek to undermine the process that has been
19 taking place in this case since the issuance of the
20 injunction in October and in fact before then as well. And
21 I can take to note judicial notice of the fact that at least
22 in hearings before me parties have acknowledged that the so-
23 called non-consenting group has in fact engaged actively in
24 the due diligence and consensual planned process including
25 in laying in on the proposed mediation parameters and in

1 engaging in the mediation itself.

2 The non-consenting states nevertheless believe
3 that the injunction should not be continued as against
4 certain related parties -- nine members of the Sackler
5 family -- to permit pending motions to dismiss and potential
6 additional motions to dismiss to proceed through a
7 determination of such motions and apparently no other
8 litigation.

9 It is stated, quote, in the next few months,
10 rulings on the legal sufficiency of the state's allegations
11 against the Sacklers could provide important information to
12 enable the parties to analyze whether they would support a
13 plan to release the state's claims against the Sacklers,
14 along with the stronger basis to determine what terms such a
15 plan should require and how it could be justified to the
16 parties, the public, and the Court. The objection notes
17 that two of those states have already won motions to dismiss
18 and none of them have lost a motion to dismiss. I will note
19 -- I can take judicial notice of this -- that a motion to
20 dismiss has been granted not against one of these states but
21 in other litigation brought by a state.

22 But in weighing the objection, I must necessarily
23 weigh the rationale for it which is that, again, in the next
24 few months, determination of one or more motions to dismiss
25 would provide important information. I must weigh that

1 against the effects of permitting those motions to proceed
2 that would have an adverse impact on these cases, again,
3 consistent with the legal standard that I've already
4 summarized and recognizing already -- I won't repeat this --
5 the beneficial effects of an injunction generally.

6 Both the Debtors and the official unsecured
7 creditors committee have listed a number of reasons why
8 permitting the motions to dismiss to be brought and decided
9 would have an adverse effect on these cases, and I generally
10 agree with their analysis, especially as follows: the
11 pursuit of the litigation which again is tied directly to
12 these individual's role in the Debtors necessarily also
13 involves the Debtors. More importantly than that even, the
14 claims are similar to claims brought by other governmental
15 entities and those governmental entities would also want to
16 pursue the litigation.

17 In addition, winning a motion to dismiss, assuming
18 it would be won, would put those states that would pursue it
19 ahead of the litigation timeline versus everyone else.
20 Naturally, those other people would say they want to have
21 the same right. In addition, it appears to me that while I
22 trust that the non-contending states will continue to engage
23 in all of the constructive work that they had been doing in
24 this case, a natural focus on that work will be diverted,
25 including by the Sacklers, to the litigation. And those

1 parties who are not pursuing the litigation and who may be
2 assuming that their recovery comes under other theories or
3 under the same theories would feel themselves to be at a
4 disadvantage in the ongoing mediation process over
5 allocation.

6 As against those considerations, the non-
7 consenting states again say that, nevertheless, this would
8 be an important data point to have and that the litigation
9 would further the public interest in bringing claims against
10 the Sacklers into the public domain. On the latter point,
11 it would appear to me that the states' interest while
12 generally strong is not strong here with respect to this
13 particular request. The motion to dismiss is just a motion
14 to dismiss. It's not a public record other than a test as
15 to the legal sufficiency of a complaint where all the facts
16 alleged in it are assumed to be true, i.e., it's a one-sided
17 story, not particularly a transparent one.

18 Secondly, I cannot believe that the pursuit of
19 motions to dismiss that admittedly would not be decided for
20 months and in some cases years is a gatekeeper for
21 negotiations. Indeed, the record of this hearing is clear.
22 We're not even at the point of negotiations other than the
23 agreement that's on the table. If there have been bids and
24 asked, I would be very surprised, given the fact that due
25 diligence is still ongoing.

1 Moreover, a victory in defeating a motion to
2 dismiss merely leads to the next step in a litigation.
3 Lawyers are perfectly capable of evaluating litigation
4 without going through a motion to dismiss. My attitude
5 would be different if I believed that these nine related
6 parties had said, we're not contributing anything. We will
7 win. See us in court. Or alternatively, the due diligence
8 shows that they really aren't contributing anything. But
9 we're at neither of those points. So it would appear to me
10 that the only use for not extending the injunction as to the
11 motions to dismiss would be to create some form of leverage
12 in negotiations among Creditors which would be improper
13 here. Or alternatively -- prematurely -- to address
14 negotiations with the Sacklers. I say prematurely because
15 it does not appear to me that those negotiations are
16 anywhere close to breaking down.

17 So again, in evaluating the factors that I must,
18 it appears to me that all four of them support continuation
19 of the injunction in all respects. As I said before, this
20 is not a free pass to the related parties but I don't
21 believe they think it is and no one in the public should
22 think it is, given the state of the record. And, of course,
23 ultimately, it is every politician's duty to act on the
24 facts as it is the judges. Judges can be wrong but simply
25 throwing out statements to the contrary, i.e., the Sacklers

1 are getting a free pass or should not get free pass, does no
2 one any good and, frankly, paints people into a corner they
3 may not want to sit in in the future.

4 I generally have allowed and discounted statements
5 like that in pleadings by the governmental entities knowing
6 that there is a political brain at work as well a legal
7 brain, but I trust that in actuality all of the public
8 stewards here like the creditors committee and the Debtors
9 will be doing their utmost to maximize the value of the
10 Debtor's estates and distribute and agree on a reasonable
11 allocation of how it's to be distributed.

12 To my mind, it is highly likely that ultimately
13 that will include a substantial contribution by the related
14 parties. It is also possible, given the political brain,
15 that someone nevertheless will not agree to it. The notion
16 that that one entity could hold up something that is good
17 for all, to me, is almost repulsive.

18 So I'm prepared to let the process continue on
19 this basis. I do want to hear, though, if anyone that's
20 playing a major role in this case is somehow not
21 participating in it because I believe that is something
22 where there needs to be transparency.

23 Lastly, on the subject of transparency, there is
24 some brief discussion in the objection apparently faulting
25 the Sacklers for having briefly filed their point of view on

1 the docket and then retracting it. The reason they
2 retracted it is that I concluded that the filing, while
3 understandable since they have not had the public forum to
4 set forth their point of view on these issues, would
5 severely retard the progress of this case, inevitably
6 eliciting responses by every other party in this case and
7 completely diverting the parties' attention from the tasks
8 that need to be undertaken and completed. So I directed
9 them to withdraw it as I believe the 24 states know, but if
10 they don't, they know it now. They should not be faulted
11 for it. They were not trying to be opaque.

12 So I urge the parties to continue what they're
13 doing and, if possible, to redouble their efforts. In
14 particular, I would urge them to complete the proposal for
15 Court consideration of the emergency fund motion. Everyone
16 here says they want to devote the Debtor's resources to
17 resolving the opioid crisis. There's general agreement that
18 a big chunk of those resources should be devoted now. That
19 agreement is right. It doesn't have to be perfect just like
20 a plan doesn't have to be perfect. Congress recognized that
21 in the bankruptcy code. It has to be good enough and I urge
22 you to agree on what's good enough and put it before me.

23 So I'll look for, in addition to the two orders on
24 the 363(b) and 365(g) matters that I dealt with at the
25 beginning of this hearing, the order granting the motion to

1 extend the preliminary injunction and overruling the two
2 objections.

3 MR. HUEBNER: Thank you, Your Honor. We will send
4 it in and I think it's probably fair to say that everyone on
5 the phone takes those admissions and the guidance very
6 seriously and people are deeply engaged and obviously, we'll
7 have to keep and our families safe, but this is -- no foot
8 is coming off the gas pedal to the extent humanly possible
9 on progressing. So I -- nothing else from the Debtors.

10 THE COURT: Okay. And I have no doubt everyone is
11 deeply engaged and maybe I was just trying to give you a pep
12 talk in time that are somewhat dark, generally. Thank you.

13 MR. HUEBNER: Thank you, Your Honor.

14 MAN: Thank you, Your Honor.

15 (Whereupon these proceedings were concluded at
16 1:00 PM)

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

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



Sonya Ledanski Hyde

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Date: March 20, 2020