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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Chapter 11  
. Case No. 20-11177 (KBO)  
AKORN, INC., .  
. .  
. Courtroom No. 3  
. 824 Market Street  
Debtor. . Wilmington, Delaware 19801  
. .  
. Tuesday, November 14, 2023  
. . . . . 11:02 a.m.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE KAREN B. OWENS  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor and  
Plan Administrator Emily R. Mathews, Esquire  
RICHARDS, LAYTON & FINGER, P.A.  
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1 (Proceedings commenced at 11:02 a.m.)

2 THE COURT: Good morning. Nice to see you all  
3 again. Please be seated.

4 We are gathered for a hearing in the Akorn Chapter  
5 11 case.

6 Please go ahead.

7 MS. MATHEWS: Good morning, Your Honor. For the  
8 record, Emily Mathews from Richards, Layton & Finger, on  
9 behalf of the plan administrator and the debtor.

10 Your Honor, I'd like to start with a brief update  
11 of where the cases are since it's been awhile since we've  
12 been before you in this matter. Drivetrain LLC, the plan  
13 administrator, has been working diligently to priority claims  
14 since the plan confirmation. We started with approximately  
15 \$39 million worth of priority claims and based on  
16 reconciliation, we've made a total payout of approximately  
17 \$4.3 million in satisfaction of those claims.

18 Because of that hard work and the plan  
19 administrator's diligent efforts, there now may be a small  
20 distribution available to general unsecured creditors.  
21 Accordingly, we have filed a number of claim objections to  
22 reconcile general unsecured creditors and we hope to continue  
23 and get through that as expeditiously as possible.

24 Turning to the agenda for today, there's one  
25 matter going forward, the debtor's fourth omnibus claims

1 objection, which is at Docket 1138, where we sought to  
2 disallow and expunge certain late-filed claims and amended  
3 and superseded claims.

4 With permission of the Court, Tom Fitzgerald from  
5 Drivetrain LLC, the plan administrator, is here virtually via  
6 Zoom and we would now seek to introduce his declaration that  
7 was submitted with the fourth omnibus objection into  
8 evidence.

9 THE COURT: Any objection?

10 (No verbal response)

11 THE COURT: I'm not hearing any objection.

12 It's admitted.

13 (Fitzgerald Declaration received in evidence)

14 THE COURT: And just for housekeeping purposes,  
15 does anyone intend, or seek to cross-examine the witness on  
16 the substance of his declaration today?

17 (No verbal response)

18 THE COURT: Okay. I'm not hearing anyone. Thank  
19 you.

20 MS. MATHEWS: We received a number of responses to  
21 this claims objection and we resolved all but one, the  
22 response of MSN Laboratories Private Limited, which is at  
23 docket number -- which response is at Docket 1142.

24 We thank Your Honor for entering the order with  
25 respect to the remainder of the claims that were subject to

1 the fourth omnibus objection.

2 In our further omnibus objection, we objected to  
3 MSN's claim, which is Claim Number 788, on the basis that it  
4 was late-filed. The bar date by which proofs of claim should  
5 have been filed was August 3rd, 2020, and MSN's claim was  
6 filed on February 28th, 2023, more than two years later.

7 Accordingly, we objected on the basis that MSN's  
8 claim was late-filed. As Your Honor is aware, there was a  
9 sale in these Chapter 11 cases and following plan  
10 confirmation and closing of the sale, Akorn Operating  
11 Company, LLC, took over business operations for the  
12 Chapter 11 debtors. As Your Honor is also aware, Akorn  
13 Operating Company, LLC subsequently filed a Chapter 7 case in  
14 this court approximately two years after the closing of the  
15 sale in February of 2023.

16 In response to our objection, MSN argued that its  
17 claim was not filed late, because the services it performed  
18 were rendered in 2022, as evidenced by the purchase order and  
19 invoice attached to MSN's proof of claim. MSN did not  
20 address the excusable neglect standard in its response.

21 Accordingly, notwithstanding that the MSN claim  
22 was filed more than two years after the bar date in the  
23 Chapter 11 cases, MSN's claim is also not an obligation of  
24 the Chapter 11 debtors; it is an obligation of the Chapter 7  
25 debtor, Akorn Operating Company, LLC.

1           In an attempt to resolve the response we received  
2 from MSN, we reached out to Mr. Vinod Chawla, a  
3 representative from MSN, and explained that MSN's claim was  
4 filed late in these cases and is an obligation of the  
5 Chapter 7 debtor Akorn Operating Company. We gave Mr. Chawla  
6 contact information for the Chapter 7 Trustee and their  
7 counsel, but to date, Mr. Chawla has not responded to us,  
8 although he did reach out to the Chapter 7 Trustee.

9           So, unfortunately, for purposes of today's  
10 hearing, we didn't want to assume that this matter was  
11 resolved and so we are here today seeking to disallow the MSN  
12 claim based on it being late-filed. I'm not sure if  
13 Mr. Chawla is here virtually today, but we did send him a  
14 copy of the agenda and explain to him how to register for the  
15 hearing, but we did not hear back, so I'm not sure if he's on  
16 Zoom.

17           THE COURT: All right. Thank you very much.

18           But I don't believe he is, but I'll ask for the  
19 record, is there a representative from MSN Laboratories on  
20 the Zoom?

21           (No verbal response)

22           THE COURT: Okay. No one is responding and based  
23 on what I can see, no one is on Zoom. Thank you.

24           MS. MATHEWS: And that's all we have, Your Honor.

25           THE COURT: Thank you very much.

1 I did have the opportunity to review the fourth  
2 omnibus objection, as it relates to the one open claim of MSN  
3 and I did look at the response of MSN, as well as the record  
4 of these cases, and I agree the claim should be disallowed,  
5 as it arose following the sale of the debtor's assets to the  
6 new Akorn entity and, therefore, it's not the responsibility  
7 of these estates and, of course, it was late-filed, as you  
8 said, which is the basis for your original filing, and that  
9 there's been no legitimate responses to the late-filing  
10 nature of, or I should say, a persuasive and acceptable  
11 response to justify the late-filing.

12 And the reality is it's because the claim should  
13 have been asserted against the Chapter 7 Akorn estate, and so  
14 for those reasons, I will enter the order, with respect to  
15 the fourth claim objection as it relates to MSN Laboratories  
16 and I'll ask you to submit a form of order on that under  
17 certification of counsel. To the extent that the claimant  
18 is -- I guess, will listen to this hearing or review the  
19 transcript, I'll note that the Chapter 7 Akorn entity did  
20 file bankruptcy protection earlier this year in February and  
21 so that case number is 23-10253. There was a bar date  
22 established in that case of June 26th, 2023, and so a motion  
23 for leave to file a late proof of claim could be filed in  
24 that case, to the extent the creditor is interested in doing  
25 that and does not receive prior permission from the trustee

1 to file the claim in that case.

2 But I'll leave it to the creditor to pursue what  
3 avenue it wishes to seek repayment of its claim.

4 MS. MATHEWS: Okay. Thank you, Your Honor.

5 We will submit that order under COC today.

6 THE COURT: All right. Thank you, Ms. Mathews.

7 MS. MATHEWS: Thank you.

8 THE COURT: I appreciate that.

9 All right. Anything else we should discuss before  
10 we part ways today?

11 MS. MATHEWS: I think that's all we have for  
12 today.

13 THE COURT: All right. Thank you all very much.

14 We'll consider the hearing adjourned. Take care.

15 MS. MATHEWS: Thank you.

16 (Proceedings concluded at 11:08 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ William J. Garling

November 15, 2023

William J. Garling, CET-543  
Certified Court Transcriptionist  
For Reliable