

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

4 IN RE:) BK. NO: 24-80040-SGJ
5)
6 EIGER BIOPHARMACEUTICALS,)
7 INC.)
8 D E B T O R.)

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12 TRANSCRIPT OF PROCEEDINGS

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20 BE IT REMEMBERED, that on the 3rd day of April, 2024,
21 before the HONORABLE STACEY G. JERNIGAN, United States
22 Bankruptcy Judge at Dallas, Texas, the above styled and
23 numbered cause came on for hearing, and the following
24 constitutes the transcript of such proceedings as hereinafter
25 set forth:

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

2 THE COURT: All right. We have settings in
3 the new Chapter 11 filing of Eiger -- I don't know if I'm
4 saying that correctly, Eiger BioPharmaceuticals, Inc. Case
5 number 24-80040. I know we're going to have a lot of
6 appearances, so let's try to do these as streamlined as
7 possible.

8 In the courtroom -- we've got a hybrid hearing. We
9 have people in the courtroom, people on video. I'll take
10 appearances in the courtroom first for the debtor team.

11 MR. CALIFANO: Good afternoon, Your Honor.
12 Tom Califano, Sidley Austin, on behalf of the debtors. Your
13 Honor, with me is Anne Wallace, Bill Curtin, Parker Embry,
14 Nathan Elner, Veronica Courtney, and Chelsea McManus from our
15 firm.

16 THE COURT: Okay.

17 MR. CALIFANO: Also we have our investment
18 banker, our proposed investment banker, Mr. Scott Victor.

19 THE COURT: Okay.

20 MR. CALIFANO: We have the CEO of Eiger
21 BioPharmaceuticals, David Apelian.

22 THE COURT: Okay.

23 MR. CALIFANO: We have our financial advisors
24 from Alvarez & Marsal, Paul Rundell and Doug Staut.

25 THE COURT: Okay. All right. Well, thank

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1 you.

2 We have a lender in the case, Life Sciences Leading
3 Fund I, LP. Who do we have appearing?

4 MR. BENDER: Good afternoon, Your Honor. Jay
5 Bender for Innovatus Life Sciences Lending Fund I, LP. And
6 I'm joined by my partner, Roger Jones. Roger has filed a pro
7 hac motion for admission, which I believe is still pending.

8 THE COURT: All right. Well, I will let
9 anyone who has filed a pro hac vice motion go ahead and speak
10 today, even though I haven't signed all of the orders yet. I
11 think I have about 6 orders in my cue.

12 MR. JONES: Thank you, Your Honor.

13 THE COURT: All right. Thank you. I've
14 looked at all of the motions.

15 All right. Well, any other courtroom appearances
16 before I turn to Webex?

17 MS. YOUNG: Good afternoon, Your Honor. Liz
18 Ziegler-Young for the U.S. Trustee.

19 THE COURT: Thank you.

20 Other appearances?

21 MS. CARSON: Good afternoon, Your Honor.
22 Candice Carson of Butler Snow for Eton Pharmaceuticals, Inc.,
23 local counsel.

24 THE COURT: Okay.

25 MR. NEWTON: James Newton from Morrison &

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1 Foerster on behalf of Eton Pharmaceuticals, as well.

2 THE COURT: Okay. Good afternoon.

3 MR. NEWTON: Afternoon.

4 MR. MORRIS: Good afternoon, Your Honor.

5 Joshua Morris from Pillsbury Winthrop Shaw Pittman with my
6 colleague, James Dickinson. We are here on behalf of Sentylnl
7 Therapeutics, Inc. We are the proposed stalking horse
8 bidder.

9 THE COURT: Okay. Good afternoon.

10 MR. CARLSON: Good afternoon, Your Honor.

11 Cliff Carlson of Weil Gotshal & Manges on behalf of the
12 Progeria Research Foundation.

13 THE COURT: Okay. I've read about your
14 client, as well.

15 MR. CARLSON: Thank you.

16 THE COURT: All right. Do we have anyone on
17 the Webex who wishes to appear at this time?

18 Okay. We may just have mostly observers today. We do
19 have a sign-in sheet. So if you're a party in interest, I
20 trust you have signed the sign-in sheet and we will file that
21 on the docket later so people in the courtroom will know.

22 All right. Well, Mr. Califano, it looks like you have
23 14 motions set, two of which have drawn objections, well, the
24 cash collateral motion and the bid procedures motion. I'm,
25 not sure, the lender may have objected to a slew of other

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1 things.

2 MR. CALIFANO: I believe the lender objected
3 to everything except joint administration and the retention
4 of our claims agent. They filed an omnibus objection to
5 everything.

6 THE COURT: Okay.

7 MR. CALIFANO: May I approach, Your Honor?

8 THE COURT: You may.

9 And I want to tell everyone I've read all of the
10 pleadings. I've seen the four declarations in support of the
11 debtors' motions today. And I wasn't quite clear on the
12 lender's omnibus objection. It looked like everything was
13 kind of tied to cash collateral, but maybe it was broader.

14 MR. CALIFANO: It seems like they're objecting
15 only to the extent that our motions seek the payment of
16 money. Other than that if they were free, they don't object.

17 THE COURT: Okay.

18 MR. CALIFANO: So, Your Honor, first of all I
19 want to thank you for having this hearing hybrid and having
20 us in. The reason why I asked for that was that I
21 anticipated that we would have objections. I anticipated
22 that we would need testimony. And based on some experiences
23 I've had, testimony doesn't work virtually that well. So I
24 really appreciate the Court allowing us to come in.

25 THE COURT: Well, I will say, the farther we

1 get away from COVID, the more we get these requests to have
2 the first day hearings hybrid. So we kind of take it on a
3 case-by-case basis.

4 MR. CALIFANO: Yeah. I'm old-school, Your
5 Honor. I like getting -- being in the room with everyone.

6 THE COURT: Okay.

7 MR. CALIFANO: So what I propose for run of
8 show today, Your Honor, is that we have a brief presentation
9 to give you that I'd like to present, put up on the screen.
10 That will give everyone sort of a sense of the company. And
11 then I'd like to go into the testimony; Mr. Apelian,
12 Mr. Rundell, Mr. Victor, because the testimony will apply to
13 various motions so if you get all -- rather than have the
14 witnesses get up and get down and try and limit their
15 testimony. And then thereafter we could go into the motions
16 themselves.

17 THE COURT: All right.

18 MR. CALIFANO: If that's all right with Your
19 Honor.

20 THE COURT: Makes sense to me, uh-huh.

21 MS. WALLACE: Your Honor, I will share the
22 presentation, Anne Wallace.

23 THE COURT: Okay. We're ready when you are.

24 MS. WALLACE: All right.

25 MR. CALIFANO: And, Your Honor, this -- even

1 though the numbers may not be large in this case, this
2 actually is a very important case. And we'll talk about it.
3 But this is about two things. It's about paying the
4 creditors. But it's also about making sure that the drugs
5 that are in development or in commercialization, and we'll
6 talk about it in a second, that they either maintain their
7 status or that they're available for the patients. So that's
8 the balancing act of the debtors. The debtors are very
9 cognizant, and you'll hear that from Mr. Apelian's testimony,
10 or Dr. Apelian -- I apologize, his testimony.

11 THE COURT: Mike, do you need to do something
12 on your end to make sure it's connected?

13 It's not on the Court's screens or my screen.

14 MR. CALIFANO: I'm sorry, Your Honor.

15 I have hard copies and we can just walk you through it.

16 THE COURT: Hard copies are great.

17 MR. CALIFANO: May I approach?

18 THE COURT: Yes. Thank you.

19 MR. CALIFANO: So, Your Honor, you'll see the
20 management team, Dr. Apelian who is here and can talk about
21 the background of the company, debtors' counsel and advisors.
22 We have Alvarez & Marsal as our financial advisor. And
23 Mr. Victor at SSG running the sale process. And I will tell
24 you this, Your Honor, and it's not unusual, but once we
25 filed, potential buyers came out of the woodwork. And we've

1 gotten calls. And you'll see we have two people here
2 fighting to be the stalking horse for one of the drugs. It
3 happens to be a very important drug. But the filing itself
4 has generated a ton of interest, because these are important
5 drugs that -- that many people are interested in either
6 developing or making sure -- and that's why -- actually,
7 Mr. Carlson from Weil Gotshal is probably the most important
8 person here.

9 THE COURT: Oh. There's a lot of important
10 people here, so --

11 MR. CALIFANO: Because he represents PRF, the
12 Progeria Research Foundation.

13 THE COURT: And I'll hear more about that,
14 this consent requirement --

15 MR. CALIFANO: Yes, Your Honor.

16 THE COURT: -- that I read about.

17 MR. CALIFANO: And we will talk about that in
18 the sale process.

19 THE COURT: Okay.

20 MR. CALIFANO: All right. So, Your Honor,
21 Eiger was founded in 2008 to commercialize drugs for these
22 rare diseases called orphan diseases. This is a disease that
23 affects a small portion of the population. And that was
24 their mission. They became public and they have nine --
25 currently have nine employees. They do contract

1 manufacturing, contracting and manufacturing. And really the
2 company's focus is developing the IP for these drugs.

3 So the most -- the one commercialized drug -- and just
4 because a drug isn't in commercialization, isn't in sale,
5 doesn't mean it doesn't have value, because we are already
6 getting approaches on some of these other drugs which are in
7 development. But Zokinvy is the drug which we'll be talking
8 about more today. It's the only sold commercialized drug.
9 And it is the sole drug that treats this condition, progeria.
10 Okay. Which is advanced aging in children. And Zokinvy is
11 the best-known treatment for this drug. There are 400
12 patients worldwide currently. And this drug has been -- it's
13 been tested -- it increases life expectancy 2 1/2 to 4 years.

14 THE COURT: Did you say 400 patients --

15 MR. CALIFANO: 400 patients worldwide.

16 THE COURT: -- worldwide?

17 MR. CALIFANO: And it's life-threatening.

18 It's -- so you can see on the next page, page 5, you can see
19 Zokinvy and its benefits. It extends life expectancy, lowers
20 blood pressure, and risk of heart damage, promotes healthy
21 weight gain, the dosage can be managed. And it's
22 well-studied and safe and tolerable for children, for people
23 under 12. And that's the target audience. These are very
24 young children who have this life-threatening disease.

25 The other drugs, Avexitide, it's completed it's Phase

1 II studies and is ready for Phase III. Okay. Lonafarnib,
2 okay. It's a viable solution for the treatment of HDV.
3 You'll hear about HDV a lot, hepatitis delta virus. There's
4 currently no drug that is approved by the FDA for this drug.
5 This is a very important drug. It could --

6 THE COURT: So is that the same drug that you
7 call Zokinvy?

8 MR. CALIFANO: No. It's a different -- that
9 was a different drug.

10 THE COURT: Well, I knew there were different
11 drugs. But --

12 MR. CALIFANO: So the next -- on page 6, these
13 are the other drugs which are in development and not
14 commercialized.

15 THE COURT: Okay. I gotcha.

16 MR. CALIFANO: I'm sorry, Your Honor.

17 THE COURT: No, I'm clear.

18 MR. CALIFANO: I should have been clearer.

19 So as I was saying, Lonafarnib is the only potential
20 drug. There is no drug that treats HDV currently. And then
21 Lambda, Peginterferon Lambda, I know Lambda, I know I
22 murdered that name, this is another drug which is in
23 development. And, in fact, the company -- Dr. Apelian can
24 testify to this, this drug has generated interest from the
25 Gates Foundation. And they're offering \$15 million to the

1 debtor to assist in the development of that drug. And they
2 may, in fact, be a buyer of the drug and develop this drug at
3 some point down the road. So that's what you'll see when
4 Mr. Rundell testifies, it's important to maintain both the
5 ability to produce Zokinvy and get it to the 400 patients,
6 but it's also very important that we maintain the status of
7 these drugs, okay, for two reasons. One, it makes them
8 valuable, right, as we continue the process -- the program.
9 But it also advances what could be a very important drug in
10 treatments.

11 So the capital structure is pretty straightforward,
12 Your Honor. It's on page 7. We have a term loan of 41.7
13 million, approximately, which asserts a lien on substantially
14 all of the debtors' assets. We have trade debt of 4.7
15 million. And we have 1.5 million of common stock. This was
16 a NASDAQ listed company.

17 So, Your Honor, what happened -- and a company like
18 Eiger BioPharmaceuticals is expected to lose money. It's
19 expected -- it's in development. It is -- so it's expected
20 to lose money over a period of time. And if the drugs are
21 successful and commercialized, well then, it can be
22 profitable.

23 But -- and this is -- will all be testified to by
24 Dr. Apelian. In June of 2023 the debtors' management and
25 board started looking at how do we keep -- how do we keep

1 going? How do we meet these time limits? How do we make
2 sure that we are funded to meet the FDA milestones to get
3 the -- so they looked at the portfolio and they did a
4 prioritization starting in June. Okay. And prioritized the
5 drugs that they would spend money on based on their
6 importance and their viability. Then there was -- during the
7 Summer of 2023 there was a significant reduction in force.
8 And then in September 2023 it discontinued the Phase III
9 trial for Lambda. But that can be restarted by a buyer.
10 Okay. And then in October 2023, started talking to Sentyln
11 about a purchase of Zokinvy, which is the drug that is
12 commercialized.

13 From late 2023 to early this year they explored a
14 number of different alternatives, a possible pipe investment.
15 And the reason why the sales, the pipes where nothing could
16 be accomplished was there was an inability to reach agreement
17 with the lender on the terms. And Mr. Rundell will testify
18 that there was a potential pre-petition sale of Zokinvy. And
19 it fell out because there was inability to reach agreement on
20 the terms of the sale of that.

21 So on January 17th the lenders served Eiger with a
22 default notice based on a material adverse change. So there
23 has not been a default, covenant default. There has not been
24 a payment default. There's no maturity here. It's all based
25 on a material adverse change claim. So there was -- there

1 was a period of negotiations of forbearances.

2 THE COURT: What was the materially adverse
3 change?

4 MR. CALIFANO: The material adverse change was
5 the impact on stock price from the results of one of the FDA
6 programs.

7 THE COURT: The Lambda one that --

8 MR. CALIFANO: Which was the --

9 MALE SPEAKER: Well, there was -- it was the
10 investor reactions.

11 THE COURT: Okay. We can hear testimony. I
12 was just curious what the MAC was. So we'll get testimony.

13 MR. CALIFANO: It was investor reaction to an
14 FDA report --

15 THE COURT: Okay.

16 MR. CALIFANO: -- that caused the stock to
17 plummet.

18 So, Your Honor, then there was a series of
19 forbearances. And the debtor pursued the Zokinvy sale and
20 prepared for this process which we have here.

21 So, Your Honor, there's two goals of this case, okay.
22 To maximize value in a process that we are all familiar with
23 and that's reasonable. And as I said, and as I'm sure
24 Mr. Victor will say, it's -- the interest in these drugs has
25 been surprising. It's been, you know, very well received,

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1 the filing and the ability to sell these. So we believe
2 there's a lot of activity. And you'll see the call this
3 morning about some of the other drugs, not Zokinvy. But we
4 also have a ton of information -- a ton of interest in
5 Zokinvy and two parties battling to be the stalking horse.

6 So there's the maximization of the asset values. But
7 just as importantly in the company's view is maintaining the
8 supply of Zokinvy and not having an interruption in the
9 supply. And making sure that the other drugs get into the
10 hands of parties who can develop them, because of their
11 importance.

12 So on page 10 there's an introduction of the
13 individuals who will be testifying. First is Dr. Apelian,
14 who is the CEO. He's the first day declarant, Your Honor.
15 And he'll also be testifying to the bid procedures. Evan
16 Gershbein from KCC whose retention is unopposed. Paul
17 Rundell from Alvarez & Marsal will be testifying to the need
18 for cash collateral. And Scott Victor from SSG will be
19 testifying on the bid procedures and the process.

20 So on the next page, Your Honor, and finally are the
21 individuals from the firm who will be presenting and the
22 motions they will be presenting. I will presenting cash
23 collateral. The order of the witnesses will be Dr. Apelian,
24 Mr. Rundell, and then Mr. Victor.

25 What this case boils down to, Your Honor, is who's

1 going to run this process? Whether the debtors' business
2 judgment is going to be allowed. And I think you'll see
3 today that we have a reasonable reasoned process which has
4 already paid for itself, if you look at the increase. And
5 that's what Mr. Rundell will testify. Or if we are going to
6 let the lender micromanage this process, if we're going to
7 allow the lender to insert its business judgment in place of
8 the debtors' business judgment -- which is the reason why we
9 came to this Court, okay, to make sure that this process
10 could be run in a reasonable way. And that the debtors'
11 business judgment would not be interfered with.

12 So, I mean, I think -- I was going to come in here and
13 complain about the lender's behavior before we filed. But I
14 don't need to because of the objection that they filed. I've
15 never seen an objection to a wage motion. That's a first. I
16 think there will be a bunch of firsts today. And, you know,
17 they're telling us -- you see them trying to insert their
18 judgment on which employees we should be retaining and which
19 employees we should retain going forward.

20 We -- I will say we tried. I mean, the first time we
21 got -- we sent them a proposed cash collateral order on
22 Thursday. And the first time we got comments was in their
23 objection. So most of their comments we probably would have
24 inserted. They don't seem that controversial. But it would
25 have been nice if we got them in a phone call, or an email,

1 or something like that. I'm not used to negotiating by
2 pleadings. But it seems like that's the way this case, at
3 least is going to start out.

4 So this is a case, Your Honor, where the debtor is not
5 trying to do anything unreasonable. We're not trying to
6 violate the absolute priority rule. We're not trying to cram
7 down the lender. What we're trying to do is run the process
8 that the debtors' board in its business judgment believes it
9 is the best process to realize on the assets, maintain the
10 value of the assets, and continue to support its patients.
11 And that's the process. And that process will be in front of
12 Your Honor. And it's a process that needs to be run in a
13 certain way. So that's what this is all about when you boil
14 it down. It's about whether we're going to let the debtors'
15 business judgment be usurped by a secured creditor who
16 manufactured a default. It doesn't have a real default under
17 their documents. They manufactured a default because they
18 wanted to exercise control.

19 So with that, Your Honor, we'd like to -- Mr. Curtin
20 will be presenting Dr. Apelian. So I'd like --

21 THE COURT: All right. I'll give other
22 parties a chance to make a brief opening statement.

23 MR. CALIFANO: Thank you.

24 THE COURT: And then we'll go to Dr. Apelian.

25 All right.

1 MR. JONES: If it please the Court, Roger

2 Jones on behalf of Innovatus.

3 I'll just address the MAC for a moment, Your Honor.

4 It's not a manufactured default. The debtors' capitalization
5 fell from 100 -- market cap fell from 100 million to 10
6 million. They published -- in their own SEC filings they
7 said they -- it was doubtful they could continue as a going
8 concern. So there's not a manufactured default. That was a
9 material adverse change in the debtors' circumstances. And
10 we did not exercise any remedies as a result of that. As
11 you'll see in the papers that were just presented, we entered
12 a series of standstills all the way through April 3rd. So we
13 took no action with respect to that.

14 I think we should talk about what is before the Court
15 today. This is a first day hearing. It's very limited in
16 terms of what we have here. Cash collateral, it is the
17 debtors' burden to show that they've -- that we're adequately
18 protected and they'll suffer immediate and irreparable harm
19 if they don't use the cash collateral they've requested, if
20 they can't use that cash collateral.

21 With respect to the sale procedures, Your Honor. There
22 are two components of that. One is with respect to Zokinvy
23 and the selection of a stalking horse. The other issue is
24 with respect to bid procedures on a going forward basis for
25 all of the remaining assets. Under the local rules this

1 Court does not take up a sale procedures order on first day
2 hearings, unless there are compelling circumstances. There
3 are no compelling circumstances here today to take up the bid
4 procedures for the assets other than Zokinvy. None have been
5 articulated in any of the declarations or in any of the
6 pleadings. So that -- we have the Zokinvy issue. But, Your
7 Honor, there's no compelling circumstances to take up the
8 other bidding procedures.

9 The other -- we're not trying to control the sale
10 process with respect to Zokinvy, Your Honor. We've been
11 excluded from that sale process altogether. We've not been
12 able to participate. The debtors' not provided us with any
13 information. We learned -- the Sentyln sale that's
14 referenced in the pleading is \$26 million. We learned that
15 someone else had offered \$29 million on exactly the same
16 terms. And we -- and that the debtor rejected it. When we
17 asked why, they told us it was none of our business.

18 It is some of our business, Your Honor. Innovatus has
19 \$45 million in debt here. No one is making any argument that
20 there's any value in these assets, or offering any proof
21 there's any value in these assets beyond Innovatus. We are a
22 real party in interest. When they talk about their sale
23 process, they are playing with Innovatus' money. That's
24 their bet. It's with Innovatus' money. We should be a
25 participant. We're entitled to be a participant with respect

1 to the sale process, with respect to both Zokinvy and the
2 remaining assets.

3 Our fundamental disagreement is not that Zokinvy should
4 be sold in a short period of time that has been proposed. We
5 believe it should be. But we disagree strongly about how the
6 remaining assets should be sold and the cost associated and
7 the cash that will be consumed in order -- under their
8 proposal to liquidate those remaining assets. They say that
9 we will derive more value from the sale of those assets if
10 they consume basically all of the cash on hand as they get
11 through the sale process. We disagree with that.

12 So what we proposed to them -- they sent us a cash
13 collateral order, Your Honor, but it went through July with
14 milestones for sales, plan confirmation. We disagree with
15 them post the sale of Zokinvy. So we said, send us an
16 interim cash collateral order for the cash you need on a
17 first day basis. We'll take a look at that. Send us the
18 budget. And answer our questions about items in the budget.
19 Never sent us an interim cash collateral order. We got the
20 budget -- I got the proposed budget -- the last proposed
21 budget actually came in Monday. And they refused to answer
22 any of our questions about items in the budget. So maybe
23 we'll get some answers to those questions today.

24 But I think when we think about all of this testimony
25 we're about to hear, I think we should limit it to those

1 things that are relevant to the motions that we have here
2 today. Nothing about the MAC, for example, is relevant to
3 anything before the Court today. We have issues of cash
4 collateral. We have issues of sale procedures. We have
5 declarations from all of the parties and all of the proposed
6 witnesses. I'm not sure why we need any witnesses at all,
7 Your Honor, because they've already filed all of their
8 declarations. So I think we need to focus on what's before
9 the Court today.

10 THE COURT: Okay. I just wanted to clarify
11 something for the record. There was a draft interim order on
12 file at docket 16-1. I knew I had seen it, so I started
13 flipping --

14 MR. JONES: There is a draft interim order.
15 And there is a budget attached to it, Your Honor. That is
16 correct. We received that be ECF.

17 MR. CURTIN: Your Honor, it's the exact order
18 that was sent to them on Thursday. That's what Mr. Califano
19 was referring to.

20 THE COURT: Okay. Okay. I just knew I had
21 seen it, so I was a little surprised when you suggested --

22 MR. JONES: No. We're talking about
23 negotiations. They sent us a stipulation for this entire
24 lengthy process. That's what they proposed to us.

25 MR. CURTIN: Again, Your Honor, it was the

1 same order that we sent. I sent it myself.

2 THE COURT: All right.

3 MR. JONES: Thank you, Your Honor.

4 THE COURT: All right. Thank you.

5 Anything else, counsel? Apparently the most important
6 person in the room?

7 MR. CARLSON: That's the first time.

8 THE COURT: You're going to get the
9 transcript, I just know it. Show it to your spouse or
10 whatever.

11 MR. JONES: Thank you, Your Honor. We do have
12 a short presentation just go get the Court familiar with PRF,
13 who they are and their involvement in the case, if that's
14 okay. And my colleague, Emma Wheeler, was going to put it up
15 on the screen.

16 THE COURT: Okay.

17 MR. CARLSON: I have hard copies, too, that I
18 can hand up.

19 THE COURT: You may approach. Thank you.

20 MR. CARLSON: Thank you.

21 So, Your Honor, my client, Progeria Research
22 Foundation, which is referred to as PRF in the papers, a
23 little bit of background on the company. And I'm glad to
24 hear it from Mr. Califano that the overarch -- one of the
25 overarching goals is continued supply of this drug so it can

1 be to the patients of progeria. And not only, you know, my
2 client's focus and goal is to make sure that during the
3 cases -- but ultimately who the buyer will be, making sure
4 that the buyer of this drug will also have the capacity and
5 experience that's necessary to be able to continue supplying
6 the drug to these patients. And so to give you a little bit
7 of background and flipping to the next slide and who -- what
8 progeria is.

9 And first -- and just to say, PRF is a 501(c)(3)
10 non-profit organization. Their mission is really just to
11 develop treatments and cures for this disease, progeria. And
12 a little bit more about this. So I think as Mr. Califano
13 noted, there's about 400 patients, that's 1 in 20 million.
14 And so it is an ultra -- what's called an ultra rare disease.
15 It's fatal. The average life expectancy of patients is about
16 14 1/2 years old. The drug that has been developed and now
17 approved by the FDA, which is the only drug available, you
18 know, has -- is on average extending lives of the patients by
19 approximately 4.3 years. And so it has been -- it has been
20 effective.

21 And, you know, of the -- of the 400 patients, I think
22 we've -- PRF has identified 149 of those patients worldwide
23 and is in contact with them, most of whom are getting the
24 drug. And 21 of those 149 are in the United States. And
25 that's important because really, as you can see on the

1 screen, this disease, even though it's rare, it does -- it
2 does, you know, cross -- it's all across the country, over 50
3 different countries. And so whoever the buyer is will have
4 to have the operational capacity and the infrastructure,
5 network, and supply to be able to, you know, distribute the
6 drug across the entire world.

7 And so moving on to the next slide here. So PRF was
8 really instrumental, played a huge role in developing this
9 drug. And as I mentioned, it's a 501(c)(3). It was
10 cofounded in 1999 by Audrey Gordon and her sister Dr. Leslie
11 Gordon who had a son, Sam, who had the disease and
12 unfortunately passed away at the age of 14 from the
13 disease -- I'm sorry, 17. And so, you know, PRF's role since
14 they've been cofounded has really been dedicated to
15 developing a drug. And they played a big role in identifying
16 what the cause of the disease was, Dr. Leslie Gordon who is
17 the medical director and cofounder. And so that's really
18 what they're focused on. And they own the clinical data that
19 shows the efficacy of the drug. And they also hold two of
20 the patents relating to -- relating to Lonafarnib, which is
21 the -- which is the ingredient, the main ingredient for
22 progeria -- for the drug that treats progeria. So moving on.
23 And with -- and also facilitated and helped facilitate the
24 FDA approval of the drug in 2020.

25 And so as I mentioned at the outset, the focus of my

1 client really is and wants to emphasize that -- you know, not
2 only during the cases but that the buyer be someone -- be a
3 party that does have the ability to continue providing
4 uninterrupted access to this drug going forward. You know,
5 we have -- just to talk a little bit about what the
6 contractual relationship is between PRF and Eiger.

7 We are party to a collaboration and supply agreement
8 that was recently amended. We'll get into all of the details
9 of what that agreement says. But it -- the most important
10 part is it requires Eiger to continue providing --
11 distributing the drug through as late as 2034 so that
12 patients across the world will continue to receive it.

13 And so, Your Honor, just to conclude. Really at the
14 end of the day the -- PRF is focused on, you know, whoever
15 ends up owning this drug be somebody that, like I said, has
16 the expertise in ultra rare diseases and has the ability to
17 manufacture, market, and distribute this drug across the
18 world, that has a global presence across the world and an
19 understanding of how to do so. So that's -- that's really
20 why we're here and what we're focused on.

21 THE COURT: Okay. I'm going to ask you a
22 question and this may be cutting way ahead. But is your
23 client in a position to say you're supportive of either one
24 of these potential bidders I've read about in the pleadings?

25 MR. CARLSON: So we have -- we have been

1 involved and done diligence on Sentynl. And I think subject
2 to maybe a few open issues, I think generally comfortable
3 that they have the ability to meet these -- these needs.

4 THE COURT: Okay.

5 MR. CARLSON: We have not done the diligence
6 on the Eton, the competing -- and so we're not in a position
7 to say one way or the other.

8 THE COURT: Okay. Thank you. All right.
9 Appreciate your presentation.

10 MR. CARLSON: Of course.

11 THE COURT: All right. Ms. Young.

12 MS. YOUNG: Thank you, Your Honor. I do just
13 want to take a few minutes. We really appreciate -- the
14 debtors have been very helpful. Have incorporated most of
15 our comments into some of the pleadings. And we may have a
16 few as the presentations go on, but I really do want to thank
17 them for taking the time to work through most of -- most of
18 what we have concerns about.

19 I did want to bring one issue to the Court's attention
20 that my client has -- has raised. We're concerned about the
21 venue here. There may be a question of venue. So we did
22 want to make sure that we're reserving those rights here
23 today on the record, whether or not this is the appropriate
24 venue for these cases to be filed. And we have -- and the
25 debtors have agreed to include language in the orders similar

1 to what was approved in Impel, that there's no waiver of
2 venue here today.

3 THE COURT: Okay. Thank you.

4 Anyone else?

5 All right. I'm ready to hear the first witness.

6 MR. CURTIN: Your Honor, the debtors call Dr.
7 David Apelian.

8 THE COURT: Dr. Apelian, if you could approach
9 the witness box, I'll swear you in.

10 (The witness was sworn by the Court.)

11 THE COURT: All right. Thank you. You may be
12 seated.

13 THE WITNESS: Thank you.

14 DR. DAVID APELIAN

15 The witness, having been duly sworn to tell the truth,
16 testified on his oath as follows:

17 DIRECT EXAMINATION

18 BY MR. CURTIN:

19 Q. Good afternoon, Dr. Apelian. Can you please state
20 and spell your full name.

21 A. It's David Apelian, D-a-v-i-d last name,
22 A-p-e-l-i-a-n.

23 Q. And what's your current position at Eiger?

24 A. I'm the CEO of Eiger.

25 Q. How long have you been the CEO?

1 A. I stepped in in late '22 as interim CEO. And I was
2 appointed full-time CEO in June of last year.

3 Q. And what are your responsibilities as CEO?

4 A. My responsibilities are to ensure the advancement
5 of our programs. To increase the value for all of our
6 stakeholders, that includes our patient communities, our
7 shareholders, and our creditors. So I see that as a balanced
8 responsibility that I took this position when I stepped in.

9 Q. And you mentioned stepping in. What was your
10 experience at Eiger prior to becoming CEO?

11 A. I'd been a member of the board of directors for
12 almost seven years. I even served for a short period of time
13 early in that tenure as the executive medical officer. And I
14 helped launch some of the important programs. The deliver
15 program for hepatitis D. And even I collaborated with PRF in
16 the early FDA and European regulatory meetings to get those
17 filings off the ground. And so I've continued in -- stepping
18 in now as CEO continued to engage PRF on a regular basis to
19 make sure we're collaborating and partnering on behalf of the
20 kids.

21 Q. And before Eiger, what other professional
22 experience did you have?

23 A. My position prior to Eiger, I served as CEO of
24 Bluesphere Bio an immune oncology company. In the past I've
25 served in executive roles as chief medical officer of Akilian

1 (phonetic) working in hepatitis C and compliment disorders.
2 And served as the chief medical officer at Global Immune, an
3 immune oncology company, as well. The areas of my interests
4 have generally been chronic hepatitis, immune oncology, and
5 rare diseases.

6 Q. And can you just tell us your educational
7 background?

8 A. I earned my Bachelor's Degree in biochemistry and
9 Rutgers. Stayed on at Rutgers for my PhD in biochemistry.
10 And then I went to medical school at UMDNJ and served three
11 years residency for pediatrics at Cornell Medical Center New
12 York Hospital in Manhattan.

13 Q. And you've already explained how you've been
14 involved with Eiger basically from the beginning. Can you
15 tell us just briefly the history of the company?

16 A. Yeah. I think Eiger was founded on a really
17 interesting idea. It was to take molecules or drugs that
18 were being developed for other reasons by big companies. And
19 then to repurpose them to serve high-need rare disease
20 populations. So many of the drugs that we licensed over the
21 years were being developed by big companies for cancer or for
22 other indications. And the team was wisely able to build a
23 portfolio of products that could actually serve diseases like
24 progeria, hepatitis D, COVID, all -- so there was a way of
25 doing -- taking these really mature assets that had a lot of

1 manufacturing background from these big companies and a lot
2 of the safety data and then repurposing them to rare
3 diseases.

4 Q. A couple of terms I'd just like to ask you to
5 explain. We've heard about orphan drugs for rare diseases.
6 Can you just explain what that means generally?

7 A. So orphan drug status is defined as any disease
8 with less than 200,000 patients involved. The diseases we're
9 actually talking about are much smaller than that. Progeria
10 is one of the rarest diseases. About 400 patients in the
11 world. Chronic hepatitis D is smaller than 200,000. It's
12 probably in the 5 to 10,000, 20,000 patient range in the U.S.
13 Depends on the estimates you see. So there's ranges of how
14 rare these diseases are. But the main threshold is a 200,000
15 patient threshold. And that gets the formal designation of
16 orphan.

17 Q. And the second one, what is FDA breakthrough
18 therapy designation?

19 A. So breakthrough status, which all of our drugs do
20 have, reflects the importance that is placed on the program
21 by the FDA. So to be given breakthrough status, they have to
22 deem it an important disease of un-met need. And there has
23 to be preliminary data, at least, to show that the drug is
24 promising. And what you get from a breakthrough status with
25 FDA is you get access to their experts in a more timely way.

1 You can have more real-time dialogue with FDA instead of
2 waiting the standard turnaround time for meetings. And so
3 it's designed to facilitate additional collaboration between
4 the FDA and the company to advance the products more
5 effectively.

6 Q. So beyond financial considerations which you've
7 already testified are certainly important, what are the other
8 factors that you have to consider as the CEO of Eiger, and
9 specifically with regard to patients?

10 A. So I take the obligation to patients and the
11 patient community really seriously. And I think that's most
12 pronounced with a commercial drug like Zokinvy that the kids
13 and the families are really depending on. And we
14 collaborated with PRF to distribute the drug. We've been --
15 we meet with them frequently to make sure that whatever
16 channel the children are getting the drug through, whether
17 it's a clinical study or whether it's commercial supply, we
18 have to make sure we're not inefficient in delivering the
19 drug to the kids because they really depend on this. And I
20 think the survival advantage we've seen is pretty striking.
21 Of all -- I've been doing this for 25 years. Of all of the
22 diseases I've worked in, a 4-year survival advantage on a per
23 patient basis is an unbelievable positive affect that's, you
24 know, amazing. And I feel a strong obligation to make sure
25 we're not disrupting that during this process.

CINDY SUMNER, CSR (214) 802-7196

1 That being said, I feel there's a strong obligation to
2 advance the other drugs that we have because they are
3 life-saving, well, we believe they have the potential to be
4 life-saving. And that's what we're trying to prove in the
5 late-stage programs that we're doing. But I do take my
6 obligation to other stakeholders very seriously; our
7 shareholders, our creditors. I have to have a balanced
8 concern across the spectrum because we are a public company
9 and we have an obligation to meet those fiduciary
10 responsibilities.

11 Q. Shifting gears a little bit to certainly something
12 a bit more mundane.

13 Can you just explain a little bit about the nature of
14 how small a biotech firm such as Eiger operates, specifically
15 with regard to being relying upon vendors for critical
16 products and services and kind of why that's important?

17 A. Sure. In contrast the bigger companies that I've
18 worked in early in my career, all of the infrastructures were
19 there, it's owned by the company. In this case as a small
20 company, we leverage access to the manufacturing capacity
21 from vendors, even storage of inventory, maintaining
22 stability studies on the inventory, any lab work that has to
23 be done is not done on the premises. We don't invest that
24 capital to have the infrastructure at Eiger because it's very
25 costly. So we do have to use a team of experts to manage a

1 broader array of vendors that can then supply that capacity
2 to us.

3 So in this setting, especially in this kind of a
4 setting, we have to make sure we're retaining the right
5 experts to manage a pretty complex inventory chain for the
6 different program, manufacturing obligations, regulatory
7 obligations. And even in Zokinvy, the case of Zokinvy, it is
8 an approved product, but we have post-marketing obligations
9 that are required to maintain the authorization to sell the
10 product in Europe and in the U.S. So while they same like
11 R&D expenses, they're not really -- they're studies that EMA,
12 the European regulatory body has mandated that we do as a
13 condition of the approval. And so there are certain
14 activities that we also have to manage through vendors to
15 make sure we're not mis-stepping and then jeopardizing the
16 commercial value of the product with the ability to sell the
17 product.

18 Q. So what you're referring to just now in terms of
19 these post-marketing necessary expenses, these -- you,
20 though, historically refer to these as R&D expenses; is that
21 right?

22 A. That is -- I think as a small company when you have
23 studies, you kind of put them in a budget item called R&D
24 because it's a study. Big companies would typically call
25 these commercial expenses because they're post-approval

1 commitments that you have to do after the drug's approved to
2 maintain the authorization to sell the drug. So they're
3 often called Phase IV commitments or post-approval
4 commitments. And so, yes, they are like R&D expenses because
5 they're studies, many of these are studies that were at
6 various stages of completion. But they truly are commercial
7 in the sense that you're doing it to maintain and meet the
8 obligations of the regulatory authorities to continue selling
9 the product.

10 Q. I just want to walk very quickly through a couple
11 of -- a few milestones that Mr. Califano mentioned in the
12 opening. Starting in June 2023 when Eiger undertook its
13 portfolio prioritization review.

14 Could you just tell us a little bit briefly what that
15 was?

16 A. So when I stepped in -- you know, in late December
17 we had actually a positive study. It was quite a good result
18 in the hepatitis D program. But the investor reaction was
19 negative and that happens for lots of reasons. But there was
20 a lot of stress on the company. We had the former CEO
21 stepped out. And the board asked me to step in and help the
22 company navigate forward and to kind of retain the talented
23 people that we had and find a way to advance our programs.
24 And so we embarked on a prioritization process for our
25 portfolio, because it became pretty clear we didn't have

1 enough resources to advance all of our programs. But we
2 wanted to pick what we felt was one of the most valuable
3 programs and then embark on a strategy to bring capital into
4 the company either through doing deals with the other assets
5 to other partners, or raising additional funds. And so we
6 were preparing to advance Avexitide as a retained asset. And
7 we were planning a partnership program to out-license the
8 other assets, Lonafarnib for HDV, Interferon Lambda for HDV,
9 for example. So that was the pivot that we were embarking on
10 mid last year.

11 Q. And you've also talked about the balancing that you
12 have to do as a CEO of a company like Eiger in terms of -- in
13 terms of expenses. Was there any -- over the Summer of 2023,
14 were there any reductions in force that took place at the
15 company?

16 A. So we were doing regular assessments of our
17 workforce and making regular reductions along the way as we
18 progressed through the year. The company was around 50
19 employees when I stepped in. And through, you know,
20 different graduated levels of reduction in force based on our
21 plan evolving, we were conscientiously doing that all along.
22 We knew we had to conserve our capital and to really retain
23 the talent that we need to advance the key programs. So
24 that's been an ongoing exercise for us.

25 Q. And from when that started until -- until now as

1 we -- as you sit and I stand here today, what -- how many
2 employees is the company down to now?

3 A. We're currently at 9. And that was really based on
4 a pretty intensive assessment of what it would take to
5 maintain Zokinvy commercial asset, because that's something
6 we still have to manage the manufacture and inventory and
7 distribution of, as well as the post-marketing approval,
8 commitments that we still have to abide by. So we have a
9 core group of four individuals that manage the manufacturing,
10 the distribution, the quality, and the pharmacovigilance.
11 And pharmacovigilance is the fact that we still have to
12 survey for safety cases that come in and report them to the
13 regulatory authorities on a regular basis. So any reports
14 that come in have to meet a standard. There's a requirement
15 to be able to report those in an appropriate way. So we've
16 maintained the core group of people to maintain the
17 commercial asset Zokinvy without compromising our compliance
18 or our regulatory obligations.

19 Q. And is it your opinion as the CEO of Eiger that
20 these 9 remaining employees down from what was once 50 are
21 absolutely essential to continuing to supply Zokinvy,
22 continuing to maintain the remaining assets for potential
23 development and to get -- see this process to its conclusion?

24 A. I do. I think there's more complexity to managing
25 an asset like Zokinvy than people might realize. When you

1 think about the different levels of inventory, management,
2 quality, regulatory, we also need a handful of other people
3 to manage the business and manage other activities that are
4 critical to the business. And the process we're about to
5 embark on requires, I think, knowledgeable people that know
6 the assets, the other assets in addition to Zokinvy. I'm
7 fortunate that I've been involved with the company for so
8 long that I understand the asset programs, the study designs,
9 the molecules, how they work. I can orchestrate a lot of the
10 support for the other asset sales, as well, through some of
11 the key people we still have. But we really did try to pair
12 this down to the minimum number of employees that we possibly
13 could.

14 Q. Okay. Let's move forward a bit to October of 2023.
15 I understand that in that time frame you began to engage with
16 Sentyln as a potential purchaser for Zokinvy; is that right?

17 A. That's correct.

18 Q. And you heard Mr. Jones say in his opening that
19 Innovatus, your lender, was not permitted to be involved in
20 that process; is that your understanding of how that played
21 out?

22 A. Well, I guess what -- well, I should say that we,
23 from literally the time I stepped in as CEO, we actually felt
24 it was important to keep in touch with Innovatus on a regular
25 basis. We actually were meeting with them every two weeks

1 from about February -- January 2023 -- of 2023 on. We
2 recognized that they were a key stakeholder and so we took it
3 upon ourselves to meet with them on a regular basis.
4 Sometimes more frequently than that. So we would keep them
5 apprised of all developments. We would keep them apprised of
6 any potential business development activities are financings.
7 And we really bent over backwards, I feel like, to keep them
8 engaged and collaborate and really try to partner with them
9 as a key stakeholder. We recognize that that was
10 substantial, one, relative to a value. And we did that
11 voluntarily.

12 So I don't really know what was being alluded to by the
13 fact that we weren't involving them. We still had to run the
14 company and engage parties and discuss potential
15 transactions. That was still our key role. And we involved
16 Innovatus and kept them apprised of that as best we could.
17 We ended up talking to several companies around the same time
18 as Sentynl reached out to us. It was not a solicited
19 process, but we had interest from about half a dozen
20 companies and we engaged on those other inquiries and Sentynl
21 put together what we thought was the strongest proposal and
22 had done extra work with PRF to meet them and understand the
23 relationship better. And so they just for many reasons, in
24 our view, were the strongest potential bidder.

25 Q. And those calls that you mentioned with Innovatus,

1 once the MAC default was issued and you were compelled to
2 retain restructuring counsel, were there additional calls
3 with Innovatus after that time where both you, you as the
4 company, and Innovatus as the lender and counsel for both
5 were present?

6 A. There were a few additional calls after that
7 period. But we didn't maintain the standard routine meetings
8 we were having just between myself and our general counsel
9 and their team. It ended up being escalated to a more
10 attended meeting with counsel from all sides. So there were
11 several of those meetings afterwards.

12 Q. And on those meetings after that time, was the
13 sale, various iterations of a sale of Zokinvy to Sentynl
14 discussed?

15 A. Well, it was discussed in various ways, I mean, it
16 was also -- we were also considering a PIPE offering to raise
17 money. And that Sentynl sale was part of that discussion.
18 So there was some debate whether we should do -- the investor
19 wanted to retain Zokinvy. And there was a question about
20 whether we could still sell Zokinvy and still do the PIPE
21 offering with the investor. And Innovatus was very involved
22 in that discussion. In fact, we kind of brokered a three-way
23 agreement that unfortunately the investor was unwilling to
24 comply with at the end. But we collaborated as best we could
25 and I thought Innovatus in that instance was fairly

1 collaborative and tried to find a three-way solution for the
2 investor and Innovatus and Eiger to find a way to make that
3 PIPE offering work with or without the sale of Zokinvy at
4 that point.

5 Q. So you mentioned Sentynl's interaction with PRF
6 being a key factor. So is it -- I almost feel silly asking
7 at this question at this point, but, do you view PRF as a
8 critical partner to Eiger with regard to Zokinvy and the sale
9 thereof?

10 A. I think PRF is absolutely a critical partner. One
11 of the first things I did when I stepped in as CEO was to
12 meet with PRF. There had been some tensions between our
13 company and PRF in the past and there was a pending
14 arbitration. I felt that was a big mistake. I met with
15 Audrey and Leslie Gordon and quickly we realized that we
16 wanted to collaborate and, you know, make some amendments to
17 how we were working together. I would say the last year was
18 great progress. We're working very efficiently, very
19 effective together, very collaboratively. And it's benefited
20 everybody. It's benefited the kids. It's benefited PRF.
21 It's benefited Eiger. It's why we're even getting offers, I
22 think, from other companies for Zokinvy because it's -- it's
23 a live and successful asset because we were able to cooperate
24 with PRF.

25 Q. Okay. We heard -- we heard through counsel's

1 presentation, you know, quite a bit of, you know, a pretty
2 powerful presentation on what we're actually talking about
3 here. But for purposes of the evidentiary record, can you
4 describe what Hutchinson-Gilford Progeria Syndrome is?

5 A. Sure. It's -- it's an obviously very rare disease
6 caused by a single point mutation in the DNA of the
7 individual. It's a totally random event, so it's not passed
8 down in a hereditary fashion like most genetic diseases are.
9 It's the mutation that occurs in the laminin protein which is
10 a very common protein that makes up the membranes of your
11 cellular structure. And the abnormal protein that's formed
12 is called progerin. And progerin has this unusual feature
13 that it allows for the attachment of a fat molecule called
14 pharماسال. And that's the host function that Lonafarnib
15 actually blocks. So we're actually blocking another protein
16 in the patient that prevents this anchor molecule, this
17 (indecipherable word) molecule that then allows the abnormal
18 protein to accumulate in the nuclear membrane of the
19 patients. And it's that accumulation of this abnormal
20 protein that causes the rapid aging syndrome, the vascular
21 defects, the staradermitis (phonetic), abnormal skin, poor
22 weight gain, wasting syndrome that these kids suffer from.
23 Now, remarkably these children don't suffer cognitive
24 deficits. It does not affect their brain. They're very high
25 functioning, very happy, well-adjusted kids that are going to

1 school. Now the patients that have been on the drug and are
2 in their 20s, some of them have gone to college. So they
3 have a very good quality of life until the very end where
4 they have a stroke or some kind of cardiac event that will
5 cause their demise. So it's a very unusual disease.

6 It just so happens the drug that we licensed from Merck
7 to treat hepatitis D, because hepatitis D uses that same fat
8 anchor to latch onto hepatitis B, so it's a co-infection of
9 hepatitis B, it's that same process that allows that abnormal
10 protein in progeria to cause the damage to these kids. And
11 so it was, you know, brilliant work by the PRF to even figure
12 out this mutation. They worked with the NIH to figure that
13 out. It's amazing. They were able to figure out that
14 there's a drug that blocks this chemical step, this pharm
15 installation step. And then Merck amended the -- our license
16 agreement to allow Eiger to work with PRF and to have a
17 royalty free, milestone free commercialization right to get
18 Zokinvy approved. And we now have approvals in the U.S.,
19 EMA, UK, Israel, and Japan. So we have global approvals for
20 this drug. And it's largely based on the collaboration we've
21 had with PRF and the cooperation we've shared with each
22 other.

23 Q. And what is progeroid laminopathies? How did I do?

24 A. Pretty good. Not bad.

25 Progeroid laminopathies are a subset -- it's progeria

1 like. So there's another range of mutations that can happen
2 in patients. It's not the classic progeria mutation I just
3 described to you. And it can cause a spectrum of severity
4 that in many cases is a little less severe, so some of these
5 patients live to be older and they mature more. In some rare
6 cases it's more severe. So we were able to do some work in
7 the filing for approval of the drug to show that it was
8 likely to work in what we call PLs, or progeroid laminopathy
9 patients. So there's a whole other subset of patients that
10 could also benefit. And we've had a few of them that were
11 identified. And it might be as many as half the number of
12 progeria patients may have this other subset called PLs. So
13 the estimate is around 200 patients might have this
14 condition. So it's another group of patients that I think
15 with time we can identify and benefit by making this drug
16 available to them.

17 Q. And about how many people suffer from both of these
18 combined, Hutchinson-Gilford Progeria Syndrome and progeroid
19 laminopathy?

20 A. It's probably estimated at 400 worldwide for
21 progeria and probably another perhaps 200 patients with
22 progeroid laminopathies of the type that we believe can be
23 treated with Zokinvy.

24 Q. And are there other treatments available for
25 progeria --

1 A. There are no other approved treatments for
2 progeria, no.

3 Q. And can you explain what the results -- you
4 mentioned this earlier, but I want you say it again because
5 it's important. What -- what are the results that have been
6 seen with Zokinvy?

7 A. I think the main basis of approval was the 2.5
8 years of survival advantage at the time that we filed. And
9 as we continue to follow these kids for several years longer,
10 we now know that they're living on average about 4 to 4 1/2
11 years longer than the untreated kids from the historical
12 culverts. And, you know, it's -- we imagine if we start
13 treating these kids younger now that we're identifying them
14 at around a year to year and a half of age, maybe that life
15 expectancy gets even better. Because most of the kids we've
16 been treating between age 5 and 7. So, I think, we continue
17 to see pretty striking benefits, multi-year survival on any
18 disease like this is incredible evidence of disease
19 modification. And that's why it's such an important drug to
20 make sure we're not having any missteps or any gaps in
21 provision to the kids.

22 Q. And as a PhD, as a medical doctor with a life-time
23 of experience in this area, is that -- is that unusual?

24 A. It's highly unusual. I mean, I've done a lot of
25 cancer programs where two or three month survival is

1 considered a big deal, right. To have multi-year survival in
2 a universally fatal disease like this is a pretty amazing
3 accomplishment. And, you know, I give so much credit to the
4 PRF for figuring this out. I mean, they did in a few years
5 what biotech companies sometimes take five or ten years to
6 do. So -- and it just shows you what the passion of a mother
7 and a family and people with the right background can
8 accomplish. So I think it's just been a real success story
9 to then partner with them and help them get the approvals,
10 because that's a very challenging and technical thing to do.
11 As a foundation it would be very hard to get drug approvals
12 and to manage all of the manufacturing expertise that you
13 need to do this the way we haven't been able to. So I think
14 it was a great partnership. And that's why we have this
15 product that's helping these kids.

16 Q. All right. Let's shift gears to what we refer to
17 -- what's been referred to, quote, the remaining assets with
18 basically everything other than Zokinvy.

19 Can you -- first of all, do you believe there are other
20 assets besides Zokinvy that can generate value for this
21 estate?

22 A. Yeah. I'm confident we can. Avexitide is the
23 product that we were going to pivot to. We felt it was
24 probably the biggest opportunity in terms of value accretion
25 for the company. Avexitide is a GLP-I antagonist. So it

1 does the opposite thing that many of these other drugs over
2 here like Wegovy and the GLP-1 agonist do. So those drugs,
3 they raise insulin levels and reduce glucose levels. And
4 they can cause weight loss and treat diabetes. What our drug
5 does, Avexitide is a GLP-1 antagonist. It blocks the
6 receptor from GLP-1. And it therefore can treat debilitating
7 hypoglycemia diseases. And there's two main diseases that we
8 will be treating with Avexitide.

9 It's not well-known, but when people get bariatric
10 surgery for weight loss, 5 percent of those patients can get
11 debilitating hypoglycemia. So their sugar level can drop so
12 precipitously and so unpredictably that they can't leave the
13 home. They can't work. They can't drive. They can have
14 seizures. They can die from it. And so we've done two
15 phases worth of studies to show that we can actually correct
16 and modify that severe hypoglycemia in these patients that
17 have what we call PBH, post-bariatric hypoglycemia. So
18 that's a really important indication for Avexitide. And we
19 think it represents a really important advance in that
20 disease. There are no approved treatments yet to treat PBH.

21 There's also another condition in pediatrics called
22 congenital hyperinsulinism. And some children are born with
23 hyper secretion of insulin and debilitating hypoglycemia.
24 And they can die in the first weeks of life from that
25 condition. We've shown in some early studies that Avexitide

1 can treat those children, as well. And then we have plans --
2 and both of these indications are Phase III ready so we've
3 done complete Phase II programs. We're literally a Phase III
4 program away from then being able to file those for approval.
5 So we think there's a lot of value in the Avexitide franchise
6 as part of our portfolio.

7 Q. Next, what about Interferon Lambda?

8 A. Interferon Lambda is a product we were developing
9 for two reasons. We were developing it for chronic hepatitis
10 D. Unfortunately we had a safety event in the Phase III
11 study last year and we had to shut that study down based on
12 our data safety monitoring board's recommendation. That also
13 caused a hit and our stock value declined after that event,
14 which is something that happens in this industry. Sometimes
15 safety events will happen.

16 I will say we don't have any future plans to develop
17 Interferon Lambda for chronic HDV. But there's still genuine
18 interest in respiratory diseases. We had some really
19 promising data in COVID that we reported, I think, early in
20 2022. And there's been interest from a non-profit money to
21 be funding additional studies in COVID using Interferon
22 Lambda for COVID and potentially flu, and RSV. So I do think
23 there's a real important use that could still be realized
24 with Lambda and some value there, as well.

25 Q. And lastly, Lonafarnib Ritonavir.

1 A. So Lonafarnib is in both Zokinvy and the HDV
2 product, Your Honor. But we use Lonafarnib with Ritonavir,
3 another drug to enhance its exposure for hepatitis D
4 treatment. And it's not weight based. So for the kids that
5 have progeria, we use Lonafarnib on a weight-base dosing. So
6 you adjust the dose based on the size of the patient. And
7 HDV, we use this combination of Lonafarnib with Ritonavir and
8 it's not weight-based dosing. So it is a different -- it
9 essentially is a different drug because it's use differently
10 with different dose and different mode of administration.

11 We had what was quite promising data end of 2022. We
12 had two drug regiments using Lonafarnib for HDV. They both
13 hit statistical significance. They both showed efficacy.
14 Investors reacted badly to the data because Giliad had a
15 program where their numbers were a bit higher. And so there
16 was an investor reaction to the data. But I felt like the
17 drug still has promise and I still do. And we had a meeting
18 with FDA, a pre-MDA meeting that you have to discuss the
19 package for filing for an approval early in the following
20 year, 2023. And I viewed it as a very favorable meeting.
21 And they basically, you know, were supportive of us filing
22 for an approval. And so we still think there's a path
23 forward there. We think it's something that I expect there
24 will be bidders for. And it's literally 9 to 12 months away
25 from filing for an approval with FDA.

1 Q. You just mentioned bidders. In the -- gosh, has it
2 only been 48 hours? In the 48 hours since this case filed,
3 have you already received interest on both Zokinvy other than
4 the two parties that are in court and on the other assets?

5 A. I've received about a dozen emails when people
6 heard the news with regard to, in some cases exclusively
7 Zokinvy and in some cases more general, we're interested in
8 your assets. And I've been referring them to the team to put
9 them into the process. But in just the last two days,
10 probably at least a dozen inquiries came in spontaneously to
11 me, in addition to the list of parties that we were already
12 aware had reached out before. So I think -- I do expect that
13 this could be a competitive process.

14 Q. Now in your -- you already talked about the
15 employees and the reducing from 50 to 9 and that the 9 are
16 absolutely essential. And of course you would like to pay
17 them. In your business judgment, do you believe the other
18 expenses that are reflected in the cash collateral budget are
19 necessary to preserve the value of the assets that are going
20 to be sold in this case?

21 A. I do. We did a, you know, program-by-program
22 review to really make sure we were preserving any activities
23 that if otherwise stopped would be detrimental to the assets.
24 So we put ourselves in the perspective of someone that would
25 come in and buy the asset. And I'll give you some examples.

1 We have to make sure we're maintaining the inventory
2 properly and the stability studies for these drugs properly
3 or it becomes a huge obstacle to advancing the program. So
4 if I'm sitting in the buyer's seat, I want -- I have
5 assurance that we're maintaining the inventories. The
6 stability studies are ongoing. Especially if you need it for
7 registration, because you can't restart it. If you stop a
8 stability study, a 5-year study, Your Honor, you have to
9 restart it. You can't pick up where you left off. These are
10 studies that require continuity. So we looked at those kinds
11 of things that were necessary to keep managing properly
12 through our vendors and to keep making sure we advanced those
13 kinds of activities on the programs that would -- any buyer
14 is going to want to see that have integrity, that have the
15 ability to move forward.

16 There's a virology study that is being done in support
17 of the HDV Lonafarnib program. That's the only remaining
18 data element necessary for filing. That's something that we
19 discussed with FDA. And that's a study that we have included
20 as an ongoing activity. We're not doing any other ancillary
21 or extra bells and whistles activities at all. We just
22 looked at the things that a buyer would want to see was
23 continuing and wasn't disrupted and wasn't going to cause a
24 detriment to the program.

25 Q. Now similar question with regard to -- well, let me

1 back up. I asked you earlier when you were talking about the
2 nature of a small biotech like Eiger I asked you about the
3 reliance on vendors to fulfill roles that maybe in a larger
4 company would be fulfilled internally.

5 With regard to the vendors that the debtors have
6 selected to receive payments, are those vendors -- same
7 question I just asked -- essential to maintaining value for
8 the assets that are going to be sold in the case?

9 A. Yes. It's exactly what we focused on. So for
10 Zokinvy, there's even more sensitivity around making sure we
11 don't misstep with a commercial product that's out there
12 being sold. So we had to make sure we were managing those
13 post-marketing requirements. Some of these are clinical
14 studies that are still finishing up. There's an
15 environmental study that we're doing for Europe. There is a
16 disposition of the drug study that we're doing also for the
17 EMA. So we have to use resources to manage those studies and
18 make sure they're completed, otherwise -- and they're
19 anywhere from 50 to 75 percent paid for already. We just
20 need to complete them and do them properly and get them done
21 in the time frame that the EMA, the European authorization is
22 expecting. So we looked at those kind of things to make sure
23 we're still paying those vendors to manage those things.

24 Again, the manufacturing, inventory chain, distribution
25 chain, stability of the drug for -- not only for batch by

1 batch, but you need to do stability for any filings that
2 you're going to do in the future for approvals. So we had to
3 make sure we weren't disrupting any of those activities
4 because they're absolutely vital for the asset value when we
5 bid these to other -- to other companies. So we took that
6 approach to this. We cut all the costs we could and we
7 really focused on those activities that if we stopped them
8 would damage the value of the program. and that's good for
9 all stakeholders. We want to make sure we're getting as good
10 a return on these programs as we possible can. That's better
11 for shareholders. That's better for the creditors. It's
12 just better for everyone involved.

13 Q. Just a couple of more questions, Dr. Apelian. And
14 these have to do with the proposed bid procedures for
15 Zokinvy.

16 You talked about, a lot about balancing interests. Is
17 it -- in your business judgment, do you believe that the sale
18 of the Zokinvy assets on the schedule that is proposed in the
19 bid procedures motion is in the best interest of the company
20 and all of its stakeholders?

21 A. I do for a few reasons. I think we need to make
22 sure we move this into the transition quickly and
23 effectively. And even after we close with a partner, it's
24 going to require several months of transition between our
25 team and their team. It's not like you give the keys to the

1 car and they drive away. We have to make sure we're
2 coordinating that transition of this asset to the new
3 company. And that's going to take, I would say, 60 to 90
4 days of coordination and collaboration of our teams, you
5 know, to share the know how and the logistics and all of
6 those things. So that's usually an important part of that
7 kind of handle.

8 I do think, based on the fact that we had about a half
9 a dozen companies and diligence before kind of spontaneously
10 reached out to us late last year, that there are several
11 companies that are probably poised and ready to get into the
12 process. And we've had spontaneous outreach over the last 48
13 hours. So I do think in the time frame outlined, there will
14 be a competitive process. I'm pretty confident of that. The
15 fact that we have two companies vying for the stalking horse
16 bid is kind of evidence of that already. I do think we need
17 additional time for the other assets to do a thorough bidding
18 process on those. And I think the time frame that was
19 detailed makes sense to me. I think it's ample time to do
20 that for the other non-Zokinvy assets. So I do think there's
21 a logical rationale for the proposal.

22 Q. Thank you, Dr. Apelian.

23 MR. CURTIN: No further questions, Your Honor.

24 THE COURT: All right. Pass the witness.

25 Any cross?

1 Yes, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. JONES:

4 Q. Mr. Apelian, were you involved in the decision to
5 choose the \$26 million Sentynl bid over the \$29 million Eton
6 bid at the end of last week and over the weekend?

7 A. So those bids were reviewed with our counsel. And
8 the holistic view of the bid and the position of the company
9 that Sentynl was, in our view, better prepared through
10 diligence was being weighed in as part of that decision. And
11 based on my counsels' advice and my banker's advice, I agreed
12 with the decision.

13 Q. Did you make the decision?

14 A. I made the decision with my counsel.

15 Q. Okay. What did your advisors tell you? You said
16 you relied on your advisors, other than counsel.

17 MR. CURTAIN: Objection.

18 THE COURT: Other than counsel. Don't reveal
19 any communications with counsel.

20 Q. What did your advisors tell you that you relied on?

21 A. My counsel is largely who was advising me on this.
22 But I would say that the total picture of the preparedness of
23 Sentynl having done full diligence with Progeria Research
24 Foundation and our appreciation that that was an important
25 part of the development of the diligence for both parties,

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1 PRF and Sentylnl. It doesn't mean the other party would not
2 have been a good partner. But it was an unknown that we
3 didn't have to take the risk on -- with Sentylnl. So that was
4 a factor that was involved in the decision process.

5 Q. That was a factor. What about the difference in
6 purchase price? How did you assess that?

7 A. Well, obviously the purchase price at that time was
8 different. But you have to handicap that with all of the
9 other factors involved; the ability to close, the ability to
10 have done the proper diligence, that's all kind of a holistic
11 view of the -- of the deal. And in our view the stalking
12 horse wouldn't have prohibited the other party from bidding
13 in just a few weeks. So it didn't seem like an unreasonable
14 decision.

15 Q. What did you know personally about Eton's ability
16 to close? You said that was a factor.

17 A. All I know is I had confidence in Sentylnl's ability
18 to close. And there was an unknown in my view of Eton's
19 ability to close.

20 Q. And what, if any, efforts did you make to determine
21 whether Eton had the ability to close?

22 A. On that point, I followed my legal counsel's advice
23 and we proceeded the way we had.

24 Q. That wasn't my question. My question is, what did
25 you do to make that determination, if anything?

1 MR. CURTIN: Objection. He answered the
2 question. He relied on counsels' advice which he can't --

3 THE WITNESS: I relied on my counsel.

4 MR. CURTIN: -- reveal.

5 THE COURT: Sustained.

6 Q. So you had no opinion or thoughts on Eton's ability
7 to close?

8 MR. CURTIN: Objection; that's not what he
9 said.

10 Q. Other than what your counsel told you.

11 MR. CURTIN: You don't have to --

12 THE COURT: I overrule the objection. He can
13 answer.

14 A. I relied on my counsel's view on the time frame for
15 the stalking horse bid. And that was the basis of my
16 decision.

17 Q. Did you consult with Innovatus in making that
18 decision?

19 A. No, I did not.

20 Q. And why not?

21 A. I relied on my counsel to proceed as we did.

22 Q. Okay. Why did Eiger refuse to even explain to
23 Innovatus why it made that decision?

24 A. I relied on my counsel to make the decision I made
25 for the stalking horse bid.

1 Q. So not only did you not consult with Innovatus, you
2 refused to tell Innovatus the basis for your decision; is
3 that correct?

4 MR. CURTIN: Objection. It's the same
5 question over and over again, Your Honor. He's answered it
6 four times now.

7 THE COURT: Overruled. He can answer, if he
8 has an answer.

9 A. From my understanding of the stalking horse
10 process -- am I -- from my understanding of the stalking
11 horse process, it is not a requirement that it be bid out as
12 a formal bidding process if a credible stalking horse bidder
13 makes a credible bid. And we felt there were enough
14 questions with the Eton bid that they were not as prepared.
15 We had a fully vetted, fully vetted offer with Sentynl months
16 and months, four to six months worth of work. It was a much
17 more, I would say, straight path forward with them. Less
18 risky path forward as a stalking horse bid.

19 Q. I'd like to focus your attention today on the cash
20 collateral -- the use of cash collateral that you have
21 requested in the interim period. We're talking about the
22 next four weeks, correct?

23 A. Uh-huh.

24 Q. Okay. If we take a look at your cash collateral
25 budget for the next four weeks, we seen an entry for \$688,000

1 for R&D post-marketing disbursements. Do you see -- you're
2 aware of that?

3 A. I am.

4 Q. What are those?

5 A. I think a large fraction of that \$680,000 figure
6 you mentioned is the virology work that's ongoing and
7 continuing to support the approval of the Lonafarnib asset
8 for HDV. So disruption of that activity I think would be
9 very harmful to the HDV program. And those are samples
10 that -- they're the only samples that exist to do that
11 testing. So disruption of that, or trying to retrieve them
12 and ship them later is highly risky and could damage the
13 value of the HDV program. So that's why we included that.
14 The majority of that 680,000 is a \$550,000 expense for the
15 virology --

16 Q. You're going to have to -- I need you to help me
17 understand that.

18 A. Okay. Sure.

19 Q. Is this money, the \$688,000, is that -- to whom
20 will that money be paid?

21 A. So there was some other -- there's some other funds
22 in that (indecipherable word) Virology testing that I just
23 mentioned to you, which is a lab that is doing the testing
24 for us.

25 Q. That 688,000 --

1 A. The 550,000 of that figure that you mentioned.

2 Q. Okay. 551,000 will be paid to a lab?

3 A. It's the work that's being conducted on the

4 virology testing and the genotyping for the --

5 Q. Okay. Is that for work that's already been done or

6 future work?

7 A. I don't have all the -- I don't have the budget in

8 front of me, so I'm -- I don't want to give you answers for

9 something that isn't going to be accurate.

10 Q. Well --

11 A. A&M has been working with us to work these budgets

12 with my team. They spent weeks of reviewing all of these

13 with my team. So I'm reluctant to give specific answers to

14 line items in the budget just for, you know, the sake of

15 being accurate. But I told you the major portion of that

16 688,000 is the virology and the genotyping testing that

17 supports the HDV program.

18 Q. But you can't tell me whether that's for work

19 that's already been done or work that will be done?

20 A. I believe that's for work that's going to be done.

21 Q. But you don't know?

22 A. I'm fairly confident of that.

23 Q. But you don't know?

24 A. Well, I don't have the ledger in front of me, so

25 I'm trying to be responsible and not give you answers that

1 are inaccurate.

2 Q. And when will that work be done? You said it's
3 going to -- if it's in the future, when will it be done?

4 A. I don't -- I don't have the answer to how quickly
5 that can be completed. But it's intended to support a filing
6 with the FDA by the end of the year. So that's a critical
7 time line for the HDV program.

8 Q. Is there a contract that supports this number,
9 551,000 to a virology -- to a lab?

10 A. I'm sure there's a contract for that.

11 Q. Do you know if there's a contract?

12 A. There's a contract.

13 Q. And what are the payment terms for that work under
14 that contract?

15 A. I don't have those details right now.

16 Q. So do you know whether you're actually required to
17 make any payment to that lab in the next four weeks?

18 A. I can't speak to the exact timing of the payment.

19 Q. Now you singled out the 551 as opposed to the 137
20 that makes up that 688 in R&Ds. What is the 137 for?

21 A. I don't know the exact application of that figure
22 to what specific activity. I just know the general
23 activities that we authorized as part of the process, which
24 were key study activities that support Zokinvy. Those are
25 categorized as R&D, but it's kind of a misnomer because

1 they're really post-marketing approval commitments that we
2 have to do. I can't item by item give you the subtotals for
3 those different expenses as I sit here.

4 Q. Well, do you know if that's for past work or future
5 work?

6 A. I can't answer that question. I don't know.

7 Q. If it's for future work, do you know when the
8 payment will come due?

9 A. I don't know.

10 Q. So you don't know whether it comes due in the next
11 four weeks or not?

12 A. I'm not certain.

13 Q. I think you testified earlier about it's important
14 to pay vendors. I think you mentioned that, right, your
15 vendor?

16 What is in your proposed budget for the payment of
17 vendors over the next four weeks?

18 A. I don't have the answers to that one in detail.

19 MR. CURTIN: Your Honor, I'm sorry. But just
20 a general objection. Counsel really expects Dr. Apelian to
21 know every single number in the budget and kind of, oh, I
22 gotcha, you don't know what that number is. I mean, it's
23 getting a big absurd.

24 MR. JONES: Your Honor, we objected to three
25 specific numbers. And I'm trying to get to the bottom of

1 those numbers.

2 THE COURT: Okay.

3 MR. JONES: Not every number. There aren't
4 many numbers in the budget, Your Honor.

5 THE COURT: Okay. Well, let's keep in mind, I
6 think I heard Mr. Rundell is going to testify about the
7 budget, correct?

8 MR. CURTIN: That's exactly right, Your Honor.
9 And by the way, I responded to his email when he asked for
10 this a couple of days ago. So he does know.

11 THE COURT: Okay. So if he knows, he knows.
12 If he doesn't, just move on. Maybe Mr. Rundell will have the
13 answers.

14 MR. JONES: I don't -- I understand, Your
15 Honor.

16 THE COURT: Okay.

17 MR. JONES: I just want to know if he knows
18 about the 137. That's all I asked.

19 Q. You also have in your budget for the next four
20 weeks commercialization disbursements for Zokinvy. Can you
21 tell me what those are?

22 A. I can't explicitly answer that. We worked with A&M
23 on the budget plan, on the cash collateral plan. That teams
24 is -- worked with my team over the last several weeks. I
25 don't have command of every line item on the budget, Your

1 Honor. I'm sorry.

2 Q. You have a category in that budget of a 1,074,000
3 of other. Do you know what that is?

4 A. I believe -- I believe Mr. Rundell is going to
5 address that.

6 Q. But you don't know?

7 A. I don't recall right now what that exactly is for.
8 At the behest of the lender, we brought in A&M to help us --
9 assist us with these preparations of the cash collaterals and
10 various aspects of this proceeding. We did that at the
11 lender request to get a forbearance, the initial forbearance.
12 We did that. We've been working closely with A&M for the
13 last several weeks to get these numbers in order. And we're
14 relying on their expertise to be able to answer some of these
15 more detailed questions.

16 Q. Well, did you consult with them on what they
17 included in the proposed interim cash collateral budget?

18 A. We had many meetings with them, my team members and
19 myself with their team over the last several weeks. I've met
20 with them at least half a dozen times to discuss various
21 aspects of this proposal.

22 Q. Would they have relied on you in order to tell them
23 about the necessity of continuing of R&D, or would they have
24 already known that?

25 A. They would have spoken to me and other experts on

1 my team, my manufacturing expert. We have other members of
2 the team that knew the programs at an intimate level to know
3 which of the activities would be -- put the program at risk
4 if we had not continued to make certain commitments or
5 advance certain parts of the program. So it wasn't solely
6 based on my input. I was involved in those discussions, but
7 my other team of experts were assisting A&M on this whole
8 process.

9 MR. JONES: No further questions, Your Honor.

10 THE COURT: All right. Any other cross?

11 I think we have some more cross.

12 MR. CURTIN: Your Honor, before counsel
13 proceeds, can we address their standing to raise this
14 objection in the first place? I believe this is counsel to
15 Eton who is not a party in interest to the case.

16 On the ECF docket it says that their objection was
17 filed by creditor Eton. We're not aware that they are a
18 creditor. They are a bidder. And we think the case law is
19 pretty clear that a disgruntled bidder -- and we don't really
20 have that here because we're talking about a pre-petition, so
21 I think it's even a step removed -- does not have standing to
22 object. So we would object to counsel questioning the
23 witness or the Court considering the objection.

24 THE COURT: What is your response?

25 MR. NEWTON: Your Honor, I'm aware that there

1 is some case law about disgruntled bidders after an auction
2 and case law that suggests that there may not be standing in
3 that scenario. Also aware there's very little case law on
4 the issue that we have here ahead of a hearing on the bidding
5 procedures. I'm aware, or I've been made aware by my
6 esteemed local counsel that there's at least one case he's
7 aware of in this District where a Court has found a potential
8 bidder to have standing to object to bid protections. It's
9 called ICH Corporation. Unfortunately it is old enough that
10 it is only in paper form and so I was unable to pull that out
11 ahead of this hearing. But I think it's rational and logical
12 and consistent with kind of the trend that party in interest
13 is really coextensive with Article III standing.

14 It's an unusual case for certain where a party is
15 prepared without further diligence to require to execute an
16 APA and comes in to oppose a very narrow issue which is bid
17 protections that are being proposed in this circumstance.
18 But we have that just here. In fact, I have an executed copy
19 of the APA with me from Eton. And so under these
20 circumstances, I do think that Eton has an interest in
21 protecting against the bid protections that have been
22 proposed here. And I propose to keep my examination narrowly
23 tailored to addressing that issue.

24 THE COURT: Okay. You acknowledge Eton is not
25 a creditor --

1 MR. NEWTON: Correct, yes.

2 THE COURT: -- with some sort of incorrect
3 labeling or whatever?

4 MR. NEWTON: Not a creditor.

5 THE COURT: Counsel, I don't think there is a
6 heck of a lot of case law on this. Certainly not controlling
7 case law. Did you have anything you wanted to say?

8 MR. CURTIN: I do, if I could just briefly
9 respond, Your Honor.

10 THE COURT: Uh-huh.

11 MR. CURTIN: The cases we rely upon are
12 Magnolia Venture Capital, Corp., versus Prudential Securities
13 which is a Fifth Circuit case which holds that a party in
14 interest is a person whose pecuniary interest, which is
15 emphasized, are directly affected by the bankruptcy
16 proceedings. And then our --

17 THE COURT: Was that in the context of a
18 potentially competing bidder or just a more general
19 proposition?

20 MR. CURTIN: No. That was -- that was in
21 regard to a more general proposition. But there is other
22 case law and we'd cite the Tuesday Morning case that cites --
23 that says that a successful bidder, right, has a pecuniary
24 interest sufficient to give standing. Now, admittedly we
25 don't have a Fifth Circuit case, but we do have a Second

1 Circuit case which is In re Colony Hill Associates, which has
2 been followed around the country in my experience, that a
3 non-successful bidder would not likely have a pecuniary
4 interest to object to sale. And -- so, again, Your Honor, I
5 think, you know, there's no case law on this exact scenario
6 because it's absurd. So if you -- if you take it to its
7 logical conclusion, right, if Courts have said that a
8 disgruntled bidder in an actual court process doesn't have
9 standing, these are people that, you know -- and I'll stop
10 for a second, because we want Eton -- we welcome Eton's
11 participation in this process, Your Honor. We want them to
12 be a bidder. And we will work with them to get them to the
13 point with PRF where we need them to be so that we can be
14 just as confident in them as we are in Sentynl. But right
15 now, we're just not. It's not their fault, but we're just
16 not.

17 And you've heard. You've seen the presentations. You
18 know what we're talking about here. We have to go with a
19 stalking horse that we have certainty with, or near
20 certainty, or much greater certainty that we do with Eton
21 that can get this thing over the finish line, particularly
22 with PRF. And, Your Honor, you haven't heard this yet but
23 it's super relevant, the Sentynl bid has been increased,
24 okay. So the economics are now identical.

25 THE COURT: Okay. Well, I haven't heard that.

1 Okay.

2 I --

3 MR. CURTIN: So, I mean, what we're talking
4 about is --

5 THE COURT: I respect both arguments. It's
6 not an easy call. I knew when I saw this objection come in
7 at midnight or 12:22 a.m., I knew I was going to hear this
8 argument about standing. But I'm going to allow it, as long
9 as you keep it very brief. It's not an easy call. But maybe
10 this goes to the integrity of the process. I've read in the
11 pleadings you're willing to make a 4 billion - excuse me,
12 don't we all wish -- a 4 million higher offer without breakup
13 fees or expenses. It just feels like we ought to allow a
14 little bit of questioning here. But, you know, if you go on
15 more than 5 or 10 minutes, I'm going to cut it off. Okay.

16 MR. NEWTON: I won't go on long.

17 THE COURT: Counsel, I'm getting mixed up who
18 represents who.

19 MR. MORRIS: May I approach?

20 THE COURT: You may.

21 MR. MORRIS: Your Honor, again, Joshua Morris
22 from Sentynl, counsel for Sentynl.

23 Just for the record. Standing issues aside, we don't
24 really have a bid here. We may have a bid. We may have a
25 signed APA. All we have is an objection. We don't have any

1 evidence that that objection -- sorry. We don't have any
2 objection (sic) that this proposed bid is actually real or
3 not subject to some contingencies. We're taking his word for
4 it, which, again, I've never met him until today. We're
5 going to take his word for it and allow him to ask questions,
6 that's fine. But I think in order to allow the process to be
7 efficient, we should perhaps allow the debtors' counsel to
8 provide the Court with the update that he just indicated that
9 our economics have increased so that the questions of the CEO
10 are not, you know, what's the difference between the bids?
11 Because there's fewer differences now. And so perhaps that
12 would expedite and make these proceedings a little shorter.

13 THE COURT: Okay. Again, I respect everyone's
14 position. It's not an easy slam dunk legal call here. But
15 I'm going to allow 5 or 10 minutes. I mean, as I think they
16 said in their pleadings, we're not a fly by night. We're
17 Eton, Eton, publicly traded company. They've got very good
18 counsel. I feel like for the benefit of unsecured creditors
19 who don't have a Committee yet, may or may not end up having
20 a Committee, we need to allow it.

21 MR. MORRIS: Of course.

22 THE COURT: So, again, please keep it short.

23 MR. NEWTON: Yep. Thank you, Your Honor.

24 MR. NEWTON: Again, James Newton of Morrison &
25 Foerster on behalf of Eton Pharmaceuticals.

1 CROSS-EXAMINATION

2 BY MR. NEWTON:

3 Q. Mr. Apelian, you mentioned a few minutes ago
4 consideration of diligence that had been undertaken by the
5 two potential bidders here in court today; Eton
6 Pharmaceutical and Sentylnl. And that that went into your
7 decision-making process, when selecting Sentylnl as the
8 stalking horse.

9 A. It was part of it, yeah.

10 Q. Are you aware that Eton was involved in diligence
11 process prior to the bankruptcy case?

12 A. I was. In fact I met with David Krempa and
13 discussed the potential for them to come in. And one of the
14 things I explained to him was that we felt that they needed
15 to do more diligence, especially with PRF. We had a direct
16 conversation about that during the JPMorgan conference, we
17 had a meeting. And his opinion was that that could be dealt
18 with as a contingency after the deal was closed, or something
19 to that affect. And I said, well, I think that's a
20 misunderstanding of the importance of PRF for this
21 transaction. That is not a contingency. It needs to be part
22 of the understanding of the relationship and how the program
23 would have to advance. So that's the last time I spoke to
24 him about that particular topic. And we had, I think,
25 another conversation after that, but it wasn't about the

1 material terms of a deal.

2 Q. Okay. And are you aware that Eton's offer from
3 last Friday did not contain any sort of diligence
4 requirements?

5 A. I understood that.

6 Q. We've also heard a fair amount about consents that
7 may be needed here. And those include, I believe, PRF and
8 likely Merck, as well, who we haven't heard much about just
9 yet. Is that your understanding?

10 A. I understand that this is an issue of discussion.
11 I'm not an expert on this topic, especially in this setting.
12 So I'm not going to offer my opinion on it.

13 Q. Okay. But is it your understanding that there are
14 consents that are required in connection with a sale, or are
15 you saying you're not --

16 MR. CURTIN: Objection; asked and answered.

17 THE COURT: Sustained.

18 Q. Okay. Are you aware of whether PRF has provided a
19 formal consent to Sentynl becoming the purchaser here?

20 A. I'm unaware of a formal consent.

21 Q. Okay. And are you aware that -- whether PRF will
22 need to execute documents in connection with the closing of a
23 sale here?

24 A. I'm not aware of that level of detail of the
25 transaction.

1 Q. Okay.

2 A. So I can't provide you an answer.

3 Q. Okay. Is that something that your investment
4 banker would typically be involved with your lawyers on?

5 A. I would imagine my counsel and the Bank that we
6 brought in to handle these transactions would be involved in
7 that, yes.

8 Q. Okay. And so the need for diligence with PRF was
9 solely based on diligence that you believe Eton should be
10 undertaking as opposed to obtaining any sort of consents?

11 A. It was -- my conversation with David Krempa, like I
12 said, during JPMorgan was more of my business judgment. That
13 it was an important part of the diligence that they did not
14 appreciate an aspect of the program that they were making a
15 bid on. And it was an important aspect of the program. And
16 it was -- that was -- it was just more of a business judgment
17 understanding the asset, understanding how it would be
18 managed. It wasn't about contractual obligations or the
19 details of closing a deal. It was really about helping him
20 appreciate that that was an important part of the transaction
21 that he had not yet understood. It was purely a business
22 discussion.

23 Q. Okay. And so it is fair to say that since you are
24 not 100 percent certain whether consent from PRF will be
25 required in connection with closing of a sale, that that

1 didn't factor into your consideration of whether the Eton bid
2 or the Sentynl bid was better?

3 A. I honestly -- I honestly don't have an opinion
4 about what the consent requirements are in this setting in a
5 Chapter 11 proceeding or process. I can't answer your
6 question.

7 Q. Okay.

8 MR. NEWTON: That's all I have for
9 Mr. Apelian.

10 THE COURT: Okay. Pass the witness.

11 Any other cross?

12 Redirect?

13 MR. CURTIN: Thank you. Very briefly, Your
14 Honor.

15 REDIRECT EXAMINATION

16 BY MR. CURTIN:

17 Q. Dr. Apelian, let's start with -- let's start with
18 PRF. Is it fair to say that Sentynl is significantly further
19 along in conversations with PRF than is -- that Eton is?

20 A. That's correct.

21 Q. And is it fair to say that you view in your
22 business judgment as the CEO of Eiger and someone that's been
23 around Eiger since the beginning that PRF is a critical
24 partner, putting aside consent right -- the consent right
25 questions, a critical partner going forward for Eiger?

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1 A. Absolutely, yes.

2 Q. And is that for all of the reasons that you gave in
3 your testimony earlier, as well as that were included in the
4 presentation by PRF's counsel?

5 A. That's correct.

6 Q. I want to talk about -- you got some questions from
7 Mr. Jones about a certain point where Innovatus was no longer
8 included in the process. When did it become clear to you
9 that Innovatus was communicating with one of the bidders?

10 MR. JONES: Objection; leading.

11 Q. Did it ever --

12 MR. CURTIN: I'll rephrase.

13 THE COURT: Sustained. Rephrase.

14 MR. CURTIN: I'll rephrase.

15 Q. Did it ever become clear to you that Innovatus was
16 communicating with one of the bidders?

17 A. Yes. I mean, we had conversations with David
18 Krempa and Claes Ekstrom from Innovatus where they
19 acknowledged talking to each other. Was an occurrence where
20 Eton was about to withdraw their bid, but I got a call from
21 Claes from Innovatus literally moments before they withdrew
22 their bid saying, did you know that Eton was going to
23 withdraw their bid? And I said, no. I'm not sure why you're
24 telling me. So there seems to be a level of communication
25 between Innovatus that David Krempa acknowledged to us when

1 we spoke to him after that call, about a week later. So we
2 know that there's been communication between Eton and
3 Innovatus. And they haven't denied it, either party. So I
4 do think it's unusual. I told David Krempa that I felt it
5 was unusual that those conversations were happening with our
6 lender in relation to the deal. I don't know what their
7 motive was for doing that. But it was noted and it wasn't
8 denied by either party.

9 Q. Okay. You heard me --

10 MR. CURTIN: Apologize because that was a bit
11 out of turn. I got a little carried away on the standing
12 objection, Your Honor.

13 Q. But you heard -- well, let me say it this way.
14 Over the last 48 hours, really over the last 12 hours, has
15 the Sentylnl offer, stalking horse offer changed in terms of
16 the economics?

17 A. My understanding is that they've increased their
18 offer to 30 million.

19 Q. And is your understanding also that they've
20 increased the floor from 20 to 26 million?

21 A. That's my understanding.

22 Q. Is it also your understanding that they've
23 decreased the step-down post April 24th from 214,000 to
24 100,000?

25 A. That's my understanding.

1 Q. And is it your understanding that with those
2 changes, the economics, putting aside bid protection, that
3 the economics of those two deals are exactly the same at this
4 point?

5 A. That's my understanding.

6 Q. And is it your understanding that Sentyln has also
7 decreased the bid protections that they're requiring from an
8 aggregate of 5.3 percent, which included a 3 percent breakup
9 fee and a \$600,000 expense reimbursement, to an aggregate
10 breakup -- aggregate bid protection, including bid --
11 including breakup fee and expense reimbursement of 3 percent?

12 A. That's my understanding.

13 Q. And based upon the -- everything you've testified
14 so far regarding how far long Eton -- I apologize -- how far
15 along Sentyln is with PRF and the critical nature of the PRF
16 relationship, is it your view in your business judgment with
17 all of your years experience at Eiger that the correct course
18 of action in this case is for Sentyln to be the stalking
19 horse so that there is a certainty, a greater certainty of a
20 closing of this transaction for all of the reasons that you
21 described?

22 A. That is my opinion.

23 MR. CURTIN: Nothing further, Your Honor.

24 THE COURT: All right. Any recross only on
25 that redirect?

1 MR. JONES: Only on the redirect.

2 THE COURT: Okay.

3 RE-CROSS-EXAMINATION

4 BY MR. JONES:

5 Q. Mr. Apelian, why did it concern you that Innovatus
6 encouraged Eton to make a competing stalking horse bid?

7 A. It didn't concern me. I didn't say that. It
8 didn't concern me that they were encouraging them to make a
9 competing bid.

10 Q. So the communication last Thursday and Friday, why
11 did that concern you, the communication between Innovatus and
12 Eton?

13 A. I'm not referring to that. I was referring to a
14 much earlier communication --

15 Q. Okay.

16 A. -- months earlier where they seemed to be talking
17 to each other about a prior diligence that Eton was
18 performing during the earlier phase of our diligence process
19 for this asset. It wasn't what happened last week.

20 Q. Okay. Did you have any concern about the
21 communications that Innovatus had with Eton at the end of
22 last week?

23 A. I would just say it struck me as similarly odd that
24 they were in communication. But it didn't concern me. It
25 was the pattern I had seen before.

1 Q. You think it odd that they were trying to encourage
2 someone to submit a higher offer?

3 A. No.

4 MR. JONES: No further questions.

5 THE COURT: All right. Any recross on the
6 redirect?

7 All right. Thank you, Doctor, you're excused.

8 THE WITNESS: Thank you.

9 THE COURT: All right. Next witness.

10 MR. CALIFANO: Yes, Your Honor. I would like
11 to call Mr. Paul Rundell.

12 THE COURT: All right. Mr. Rundell, welcome
13 back to our courtroom. It's been a few years.

14 Please raise your right hand.

15 (The witness was sworn by the Court.)

16 MR. CALIFANO: I was surprised that you
17 recognized Mr. Rundell, because he's got a sharp new haircut
18 now.

19 THE COURT: Oh, I don't know about that. Any
20 way, we're always glad to see old familiar faces.

21 THE WITNESS: Thank you.

22 THE COURT: I didn't mean old. You know what
23 I mean.

24 MR. CALIFANO: Thank you, Your Honor.

25 (no omission)

1 PAUL RUNDELL

2 The witness, having been duly sworn to tell the truth,
3 testified on his oath as follows:

4 DIRECT EXAMINATION

5 BY MR. CALIFANO:

6 Q. Mr. Rundell, where are you employed?

7 A. I'm managing director with Alvarez & Marsal.

8 Q. Okay. And what is Alvarez & Marsal's role with the
9 debtors?

10 A. Financial advisor to the debtors.

11 Q. Okay. And what does Alvarez & Marsal do in the
12 capacity as financial advisor?

13 A. We work with companies that are typically under
14 performing. And we look at options on how to maximize value.
15 Oftentimes in the group that I work in, sometimes we do have
16 to go through Chapter 11 in order to get -- in order to
17 maximize that value.

18 Q. Okay. And what is your current position at A&M?

19 A. I'm a managing director.

20 Q. Okay. And do you have experience in restructuring?

21 A. I do. I -- I run the healthcare restructuring
22 practice for Alvarez. I've been -- I only work with, for the
23 most part, healthcare companies for the last 20 years. And I
24 do about anywhere between six to a dozen healthcare providers
25 a year. Some of them are out of court, but some do go in

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1 court.

2 Q. Okay. So do you have experience in Chapter 11
3 cases?

4 A. I do.

5 Q. Approximately how many?

6 A. Definitely over 20, probably over 30 over my career
7 I've worked on.

8 Q. Okay. And have you ever testified in a Chapter 11
9 case before?

10 A. I have.

11 Q. And as part of your role as Alvarez & Marsal, do
12 you examine company's liquidity and cash forecasting?

13 A. Yes. In pretty much every engagement we have.

14 Q. Okay. And have you -- do you understand what a
15 cash collateral budget is?

16 A. I do.

17 Q. Okay. And how many times have you been involved in
18 the creation of a cash collateral budget?

19 A. Pretty much every one of our clients that do file,
20 we -- we have to create a cash collateral budget.

21 Q. Okay. So that's some 20 to 30 times?

22 A. At least. I mean, almost every engagement has
23 (inaudible word) cash flow. I've probably looked at hundreds
24 of cash flows over my career.

25 Q. Okay. Now, are you familiar with the debtors'

1 proposed cash collateral budget?

2 A. I am.

3 Q. Okay. And what was your involvement in the
4 creation of that budget?

5 A. It was created under my -- with people that work
6 for me under my supervision.

7 Q. Okay. And the debtor created both a 4-week interim
8 budget and a 13-week budget, correct?

9 A. Yes.

10 Q. Okay. Even though we're only seeking approval of
11 the interim budget, why was the 13-week budget important?

12 A. In all cases, especially in healthcare, it's
13 important that we show all stakeholders that we have the
14 wherewithal to go through the process. It's important that,
15 you know, in this case we're selling, you know, potentially
16 up to four different drugs. Those drugs involve patients,
17 people around the world. They have to be able to see that we
18 have the wherewithal to make it to the end of the process.
19 So it's really more of an illustrative right now so that
20 people can see that we're not going to go out of business.
21 We're actually going to be able to sell these and continue
22 and hopefully transition properly the drugs.

23 Q. Okay. Thank you.

24 MR. CALIFANO: And, Your Honor, this is
25 Exhibit 5 at docket number 43.

1 THE COURT: Okay.

2 MR. CALIFANO: Would you like a separate copy?

3 THE COURT: I've got it.

4 MR. CALIFANO: Okay. Thank you.

5 Q. And, Mr. Rundell, is that the budget that you just
6 testified to?

7 A. Yes.

8 Q. Okay. So how much cash does the debtor currently
9 have on hand?

10 A. A little under 10 million.

11 Q. Okay. Prior to the filing, did that cash on hand
12 reduce by approximately \$5 million?

13 A. It did.

14 Q. And what was that attributable to?

15 A. The D&O that was paid. KERP that was paid. And
16 some retainers.

17 Q. To the professionals; is that correct?

18 A. That is correct.

19 Q. How did you determine what the appropriate expenses
20 were for the interim period?

21 A. When we do these, we first start with run rates for
22 the revenue and the receipts. In this case we go customer by
23 customer. On the disbursement we do the same. We first
24 start with run rates and then from there -- especially
25 because there was conversations, despite what I heard

1 earlier, between people that work in my firm and the lenders
2 regarding this budget last week where we talked about
3 disbursements. As a matter of fact, we talked about
4 disbursements that went down to \$300. So in those
5 conversations we took the disbursements to the vendor level.
6 I mean, in many cases we have -- each of these line items
7 have vendor specific details.

8 Q. So you did discuss the budget with Innovatus; is
9 that correct?

10 A. Yes.

11 Q. Okay. And as a result of those conversations was
12 the budget increased or decreased?

13 A. It was decreased. About \$3 million was pushed off
14 from important vendors. Those disbursements have to get
15 paid. But we agreed that some of those disbursements could
16 wait beyond the 30-day period. So it did decrease.

17 Q. Okay. Now, if you look at the budget -- and we
18 heard Mr. Jones before. He talked about specific items.
19 Now, there's an item that is Zokinvy commercialization
20 disbursements. What does that relate to?

21 A. It relates to the storage, the shipping, the
22 labeling, the distributions for that drug, which is our only
23 revenue generating drug.

24 Q. Okay. So that is necessary costs -- let me strike
25 that.

1 Are those necessary costs to deliver the drugs to the
2 400 patients we've heard about before?

3 A. Yes.

4 Q. Okay. Now R&D post-marketing disbursements. Are
5 you familiar with that line item?

6 A. Yes.

7 Q. Okay. And what does that line item relate to?

8 A. That relates to we -- as you heard earlier, there's
9 several other drugs that are going through testing phases.
10 And when they do that, they incur costs. Those costs -- and
11 I heard earlier questions, those are mostly costs that have
12 been incurred. But we have to pay them to continue the
13 regulatory process. Without that, if we try to sell the
14 drug, it will set us back years and the value will be
15 lowered. So those are costs that have been incurred and we
16 do have to pay those. Unless -- if we don't, we'll fall
17 behind from a regulatory standpoint.

18 Q. Okay. Now the item for other, can you explain
19 that?

20 A. Yes. That's -- about -- about 1.1 million of that
21 is Medicaid taxes, so those are from various states. We have
22 to pay that.

23 Q. Okay. And the contingency item, can you explain
24 that?

25 A. Absolutely. Not all of our vendors -- like most

1 debtor-in-possession, we have a lot of vendors that do not
2 have contracts. So we have to be able to pay vendors that
3 demand cash in advance. And it happens in every case.
4 There's literally -- because we did this vendor-by-vendor,
5 there literally has to be some amount of money for vendors
6 that don't have contracts that require cash in advance
7 payments before they ship. And we cannot fall behind. It
8 will impact our drugs and our value. Like we talked about,
9 we're trying to sell these things. If we have any disruption
10 in our supply chain, it's a real big issue to our patients,
11 as well as to value.

12 Q. Okay. Do you believe that 100,000 a week is a
13 reasonable amount for those contingencies?

14 A. Yes.

15 Q. Okay. Now, during the four-week period that this
16 budget covers, does the cash go up or go down?

17 A. It goes up.

18 Q. Okay. Now, are you aware that the lender objected
19 and stated that the order should provide that for the interim
20 period there be no ability -- there be no variance from the
21 budgeted items? Are you aware of that?

22 A. I am aware.

23 Q. Okay. Is that customary?

24 A. I've never seen it in any case.

25 Q. Okay.

1 A. Think about this. If we have one deviation.
2 Things happen in Chapter 11, always. We can't possibly
3 forecast the next 30 days perfectly under any scenario. Any
4 deviation could dramatically impact enterprise value.

5 Q. Okay. Did you discuss this budget with members of
6 management?

7 A. Yes.

8 Q. Okay. And do you believe that they exercise
9 reasonable business judgment in connection with this budget?

10 A. I do.

11 Q. Okay. I'm sorry. Did I ask you in the budget does
12 the cash on hand goes up or down during this period?

13 A. You did. And it does go up.

14 Q. Okay. Now, you say that you involved the lender in
15 the budgeting process. Can you relate that call to the
16 Court?

17 A. Yeah. I mean, I gave a synopsis previously. So
18 people that work for me went line item by line item. There's
19 lots of questions. I mentioned, it went down to \$300 issues.
20 There was definitely dialogue. And the result was a good
21 thing. There was -- for the lender there was a push off of 3
22 million. We'll have to spend it. But in that four weeks,
23 disbursements went down, which is always a good thing. But
24 there -- I'm a little perplexed about there's no
25 communication, no basically transparency. There's been --

1 I've been on several phone calls with the lender. And we
2 talk about -- every time there's a question, we give them an
3 answer. So I was a little confused by that.

4 Q. Okay. And is it customary in the some odd 30 cash
5 collateral orders that you've dealt with, that a lender would
6 go to that level of detail to \$300, as you said?

7 A. No. No.

8 Q. Okay. Now, are you familiar with the -- generally
9 familiar with the Zokinvy sale process?

10 A. Yes.

11 Q. Okay. Why wasn't it able to be consummated out of
12 court?

13 A. The lender had a right to consent that they would
14 not provide. I was on multiple calls. We had, to be candid,
15 some heated conversations. Ultimately they were willing to
16 consent, but it was too late. The stalking horse got
17 frustrated, rightfully so, that we couldn't get the lender to
18 consent. And that basically left us no choice but to go --
19 to file so that we can get that sale done.

20 Q. Okay. Now, this budget, does it take into account
21 funding amounts that are anticipated under the various first
22 day motions?

23 A. Yes.

24 Q. Okay. So the amounts requested in the first day
25 motions are not duplicative of the amount -- I'm sorry. The

1 amount in addition to the amount asked for under the cash
2 collateral budget; is that correct?

3 A. That's correct.

4 Q. Okay. What would be the impact on the debtors if
5 they were unable to use cash collateral?

6 A. Oh, I mean, I don't -- I think you would have a
7 different type of liquidation. I think you would have
8 negative value.

9 Q. All right. Would they be able to deliver their
10 drug?

11 A. No. I think -- I think there would be people that
12 would potentially die. And I think it would be a disaster,
13 if you asked.

14 Q. Okay. Now, are you familiar -- you're familiar, we
15 just asked you, with the asset sale process. Do you think
16 that conducting the asset sale process in Chapter 11 will
17 increase the realizable value of the estate?

18 MR. JONES: Objection, Your Honor --

19 A. Yes.

20 MR. JONES: -- lack of foundation.

21 THE COURT: Lack of foundation?

22 MR. JONES: What's the basis for him to
23 testify? Is he an expert on value? Is he an expert on
24 drugs? What's the basis for him to testify about the value?

25 THE COURT: Do you want to take him on voir

1 dire?

2 MR. JONES: Pardon?

3 THE COURT: Would you like to take him on voir
4 dire on that?

5 MR. JONES: Well, I think it's up to counsel
6 to -- if he's going to ask him for his opinion about value,
7 he needs to lay some foundation.

8 MR. CALIFANO: No. What I asked, Your Honor,
9 does he think the process will increase the realizable value?
10 And I asked him if he was familiar with the process. And I
11 can go into his experience in bankruptcy sales, about a dozen
12 of which are in front of Your Honor. But we can do that, if
13 necessary. But it was just to be whether he thought that the
14 process that the debtors are going forward with will increase
15 the realizable value to creditors.

16 THE COURT: Okay. I just have one question.
17 How many weeks have you been in there helping the
18 debtor?

19 THE WITNESS: A couple of months. And I was
20 on some calls related to the process with the lender too.

21 THE COURT: Okay. I overrule the objection.
22 He can answer.

23 A. So I am familiar with it. As a matter of fact, we
24 had a very interesting heated call, one-way heated, not me
25 heated with the lender where we had this argument that

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1 basically they said I don't know what I'm doing because
2 there's no way value will go up in a bankruptcy. And that,
3 you know, it's a different -- this industry is different than
4 what I'm used to. So we had a very long, debated
5 conversation where I basically said, there are a lot of
6 buyers that show up in bankruptcy that sometimes don't
7 otherwise. And in my experience value oftentimes, not
8 always, but is -- goes up. And to be candid, and I'm not one
9 to say I'm right, but it's already happened. We've already
10 gone up \$4 million. And we haven't even started the auction.

11 Q. And how does that 4 million relate to the expected
12 cost of this case?

13 A. The entire increase that -- we were going to do
14 this out of court for 26 million. We've already gone up 4
15 million. The entire cost of this case to run this through a
16 bankruptcy is less than that. So we've already met adding
17 value to the estate, from that standpoint.

18 MR. CALIFANO: Thank you, Your Honor. No
19 further questions.

20 THE COURT: All right. Cross?

21 CROSS-EXAMINATION

22 BY MR. JONES:

23 Q. Mr. Califano asked you about you think the sale
24 process inside Chapter 11 will result in an increase in value
25 for the asset. Is that a fair statement of the question?

1 A. I think so.

2 Q. Okay. Are you referring to the sale procedures
3 with respect to Zokinvy or sale procedures with respect to
4 the remaining assets?

5 A. I was referring to Zokinvy.

6 Q. Okay. Do you have any opinion about whether the
7 sale procedures will result in a higher value for the sale of
8 the remaining assets?

9 A. I think it -- I think in my experience, I think it
10 will.

11 Q. But just based on your general experience.

12 A. Based on my experience, I think it will.

13 Q. Okay. And could you tell the Court why there is a
14 compelling reason to -- for the Court to have to approve
15 those procedures for the non-Zokinvy assets today?

16 A. I think it's helpful. I think we're getting a lot
17 of calls and people want to understand where we're going.
18 And to lay that out upfront is always helpful in this
19 process, in my opinion.

20 Q. Well, my question was whether is it compelling that
21 we do this today as opposed to doing it two weeks from now?

22 A. Yeah, I just answered that. I think the sooner you
23 do it, it's helpful. The better -- the sooner you do it, it
24 gets the bidders to understand what the rules are, more
25 people come to the table. So, yes, I think the sooner you do

1 it, the better it is.

2 Q. You think two weeks makes a difference?

3 A. I think every day makes a difference.

4 Q. Okay. Are -- the budget that was presented for the
5 four-week period -- hold that for a second.

6 The cash that's now less than 10 million and only a few
7 weeks ago it was 15 million, would you tell us the components
8 of the decrease in that cash?

9 A. Yeah. I think I testified there was the D&O, there
10 was a KERP, and there was retainers.

11 Q. Okay. How much was the D&O?

12 A. It was a little over 3 million.

13 Q. Was that a renewal?

14 A. It -- yes, it was a renewal and a tail.

15 Q. Okay. So you bought some new insurance. Eiger
16 bought some new insurance in form of a tail?

17 A. No, it's renewal and a tail.

18 Q. Okay. Was there any increase in the amount of the
19 insurance?

20 A. I think -- insurance goes up every year,
21 unfortunately. So there probably was an increase.

22 Q. Do you know how much that increase was?

23 A. I don't.

24 Q. How much was the KERP?

25 A. I don't have the details in front of me. It was

1 the balance of the, like 333 minus the 5 million, so it was
2 about 1 -- the KERP and the retainers were about 1.7 million.
3 The KERP's about 1.3, I believe, or something -- something
4 like that. A little over a million.

5 Q. Could you provide us with the details of the KERP?

6 A. I don't have them on me.

7 Q. Okay. Could you tell us anything about the KERP?

8 A. Sure. What would you like to know?

9 Q. What can you tell us about the KERP?

10 A. We -- at my firm we have an employee compensation
11 group. So they study and analyze what people make in these
12 type of situations. They specifically work in this
13 environment. Especially when a company like this is going
14 through basically selling off all of its assets, there are
15 certain people that are needed to be kept around. If they
16 leave, it could be detrimental to the value and the sale
17 process. The way we do that is through the use of a KERP by
18 incentivizing them to stick around until we no longer need
19 them.

20 Q. Understood.

21 I know what the KERP is. Do you have any details about
22 the amounts awarded the particular employees?

23 A. I don't have those details on me.

24 Q. And \$400,000 in retainers; is that correct?

25 A. I don't know the exact amount. I don't know the

1 exact amount.

2 Q. With respect to the budget, there's an entry for
3 R&D post-marketing disbursements; do you see that?

4 A. I do.

5 Q. \$688,000 during the first four weeks of the case?

6 A. Yes.

7 Q. Okay. Now, Mr. Apelian thought that those payments
8 were for work that would be done in the future. But you're
9 telling us that that's for work that's already been done?

10 A. Yes.

11 Q. Okay. And done by whom?

12 A. By the vendors. There's a bunch of vendors that
13 have done the work.

14 Q. And who are those vendors? Do you know?

15 A. STAT's one of them. They're the largest. The rest
16 I don't have off the top of my head. But we have a list.

17 Q. Okay. And the work has already been performed?

18 A. It's been performed. But in order to get the
19 results and keeping through that regulatory process, they
20 have to be paid.

21 Q. So in order to -- in order to get the results of
22 the work that's already been done, the debtor needs to pay
23 \$688,000 in the next four weeks; is that correct?

24 A. Yes.

25 Q. Okay. And what are the due dates with respect to

1 the invoices for this work? Do you know?

2 A. No.

3 Q. Okay. Do you know whether these invoices come due
4 in the next four weeks or not?

5 A. No. I think the due dates were -- have already
6 come due.

7 Q. Do you know?

8 A. Yes.

9 Q. Okay. Did you personally review those invoices?

10 A. No.

11 Q. Okay. So how do you know they're already due?

12 A. Because the people that work for me under my
13 supervision review them. And they told me it was due.

14 Q. Okay. So you know those are due?

15 A. Yes.

16 Q. The whole \$688,000?

17 A. Yes.

18 Q. Okay. And what will be the consequence if that
19 amount is not paid in the next four weeks?

20 A. I think it would interrupt the regulatory process
21 on some of our drugs.

22 Q. So it will interrupt the process. What irreparable
23 harm would Eiger suffer if it doesn't pay that \$688,000?

24 A. I think it impacts the value of the drugs. It
25 would have significant harm.

1 Q. And why do you think it impacts the value of the
2 drugs? What's the basis for that?

3 A. It sets back the regulatory process years,
4 potentially.

5 Q. How would the delay in receiving these records
6 delay the regulatory process potentially for years?

7 A. (Indecipherable answer.)

8 Q. Do you have any personal knowledge of that?

9 A. Just the people I've spoke to that do have the
10 knowledge on these drugs, no.

11 Q. Who did you speak to?

12 A. The people on the management team that -- and the
13 vendors themselves of what they need and how they need it.

14 Q. What vendors did you speak to?

15 A. We spoke to STAT, that's one.

16 Q. Okay. And tell us about that conversation?

17 A. Well, since -- I didn't have it directly, someone
18 that work for me had it.

19 Q. Oh, so you didn't have that conversation?

20 A. No.

21 Q. Tell me, what is the basis for your conclusion that
22 the process would be delayed for years. I just want to make
23 sure I understand.

24 MR. CALIFANO: Objection, Your Honor. He
25 answered this question. He said it was from conversations

1 with management. And we also had Dr. Apelian just testify
2 it's five years. So what is this, like a test to see what
3 witnesses know everything?

4 MR. JONES: It's not a test.

5 MR. CALIFANO: This is just silly.

6 THE COURT: Okay. I sustain the objection.

7 Q. We see on the budget we see, other. Why does it
8 not say Medicaid taxes, if that's what that's for?

9 A. Well, it could say anything. But it's -- there's a
10 couple, about 10 or 20,000 of other. And there's Medicaid
11 taxes in there.

12 Q. How much is the Medicaid taxes?

13 A. About 1. -- I think it's 1.74.

14 Q. And as currently presented, this could be anything,
15 right, it's just other?

16 A. Okay.

17 Q. Is this were approved, is it not true Eiger could
18 spend it for anything, whether it's Medicaid taxes or not?

19 A. I'm not sure we would do that. I think we would
20 pay our taxes.

21 Q. Again, but why did you choose not to say, a line
22 item for Medicaid taxes?

23 A. It --

24 MR. CALIFANO: Your Honor, can we stipulate
25 that other means Medicaid taxes and we can do that?

1 MR. JONES: That's what I'd like to do.

2 THE COURT: Then stipulate.

3 MR. CALIFANO: And n the next budget I'll
4 write Medicaid taxes?

5 THE COURT: Okay. There we go.

6 MR. CALIFANO: And if I had gotten a phone
7 call, that would have been done and we would have saved some
8 time.

9 THE COURT: All right. Sounds like we are
10 good on that one. Let's move on.

11 Q. Medicaid taxes. Well, why do those Medicaid taxes
12 have to be paid in the next four weeks?

13 A. Because we can't afford to go sideways with the
14 states.

15 Q. Just asking.

16 And what will happen to the debtor if they don't pay
17 the Medicaid taxes within the next four weeks? What bad will
18 happen?

19 A. Well, lots of things. We could lose -- we could be
20 prohibited from selling drugs in certain states.

21 Q. Do you know that, or is that a speculation?

22 A. Sir, I've been in healthcare for 20 years. I've
23 been in the Department of Health lots of times, Department of
24 Justice. When you don't pay Medicaid, or CMS, or anything ad
25 things happen, including you can get the OIG involved and

1 other things. So, yeah, I mean, I -- in my experience for 20
2 years of doing healthcare, we pay our Medicaid taxes.

3 Q. The contingency, is the contingency here limited to
4 the payment of vendors who insist on COD for the Zokinvy
5 product?

6 A. I think it's based on any vendor that does not have
7 a contract. And we think it's critical whether it's Zokinvy
8 or any of their drugs, if we need to pay something to keep
9 the enterprise value, we want the ability to do that.

10 Q. So does it include things other than vendors who
11 insist on COD?

12 A. It's contingency. We don't know what it's going to
13 be for.

14 Q. And your cash collateral order includes a variance
15 of 120 percent already, correct?

16 A. Yeah. That's my -- yes.

17 Q. So you need this contingency on top of the 20
18 percent variance?

19 A. Yes.

20 Q. And why?

21 A. That's very customary. Actually, I don't recall a
22 case I've ever had where we don't plan for cash in advance.
23 And we don't get a variance. I don't recall a case in my
24 entire career. I'm not even actually aware of a case where
25 there's been a 0 percent variance.

1 Q. Do you recall a case where there's been a 10
2 percent variance?

3 A. Sure. It could be 10.

4 Q. And do you recall a case where it was 10 percent
5 without a contingency?

6 MR. CALIFANO: Judge, are we going to
7 negotiate the cash collateral order while he's on the stand?

8 THE COURT: If there's an objection there, I'm
9 happy to respond to that.

10 MR. CALIFANO: Sorry about that.

11 THE COURT: I think it's --

12 MR. JONES: Just trying to determine. We're
13 going to argue about what variance is appropriate. He just
14 testified 20 percent variance was common. I wanted to know
15 if a 10 percent variance is common. Straightforward
16 question.

17 THE WITNESS: I don't believe I said 10
18 percent is common. I don't think that was your question
19 either.

20 THE COURT: Okay. Well, I'll overrule the
21 objection. But I do hope you aren't going to prolong this
22 with negotiations. I mean, I think that's a fair point.

23 MR. JONES: Not trying to, Your Honor. Just
24 trying to understand what's included here. Because if the
25 Court enters an order that says it approves, other, I don't

1 know what that means. If the Court is going to enter an
2 order that says, contingency and that's intended to be to pay
3 vendors on COD, but it's not limited to that, it could be
4 anything. I'm just trying to pin down exactly what purposes
5 they seek to use cash collateral for. That's all.

6 THE COURT: All right. Well, I think we're
7 almost through every line item, so --

8 MR. JONES: We are, Your Honor. Thank you.

9 THE COURT: Uh-huh.

10 Oh, pass the witness?

11 MR. JONES: Yes.

12 THE COURT: Okay. Any other cross?

13 Okay. I have two questions, Mr. Rundell, for you.

14 Maybe you remember I tend to ask questions.

15 This may be the next witness' question I should ask.

16 It's Mr. Victor, right? But we've talked here and there
17 about the stalking -- proposed stalking horse's 214,000 per
18 day price reduction if there's not a closing by April 24th,
19 which now apparently has been negotiated down to 100,000 per
20 day price reduction. So I'm not entirely clear what the
21 basis is. I know it has something to do with they'll get --
22 they expect to get less revenue if they -- if the closing is
23 extended much.

24 But can you elaborate on that, or should that be a
25 Scott Victor question?

1 THE WITNESS: I can try. Scott might clean it
2 up if I mess it up.

3 But these drugs have effectively only so much before
4 they lose the licensing ability. So every day they don't get
5 it, they lose revenue. So they want to fast close. Because
6 if the close happens 30 days from now, there's 30 days less
7 revenue. Because how long their license is is a finite
8 period of time, right. It ends at a certain date. Does that
9 makes sense?

10 So the longer we have it, we get that revenue, they
11 don't. So they want to close as fast as possible.

12 THE COURT: Okay. And then my other question
13 I think I know the answer to. But the line item that you
14 were questioned about by Mr. Jones, the 688,000 for the
15 post-marketing disbursements and R&D, that is included in
16 your critical vendor motion, right?

17 THE WITNESS: Yes.

18 THE COURT: Of the 1.7 million of proposed
19 critical vendors, that is already included?

20 THE WITNESS: Yes, it was.

21 THE COURT: Okay.

22 THE WITNESS: And there was a lot of confusion
23 between the critical vendors and what's in the budget. But
24 there's an overlap, so the critical vendors are in this
25 budget.

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1 THE COURT: Okay. All right. Any redirect?

2 MR. CALIFANO: No, Your Honor.

3 THE COURT: All right. Thank you,

4 Mr. Rundell.

5 THE WITNESS: Thank you.

6 THE COURT: You ready for your next witness?

7 MR. CALIFANO: Yes, Your Honor. The debtors

8 call J. Scott Victor.

9 THE COURT: All right. Mr. Victor.

10 MR. VICTOR: Good afternoon, Your Honor.

11 THE COURT: Good afternoon.

12 Please raise your right hand.

13 (The witness was sworn by the Court.)

14 SCOTT VICTOR

15 The witness, having been duly sworn to tell the truth,

16 testified on his oath as follows:

17 DIRECT EXAMINATION

18 BY MR. CURTIN:

19 Q. Good afternoon, Mr. Victor. Please state and spell
20 your full name.

21 A. J. Scott Victor, V-i-c-t-o-r.

22 Q. And by whom are you currently employed?

23 A. SSG Capital Advisors.

24 Q. And what is your position there?

25 A. CEO of the holding company and managing director of

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1 SSG.

2 Q. And how long have you been with SSG?

3 A. Since it was founded in 2001.

4 Q. And can you give the Court your educational
5 background?

6 A. Sure. University of Pennsylvania undergrad.
7 University of Miami School of Law, law degree.

8 Q. And can you give us your work experience prior to
9 joining SSG?

10 A. Sure. Practicing bankruptcy attorney from 1983 to
11 2000. Became an investment banker in 2000. And founded SSG
12 in 2001.

13 Q. Okay. Just because I'm bad at math, how many total
14 years does that give you working in the restructuring
15 industry?

16 A. 41.

17 Q. And can you talk about your responsibilities in
18 your role at SSG general -- generally and in this case
19 specifically?

20 A. Sure. My role at SSG generally is to originate
21 business and lead deals, many of which are in Chapter 11. My
22 role specifically on Eiger is the same. Generated the
23 engagement, and leading with my partner Theresa Cole the
24 day-to-day activity of the engagement.

25 Q. Have you through SSG marketed distressed companies

1 or their assets before?

2 A. Every day.

3 Q. About how many over the course of your career?

4 A. Hundreds.

5 Q. Have you been involved in marketing and selling
6 assets in the context of a bankruptcy case?

7 A. Hundreds.

8 Q. Have you been involved in marketing and selling
9 assets in the context of a bankruptcy case in the Northern
10 District of Texas?

11 A. About ten, yes.

12 Q. Okay. We're here today, one of the issues we're
13 here to talk about are the bidding procedures for the sale of
14 what has been referred to as the Zokinvy assets and the
15 debtors' remaining assets. Are you familiar with those two
16 terms?

17 A. Yes.

18 Q. And have you been involved specifically with
19 marketing and selling biopharmaceutical assets in companies?

20 A. Yes, many times.

21 Q. Okay. Are you familiar -- let's talk first about
22 the Zokinvy assets.

23 A. Uh-huh.

24 Q. Are you familiar with the contemplated timeline for
25 the sale of the Zokinvy assets under the bid procedures?

1 A. Yes, I am.

2 Q. And do you believe that that time frame is properly
3 structured to generate the highest value?

4 A. It's fast. It's expedited, I would say. But given
5 the interest that occurred pre-petition and the unbelievable
6 response we've had in the last 48 hours, I'd say it's very
7 doable, yes. And just in the last 24 hours we've increased
8 the purchase price \$4 million.

9 Q. Let's -- let's talk about that. We heard from
10 Dr. Apelian, but this is really -- that kind of just came out
11 of turn based on some cross questions. But the -- is it your
12 understanding that the Sentynl stalking horse price has
13 increased from 26 million to 30 million?

14 A. That's correct.

15 Q. And is it your further understanding that the per
16 diem reduction from April 24th on has been reduced from
17 \$214,285.71 to \$100,000?

18 A. Yes, correct. All good.

19 Q. And is it also your understanding that in the
20 Sentynl stalking horse bid the base price floor has increased
21 from 20 million to 26 million?

22 A. Yes, good.

23 Q. You heard the Court ask about the reason for the
24 step-down reduction when Mr. Rundell was on the stand and
25 Mr. Rundell mentioned that you might be able to clean up his

1 testimony, although I think he did a pretty good job.

2 What's your understanding of why both bidders, or both
3 the stalking horse bidder and Eton as a potential bidder have
4 that step-down in their bid?

5 A. Sure. Because there is -- because this is an FDA
6 fast-tracked, orphan drug approval, you get seven years of
7 exclusivity. And those seven years expire in 2027. So it's
8 not that the license expires. It's not that the patent
9 expires. That already happened, the patent a long time ago.
10 But the exclusivity of the license will expire in 2027. And
11 it can be a generic drug then. So if some other company
12 wants to go through the time and effort and work with the
13 Foundation to develop another generic drug for Zokinvy, they
14 can.

15 Q. And will -- as part of your role as investment
16 banker, you work with potential bidders during the process;
17 is that right?

18 A. Yes. Yes.

19 Q. And is one of the things that you will do during
20 that process is assist potential bidders, including Eton, in
21 attempting to get to the point with PRF where Sentyln already
22 is?

23 A. Absolutely. We'll do our best to facilitate
24 conversations beginning immediately with PRF.

25 Q. I want to ask about the breakup fee, is it your --

1 or the bid protections, I should say more generally. Is it
2 your understanding that the bid protections which, again, is
3 the aggregate of the breakup fee and the expense
4 reimbursement, has been reduced under the Sentyln stalking
5 horse from approximately 5.3 percent to an aggregate of 3
6 percent?

7 A. Yes, all good.

8 Q. And is 3 percent aggregate for bid protections
9 market, above market, or below market?

10 A. In my view and experience, below market. But I'm
11 very happy with it.

12 Q. That makes two of us.

13 You mentioned outreaches. You don't have to go through
14 every one, but can you please give the Court a sense of the
15 volume of outreaches that you've received with regard to
16 Zokinvy -- actually, do it all at once, just to save time,
17 with regard to Zokinvy and remaining assets in the short time
18 this case has been in bankruptcy?

19 A. Yes. Today's Wednesday, so this was filed on
20 Monday. I would say at least a dozen, if not more, inbound,
21 not just inbound, but we've actually had Zoom calls with many
22 of them, probably a dozen, in the past 48 hours. There's
23 several more, have several more scheduled for tomorrow.
24 These are both domestic and foreign potential buyers.
25 Everyone around the world is quite familiar with Zokinvy and

1 what it does for children with progeria. It's a revenue
2 producing drug, which is great, because many of the pharm's I
3 work on are not revenue producing. So there has been
4 tremendous inbounds. We haven't even gone outbound yet
5 because we're waiting until after the first day hearing and
6 the bid procedures are approved for Zokinvy before we go out
7 to market. But the inbound has been remarkable.

8 With respect to the other potential -- the other assets
9 which are drugs in development, there's been several inbound
10 there, as well. And, again, we have not begun the outbound
11 on that.

12 Q. So based on those, let's move on to the remaining
13 assets and we'll finish up with those.

14 So based on that outreach, but also your judgment prior
15 to even receiving those outreach, do you believe that there
16 is potential value to the company in those non-Zokinvy
17 assets?

18 A. Absolutely. And I personally believe and have told
19 the lender this, that that value only increased because of
20 the Chapter 11 filing.

21 Q. And do you believe that getting the bid procedures
22 for those remaining assets approved today so the process can
23 begin in earnest would increase that value?

24 A. I don't know if it will increase the value, but it
25 will -- it will certainly present the bidders for these other

1 assets with certainty, and when they have to bid, when they
2 get their diligence done. If it was delayed a week or two,
3 it wouldn't kill me. But certainly having the certainty to
4 be able to tell the buyers for the other assets when bids are
5 due, what diligence period they're going to have, that would
6 be helpful.

7 Q. So last question, Mr. Victor. Based on your --
8 your 40 years in the restructuring industry and having
9 successfully marketed and sold assets for hundreds of
10 companies and scores of biopharmaceutical companies, do you
11 believe that the timelines that are contemplated in the -- in
12 the debtors' sale of, I'll start with the Zokinvy assets, is
13 reasonable and in the best interest of the estate?

14 A. I do.

15 Q. Same question with regard to the remaining assets?

16 A. I do.

17 Q. And same question with regard to the selection of
18 Sentynl as the stalking horse to include the 3 percent
19 aggregate in bid reductions?

20 A. I do.

21 MR. CURTIN: Nothing further, Your Honor.

22 Thank you.

23 THE COURT: All right. Cross?

24

25 (no omission)

1 CROSS-EXAMINATION

2 BY MR. JONES:

3 Q. Mr. Victor, when did you receive the most recent
4 proposal from Sentynl?

5 A. From counsel this afternoon.

6 Q. Have you had an opportunity to communicate with
7 Eton since you received that proposal?

8 A. No. I asked counsel if he spoke to Eton's counsel,
9 who's here, prior to the start of the hearing and he said,
10 yes. Because I had promised to get back before the hearing.

11 Q. Okay. Do you know whether Eton is willing to
12 increase its offer or proposal with respect to its stalking
13 horse bid?

14 A. I do not.

15 Q. The procedures for the sale of the remaining
16 assets, you said -- is there a compelling reason why we have
17 to decide that today?

18 A. No. Like I said, it could be a week or two. But
19 if we had the dates, it's just easier and quicker to deal
20 with the other buyers. But it's not critical today.

21 MR. JONES: No further questions, Your Honor.

22 THE COURT: All right. Any other cross?

23 CROSS-EXAMINATION

24 BY MR. NEWTON:

25 Q. Good afternoon, Mr. Victor.

1 A. Good afternoon.

2 Q. Nice to speak with you again.

3 A. Yes.

4 Q. And thank you, you did convey the message to me
5 before the hearing.

6 A. Good.

7 Q. So appreciate it.

8 Just, again, keeping this short and focused. Just
9 wanted to ask you a few questions, Mr. Victor. Are you
10 familiar with Eton from prior to your involvement here?

11 A. You know, I don't know. I think -- I think we have
12 dealt with them in other life science transactions where
13 we've gone out to market. But none specifically that I can
14 recall.

15 Q. Okay. And -- but since you've been involved here,
16 you've obviously become more familiar with Eton?

17 A. Yes. They've been a pleasure to deal with.

18 Q. And are you aware that Eton focuses exclusively on
19 ultra-rare disease --

20 A. Yes, orphan drugs.

21 Q. Okay. And are you aware that they work with and
22 partner with patient populations like those -- like the
23 patient population for Zokinvy?

24 A. Yes. They deal with orphan populations. Less than
25 200,000, as the Doctor testified to previously. They don't

1 spec -- they don't work specifically in pediatrics. But they
2 do work specifically in orphan drugs.

3 Q. Okay. Thank you.

4 And so just turning to the -- the bid procedures. I
5 think we just learned that -- you're aware the debtors are
6 still proposing bid protections for Sentyln, correct?

7 A. Yes. 3 percent all in for bid protections.

8 Q. Okay. And prior to today that was as \$600,000
9 expense reimbursement; is that correct?

10 A. Plus a 3 percent breakup fee, yes. So about 5.3
11 percent all in.

12 Q. And that breakup fee would have been about
13 \$780,000, by my math, on a \$26 million purchase price. Does
14 that sound right to you?

15 A. Good math.

16 Q. So a total of about \$1.38 million?

17 A. Yes.

18 Q. Okay. And after the changes today, the cap is now
19 at 3 percent overall; is that right?

20 A. 900,000 based upon the current bid of 30 million,
21 yes.

22 Q. Okay. So it's 900,000 on -- and that's calculated
23 on the \$30 million purchase price, right?

24 A. Yes.

25 Q. Okay. So any other bidder that comes in, assuming

1 that Sentynl is designated as the stalking horse bidder, any
2 other bidder that comes in is going to need to clear that bid
3 plus the breakup fees, plus --

4 A. Plus an incremental overbid.

5 Q. Okay.

6 A. Which is common.

7 Q. Yeah. I'm not dismissing that it's common.

8 Okay. And just wanted to focus quickly on some
9 consents, as well. We've heard quite a bit about consents.
10 I asked Dr. Apelian about the consents. He wasn't entirely
11 sure. So I'll probably --

12 A. Neither am I.

13 Q. You're not sure either?

14 A. I'm not sure either.

15 Q. Okay.

16 A. I know we're all aware and your client has the
17 agreement that was entered into between the foundation and
18 the company, Eiger, pre-petition to settle the arbitration.
19 So that pretty well lays out what the agreement is going
20 forward. But I cannot opine as counsel sitting here, or an
21 expert sitting here whether consent is required. I will
22 leave that to counsel.

23 Q. Okay. Are you aware of any agreements that were
24 being negotiated or considered that either Merck or PRF would
25 execute in connection with the transaction?

1 A. Well, I'm aware that there is a -- a side letter
2 with Merck that approves the distinction between the
3 application of the Zokinvy drug and the similar drug used for
4 an HDV application, which is good, because we're not selling
5 the HDV application. We heard counsel for the Foundation get
6 up here and address the Court that they're not there, but
7 they're almost there with respect to Sentyln. That's -- I
8 know as much as you do.

9 Q. Uh-huh, okay.

10 And that Merck side letter, would that be an exhibit to
11 the --

12 A. It is an exhibit as set forth in the APA. I do not
13 believe it was filed.

14 Q. Okay. And are you aware of any other exhibits to
15 the APA that would involve PRF?

16 A. There are -- there's something that's referenced.
17 But, again, it was not filed of record.

18 Q. Okay. And are you -- have you seen copies of those
19 agreements?

20 A. I have not.

21 Q. Okay. Do you know if they've been drafted?

22 A. I don't know.

23 Q. Okay. And do you know if they've been executed?

24 A. I don't know.

25 Q. And so based on the representations earlier today

1 and what you know, there are still some open points with
2 respect to Sentyln obtaining consent for PRF?

3 A. That's what I heard -- that's what I heard the
4 Foundation's counsel say. But I don't know.

5 Q. Okay.

6 MR. NEWTON: No other questions, Your Honor.

7 THE COURT: All right. Any other cross?

8 All right.

9 MR. CURTIN: One redirect, Your Honor?

10 THE COURT: One and I may have one or two
11 questions.

12 MR. CURTIN: Would you like to go first, Your
13 Honor?

14 THE COURT: Yeah, I think I would.

15 The 3 percent all in breakup fee now, so there's no
16 expense reimbursement component now, it's just 3 percent --

17 THE WITNESS: It's all -- I don't know how
18 they split it up, but it's all combined. It's no more than 3
19 percent. I don't know how it's --

20 THE COURT: So no more than 900,000?

21 THE WITNESS: Correct.

22 THE COURT: However you want to slice and dice
23 that.

24 All right. So if these are approved, a competing bid
25 would be how much? I mean, obviously a little bit more than

1 30,900,000. I can't remember what the overbid was.

2 THE WITNESS: I thought the overbid was
3 350,000. So it would be 900 plus the 350 as an incremental
4 overbid, which is quite common.

5 THE COURT: Okay. I think I had one more
6 question.

7 Oh, the deadline for the other assets, it was June
8 something, right, for bids?

9 THE WITNESS: I believe it was June 10th for
10 the bid deadline for the other assets.

11 THE COURT: Okay. Just a hypothetical. What
12 if you were to get bids for everything? You've already
13 thought about that, I bet. So someone comes in by April
14 15th, or whatever the bid deadline is for Zokinvy and they
15 say, we'll pay --

16 THE WITNESS: Billions.

17 THE COURT: -- billions, yes, let's use that
18 hypo. I guess at some point using your -- the debtors'
19 business judgment you might consider that earlier --

20 THE WITNESS: We might.

21 THE COURT: -- than June whatever?

22 THE WITNESS: Yes. We have -- we have not
23 only considered that, but we've actually spoken with some of
24 the buyers about that who have expressed interest in
25 everything.

1 THE COURT: Uh-huh.

2 THE WITNESS: And they wanted to know, well,
3 can they bifurcate their bid for the Zokinvy assets, which is
4 on a fast track, and then bid for the others on a slower,
5 more normal track? We said, sure. Or if you have your
6 diligence and you want to come in for everything by the
7 expedited timeline, we're happy to consider it.

8 THE COURT: Okay. All right.

9 Redirect?

10 MR. CURTIN: No thank you, Your Honor.

11 THE COURT: Okay. Thank you. Appreciate your
12 testimony.

13 All right. So that's all of the debtors' witnesses?

14 MR. CALIFANO: Yes, Your Honor.

15 THE COURT: I didn't see witness and exhibit
16 lists for anyone else, correct? No one else had an exhibit
17 or witness -- okay.

18 MR. CURTIN: Your Honor, I apologize. We
19 actually, Mr. Califano and I both, as is -- are custom,
20 neglected to move the declarations into evidence. So at this
21 time -- I know it's a little late, but we would move the
22 declarations into evidence. I won't give the normal speech
23 about them being available for cross --

24 THE COURT: Because they've already been --

25 MR. CURTIN: -- because they already did it.

1 THE COURT: All right. Well, any objections
2 to that?

3 MR. JONES: No, Your Honor.

4 THE COURT: Okay. So all four of those
5 declarations are admitted into evidence.

6 MR. CURTIN: Thank you, Your Honor.

7 THE COURT: Okay.

8 MR. CALIFANO: Your Honor --

9 THE COURT: I'm ready for closing, if you are.
10 Are you ready?

11 MR. CALIFANO: Yes, Your Honor. And I
12 thought -- I don't know if Your Honor would like to deal with
13 the motions one at a time or --

14 THE COURT: Well, let -- let's at least
15 hear -- okay. We did not have any objection, as you said, to
16 anything that didn't involve cash, right. So those are joint
17 administration --

18 MR. CALIFANO: Correct.

19 THE COURT: -- extension of time to file
20 schedules, creditor matrix, I guess the NOL motion. We don't
21 have an --

22 MR. CALIFANO: We have no objection to the NOL
23 motion.

24 THE COURT: Okay. And designation of complex
25 case. KCC retention, I presume there's not an objection to

1 that?

2 Okay. Well, how about we quickly get those out of the
3 way, if we can. Anyone have anything they wanted to say? I
4 know, Ms. Young, at one point you said you might have
5 comments at some point. Any comments about these?

6 MR. CALIFANO: All right. Nothing.

7 THE COURT: Nothing. All right. Well, I
8 think that you have certainly shown good cause and reasonable
9 business judgment, you the debtor, on these various requests
10 so the cases -- there's five debtor cases, four are 100
11 percent subsidiaries of Eiger Biopharmaceuticals, Inc.,
12 right?

13 MR. CALIFANO: Yes.

14 THE COURT: And so I think under 1015 there's
15 good cause to consolidate under the lead parent, if you will.

16 And then with regard to the extension of schedules. I
17 think you wanted -- did you want 21 days? 15 days? What was
18 the -- 21 days. You wanted a 21-day extension and the U.S.
19 Trustee was fine with that. Okay. So I think there's good
20 cause, given the size of this debtor. And everything else
21 looked very reasonable to me. The creditor matrix you were
22 wanting, among other things, to seal the actual addresses of
23 the human being creditors. And on the NOL -- so I think
24 there's good cause to grant that. On the NOL thing, that was
25 just applying to anyone with over 5 percent?

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1 MR. CALIFANO: 5 percent, yes, Your Honor.

2 THE COURT: Okay. So that's kind of standard
3 fare, I think, in a situation like this where there might be
4 valuable tax attributes lost, if there's trading such that
5 there's a change of ownership. So that is granted. The form
6 of notice you intend to send out on that looked reasonable.
7 KCC's retention, that's just kind of their standard --

8 MR. CALIFANO: Yes, Your Honor.

9 THE COURT: -- set --

10 MR. CALIFANO: And we did -- we did get the
11 three bids and go through that process.

12 THE COURT: Okay. All right. So good cause
13 to grant that. They are well qualified. And, of course,
14 we'll designate you as a complex case, given the size of debt
15 and it's a public company.

16 All right. So that brings us down to anything
17 involving cash, I guess.

18 Do we -- do we have any -- I don't know. Now that
19 you've heard the testimony, is the lender willing to, I don't
20 know, scale back on the objection, or do you still stand firm
21 on your objection as filed?

22 MR. JONES: When you say objection to cash
23 collateral? Is that what you're talking about?

24 THE COURT: Well, yeah. Because I think all
25 of the other motions, other than the bid procedure motion,

1 are kind of connected to that, right? I don't know. Maybe
2 not.

3 MR. JONES: Not exactly.

4 THE COURT: Okay.

5 MR. JONES: For example, if you take the
6 emergency motion for interim -- entry of interim and final
7 orders authorizing the payment of customer programs, they
8 actually -- it doesn't seek any interim relief or specify
9 what is to be paid in any interim period of time.

10 THE COURT: Okay. I thought it might make
11 sense to take this out of order and let you go first. But
12 maybe we'll let Mr. Califano go ahead and present. Maybe
13 he's going to have -- eliminate any questions. I did
14 understand that a couple of these motions say, hey, we don't
15 know about anyone, you know, that's owed money, but we're
16 just wanting authority in case we happen to discover.

17 Wasn't that the case on, for example --

18 MR. CALIFANO: Yes, Your Honor.

19 THE COURT: -- taxes and insurance?

20 MR. CALIFANO: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. CALIFANO: I mean, these are very standard
23 motions --

24 THE COURT: Uh-huh.

25 MR. CALIFANO: -- in cases in this District.

1 And, you know, we've used forms of first day orders, and
2 that's why we're in agreement with the U.S. Trustee, that are
3 standard.

4 And, Your Honor, in this case -- this case, I would
5 say, and I think the testimony and our think our friends from
6 PRF put a big explanation point on it, this case is different
7 because it's more important, it's more important that we have
8 that flexibility. It's more important that the debtor gets
9 to exercise its business judgment. I mean, we have a cash
10 collateral budget that's stripped down as much as it can be
11 for the four-week period and that has had the input from the
12 lender. And if I knew that there was going to be an
13 allegation that we didn't share it with them, we would
14 have -- Mr. Rundell would have the exhibits of all of the
15 ones that we shared. But, I mean, I didn't think it was
16 going to be an issue, but it is.

17 Your Honor, everything that's stripped down -- we
18 have -- we have unrebutted testimony on each of our issues.
19 So, I mean, our witnesses were questioned as to what they
20 knew. But there was no testimony, for example, that we don't
21 need to pay those amounts to keep Zokinvy in the market.
22 There was no testimony that we don't need to keep these
23 programs going. There was no testimony that it's a good
24 thing to not pay Medicare and Medicaid taxes, right.

25 So as -- when we started this afternoon, I said this

1 was all about whether the debtors' business judgment is going
2 to be what rules this case, or are we going to let the
3 lender, without testimony, asking a bunch of questions as if
4 they are the only stakeholder here, Your Honor. And they're
5 not the only stakeholder here. And they say that there's no
6 evidence that there is value over there -- over their claims.
7 That's nonsense. It's nonsense, because we talked today
8 about two things that could clear the debt, right. And we
9 have it from Dr. Apelian's declaration the fact that the
10 stock has a positive trading. That indicates some value.

11 So if you just look at 15 million -- the \$30 million,
12 assuming the sale doesn't go any higher, right, and the \$15
13 million potential from the Gates Foundation, you've got the
14 debt cleared. What they should be doing, they should be
15 sitting down, staying quiet, and thanking us for what we're
16 doing. All right. Because they were pushing us to take a
17 \$26 million sale. And now even before the auction, it's
18 increased to 40 million for just one asset. And we have a
19 process that is --

20 THE COURT: Has it gone up another 10 million
21 in the last few minutes? You said 40 million.

22 MR. CALIFANO: I'm sorry, 30. I just
23 anticipate it. 30 plus 15 is 45.

24 THE COURT: Subliminal messages going out from
25 the podium.

1 MR. CALIFANO: But, Your Honor, and this is --
2 it's almost -- I mean, it's almost perplexing, the situation
3 we're in here. Okay. Because as I said when we got here,
4 we're coming in and we're saying, we're going to realize on
5 your collateral, but we're going to do it in a responsible
6 fashion. And we have professionals who've done this before.
7 And we have management that's saying they understand the
8 responsibility. So you don't -- and you don't have to take
9 our word for it. We've got a process that before it even
10 started, has shown that not only it's viable, in the 48 hours
11 since we filed now we started -- we're over -- we're at \$30
12 million and we've got two hungry bidders, right. We also
13 have the un rebutted testimony from Mr. Victor that he is
14 getting calls that were unexpected.

15 So, Your Honor, what we need from this Court is the
16 protection to operate in the ordinary course in the
17 reasonable fashion that we've laid out to maximize the value
18 for all of the stakeholders, including our unsecured, and
19 possibly our shareholders. But at the same time, we need to
20 be able to provide this drug, which we are the sole source
21 of. We need to maintain the viability of other drugs.

22 So Mr. Jones in his cross ignored the fact that
23 Dr. Apelian testified, if you stop this, okay, you lose five
24 years. You stop the process, it doesn't pick up. It's not
25 like a buyer can pick it up. It's another five-year process,

1 okay. Any buyer who's going to want -- who looks at this is
2 going to say, where are you maintaining this, you know? It's
3 sort of like, you're selling a helicopter engine and they
4 want to say, do you maintain the maintenance log? I mean,
5 you want to make sure that you're doing things -- we are
6 doing reasonable things to maximize the value and we're
7 getting rocks thrown at us.

8 We have a lender who asked for a zero percent variance.
9 A zero percent variance on a company that produces a
10 life-saving drug. I mean, it's not reasonable. It's just
11 not reasonable.

12 Now, hopefully we'll have this Court's protection.
13 Things will settle down. And they'll act rationally, okay.
14 But we've seen so many firsts. I have not seen a -- and I
15 will tell you right now what I told Dr. Apelian is, we've got
16 to shut down the conversations with Innovatus, because
17 they're obviously talking to Eton while we're trying to run a
18 process, while we're trying to negotiate with Sentylnl, and
19 get to the point where we're at a stalking horse bid.

20 So I called Mr. Jones -- I called Mr. Jones out on it
21 and he's like, yeah, we're doing it. So, yes, we're not
22 going to talk to them any more. Just makes sense. All
23 right. But if we can get this on a stable footing, then
24 we're going to do our job, okay. We're all here to do our
25 job. We're -- remember, we're not here trying to prime their

1 collateral. We're not trying to make some wacky, you know,
2 absolute priority rule exception claim, all right. What
3 we're trying to do is what is the right thing here and where
4 is value maximized. And they're just trying to say, we want
5 to tell you how to do it. And that's not what -- that's why
6 people come to this court, Your Honor.

7 So the board makes the decisions here. Now, if we are
8 doing something wrong, then they can come to Your Honor, all
9 right. And if, you know, Mr. Rundell doesn't pay the
10 Medicaid taxes and puts it in his pocket, they can run to
11 Your Honor. But that's not what's going on here. And that's
12 not what anybody can expect here.

13 So I don't know how else to say it other than, we just
14 need them to leave us alone so we can do our job. If they
15 act like every other lender acts, we'll give them all of the
16 information. We'll give them consultation rights. Okay.
17 Most of the stuff they put in their objection, if they picked
18 up the phone any time since last Thursday, we would have put
19 in the order. So, I mean, that's what it really boils down
20 to here, Your Honor. The unrebutted testimony on cash
21 collateral establishes that this is all reasonable and is
22 done -- and all of the expenditures will preserve value.

23 And the other thing that Mr. Jones forgets about is
24 that the cash goes up during the four-week period. Well,
25 what are they complaining about? The cash under our budget

1 goes up. How can they say they're not adequately protected?
2 Okay. Now -- and I know I'm going to go out of turn and I'm
3 stealing some of the motions from my colleagues, but I
4 figured let's get this done.

5 With respect to the Eton objection, it's fully within
6 the debtors' business judgment and it is reasonable that they
7 picked the stalking horse who's further along with PRF.
8 Okay. As I said this morning, Your Honor, PRF is the most
9 important people -- they are the most important people in
10 this courtroom, okay. So they came in. They sent a lawyer
11 here, okay, to tell you, hey, we're open minded. We'll talk
12 to Eton. But we really are comfortable with Sentynl, who
13 we've talked to.

14 So based on that, I mean, it would be a violation of
15 our business judgment to choose anybody else as a stalking
16 horse. And I don't know why they are complaining that we
17 didn't bifurcate the bid procedures. We're trying to save
18 money. We're trying to make things more efficient. And
19 that's their only complaint. They're not -- their complaint
20 is not that the Zokinvy bid procedures are inappropriate, or
21 not value maximizing, or it's too short, it's too long. All
22 they're saying is we don't need to do it today. Okay. Well,
23 there's got to be more than that. But this is the kind of
24 micromanaging that we've been facing.

25 Your Honor, I think the evidence is clear. It supports

1 each of our contested motions. It supports the preservation
2 of estate assets and value. And it shows that this debtor is
3 trying to act reasonably and this debtor is trying to fulfill
4 its fiduciary duties.

5 So, Your Honor, that's all I have. Thank you.

6 MR. JONES: May I respond, Your Honor? It
7 might be helpful to the Court.

8 THE COURT: Yes. But I guess we're going to
9 have some individual presentations --

10 MR. CALIFANO: Yes, Your Honor.

11 THE COURT: -- as to some of the other
12 motions. And I didn't want to gloss over that. So I'm
13 trying to figure out the sequence that makes more sense here.

14 Again, I'm not sure where you are after hearing all of
15 the evidence. So I'll go ahead and let you reply. But we
16 may have some further back and forth.

17 MR. JONES: Well, I want to reply to some of
18 the things that Mr. Califano said about Innovatus' position
19 and its objections.

20 We had worked with the debtor throughout both giving
21 them additional time, standstill, et cetera until -- and have
22 encouraged them to enter into and actually close a sale with
23 Sentynl. This issue of control of the sale process only
24 arose last week when we brought to the table someone they
25 were not going to pursue as a stalking horse, which was Eton.

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1 We brought Eton to the table.

2 THE COURT: Okay. The testimony from
3 Mr. Rundell is that you started a dialogue with them --

4 MR. JONES: Oh, they were in it a long time
5 ago.

6 THE COURT: -- months ago.

7 MR. JONES: But when we spoke with debtors'
8 counsel on Thursday night, they had no intention of reaching
9 out to Eton to be a stalking horse bidder. They were under
10 the impression that Eton would not be a stalking horse bidder
11 because they had not completed their diligence.

12 On Friday when we talked to Eton, we did. And we
13 learned that they made a \$20 million -- \$29 million offer as
14 opposed to the Sentylnl 26. Debtors' counsel would not
15 explain to us why they rejected. Did not consult with us.
16 And gave us no explanation. Wouldn't tell us anything.

17 THE COURT: Okay. There's a lot of like
18 people not communicating here that I don't understand. Okay.
19 Why don't we go back. I heard that the debtor and its
20 professionals got concerned late last year when you're having
21 a dialogue with Eton and they thought, you know, we're --
22 it's our assets. We should be in charge here. So why don't
23 you start by addressing that. I'm afraid that things kind of
24 took a bad turn because of that.

25 MR. JONES: They didn't take a bad turn

1 because of that, Your Honor. We worked along with the debtor
2 in connection -- and, in fact, we encouraged them to close
3 the sale with Sentyln even before the --

4 THE COURT: Why was your client or you -- I
5 don't know if it was your client or the lawyers. Why were
6 they separately trying to negotiate with Eton?

7 MR. JONES: They weren't trying to negotiate
8 with Eton.

9 THE COURT: What were they doing with the --
10 they were talking to them?

11 MR. JONES: They were. And trying to get Eton
12 to be a bidder. Trying to convince Eton that they should buy
13 these assets. We're looking for a buyer, Your Honor.

14 THE COURT: Do you understand why that might
15 make a borrower concerned?

16 MR. JONES: I do.

17 THE COURT: Why aren't they just giving us
18 this name and then letting us take it from here?

19 MR. JONES: Your Honor, there was no ongoing
20 sale process at that time. That didn't happen until last
21 week. Before last week we thought the sale was going forward
22 to Sentyln pre-bankruptcy filing. And the only reason it
23 didn't was because Merck would not provide their consent. So
24 we had been working and consented to the sale.

25 THE COURT: Okay. Well, let's just move on.

1 What about your statement a couple of times today that
2 you didn't get the interim cash collateral order and you
3 weren't having conversations with anyone on the debtors' side
4 about the usage of cash?

5 MR. JONES: The debtor side, we asked
6 questions about those entries like, for example, the, other.
7 It was 1.5 million when I first started asking questions
8 about it.

9 THE COURT: No. I'm talking about your
10 comment that, you know, communication was closed.

11 MR. JONES: Communications --

12 THE COURT: And Mr. Rundell said, wait, I
13 talked to their client multiple times. They were questioning
14 \$300 expenses.

15 MR. JONES: Your Honor, this is a -- they're
16 different moments in time.

17 We looked at -- they presented to us a budget several
18 weeks ago which had at that time starting cash of 15 million,
19 rather than 10. And it had a whole host of expenses in it.

20 THE COURT: And they whittled it down, that's
21 what we heard from Rundell.

22 MR. JONES: Well, the first -- the first cut
23 we got back was they reduced by \$500,000.

24 THE COURT: I don't have to hear details. I'm
25 just questioning --

1 MR. JONES: And, Your Honor, just for the
2 record, all of these -- I mean, we haven't brought it up.
3 Everything obviously was subject to 408, and apparently --

4 THE COURT: Well, okay.

5 MR. JONES: Just so you know.

6 THE COURT: And I'm not asking details. I
7 just -- I can't remember your exact words early on, but your
8 words were -- I heard them as, we're objecting because they
9 didn't talk to us.

10 MR. JONES: Because they wouldn't answer
11 questions about things in the actual budget that was
12 presented to me on Sunday.

13 Your Honor, what we've been talking about are two
14 different things. We have never objected to the timeline for
15 the sale of Zokinvy or the use of the cash collateral
16 necessary to preserve its value for that timeline.

17 THE COURT: Okay. So what are we down to?

18 MR. JONES: What we do object to, Your Honor,
19 is we -- in the broad scheme of things, we object to the
20 post-sale of Zokinvy track that the debtor would like to put
21 this case on. And we think it's premature to do that. So
22 we --

23 THE COURT: It's June. So help me to
24 understand that. What's wrong with putting it out there to
25 the universe of potential bidders, hey, we're also going to

1 sell these other assets and we've got a later deadline for
2 that?

3 MR. JONES: Because, Your Honor, it foots
4 to -- it foots to the cash collateral budget. That cash
5 collateral, today we're here on the interim cash collateral
6 budget, just for a month. We have a big disagreement about
7 the cash collateral budget on a going-forward basis to get to
8 the end of the road in June for that sale process. That's
9 our big disagreement here.

10 THE COURT: Okay. Well, I'm not approving
11 anything other than four weeks, right, today. You all know
12 that.

13 MR. JONES: Right. But the sale procedures
14 are tied to that process. For the non-Zokinvy assets, all of
15 that is tied to that same cash collateral issue of how much
16 money is going to be spent. Is the debtor going to continue
17 to operate, or is it going to be liquidated differently? All
18 of that's tied together. The use of cash collateral post the
19 sale of Zokinvy and the sales procedures post the sale of
20 Zokinvy are all tied together. That's where we disagree
21 about this case, is what is to happen after the sale of
22 Zokinvy. And that's the issue. That's why those sale
23 procedures for the non-Zokinvy assets -- that's why we need
24 to take those up in conjunction with the hearing on the final
25 use of cash collateral and the budget that they propose that

1 goes along with those sale procedures.

2 Because our concern is, Your Honor, that --

3 THE COURT: Okay. What -- what are we down to
4 as far as interim cash collateral usage and these different
5 motions that contemplate usages of cash? What are we down
6 to? I understand on this bid procedures motion we're down to
7 an objection to the other assets bid procedures.

8 MR. JONES: The procedures with respect to the
9 other assets.

10 THE COURT: Okay. So that's what we're down
11 to.

12 MR. JONES: Because that whole process is tied
13 to cash collateral. We think that should be done in
14 conjunction with --

15 THE COURT: You're linking them to cash
16 collateral usage in the future?

17 MR. JONES: Correct. They are.

18 THE COURT: Okay. So what else are we down
19 to?

20 MR. JONES: With respect to cash collateral
21 today, a lot of these other motions, Your Honor, seek to
22 spend cash, but they're not tied to the -- limited by the
23 cash collateral budget. And it's --

24 THE COURT: I think we heard they are.

25 MR. JONES: Well, they're not in the order.

1 That's our -- in the orders themselves, at least as we read
2 them, they are not.

3 THE COURT: Okay. We addressed the biggie,
4 right? We addressed the biggie, the 688. And Mr. Rundell
5 confirmed that was the subsumed by the critical vendor
6 motion.

7 MR. JONES: Well, but the critical vendor
8 motion just seeks the payment of a whole lot of vendors
9 without any correlation to the interim cash collateral
10 budget. It's not limited. All we said is that to the extent
11 that they're going to pay trade claims within the interim
12 period, if they're going to pay vendors during the interim
13 period, if they're going to pay taxes during the interim
14 period, all of that needs to be limited by the cash
15 collateral budget. To the extent it's not in the approved
16 cash collateral budget, it should not be spent under these
17 other motions. It's very straightforward.

18 THE COURT: I thought it was straightforward.
19 But tell me what language you think makes it ambiguous. I
20 mean, all of these different motions that contemplate usage
21 of cash -- and I say all --

22 FEMALE SPEAKER: Hello.

23 THE COURT: Who's on the line?

24 Okay.

25 MR. JONES: The customer programs, for

1 example, Your Honor. They don't tell us what those are in
2 this motion. So --

3 THE COURT: In what motion?

4 MR. JONES: In their motion to approve the
5 payments to customer programs. That does not foot to -- and
6 maybe they're willing to do it and agree that they're not
7 seeking any right to make payments beyond those that the
8 Court approves with respect to the four-week interim cash
9 collateral budget.

10 THE COURT: Okay. We can handle that in one
11 sentence, right --

12 MR. JONES: Yes, we can.

13 THE COURT: -- Mr. Califano, one sentence?

14 MR. CALIFANO: And the way I understand the
15 law is that we can't spend their cash collateral unless Your
16 Honor orders it. So the fact that we have a customer motion
17 that talks about payments to be made, if we don't have it in
18 that cash collateral budget, we've got to wait and make it
19 from some other --

20 MR. JONES: That's all we said, Your Honor.
21 And that's all that's in our objection.

22 MR. CALIFANO: And we didn't need to do all of
23 this today to get there.

24 THE COURT: Okay. Well, again, I'm used to
25 people talking outside the courtroom. And I'm hearing

1 different views of why that didn't happen.

2 But any way. So it sounds like we can craft a sentence
3 in the order. And I don't know if we want it in the interim
4 customer programs order, for example, or in the cash
5 collateral order, or both, but you know --

6 MR. JONES: I agree, Your Honor.

7 THE COURT: -- you need authority given under
8 the customer program order is subject to the cash collateral
9 order, right?

10 MR. JONES: Exactly, Your Honor. It's all we
11 ask for.

12 THE COURT: Okay. So what else --

13 MR. JONES: With respect to cash collateral,
14 Your Honor.

15 Again, I heard more today about what these -- like the
16 R&D. We asked for an explanation of that. Who's that to be
17 paid to? What's it for? All that sort of stuff. We got
18 nothing. And so --

19 THE COURT: We got nothing?

20 MR. JONES: We got no response. Today I got
21 an explanation from what that \$688,000 is. But I still
22 object to it because I don't think the proof was substantial
23 enough to show irreparable harm from not paying those amounts
24 during the interim period. I don't think I heard that
25 testimony that there would be irreparable harm, immediate and

1 irreparable harm. There was speculation about what might
2 happen if those studies, the documents are not retrieved in
3 some period of time. But no testimony that there's going to
4 be immediate and irreparable harm.

5 Again, Your Honor, the Medicaid taxes says, other. We
6 just wanted to clarify that's Medicaid taxes.

7 THE COURT: It's been clarified.

8 MR. JONES: And our objection to the variance
9 is also tied to the contingency because we see that as a
10 double dip. If you're going to put in a \$400,000 contingency
11 on top of a 120 percent variance, that's a double dip. And
12 so we think those two things together are too much. 10
13 percent variance and a contingency for payment of vendors who
14 on COD, we can live with that.

15 THE COURT: That's critical vendors. That's
16 subsumed in the critical vendor motion, right?

17 MR. CALIFANO: Yeah. And, Your Honor, there's
18 a difference between the contingency and a variance. The
19 variance is if an item that's a dollar turns out to be \$1.20.
20 That's variance. Contingency is for some other category that
21 we don't know about that pops up.

22 MR. JONES: Actually, the contingency could be
23 for additional payroll. It could be for additional overhead.
24 It could be for anything, because it has no definition
25 associated with it.

1 MR. CALIFANO: Yeah. We have additional
2 payroll and would like to pay that.

3 MR. JONES: It just could be anything. We
4 don't now what it is.

5 MR. CALIFANO: Right. That's why it's
6 contingency, because we don't know what it is. If we know
7 what it is, it would be that thing that we don't know.

8 MR. JONES: So, we still object to those
9 items, Your Honor. I take it the Court maybe seems to be
10 inclined to overrule that objection. But we object to 120
11 percent variance plus \$400,000 contingency. We think it
12 should be less.

13 The other thing, Your Honor, is on the cash collateral
14 and on the bid procedures, we're not designated as a
15 consultation party with respect to the sale process.

16 THE COURT: I think he said he'd add you,
17 right?

18 MR. CALIFANO: Yes. Yes, Your Honor. We'll
19 add them as a consultation. However, we're going to ask that
20 they not talk to anybody, except through Mr. Victor.

21 THE COURT: I think that's reasonable.
22 Usually the investment banker is the guy in charge, the point
23 of contact.

24 MR. JONES: Understood.

25 THE COURT: Yeah.

1 MR. JONES: We have no objection to that.

2 THE COURT: Okay. And I think we would say
3 any Creditor's Committee who ends up getting formed --

4 MR. CALIFANO: Yes, would be a consultation --

5 THE COURT: -- would have the same thing, they
6 would be consulted?

7 MR. CALIFANO: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. JONES: We have another -- one other thing
10 about legal fees, Your Honor. The way the cash collateral
11 order is structured, it --

12 THE COURT: They're not getting paid in the
13 interim period.

14 MR. JONES: But it subordinates -- right, they
15 are not. But, actually, they subordinate our lien to their
16 legal fees through the carve-out that's provided for in the
17 -- in the cash flow.

18 THE COURT: Right. That's the usual thing in
19 Chapter 11, right?

20 MR. JONES: Well, that's effectively a
21 surcharge, Your Honor. And I don't know why that has to be
22 done at the first day hearings, if that's what they're going
23 to do. But it's nothing immediate or irreparable about them
24 to be avoided.

25 THE COURT: Is that fair? Is that fair? We

1 have three professionals for the debtor working their tails
2 off, I suspect, but we're going to leave you hanging on
3 whether you ever get paid for this. I've never done that in
4 a case.

5 MR. JONES: Well, Your Honor --

6 THE COURT: Have you ever gotten a judge to
7 say --

8 MR. JONES: Your Honor, they just testified
9 that they got \$400,000 in retainers. All we're saying is
10 then we think if you're going to have monies for legal fees,
11 those legal fees should be in the form of a cash collateral
12 budget. You're going to pay legal fees.

13 THE COURT: And I'm sure at the final hearing
14 they're going to have --

15 MR. JONES: But that's not going to be part of
16 the budget, or part of the cash collateral order. It's just
17 going to be that we're subordinated.

18 THE COURT: What? It's in the 30-day budget.

19 MR. JONES: But the carve-out subordinates us,
20 period, to all of their fees.

21 THE COURT: What does the interim order say
22 about a carve-out? I -- I didn't --

23 MR. JONES: It says there's a carve-out of
24 cash collateral for all professional fees.

25 THE COURT: But it doesn't contemplate any

1 payment of those fees in the interim period. So what are we
2 arguing about?

3 MR. JONES: But it subordinates us to those
4 fees.

5 THE COURT: To the fees that aren't getting
6 paid yet?

7 MR. JONES: That's correct. We think that
8 should be reserved for another day. They have retainers. If
9 they wanted legal fees --

10 THE COURT: There's nothing in the budget that
11 allows professional fees to be paid in the first --

12 MR. JONES: That's true, Your Honor.

13 THE COURT: -- 30 days.

14 MR. JONES: That's true.

15 THE COURT: So, again, I'm trying to figure
16 out what we're complaining about as far as the interim cash
17 collateral usage.

18 MR. JONES: To eliminate the carve-out
19 provision, which subordinates us to their legal fees.

20 MS. WALLACE: Your Honor, for the record, Anne
21 Wallace, proposed counsel for the debtors.

22 So the carve-out that we included is a very traditional
23 carve-out that has been approved by this Court in prior
24 cases. Additionally, it would only be contemplated to be
25 paid out in the event of a termination of these cases. If

1 we're going into Chapter 7, a liquidation. And I certainly
2 hope that that doesn't happen in the next four weeks.

3 THE COURT: Okay. Thank you. Thank you. I
4 didn't remember the exact wording, but that sounds pretty
5 standard fare.

6 MR. JONES: Your Honor, we think maybe this
7 case should be converted to a Chapter 7, somewhere down the
8 road.

9 THE COURT: Okay. I don't know what else you
10 have to say, but I'm going to ask this question.
11 Mr. Califano said this case is different. It certainly feels
12 different to me in a couple of respects. Do you agree or
13 disagree? And what I -- here's what I hear when he says
14 this. This is not a restaurant. This is not a retail
15 business. This is -- we know what it is.

16 MR. JONES: We do, Your Honor.

17 THE COURT: It is a drug, a one-of-a-kind drug
18 available to extend children's lives. Okay.

19 MR. JONES: Your Honor, we don't disagree --

20 THE COURT: Has there ever been more of a
21 Bambi in Chapter 11? And I don't mean to be --

22 MR. JONES: Your Honor --

23 THE COURT: -- flippant, but let me be honest.
24 We used to have a judge in this District, God rest his soul,
25 he's been gone, and he used to be very suspicious of every

1 debtor and ask a lot of tough questions. And another judge
2 said to him once, you're always suspicious. But sometimes
3 the debtor is Bambi. And, you know, I would say very rarely
4 do we have a Chapter 11 debtor who's Bambi. But this may be
5 it.

6 MR. JONES: Your Honor --

7 THE COURT: Do you know why I'm saying that?

8 MR. JONES: I do. But you misunderstood my
9 comment, Your Honor. I don't -- Zokinvy should be sold.
10 We're not objecting to that. We're not addressing that at
11 all. But down the road when we talk about the sale of these
12 drugs that are not yet on the market --

13 THE COURT: Right.

14 MR. JONES: When we're talking about the sale
15 of those drugs and the costs associated with the ongoing
16 operation of the debtor as opposed to the value that could be
17 realized if they're sold as the debtors' going concern, or
18 simply just sold, that's the issue. So when I say maybe this
19 case should be converted to a Chapter 7 somewhere down the
20 road, it's not about Zokinvy, it's about those remaining
21 assets and the cash collateral that will have -- the money
22 that will have to be spent in order to realize value on those
23 assets in a way that the debtor proposes.

24 THE COURT: Okay.

25 MR. JONES: But all of that is somewhere down

1 the road. We don't disagree on Zokinvy today. We just
2 don't. We think it should be sold. And -- but -- and we're
3 not trying to interrupt that process.

4 THE COURT: Okay. So we got into a
5 philosophical discussion, maybe. What -- have we covered
6 everything in this budget that concerns you?

7 MR. JONES: We have, Your Honor.

8 THE COURT: Okay. Thank you.

9 Perhaps, Ms. Young, this is a good time to hear from
10 you.

11 MS. YOUNG: Thank you, Your Honor.

12 I have spoken with the debtors about most of the
13 expenses that we also had questions about. They had resolved
14 all of our concerns. I think any concerns that we have about
15 the budget items have been completely resolved by the
16 testimony here today.

17 We had reviewed the form of order. And as I told the
18 debtors, I had no comments. It was absolutely -- they've
19 addressed all comments that we could have possibly thought
20 about. And have included them in the draft interim order.
21 So we have no objection to the use of cash collateral in this
22 case.

23 THE COURT: Okay. Thank you.

24 All right. Well, I guess at this --

25 MR. NEWTON: Your Honor --

1 THE COURT: Oh, I'm sorry. Did you have --

2 MR. NEWTON: That's all right.

3 I don't know if there's going to be a further
4 presentation on the bid procedures or not. I wanted to just
5 make a couple of quick comments on the breakup fee. But I'm
6 happy to defer if there's going to be a separate presentation
7 on --

8 THE COURT: Okay. Were you wanting to say
9 separate closing things on --

10 MR. CALIFANO: No, thank you. No.

11 THE COURT: Okay. Then I'll hear what you
12 want to say.

13 MR. NEWTON: Thank you, Your Honor. James
14 Newton of Morrison & Foerster on behalf of Eton
15 Pharmaceuticals.

16 Again, Eton -- I'm here on a very narrow issue. The
17 focus here on -- the focus here today has been on justifying
18 breakup fee not based on necessity, as far as I can tell, but
19 based on a desire to provide the breakup fee to Sentynl.

20 We don't have, quite frankly, any issue with Sentynl
21 acting as the stalking horse bidder. Again, the focus is
22 just very narrow on the breakup fee. We don't think it
23 should be approved. The breakup fee is generally utilized
24 when you need it to create competitive bidding. We just
25 heard testimony from the debtors', I think every one of the

1 debtors' professionals that were put on the stand suggesting
2 that there was a ton of interest in the Zokinvy asset. And
3 we also have two very, very qualified bidders that are
4 sitting here in the courtroom today ready to act as a
5 stalking horse bidder. So there's been a fair amount of
6 focus on Eton today and whether there are -- whether Sentynl
7 is further along in the process. That is largely designed to
8 make the Court aware that Eton is a viable alternative, in
9 the event that Sentynl decides, oh, I'm not going to get a
10 breakup fee. I'm not going to act as the stalking horse
11 bidder, within their decision-making authority. So Eton is
12 here. It's ready, willing, and able to execute an APA
13 without any sort of breakup fee.

14 As you heard from Mr. Victor, it's a very well regarded
15 public company. Deals with rare disease and deals with
16 patient populations much like the one that we have here. And
17 partners with them all the time.

18 I want to be very clear that Eton does respect the work
19 of PRF and Dr. Gordon. And the suggestion that they have not
20 done their diligence I think is a little bit overstated. I
21 think they're comfortable that given their experience, the
22 reputation, and the references they can provide to PRF that
23 they can get there very quickly with PRF.

24 So on that basis, I think the breakup fee should be
25 denied and Sentynl can still act as a stalking horse bidder,

1 if they'd like. But Eton is prepared to act as a stalking
2 horse bidder if they choose not to.

3 THE COURT: Okay.

4 MR. CURTIN: May I respond briefly, Your
5 Honor?

6 THE COURT: You may.

7 MR. CURTIN: It will be very brief.

8 So, Your Honor, the stalking horse has already done its
9 job. I mean, you heard about all of the expressions of
10 interest. That's not independent of the stalking horse. The
11 stalking horse bidder worked with us over a compressed period
12 of time over a holiday weekend to negotiate the APA that you
13 saw on the docket. And, you know, the stalking horse has
14 stepped up, which is the role of a stalking horse, to kick
15 off this process. It seems to be fairly clear that it's
16 going to be a competitive process. And, you know, they
17 have -- you know, they're quite frankly in our view entitled
18 to that breakup fee. And it's -- again, it's reduced from
19 what they negotiated, you know, in the first place. And as
20 Mr. Victor said, it is below market and we are supportive of
21 the Sentylnl bid as it stands.

22 THE COURT: And there are zero contingencies
23 in their bid, right, or wrong?

24 I see a head shaking from their counsel. I just want
25 it to be crystal clear. I thought that's what I was hearing.

1 MR. CURTIN: That's right.

2 THE COURT: No contingencies?

3 MR. MORRIS: Other than the closing conditions
4 that are set forth in the asset purchase agreement.

5 MR. CURTIN: Right. That's why I hesitated.

6 There are, of course --

7 THE COURT: No financing?

8 MR. CURTIN: Right.

9 THE COURT: No due diligence?

10 MR. CURTIN: No. No financing. No due
11 diligence. Just normal closing conditions that are included
12 in the APA, that's it.

13 THE COURT: Okay.

14 MR. MORRIS: To be clear, there are no
15 contingencies in either of the bids. But there are -- there
16 are documents that still need to be negotiated with parties
17 that are -- that have not signed the APA, as we heard from
18 Mr. Victor.

19 THE COURT: Okay. Understood.

20 All right. Does anyone else have anything they want to
21 say about either cash collateral usage or the bid procedures?
22 And then we'll go the individual motions. Anything else?

23 All right. I will first address the cash collateral
24 motion. Based on extensive evidence that I've heard and
25 read, I am granting that motion on an interim basis finding

1 under Rule 6003 I heard evidence that was convincing that the
2 budget presents items that are necessary to avoid immediate
3 and irreparable harm. And the debtor is exercising sound
4 business judgment in proposing this budget. Again, it's the
5 interim budget that goes the next 30 days.

6 I further find that adequate protection is being
7 provided to the lender. Among other things, the evidence
8 that was unrefuted was that cash is expected to go higher
9 above it's \$9.9 million level currently -- or as of the
10 petition date.

11 I find that Mr. Rundell and Dr. Apelian -- I hope I
12 remembered that correctly -- their evidence supported in all
13 ways the reasonableness of these expenses, elaborated on what
14 things were. Among other things, there was an explanation
15 that I found credible for the R&D post-marketing
16 disbursements line item which notably is subsumed in the
17 critical vendor motion. I think there was an adequate
18 explanation for what, other, is. I heard that there was 1.1
19 million of Medicaid taxes, which we want to stay good with
20 the Medicaid people. And I think the contingency line item
21 was well explained as vendors that don't have contracts, that
22 may expect cash in advance. And so they may have that
23 expense in the next four weeks.

24 So the Court will say that the 120 percent variance
25 sounds reasonable at this point in time. And I don't think

1 there was anything else in the interim form of order that was
2 problematic or not reasonable in all ways. So I do approve
3 it. And I will add that I hope there is a reasonable amount
4 of dialogue in the coming weeks about final cash collateral
5 usage. And we hopefully have a shorter hearing when we come
6 back for the final hearing on that.

7 With regard to the bid procedures that have been
8 proposed. I note for the record that they were significantly
9 revised happily during this case, or just prior to this case
10 with the proposed stalking horse, Sentynl, having increased
11 its bid for the base price from 26 million to 30 million. It
12 also decreased downward the, what I'll call step-down, if
13 there's no closure on the Zokinvy -- did I say that wrong?

14 MR. CALIFANO: We all do, Your Honor.

15 THE COURT: Zokinvy. The step-down from
16 214,000 per day price reduction, if there's no closing by
17 April 24th down to 100,000, I think that economic change is
18 very significant here.

19 And then last, but not least, we have the decrease of
20 the aggregate breakup fee down to, at most, 3 percent, or at
21 most 900,000 versus possibly 1.380 million.

22 The Court believes that based on these revisions, it
23 should approve and will approve the bid procedures. This is
24 not a terribly easy decision. You know, we have what might
25 be a wonderful situation here, we hope, of Eton having come

1 in and said, we'll be the stalking horse and we won't even
2 have this \$900,000 worth of breakup fee and expense
3 reimbursement. That's a tough one for the Court. But on
4 balance, the totality of the evidence made it seem to me that
5 the debtor and its professionals were reasonable in thinking,
6 we just feel like we have a bird in the hand with Sentynl.
7 You know, maybe Eton is of, you know, equal status. But
8 based on our investigations, we just feel like we have a bird
9 in the hand with Sentynl. And we think the -- I'm going to
10 say it wrong, PRF? PRF?

11 MR. CURTIN: Yes, Your Honor.

12 THE COURT: We feel that we know PRF is
13 comfortable with them. I'm not clear. I've not seen the
14 documents to know how this consent concept works. But I
15 think it's reasonable business judgment for the debtor to
16 feel like they've got a bird in the hand and -- and to feel
17 like Sentynl is enhancing the bid process. Not just because
18 Eton has come into the picture, but because I heard testimony
19 from Mr. Victor that -- I forget how many people he has heard
20 from since the filing of the bankruptcy case. A significant,
21 I think he said a dozen or so interested parties have
22 approached him since the filing. So I think it's reasonable
23 to conclude here that having Sentynl in there as a bid to
24 beat is stimulating interest here. So I think it's
25 reasonable business judgment and there is a reasonable

1 necessity. And, again, it helps tremendously that they
2 reduced the breakup fee and expense reimbursement aggregate
3 amount, as well as they improved their offer. So this all is
4 approved.

5 Okay. So with that, we'll quickly run through the
6 various motions which were dependent on the approving usage
7 of cash collateral.

8 So, Mr. Embry, you are presenting -- I already ruled on
9 a couple of your matters, right?

10 MR. EMBRY: Yes, Your Honor. I'm going to be
11 presenting on cash management and tax.

12 THE COURT: Okay.

13 MR. EMBRY: And I think based off your ruling
14 previously and some conversations with the UST, as well as
15 the language we're going to include in the order regarding
16 cash collateral, I think my colleagues and I are going to
17 break a land speed record on closing the rest of the hearing.

18 THE COURT: Okay.

19 MR. EMBRY: Starting with cash management at
20 docket number 4, which is agenda item number 4. I know Your
21 Honor has read the motion. If you look at Exhibit D to the
22 motion, there's a list of banks -- excuse me, bank accounts.
23 Three of those are held at Silicon Valley Bank, three are at
24 JPMorgan, Merrill Lynch, and the Bank of Ireland. As we've
25 communicated to the UST, the Bank of Ireland account holds de

1 minimus amounts. We have collaborated or coordinated with
2 the UST over the weekend and the days leading up to this
3 hearing. We have no objection to the form of order from the
4 United States Trustee. And we're going to continue
5 coordinating with the UST. There, again, was the lingering
6 objection in regard to the -- excuse me, from Innovatus as to
7 cash collateral. Of course, it would be subject to the
8 budget in the cash collateral order. And we'll put that
9 language in as we discussed prior.

10 THE COURT: All right. So, Ms. Young,
11 anything you want to add to that?

12 MS. YOUNG: Just briefly, Your Honor.

13 This is one of the few that I had comments on. Two of
14 the accounts, the JPMorgan account and the Merrill Lynch
15 account are investment accounts. Obviously those are a
16 little bit problematic with the investment structure. So
17 we're going to be working with the debtor to figure out a way
18 to make us all comfortable with them either maintaining the
19 accounts, or what you do with those investment accounts. But
20 we have agreed to stipulate to the extension of time so that
21 we can get into compliance so that if we do have to bring an
22 objection, we'll really have tried to work through all
23 potential avenues just to make sure that those funds are
24 protected for the duration of this time -- the time this case
25 is in bankruptcy.

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1 THE COURT: Okay. All right. So with that
2 understanding that we're going to continue to work with the
3 U.S. Trustee on getting them comfortable on those investment
4 accounts, I do find that maintaining the cash management
5 system is an exercise of reasonable business judgment and it
6 is approved.

7 MR. EMBRY: Thank you, Your Honor.

8 Now we'll move to docket number 11, which is agenda
9 item number 5, the taxes motion. Again, I know that Your
10 Honor's read the motion. The debtors plan to pay in the
11 ordinary course franchise taxes, income taxes, property
12 taxes, foreign taxes, and certain regulatory filing fees.
13 The majority of those taxes are franchise taxes. And we are
14 only choosing to go interim at this time. We have, again,
15 spoken to the U.S. Trustee. We received more informational
16 requests than objections to the form. And at this point I'm
17 prepared to move forward with an interim order.

18 We have, again, had the lingering objection from
19 Innovatus as to it being subject to the budget in the cash
20 collateral order. Again, we'll put the language in and
21 ensure that is in there. And we respectfully request you
22 enter that order.

23 THE COURT: All right. So we're expecting a
24 negligible amount, if any --

25 MR. EMBRY: Yes, Your Honor. They -- the

1 debtors pay their taxes as they come due. They're current on
2 all taxes. There is a \$3,200 franchise tax that will come
3 due in the next 14 days. We've informed the UST of that.
4 Besides that, I believe the taxes will be negligible.

5 THE COURT: Okay. Well, subject to the
6 sentence to satisfy the lender, as we discussed earlier, I do
7 approve that under the Doctrine of Necessity. All right.

8 MR. EMBRY: Thank you, Your Honor. I will now
9 pass the mic to Mr. Elner on wages.

10 THE COURT: All right. Mr. Elner.

11 MR. ELNER: Good afternoon, Your Honor.

12 THE COURT: Good afternoon.

13 MR. ELNER: I will quickly walk the Court
14 through agenda item number 7 and agenda item number 9, which
15 are the wages and utilities motion.

16 THE COURT: Uh-huh.

17 MR. ELNER: The wages motion appears at docket
18 number 8. The debtors maintain payroll and various employee
19 programs that commensurate with the size and the anticipated
20 sale process of the debtors. Through the motion the debtors
21 are seeking a final order to pay pre-petition wages,
22 salaries, and employee benefits. A key note on this is the
23 debtors are not seeking to pay any amounts in excess of the
24 statutory cap. And then also to continue post-petition
25 maintenance of employee programs, policies, and procedures.

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1 We received informal comments from the U.S. Trustee's
2 Office just inquiring about the statutory cap. And to
3 resolve those informal comments, we're just going to add
4 language stating that nothing is in excess of that cap. And
5 otherwise, we would request entry of a final order with the
6 language discussed in connection with the other motions.

7 THE COURT: Okay. All right. So the debtors
8 believe they owe no amounts to employees, right? But then
9 there is a line item for 217.

10 MR. ELNER: Oh, sorry. They owe no amounts in
11 excess of the cap to employees.

12 THE COURT: Oh, oh, oh, oh, okay. Gotcha.

13 All right. Anyone wish to be heard on that?

14 Okay. Well, again, subject to the sentence that has
15 been negotiated, if you will, with the lender, I do approve
16 this wage motion under the Doctrine of Necessity, again,
17 noting that everything is under the priority wage cap. I'll
18 approve this on a final basis.

19 MR. ELNER: Thank you, Your Honor.

20 THE COURT: Okay.

21 MR. ELNER: The next and last motion for me is
22 the utilities motion which can be found at docket number 5.
23 The debtors have limited utility obligations related to their
24 business obligations -- sorry, business premises. It's only
25 about \$1,900 a month. Most of the utilities are covered

1 through leases with their landlords. We're not seeking
2 separate payment here to pay those amounts through this
3 motion. The debtors are requesting a final order to make
4 adequate assurance payments equal to one-half of the debtors'
5 monthly payments, so \$950. Prohibit utilities from refusing
6 or discontinuing service, and approving proposed procedures
7 for resolving additional adequate assurance requests. There
8 is -- we would seek entry of a final order, subject to the
9 language discussed --

10 THE COURT: Okay.

11 MR. ELNER: -- in regards to cash collateral.

12 THE COURT: All right. Anyone wish to be
13 heard on this? This is a very low amount of utilities that
14 this debtor has to pay, which is a good thing. So I do under
15 366 approve this proposal as adequate assurance.

16 All right.

17 MR. ELNER: Thank you, Your Honor. I'll pass
18 the podium to Ms. Veronica Courtney.

19 THE COURT: Okay.

20 MS. COURTNEY: Good afternoon, Your Honor.
21 Veronica Courtney of Sidley Austin, LLP on behalf of the
22 debtors.

23 THE COURT: Okay.

24 MS. COURTNEY: This afternoon I will be
25 discussing two items, items number 10 and 12 on the filed

1 agenda. The first item is the insurance motion, agenda
2 number 10 filed at docket number 6.

3 By this motion, Your Honor, the debtors seek a final
4 order authorizing the debtors to continue their pre-petition
5 insurance coverage and satisfy related pre-petition
6 obligations, and to renew, supplement, or enter into new
7 insurance coverage in the ordinary course of business on a
8 post-petition basis.

9 The debtors currently maintain 16 insurance policies
10 administered by 10 third-party insurance carriers. The
11 insurance policies are renewed on an annual basis. And
12 provide coverage for, among other things, commercial
13 automobile insurance, general liability insurance, cyber
14 insurance, and property insurance, as well as excess
15 liability and D&O coverage. The debtors obtain their
16 insurance policies through an insurance broker. And as of
17 the petition date, the debtors do not believe there are any
18 unpaid pre-petition obligations due and owing to the
19 insurance broker.

20 Further, as of the petition date, the debtors do not
21 believe that there are any pre-petition amounts owing on
22 account of the insurance policies. While the debtors do not
23 believe that there are any amounts owed on account of the
24 insurance policies, they seek authority to continue honoring
25 such pre-petition policies and obligations that may arise in

1 the course of ordinary business. Accordingly, we seek
2 authorization -- we seek entry of the proposed order subject
3 to the language discussed earlier.

4 THE COURT: All right. And, as I understood
5 it, the debtors estimate there are no pre-petition amounts --

6 MS. COURTNEY: Correct.

7 THE COURT: That this is, you know, just sort
8 of a just-in-case kind of thing?

9 MS. COURTNEY: Yes. Just in case anything
10 comes up in the ordinary course.

11 THE COURT: All right. Anyone have anything
12 to say on this?

13 Okay. Again, subject to the sentence negotiated with
14 the lender, the Court does approve this under the Doctrine of
15 Necessity.

16 MS. COURTNEY: Thank you, Your Honor.

17 The final item that I would like to discuss is agenda
18 item number 12, docket number 17, the customer programs
19 motion. By this motion the debtors seek an interim order
20 authorizing the debtors to honor certain pre-petition
21 obligations to their customers and to continue customer
22 programs in the ordinary course of business.

23 The debtors primary customers are specialty
24 distributors and specialty pharmacy providers through a
25 third-party logistics distribution agent who subsequently

1 sells the products to patients and healthcare providers. In
2 the ordinary course of business the debtors provide a number
3 of customer programs to develop support and sustain a
4 positive reputation with their customers and in the
5 marketplace generally. And to remain competitive on pricing
6 in the marketplace. The customer programs include the
7 following; distribution fees, government rebates, Medicaid
8 rebates, copay programs, patient assistant programs, prompt
9 pay discounts, and a product return program. The debtors'
10 customer programs are standard within the industry and an
11 essential component of the debtors' operations and customer
12 attention strategy.

13 If Your Honor would like me to walk through any of the
14 programs in more detail, I would be happy to. But in the
15 interest of time, I'm happy to keep moving forward.

16 THE COURT: Okay. You may keep moving
17 forward.

18 MS. COURTNEY: Perfect. Thank you.

19 As of the petition date the debtors estimate there's
20 approximately 3.2 million of accrued pre-petition customer
21 program obligations. And by this motion, they seek entry of
22 an order authorizing such pre-petition payments and to
23 continue such pre-petition programs obviously subject to the
24 language that we have discussed extensively.

25 THE COURT: Okay. And I am just noting that

1 of the 3.2 million, far and away this is attributable to
2 government rebates, as well as the Medicare --

3 MS. COURTNEY: Correct.

4 THE COURT: -- or Medicaid rebates.

5 MS. COURTNEY: Yes.

6 THE COURT: Okay. All right. And the
7 government rebates, also a big part of that is German --
8 Germany related, right?

9 MS. COURTNEY: Yes.

10 THE COURT: A foreign government. Okay.

11 All right. Anyone have anything they want to say about
12 this?

13 Okay. Again, subject to the sentence negotiated with
14 the lender, I find under the Doctrine of Necessity that it is
15 appropriate to approve this and I do.

16 MS. COURTNEY: Thank you, Your Honor. I'll
17 now pass it off to my esteemed colleague, Chelsea McManus.

18 THE COURT: Okay. You're not the most
19 important person in the room, but you're esteemed.

20 MS. McMANUS: Thank you, Your Honor. Good
21 afternoon, Your Honor. For the record, Chelsea McManus of
22 Sidley Austin, LLP on behalf of the debtors. I'll be taking
23 up the last motion today, the critical vendor and lien
24 claimant motion, agenda item 13, located at docket number 10.

25 As we briefly heard earlier, the critical vendors and

1 potential lien claimants, payment of them is critical to
2 ensure preserving value of the estate, as well as continuing
3 operations and providing these critical drugs to various
4 parties, storage, and shipping, warehouses, all the different
5 buckets that are covered throughout this motion. Through the
6 motion we have four different buckets; the 503(b)(9)
7 claimants, the lien claimants, the critical vendors, and the
8 foreign vendors.

9 We received some informal comments from the U.S.
10 Trustee on this, specifically related to providing the list
11 of all of the different vendors, critical vendors, foreign
12 claimants, 503(b)(9). And I believe we've resolved some of
13 the informal comments we received from the U.S. Trustee with
14 the caveat that we provide a proffer of the four different
15 critical vendors under the Coserv factors.

16 THE COURT: Okay.

17 MS. McMANUS: As well as providing language,
18 which I believe is included in our proposed order, that we
19 would provide a matrix of the different payments to the U.S.
20 Trustee on a monthly basis and to any statutory Committee
21 appointed, if one does get appointed.

22 THE COURT: Okay. So I thought that was
23 already in your form of order submitted --

24 MS. McMANUS: It is.

25 THE COURT: -- that I looked at.

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1 MS. McMANUS: Yes. I think it's paragraph 8
2 of the proposed order.

3 THE COURT: Okay.

4 MS. McMANUS: And I think it's on the 15th of
5 each month that we -- or by the 15th of each month that we
6 provide the matrix and reports.

7 THE COURT: Okay. And I think you also had
8 language in there that basically by taking a payment, they're
9 agreeing to continue to provide services and you reserve the
10 right to clawback, if they don't.

11 MS. McMANUS: Yes. Under the trade terms,
12 correct.

13 THE COURT: Yes, under the trade terms.

14 All right. Well good deal. Anyone wish to be heard on
15 this?

16 All right. Well, I will, once again, find under the
17 Doctrine of Necessity that this motion has merit. Again, as
18 you alluded to, you had categories of claimants here, some of
19 who you thought would have 503(b)(9) status, some might have
20 mechanic lien or possessory lien or other similar lien
21 status. You have some foreign vendors that are a big chunk
22 of the amounts you seek to pay. And then just others that
23 you will have a proffer would meet the Coserv test. So I
24 think under the Doctrine of Necessity, it is appropriate to
25 approve that motion, again, subject to the sentence

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1 negotiated with the lender.

2 All right. Is there anything else?

3 MR. CALIFANO: No, Your Honor.

4 THE COURT: That's all for today?

5 MR. CALIFANO: Yes, Your Honor.

6 THE COURT: All right. Well, I thank you all
7 for your organized presentation. I hope I didn't sound too
8 grouchy at some point. But I really -- I feel very confident
9 that there's going to be more dialogue in the weeks before
10 the final hearing on cash collateral usage. I suppose we
11 need to address that and give you a hearing.

12 MR. CALIFANO: Yes, Your Honor.

13 THE COURT: I know that my courtroom deputy
14 has been in contact with some of the lawyers. You all in
15 your timeline for the bid process wanted an April 22nd
16 hearing. And I think she reported that I could do April
17 23rd, but not 22nd?

18 MR. CALIFANO: The 23rd would be better for
19 me, Your Honor, because I have a hearing on the 22nd in front
20 of Judge Everett.

21 THE COURT: Wait, you said --

22 MR. CALIFANO: 23rd.

23 THE COURT: The 23rd is good for you, 22nd
24 would be bad?

25 MR. ELNER: He was agreeing with you.

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1 THE COURT: You were agreeing with me?

2 MR. CALIFANO: Yes, I was.

3 THE COURT: Okay. So what time did Ms.
4 Ellison tell you?

5 MR. ELNER: 9:30 on the 23rd.

6 THE COURT: 9:30 on April 23rd.

7 And as far as the next cash collateral hearing, did you
8 have any discussions with Ms. Ellison?

9 MR. ELNER: That was also going to be set at
10 the same hearing on the 23rd.

11 THE COURT: Okay.

12 MR. ELNER: And then second days would be on
13 May 7th.

14 THE COURT: May 7th, okay. So that is fine.
15 And so I assume you're going to put in the interim cash
16 collateral a deadline for objections to final cash collateral
17 usage?

18 Okay. All right. Anything else?

19 All right. Well, I will be standing by ready to sign
20 orders. I don't know if you think you'll get to me tonight
21 or overnight. I mean, if it's overnight I can sign them and
22 you'll have them first thing in the morning.

23 MS. WALLACE: Your Honor, we will work to get
24 those to you tonight.

25 THE COURT: Okay. Just -- just so I have a

1 clue, I mean -- do you mean in the next 30 minutes --

2 MR. CALIFANO: You can sign them tomorrow.

3 MS. WALLACE: No, no.

4 THE COURT: -- or in the next three hours?

5 MS. WALLACE: For the avoidance of debt, Your
6 Honor, we do not need relief in the next 30 minutes. You can
7 sign them tomorrow.

8 THE COURT: Okay. All right. I just wanted
9 to know what I need to do with my laptop.

10 MS. WALLACE: Thank you, Your Honor.

11 THE COURT: Okay. Thank you. We stand --

12 MR. CALIFANO: Your Honor, thank you very
13 much.

14 MS. WALLACE: Thank you very much.

15 (End of Proceedings.)

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C E R T I F I C A T E

I, CINDY SUMNER, do hereby certify that the foregoing constitutes a full, true, and complete transcription of the proceedings as heretofore set forth in the above-captioned and numbered cause in typewriting before me.

/s/Cindy Sumner

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