

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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11 \* \* \* \* \*

12 TRANSCRIPT OF PROCEEDINGS

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20 BE IT REMEMBERED, that on the 26th day of June, 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. Well, we have a  
3 setting in the Eiger BioPharma case. We have sort of a  
4 routine administrative matter, a motion to set a bar date, as  
5 well as a motion to approve a sale of the Avexitide drug. So  
6 I will start by getting appearances from lawyers in the  
7 courtroom.

8                   MR. CURTIN: Good afternoon, Your Honor.  
9 William Curtin from Sidley Austin. I'm joined by my  
10 colleagues Anne Wallace, Parker Embry, and Chelsea McManus.  
11 I'm also joined by Doug Stout, our chief restructuring  
12 officer, and Paul Coloma from Alvarez & Marsal; Craig Warznak  
13 from SSG; and Dr. David Apelian, the CEO of Eiger.

14                  THE COURT: All right. Welcome to you all.  
15 We'll get other appearances.

16                  MR. SMITH: Good afternoon, Your Honor.  
17 Garrick Smith, Munsch Hardt Kopf & Harr, here along with my  
18 co-counsel, Daniel Gonzalez, of Meland Budwick, PA on behalf  
19 of the Official Committee of Unsecured Creditors.

20                  THE COURT: Okay. Good afternoon.

21                  MR. GONZALEZ: Good afternoon.

22                  THE COURT: Other appearances in the  
23 courtroom?

24                  MR. LAMBERSON: Good afternoon, Your Honor.  
25 This is Phillip Lamberson on behalf of Amylyx

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1 Pharmaceuticals, which is the buyer for today's sale hearing.  
2 And then joining us by video is Christine Pirro Schwarzman of  
3 the Ropes & Gray Firm, my co-counsel.

4 THE COURT: Okay. Welcome to you.

5 MR. LAMBERSON: Thank you.

6 THE COURT: All right. It looks like we have  
7 one more courtroom appearance.

8 MS. ROSEN: Thank you. Good afternoon, Your  
9 Honor. Suki Rosen of Forshey Prostok, local counsel for  
10 Innovatus. And also joining by virtual is Brad O'Neill of  
11 Kramer Levin.

12 THE COURT: Okay. Thank you.

13 I said one more courtroom appearance, but I didn't see  
14 Ms. Kippes back there.

15 MS. KIPPES: Thank you, Your Honor. Meredyth  
16 Kippes on behalf of the United States Trustee.

17 THE COURT: Okay.

18 Is there anyone on the Webex who wishes to appear at  
19 this time?

20 MS. VENUS: Your Honor, Margie Venus with  
21 McKool Smith. Yesterday the U.S. Trustee appointed an  
22 Official Equity Security Holders Committee. And we have been  
23 asked to serve as local counsel to Porzio, Bromberg & Newman.  
24 Pro hac vice motions will be filed shortly for the members of  
25 Porzio. In the mean time, I'd like to introduce Mr. David

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1 Sklar, who is on via video, who wanted to address the Court  
2 for a few moments.

3 THE COURT: All right. Mr. Sklar, did you  
4 want to say something before we get started, or what?

5 MR. SKLAR: I -- good afternoon, Your Honor.  
6 David Sklar from Porzio --

7 THE COURT: And could you speak up a bit?

8 MR. SKLAR: Sure. Can you hear me now?

9 THE COURT: A little better, yes.

10 MR. SKLAR: Good afternoon, Your Honor. It's  
11 David Sklar from Porzio Bromberg.

12 I think we can address our preliminary thoughts at the  
13 beginning of the sale hearing and allow the Court to continue  
14 with appearances.

15 THE COURT: Okay. I'm sorry, maybe it's just  
16 me. I'm having difficulty hearing what you're announcing.

17 MR. SKLAR: Is it better now?

18 THE COURT: A little bit better. Okay. If  
19 you could just repeat yourself.

20 MR. SKLAR: Sure, Your Honor. Sorry about the  
21 technical difficulties.

22 I was just saying that I would be happy to save my  
23 thoughts for the beginning of the sale -- at the outset of  
24 the sale hearing, we would announce a few preliminary  
25 thoughts. I was just happy to allow the Court to continue

1 with appearances and not -- at this time.

2 THE COURT: Okay. I'll let all parties make  
3 any opening statement they want. And if I've gotten all of  
4 the appearances at this point -- any other appearances?

5 MS. WEISS MANNE: Yes, Your Honor, Beverly  
6 Weiss Manne. I hope you can hear me. Beverly Weiss Manne  
7 for various Thermo Fisher Scientific entities. We are  
8 contract counterparties.

9 THE COURT: All right. Thank you.  
10 Other appearances at this time?

11 All right. Well, Mr. Curtin, are you going to start us  
12 off?

13 MR. CURTIN: Yes, Your Honor.

14 THE COURT: I don't know if we'll have very  
15 elaborate opening statements. The papers make it look like a  
16 very happy day.

17 MR. CURTIN: We certainly were not planning on  
18 an elaborate or any opening statement.

19 THE COURT: Okay.

20 MR. CURTIN: Again, Your Honor, William Curtin  
21 from Sidley Austin for the debtors. It's good to be back  
22 before you.

23 If it's okay with the Court, I'll just provide a very  
24 brief update of kind of where we are since the last hearing.

25 THE COURT: Okay.

1 MR. CURTIN: And then we can just move right  
2 into the sale hearing and we'll do the bar date motion last,  
3 if that works.

4 THE COURT: Okay.

5 MR. CURTIN: So as Your Honor alluded to the  
6 headline for today is -- is another exceptional result in our  
7 auction for the Avexitide assets.

8 So as Your Honor will recall, earlier in the case in  
9 the Zokinvy auction we started with a stalking horse there of  
10 26 million. We were able to increase that to a stalking  
11 horse of 30 million. And then after the auction, we ended up  
12 with a final purchase price after adjustments of 44.4  
13 million. Now, believe it or not, Your Honor, it seems that  
14 arguably we've out done ourselves with this latest auction.

15 In the Avexitide auction we started after a pre-auction  
16 process with a stalking horse of \$10 million for the -- only  
17 for the Avexitide asset. And after an extensive auction that  
18 you'll hear testimony about in a moment, we ended with a  
19 final bid of \$35.1 million. So obviously three and a half  
20 times the stalking horse. So really --

21 THE COURT: And that's in addition to  
22 potentially some cure costs on executory contracts being  
23 assumed?

24 MR. CURTIN: That's right. About 300,000,  
25 yes, Your Honor. So really an exceptional result. It will

1 clearly allow for the payment of all creditors in this case,  
2 both secured and unsecured with a rather substantial surplus  
3 for the benefit of equity. So, you know, really a good  
4 couple of weeks in the case.

5         So beyond that, as Your Honor is aware by the  
6 appearances and by the notices that were filed, since the  
7 last hearing the U.S. Trustee did appoint two statutory  
8 committees. We have the Unsecured Creditors Committee which  
9 is represented here in court. We've had a couple of good  
10 calls with counsel to the UCC since they were appointed  
11 about, I guess about two weeks ago. And the Equity Committee  
12 was just appointed yesterday afternoon. So we learned very  
13 informally this morning, heard a rumor that Porzio was  
14 retained as counsel. So we're happy to see them as well as  
15 McKool Smith here. Obviously we haven't spoken to them yet.

16                 THE COURT: Yeah. I didn't even see on the  
17 docket that an Equity Committee had been appointed.

18                 MR. CURTIN: Yeah. It was late in the day  
19 yesterday, Your Honor --

20                 THE COURT: It was late, okay. I didn't see  
21 it.

22                 MR. CURTIN: -- when it came over.

23         As far as next steps, Your Honor. You know, we are --  
24 we're continuing to work with the company on formulating a  
25 Chapter 11 plan. We will engage with both Committees on

1 that. We've had preliminary conversations with the UCC. And  
2 expect to be able to file that in very short order, probably  
3 within the next couple of weeks.

4 Also, Your Honor, there is one other -- or a couple of  
5 other remaining issues. One is there are still two  
6 additional assets in this estate.

7 THE COURT: Uh-huh.

8 MR. CURTIN: That's Lonafarnib Lambda.

9 We, Your Honor, may have seen that -- although we do  
10 have some interest in those assets, we've elected in our  
11 judgment to slightly delay the process on that. But we do --  
12 those are -- we are actively progressing those -- the  
13 marketing and sale of those assets and expect to move forward  
14 on the disposition of those in the very near term.

15 Lastly, Your Honor, you recall the last time I was  
16 before you we argued the 2004 motion. Your Honor shortly  
17 thereafter entered an order directing document production.  
18 That is proceeding, albeit slowly, on a rolling basis. We  
19 received one production from Innovatus shortly after the  
20 Avexitide auction and another late last night. Neither of  
21 those productions contain the internal documents and  
22 communications that are really the crux of the matter here.  
23 So we look forward to continuing rolling productions.  
24 Hopefully -- hopefully a bit more quickly so we can move  
25 forward on that -- on that front.



1 That's the general status, Your Honor. Unless you have  
2 questions, I can move on to the Avexitide sale motion.

3 THE COURT: And just to confirm, there are no  
4 objections at this point to either your bar date motion or  
5 the Avexitide sale. I saw that there were some limited  
6 objections of executory contract parties. But you've just  
7 agreed to kind of defer --

8 MR. CURTIN: That's correct.

9 THE COURT: -- and try to work those out and  
10 if you need to come back on cure amounts, you'll come back?

11 MR. CURTIN: Correct, Your Honor. It's  
12 actually only -- and Ms. Wallice will correct me if I'm  
13 wrong. But I believe it's only one that actually --

14 THE COURT: Just one?

15 MR. CURTIN: -- impacts the Avexitide asset.

16 THE COURT: Okay.

17 MR. CURTIN: You know, through no fault of any  
18 party, when we delayed the other two, some of those are  
19 related to those two. So it's really just one. And, yes,  
20 that is how we -- how we plan to handle it.

21 So I do have a witness in court, Your Honor. And if  
22 Your Honor will allow us, we would like to call Craig Warznak  
23 from SSG in support of the motion.

24 THE COURT: All right. Before we do that, if  
25 anyone has a burning desire to tell me something before I

1 hear the evidence, you may. But, again, I don't see where we  
2 need lengthy opening statements, if we have no objections  
3 today. So anyone feel the need to put anything on the  
4 record?

5 MS. WEISS MANNE: Your Honor --

6 MR. SKLAR: Your Honor --

7 THE COURT: Oh, two people talking at once.

8 We'll hear the executory contract party first.

9 Ms. Manne.

10 MS. WEISS MANNE: Thank you, Your Honor. I

11 will be really brief.

12 Your Honor, I did want to say that our objection with  
13 respect to the executory contract goes both to the cure  
14 amount and the terms by which they cure. So the timing and  
15 how it's done and when it's done, not just the amount. We  
16 are working with the debtors and we expect to resolve those.  
17 But I did want to put on the record it's not just an issue as  
18 to how much is owed, it's just how much is owed and when it  
19 will be paid and by whom, Your Honor. We expect to fully  
20 resolve those before any closing.

21 THE COURT: Okay. Understood. And so we'll  
22 just stay tuned for, you know, either an announcement that  
23 that's been worked out with a form of order submitted, or if  
24 we need another hearing, we'll come back for that.

25 MS. WEISS MANNE: Thank you.

1 THE COURT: All right. Mr. Sklar, were you  
2 the one speaking up, as well?

3 MR. SKLAR: Yes. That was me, Your Honor.

4 THE COURT: Okay.

5 MR. SKLAR: And I think I have a better audio  
6 connection set up now.

7 THE COURT: Okay.

8 MR. SKLAR: I just wanted to make a short --  
9 we just wanted to make a short statement. We want to thank  
10 the United States Trustee for keeping the interest of equity  
11 holders in mind in this case and soliciting and appointing an  
12 Equity Committee. We also want the compliment the debtors'  
13 team on what's been a very successful sale. We as Porzio  
14 worked with the particular team from Alvarez & Marsal before  
15 and are excited to work with them again.

16 As was noted briefly, Porzio was retained by the Equity  
17 Committee this morning. I believe the Committee members are  
18 listening in and their names are Adam Gray, Gary Ruby, and  
19 Chris Pareese. We support Your Honor approving this sale.  
20 There appears to be some \$25 million of asset value and cash  
21 available after all secured and unsecured claims are  
22 satisfied in full once this transaction closes.

23 We have also spoken to Mr. Califano from the debtors'  
24 counsel prior to this hearing. He supports the full  
25 participation of the Equity Committee and understands that we

1 are the fulcrum security in the case at this juncture. And  
2 I'll just note at the end, we look forward to working with  
3 the debtor and the parties in interest in maximizing value  
4 for all stakeholders.

5 THE COURT: All right. Well, thank you,  
6 Mr. Sklar. I don't know if I could have anticipated this --  
7 these developments early on in the case. But it's very  
8 interesting, indeed. You know, at the beginning if this case  
9 I was scratching my head about what was the material adverse  
10 event that caused the default and caused the concern about  
11 value. And, you know, here we are.

12 MR. SKLAR: Here we are.

13 THE COURT: All right. Well, I'm anxious to  
14 hear from Mr. Warznak. So you may approach and I'll swear  
15 you in and we'll hear the happy report.

16 Please raise your right hand.

17 (The witness was sworn by the Court.)

18 MR. CURTIN: Your Honor, before I begin the  
19 questions, I would like to offer into evidence the  
20 declaration of Mr. Warznak in support of our motion to  
21 approve the sale of the Avexitide assets, which is filed on  
22 the docket at docket number 361.

23 THE COURT: All right. I did see that before  
24 coming out today. I assume there's no objection, since he's  
25 available to cross-examine?

1 All right. That will be admitted.

2 MR. CURTIN: Thank you.

3 CRAIG WARZNAK

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

6 DIRECT EXAMINATION

7 BY MR. CURTIN:

8 Q. Mr. Warznak, can you please state and spell your  
9 full name for the record.

10 A. Yes. First name is Craig, C-r-a-i-g, last name  
11 Warznak, W-a-r-z-n-a-k.

12 Q. And can you briefly describe to the Court your  
13 educational and professional background?

14 A. Yes. I have an undergraduate business degree from  
15 Georgetown University. And I have 18 years of mergers and  
16 acquisitions and transaction related experience. 10 of  
17 those, over 10 of those which have been focused on  
18 restructuring. In addition to my investment banking  
19 experience, I have served in investing roles in private  
20 equity and with corporations.

21 Q. And where do you currently work?

22 A. I currently work for SSG Capital Advisors for over  
23 5 years.

24 Q. And what's your current position at SSG?

25 A. Senior vice president.

1 Q. All right. Have you marketed companies or their  
2 assets for sale in the past?

3 A. I have, yes.

4 Q. About how many times?

5 A. Approximately 75 companies or assets.

6 Q. And what percentage of those were distressed  
7 companies or distressed assets?

8 A. Approximately half to two-thirds.

9 Q. And have you been involved in marketing and selling  
10 assets in the context of a bankruptcy case?

11 A. I have, yes.

12 Q. About how many times?

13 A. Approximately 30.

14 Q. And were you involved -- have you been involved in  
15 the marketing and selling assets of BioPharma companies?

16 A. Yes. Over the past 2 years our firm has conducted  
17 sales for six BioPharma companies, in addition to other  
18 early-stage healthcare and medical device companies. And the  
19 firm has additional experience in healthcare and life  
20 sciences beyond the past two years.

21 Q. And can you briefly describe some of the unique  
22 considerations when marketing BioPharma assets?

23 A. Absolutely. So early-stage BioPharma companies  
24 come with a high degree of risk. Additionally, the assets  
25 they are developing require significant amounts of capital to

1 get through the development. And once through development  
2 there's additionally a high degree of uncertainty on whether  
3 or not they'll receive approval and ultimately reach the  
4 commercialization or revenue-producing phase.

5 Q. All right. Can you -- moving on to this case. Can  
6 you briefly describe the post-petition marketing process for  
7 the Avexitide asset?

8 A. Absolutely. So our firm, SSG, and myself conducted  
9 a thorough marketing process, reaching out to both  
10 stragetics, including pharma companies, Big Pharma, other  
11 biopharmaceutical companies and financial investors. And in  
12 total contacting approximately 300 parties that fit the  
13 description that I just mentioned.

14 Q. And were you personally involved in that process?

15 A. I was. I was personally involved in developing the  
16 marketing plan. Directly outreached to interested and  
17 potential buyers. Assisting to manage the due diligence  
18 process and ultimate negotiation of the transaction.

19 Q. And as a result of that process, how many bids were  
20 received for the Avexitide asset?

21 A. We received two bids in a competitive stalking  
22 horse process. Spruce Biosciences ultimately being named as  
23 the stalking horse. And Amylyx as a qualified bidder.

24 Q. And based upon the receipt of those bids, did  
25 you -- did SSG decide to recommend to the debtor to conduct

1 an auction?

2 A. Yes, we did.

3 Q. And were you involved in the Avexitide auction?

4 A. I was. So I was responsible for preparing for the  
5 auction, reviewing the stalking horse and qualified bid APA  
6 to ensure that the bids were being compared at auction on a  
7 like-for-like basis. And my colleague, Scott Victor,  
8 conducted the auction.

9 Q. Okay. And what was the -- what was the stalking  
10 horse bid and then what was the opening bid at the auction?

11 A. Yes. The stalking horse bid was \$10 million. And  
12 the opening bid to Amylyx at the start of the auction was  
13 \$10.4 million.

14 Q. And what type of consideration were the parties  
15 offering through the process of the auction?

16 A. The parties were bidding in all cash.

17 Q. Can you explain to -- or describe to the Court what  
18 happened at the Avexitide auction?

19 A. Yes. Over the span of approximately 3 hours we  
20 went through 122 rounds of bidding with Amylyx ultimately  
21 becoming the winning bidder at 35.1 million plus the cure  
22 costs that you had discussed earlier.

23 Q. And was there also a back-up bidder at the  
24 conclusion of that auction?

25 A. There was. Spruce acknowledged their status as



1 back-up bidder at a value of \$35 million.

2 Q. Okay. Mr. Warznak, based upon your 10 years of  
3 experience in the restructuring industry and 18 years in  
4 total in banking and successfully marketing companies, do you  
5 believe that the post-petition marketing process and the  
6 auction here were conducted in accordance with the bidding  
7 procedures approved in this case?

8 A. Yes, I do.

9 Q. And do you believe that the sale that we seek to,  
10 the debtors seek to approve today represents the highest and  
11 best value available to the debtors' estate for the Avexitide  
12 asset?

13 A. Absolutely.

14 Q. And why do you think that?

15 A. We did conduct a very thorough marketing process  
16 for the Avexitide asset, resulting in two bids that included  
17 a competitive stalking horse process. We had a lengthy  
18 auction of 122 rounds that ultimately resulted in what we  
19 believe is a value-maximizing winning bid that more than  
20 tripled the original stalking horse offer.

21 MR. CURTIN: Your Honor, I don't have any  
22 additional questions.

23 THE COURT: All right. Who has  
24 cross-examination for Mr. Warznak?

25 Anyone?

1 And maybe you're going to get to this with another  
2 witness. But I cannot remember the stalking horse bid  
3 protections in place on this one.

4 MR. CURTIN: We can do it -- well, we can get  
5 to it with --

6 THE COURT: Okay. I just wanted to make sure  
7 we had a record of --

8 MR. CURTIN: Yeah, no problem. It's in the  
9 declaration, but we can actually hit that.

10 THE COURT: Okay.

11 Q. Can you tell -- did the Spruce -- did the Spruce  
12 stalking horse APA include bid protections?

13 A. It did. It included a flat \$300,000 termination  
14 fee.

15 Q. And did it include any expense reimbursement or  
16 anything else beyond that 300,000?

17 A. It was not. That was waived. It was \$300,000  
18 only.

19 Q. And is that the reason why the initial bid to  
20 Amylyx was 400,000 instead of 100 -- I'm sorry, it was  
21 \$400,000 over the 10 million as oppose to 100?

22 A. That's correct. So the Amylyx opening bid was 10  
23 million to match the stalking horse; \$300,000 to cover the  
24 termination fee plus \$100,000 which was the minimum bid  
25 increment.

1 THE COURT: Okay. All right. Well, thank  
2 you. We appreciate your testimony, as well as your effort,  
3 your's and Mr. Victor's efforts here.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you.

6 MR. CURTIN: Your Honor, if I could turn it  
7 over to my colleague, Ms. Wallice, who will address the rest  
8 of the motion.

9 THE COURT: Okay. Ms. Wallice.

10 MS. WALLICE: Good afternoon, Your Honor.

11 THE COURT: Good afternoon.

12 MS. WALLICE: For the record, Anne Wallice of  
13 Sidley Austin on behalf of the debtors.

14 Your Honor, we are here today to seek approval of the  
15 Avexitide sale to Amylyx Pharmaceuticals on the terms and  
16 conditions set forth in the APA, which was filed at docket  
17 number 350, Exhibit A.

18 One note that has come up with respect to our prior  
19 sale, the Zokinvy sale. With respect to closing conditions,  
20 we do have two consents. One for Stanford. One with respect  
21 to University of Pennsylvania and the Children's Hospital of  
22 Philadelphia. I'm happy to report that not only do we not  
23 expect any issues or delays with respect to those consents,  
24 we've actually already received consent from Stanford shortly  
25 before the hearing. So we are moving very quickly towards

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1 closing.

2 THE COURT: Okay.

3 MS. WALLICE: So as you heard from  
4 Mr. Warznak, we did have a very active process here.  
5 Increased the value of the sale. The sale order, which was  
6 filed at docket number 366, Exhibit A, reflects comments from  
7 Amylyx. We've also shared that order with the UST who had no  
8 comments to the proposed sale order. Additionally, we  
9 received comments last night from Innovatus' counsel. And  
10 the form of order that was filed reflects those comments.

11 THE COURT: Okay.

12 MS. WALLICE: I understand that we are signed  
13 off with respect to the secured lenders on the form of order.  
14 One additional point that I did want to flag. There is an  
15 Innovatus pay down included in that form of order. That is  
16 on page 27 of docket number 33. We are providing for the pay  
17 down of \$12 million from the proceeds of the Avexitide sale.

18 And if Your Honor would permit me, I just would like to  
19 walk through why 12 million.

20 THE COURT: Okay.

21 MS. WALLICE: So as the Court knows, the  
22 debtors and the secured lenders are currently engaged in  
23 ongoing settlement discussions related to Innovatus' overall  
24 claim. While we disagree on the overall components of that  
25 claim, we do want to move those discussions forward. So

1 through a combination of the two pay downs as well as the  
2 escrowed funds from the Zokinvy sale, we believe the 12  
3 million pay down will completely cover Innovatus' possible  
4 claim.

5 So the full claim would include the principal, pre- and  
6 post-petition cash and PIK interest, post-petition default  
7 interest at the contract rate, the pre-payment fee, the exit  
8 fee, as well as costs associated with the potential  
9 indemnification obligations. Obviously all parties reserve  
10 all rights with respect to whether or not those are viable  
11 components of the claim. But just in an effort to advance  
12 discussions, ensure that the secured lenders are adequately  
13 protected as we move through this process, we are reserving  
14 for all of those amounts.

15 THE COURT: Okay.

16 MS. WALLICE: With respect to the  
17 indemnification. The debtors propose to set aside a million  
18 in legal fees under that indemnification. And the reason for  
19 that is if there are actual losses to the secured lender  
20 under the indemnification, there's a standard carveout that  
21 the debtors would not be responsible to cover those losses.  
22 If there are no losses and the secured lenders do seek  
23 reimbursement through their indemnification, the only cost  
24 would be legal fees. So that's the reason for the \$1 million  
25 set aside for those legal fees.

1 THE COURT: Okay.

2 MS. WALLICE: So just to kind of give the  
3 overall numbers. The full possible claim without  
4 indemnification costs is about 47.2 million. With the  
5 indemnification reservation, that's 48.2.

6 THE COURT: Uh-huh.

7 MS. WALLICE: Innovatus has received the \$15  
8 million pay down from the Zokinvy sale, which has left 33.2  
9 million. A further \$12 million pay down from the Avexitide  
10 sale would bring that total claim to 21.2 million. Pursuant  
11 to the Zokinvy sale order we escrowed, the net --

12 THE COURT: Wait. Say that again. They  
13 received 15 million already --

14 MS. WALLICE: Yes.

15 THE COURT: -- from the Zokinvy sale.

16 MS. WALLICE: We would propose to pay 12  
17 million from the Avexitide sale.

18 THE COURT: That's 27 million.

19 MS. WALLICE: So 33.2 and then another \$12  
20 million pay down off the 33.2.

21 THE COURT: Okay.

22 MS. WALLICE: So that brings it to 21.2  
23 million. And the pursuant to the Zokinvy sale order, the  
24 debtors did escrow the net Zokinvy sale proceeds in a  
25 separate account which is subject to Innovatus' liens. And

1 that escrow currently holds 21.6 million.

2 THE COURT: Okay.

3 MS. WALLICE: With that, unless Your Honor has  
4 any further questions, we would ask that the Court enter the  
5 proposed order.

6 THE COURT: All right. Anybody want to weigh  
7 in about the requested relief or form of order?

8 MR. O'NEILL: Your Honor, Brad O'Neill on  
9 behalf of Innovatus. If I could be heard briefly?

10 THE COURT: Okay. I'm sorry, we -- we're  
11 going to allow courtroom comments first before Webex.

12 MR. O'NEILL: Very well.

13 THE COURT: So, counsel, did you want to --

14 MR. GONZALEZ: Yes. Good afternoon, Your  
15 Honor. Daniel Gonzalez on behalf of the UCC.

16 I just want to compliment the debtors on the auction  
17 process. The UCC is obviously very happy with the outcome of  
18 the Avexitide sale. It does appear, assuming closing occurs,  
19 that the unsecured creditors will receive full payment on  
20 their claims plus interest. At this point we're going to  
21 wait to see what happens with the plan and what's proposed  
22 and work with the debtor and the debtors' counsel. I also  
23 want to thank the debtors' counsel for being open and  
24 responsive to the Committee. They've spoken with us a number  
25 of times since being appointed. And we've very much

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1 appreciated working with them so far.

2 THE COURT: Okay. That's very good to hear.

3 MR. GONZALEZ: Thank you.

4 THE COURT: All right. Now, Mr. O'Neill, I  
5 think that's all of our courtroom comments, maybe. Go ahead.

6 MR. O'NEILL: Good afternoon.

7 THE COURT: Good afternoon.

8 MR. O'NEILL: It was interesting -- I had not  
9 planned to speak today. We, like everyone else, are pleased  
10 with the results of the auction. But the comments that you  
11 just heard from the debtor I think require a response.

12 THE COURT: Okay. If you could speak up a  
13 little. You know, maybe it's just me today having trouble.  
14 But if you could help me out and speak a little louder.

15 MR. O'NEILL: I will, Your Honor, Is that  
16 better?

17 THE COURT: A little better, yes.

18 MR. O'NEILL: Okay. I apologize. I know  
19 Mr. Sklar had difficulty too.

20 We were not aware -- as Ms. Wallace told you, the order  
21 provides for a pay down. We were not aware that the order  
22 would provide for a pay down or the debtor intended to make a  
23 pay down until late yesterday afternoon when we received,  
24 without announcement, the form of order which provided for  
25 it. We did not at the time receive the explanation that you



1 just received about the basis for the amount of the pay down.  
2 And so it's a little disquieting to hear that presented to  
3 you for the first time rather than to us.

4 And we also were surprised to hear again today for the  
5 first time that as a result of the sale, the debtor expects  
6 the case to be solvent. And has told Mr. Sklar that it's \$20  
7 million solvent. Now, we could hear it today. But the point  
8 is that we're not getting current communication from the  
9 debtor. And we think that's unfortunate. We think in light  
10 of the condition of the estate, people need to pay attention  
11 to the continued accrual of expenses, including interest,  
12 which in the case of our loan is significant, particularly in  
13 the context of a solvent case.

14 And we -- consistent with the concerns you expressed at  
15 the 2004 hearing, we don't want avoidable expenses, like  
16 interest, to consume creditor or equity recoveries.  
17 Similarly --

18 THE COURT: Wait. Say again what you just  
19 said. Again, I apologize if, you know, this judge is losing  
20 her hearing. What did you just say about your concern about  
21 post-petition interest or expenses?

22 MR. O'NEILL: Well, we've received -- I mean,  
23 Ms. Wallace went through an extensive computation for you  
24 about what's been paid and what's owing, which they did not  
25 present to us and which we have not considered or agreed to.

1 And in any event, I think what we can all agree on is that a  
2 significant portion of our claim remains outstanding and  
3 accruing interest. And accruing interest at a significant  
4 rate in part because this is a solvent case. So it's not  
5 just interest at the regular rate, which is 12 plus percent,  
6 but default interest.

7 THE COURT: Maybe. Maybe according to the  
8 Layman case. But, you know -- probably, but maybe. There's  
9 a Fifth Circuit case on that from many years ago.

10 MR. O'NEILL: The point being that maybe --  
11 maybe the estate should be incurring those expenses and maybe  
12 it shouldn't, right. And that's a discussion, I think, that  
13 needs to be had with -- after full disclosure of information,  
14 right. And that's not -- it's not an issue for today, but  
15 it's an issue for the forthcoming weeks. And I think Your  
16 Honor should expect us to be back in front of you on that  
17 front.

18 Similarly, we now have not one but two Committees in a  
19 case -- in a liquidating case where a lot of the liquidation  
20 has already occurred. And so that naturally raises a  
21 question about what people are going to be doing, how to  
22 avoid duplication, and how to prevent professional fees from  
23 consuming creditor recoveries.

24 So, again, this is not a today issue. But --

25 THE COURT: Isn't -- isn't that -- isn't that

1 the Unsecured and the Equity Committees' concerns, not the  
2 very over-secured lender? I'm just trying to understand  
3 that.

4 MR. O'NEILL: I think it's a concern for all  
5 stakeholders, Your Honor.

6 THE COURT: There's plenty of money --

7 MR. O'NEILL: And something --

8 THE COURT: Wait. How much have we realized  
9 between these two sales?

10 MR. O'NEILL: The debtors haven't given us a  
11 full accounting.

12 THE COURT: We have 35 million plus 44  
13 million.

14 MS. WALLICE: That's correct, Your Honor. And  
15 in the escrow from Zokinvy is approximately, I believe that  
16 was 21.6 million. And I don't have the numbers with respect  
17 to the Avexitide, but we expect that to be over 30 million.

18 THE COURT: Yeah. I'm just trying to, you  
19 know, understand what I'm missing here. I mean, they have  
20 offered to pay you down 27 million and keep plenty of money  
21 in escrow to make sure the rest is paid. And we're talking  
22 about close to \$80 million total that have been realized.  
23 You're going to get paid in full, whatever the amount is  
24 that's allowed at the end of the day. And I don't know what  
25 that amount is going to be. I'm trying to understand the

1 reason for your comments. What am I missing?

2 MR. O'NEILL: My comments -- well, my comments  
3 are a result of several things. First, we're not getting a  
4 consistent flow of information from the debtors, which we  
5 should be.

6 THE COURT: You're not getting -- I'm sorry.  
7 We've got an IT person coming in here to make sure it's not  
8 an equipment problem at my end, my trouble hearing you.

9 Okay. Repeat what you were just saying.

10 MR. O'NEILL: I said, A, we're not getting a  
11 consistent flow of information from the debtors, which we  
12 should be. I think that's undisputable. And, two, the  
13 amounts that they've agreed to pay down so far are -- well,  
14 of course we don't object to a pay down. I think the  
15 estates, the various parties to the estate need to think  
16 about whether the continued accrual of interest is something  
17 that they want to incur. That's all. I'm just making a  
18 statement, Your Honor. I'm not asking you to make a ruling.  
19 And that together with the additional professionals raises  
20 the issue of what -- of the continued expenditures on behalf  
21 of the estate and whether they are -- what is the right thing  
22 for the estate to be doing? I don't think Your Honor needs  
23 to decide that. I just think it's an issue going forward in  
24 the case.

25 THE COURT: All right. Well -- anything else

1 from anyone? Anyone wish to --

2 MALE SPEAKER: Your Honor, I just wanted to  
3 correct something. I know we're just jumping into this case  
4 and we just -- we were retained this morning.

5 The figure I stated was a projection based on looking  
6 at the sales and the documents that are before the Court. I  
7 don't want to give the impression that we're getting  
8 information from the debtor that the lender is not. That was  
9 not -- I didn't state that we received that information from  
10 the debtor. And I don't want to make that appearance. I  
11 just want to correct the statement that was made. But we  
12 also look forward to working with all of the parties as we  
13 jump into this case. But I just wanted to make that clear.

14 THE COURT: Okay. Thank you.

15 Anyone else?

16 All right. Well, before I give a ruling on the same  
17 motion, were you going to make a separate presentation on the  
18 bar order thing? Am I forgetting? Did you already present  
19 that?

20 MS. WALLICE: Your Honor, we have not.

21 THE COURT: Okay.

22 MS. WALLICE: My colleague, Mr. Embry, will  
23 handle the bar date motion.

24 THE COURT: Okay. Well, we'll get to that in  
25 a minute. I was just making sure we didn't forget.

1 All right. Well, first and foremost, I will note that  
2 notice of the sale procedures and request for approval of the  
3 sale today of the Avexitide asset was consistent, in  
4 compliance with the Bankruptcy Code and Rules and it was in  
5 all ways reasonable. The evidence was quite compelling that  
6 there was both a sound business justification to go forward  
7 with the sale. And it was also compelling that we had a  
8 fulsome marketing process of this asset, there being evidence  
9 that more than 300 parties were contacted by SSG. We  
10 obviously had a stalking horse, Spruce. We had the competing  
11 bid of Amylyx and 122 rounds of bidding. And this process  
12 yielded an ultimate proposed purchase price of 35.1 million  
13 plus some cure costs that will be included in that.

14 The Court finds based on the evidence presented both by  
15 testimony, as well as the declarations, that this is a fair  
16 price and that we have a good-faith purchaser for value with  
17 Amylyx. It appears that the auction process was in all ways  
18 fair.

19 I will approve as a good-faith purchaser for value  
20 Amylyx at the bid price of 35.1 million plus the cure costs.  
21 And I will also approve as a good-faith purchaser for value  
22 Spruce at their back-up bid of 35 million plus cure costs, if  
23 for any reason the sale to Amylyx does not close as  
24 anticipated. Assuming it does close as anticipated, I do  
25 approve the payment of the bid protections negotiated with

1 Spruce, finding that they certainly provided value in this  
2 process through their stalking horse role.

3 With regard to the proposed disbursement of the sale  
4 process as have been outlined here by Ms. Wallice, I do  
5 approve the disbursement of fees as she has described. I  
6 think it is a fair offer of adequate protection, if you will,  
7 to Innovatus. And obviously this is without prejudice to  
8 anyone down the road arguing about the size of the Innovatus  
9 claim and payment of other amounts potentially to it.

10 With regard to the executory contracts that are  
11 proposed to be assumed. I do approve, I guess there are  
12 certain executory contracts that we did not have objectors  
13 on, right, we just are down to this one?

14 MS. WALLICE: That's correct, Your Honor. The  
15 TFS entities are the only objecting parties that are at issue  
16 in the sale.

17 THE COURT: All right. So I approve, as an  
18 exercise of good business judgment, the assumption and  
19 assignment and cure amounts that have been proposed with  
20 regard to the various executory contracts, carving out, of  
21 course, the one that you're still working on as outlined here  
22 today.

23 So with that, I do have your form of order. I haven't  
24 studied every line of it, but I understand, you know, with  
25 the exception of these Innovatus comments that everything has

1 been worked out, and so I will approve the substance of it  
2 and look for you to upload it. All right.

3 MS. WALLICE: Thank you, Your Honor.

4 THE COURT: All right. Thank you.

5 Now, shall we turn to Mr. Embry on the bar date?

6 MS. WALLICE: Yes. Thank you, Your Honor.

7 THE COURT: Thank you.

8 MR. EMBRY: Good afternoon, Your Honor.

9 Parker Embry, for the record, of Sidley Austin representing  
10 the debtors.

11 THE COURT: Good afternoon.

12 MR. EMBRY: This should be short and  
13 uneventful, hopefully.

14 But we filed the bar date motion at docket number 309  
15 on June 2nd. We, by that motion, are requesting a general  
16 bar date of July 22nd and a governmental bar date of  
17 September 30th. The form of order is standard for this  
18 District. We've received no objections. We also reviewed --  
19 or provided this to the United States Trustee upon filing.  
20 Received no comments. And my understanding is the Committee  
21 also has no comments to the form of order. So you have no  
22 objection before you, Your Honor.

23 There is one item I wanted to flag for you. And I have  
24 a red line to the extent you need it. But we -- during the  
25 pendency of this case -- and I'll provide it, if you would



1 like it. During the pendency of this case and really while  
2 the motion has been on file, KCC, our claims agent, has  
3 rebranded, is the proper term, and it is now going by Veritas  
4 Global. Because of that, the actual form of order and the  
5 exhibits, that hopefully you will sign later today, have  
6 replaced any mention of KCC with their new name. That  
7 includes the email, the attention line on mailing address,  
8 and the case website. I have a red line for you, if you  
9 would like to review it.

10 May I approach?

11 THE COURT: Sure.

12 MR. EMBRY: It might help when you receive the  
13 order.

14 THE COURT: Yes. I was not aware of the new  
15 name, rebranding as you call it. So I might have been  
16 confused.

17 MR. EMBRY: So, again, that would be the only  
18 change to the form of order you reviewed. That includes the  
19 exhibits; which is the bar date notice, the publication  
20 notice, and the form of proof of claim.

21 We've received no objections and we'd respectfully  
22 request you enter the order. And we will get going on  
23 getting this out.

24 THE COURT: Okay. And September 30th, that's  
25 probably exactly 180 days after the case was filed?

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1 MR. EMBRY: It is, Your Honor.

2 THE COURT: Okay. That's the main thing I  
3 know Ms. Kippes was focused on, or one of the main things.

4 All right. Anyone have anything to say? Again, the  
5 Committee will confirm they're good with it.

6 MR. GONZALEZ: No objection from the  
7 Committee.

8 THE COURT: The Unsecured Creditors Committee,  
9 I should say.

10 MR. GONZALEZ: No objection from the UCC, Your  
11 Honor.

12 THE COURT: Okay. All right.

13 Well, if there are no other comments, I certainly find  
14 this to be a well-founded motion, good cause. These dates  
15 seem reasonable. So I do approve, again, July 22nd, 4 p.m.  
16 Central Time as the deadline for non-governmental proofs of  
17 claim and September 30th for governmental entity proofs of  
18 claim.

19 All right. Very good. Well, I've kind of gotten a  
20 little bit of a preview, Mr. Curtin. Is there anything else  
21 you wanted to --

22 MR. CURTIN: No. Nothing from the debtors,  
23 Your Honor. Thank you for your time this afternoon.

24 THE COURT: All right. Well, I will just  
25 reiterate, this was such good news to read about and hear

1 about. And, you know, I certainly take to heart, I'll say to  
2 Mr. O'Neill, comments about concerns about, you know,  
3 professionals fees and whatnot. But just to kind of, I don't  
4 know, explain some of my questions back to him and any  
5 concern I might have expressed, you know, I -- this is in the  
6 for-what-it's-worth category for all parties in negotiating.

7 I remain baffled, shall we say, that it ever came to  
8 this, a bankruptcy filing. I just, you know, when I see the  
9 kind of value that two of the four drugs have yielded and,  
10 you know, there's going to be enough to pay unsecured  
11 creditors in full, and whatever the secured claim is in full,  
12 and value down to the equity, you know, I'm -- again, I'm  
13 just thinking out loud. Did it ever have to come to this?  
14 You know, the debtor kind of suggested that on day one,  
15 right, that they had some sort of game plan for a capital  
16 infusion in place. And I guess Innovatus wasn't receptive to  
17 that. Well, okay. But then the default was declared and now  
18 look at all of this value.

19 So if we have administrative expenses, you know, gee  
20 whiz, part of that is because we have a bankruptcy. And  
21 guess what, we have more value than maybe we thought, certain  
22 people thought we were going to have. And, guess what, we  
23 have an Unsecured Creditors Committee. You know, there's a  
24 need for that where there's value beyond secured claims.  
25 And, guess what, now we have an Equity Committee. Because,

1 guess what, there's a need for that, if they suddenly become  
2 the fulcrum security, as we say.

3 So I'm just trying to understand where everyone's  
4 coming from. And so don't let my grumpiness be  
5 misunderstood. I'm thrilled. I am thrilled with SSG and,  
6 you know, all of the professionals involved on behalf of the  
7 debtor, and the debtors' management and board. Wow, talk  
8 about pulling a rabbit out of the hat. You know, we just --  
9 it's wonderful. But, you know, I just, again, a situation  
10 like this makes me wonder, you know, why are we here? Why  
11 couldn't this have been worked out outside of court?

12 So, again, I'll maybe see evidence one day that will  
13 help me understand, because I'm just the person back here.  
14 not the person hearing everything going out outside of court.  
15 But, you know, just I hope everyone gets reasonable outside  
16 the courtroom. And, you know, when we're talking about the  
17 size of this claim, and default interest, and prepayment  
18 penalties, et cetera, et cetera, because your Judge is just  
19 wondering, did there ever need to be a case? Was an event of  
20 default really -- I just don't understand what prompted  
21 things. But maybe I will one day. Okay.

22 So I hope that helps. I'll hear the evidence. But it  
23 just appears -- well, we had a contested cash collateral  
24 hearing. Don't let them use cash collateral. Maybe we  
25 should just liquidate. What if I had accepted that argument?

1 We have an appeal of my cash collateral order. We have an  
2 appeal of a motion to transfer venue. Let's just be  
3 productive, everybody. Okay.

4 Again, congratulations on this good result and we'll  
5 look for your orders.

6 MR. CURTIN: Thank you, Your Honor.

7 (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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