

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

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

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TRANSCRIPT OF PROCEEDINGS

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BE IT REMEMBERED, that on the 1st day of May, 2024,  
before the HONORABLE STACEY G. JERNIGAN, United States  
Bankruptcy Judge at Dallas, Texas, the above styled and  
numbered cause came on for hearing, and the following  
constitutes the transcript of such proceedings as hereinafter  
set forth:

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P R O C E E D I N G S

THE COURT: All right. We will begin now our status conference and emergency motion to seal in the Eiger BioPharmaceutical, Inc., case. Case 24-80040. For anyone on the Webex who didn't get the memo, we were scheduled to start at 1:30 Central Time and my courtroom deputy got a request from debtor's counsel to push it back one hour because perhaps productive negotiations were underway outside the courtroom. So here we are now.

I'll get appearances first from debtor's counsel, please.

MR. CURTIN: Good afternoon, Your Honor. William Curtin from Sidley Austin. I'm joined by my colleague, Anne Wallice.

THE COURT: Good afternoon.

Any other counsel for the debtor?

All right. I ask because I notice we have special counsel who has weighed in on the Merck issues. Do we have an appearance from special, proposed special counsel?

MR. GAITHER: Yes, Your Honor. John Gaither for the debtors as proposed special conflicts counsel. Mr. Neligan is on the line too. I think he may have been muted. I heard him speaking, but you didn't hear him, so I think he may have been on mute.

THE COURT: Okay. Very good.

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1 All right. Do we have an appearance from Merck? I saw  
2 that they filed a reservation of rights, I think late last  
3 night. So I'll take their appearance.

4 MR. VAN HORN: Good afternoon, Your Honor.  
5 Eric Van Horn of Spencer Fane on behalf of Merck Sharp &  
6 Dohme as local counsel for Covington Burling. And joining  
7 our Webex is Michael St. Patrick Baxter, Martin Beeler, and  
8 Joseph Dunn of Covington & Burling.

9 THE COURT: Okay. Good afternoon to all.

10 I will ask, any other parties in interest wishing to  
11 appear?

12 I see Ms. Young. Are you appearing for the U.S.  
13 Trustee?

14 MS. YOUNG: I am, Your Honor. Liz Ziegler  
15 Young for the U.S. Trustee.

16 THE COURT: All right. Anyone who wishes to  
17 appear?

18 Mr. Morse, you're out there for the buyer; is that  
19 correct?

20 MR. MORSE: Yes, Your Honor. Joshua Morse  
21 from Pillsbury Winthrop Shaw Pittman LLP on behalf of Sentynl  
22 Therapeutics, Inc., the proposed purchaser of the -- of the  
23 Zokinvy assets.

24 THE COURT: Okay. Very good.

25 Anyone else who wants to make an appearance on the

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1 record?

2 All right. Well, as I said, we had a status conference  
3 set today, as well as a motion to seal with regard to Merck  
4 documentation that was filed by the debtor.

5 Would the debtor like to start us off and see what we  
6 need to accomplish?

7 MR. CURTIN: Yes, Your Honor. If it's all  
8 right with you, I'll start it off. This is William Curtin  
9 from Sidley, proposed counsel to the debtor.

10 First of all, thank you, Your Honor, for accommodating  
11 us for this status conference, as well as scheduling the  
12 hearing on this motion for next Tuesday.

13 Your Honor, it's not an exaggeration to say that the  
14 debtors have been working around the clock to try and resolve  
15 this issue so that we can get the sale of the Zokinvy assets  
16 closed. As Your Honor is aware, there are both financial and  
17 non-financial reasons why this particular sale just must  
18 close and must close soon.

19 Your Honor, I'm cautiously happy to report that I  
20 believe that the parties are very close to a resolution of  
21 the issues that would obviate the need for Your Honor to hear  
22 the motion next Tuesday. But unfortunately, despite the  
23 extra hour, I'm not able to report that we are -- we are  
24 settled. We are in the process of scheduling an additional  
25 hopefully final settlement call for directly after this

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1 hearing. And hopefully we'll be able to work through what is  
2 one remaining issue out of what was many more than one, Your  
3 Honor. So if we are able to reach this, this settlement,  
4 again, it will obviate the need for a hearing. The majority  
5 of the settlement will be incorporated in a side letter  
6 concept that was already part of the sale order that Your  
7 Honor approved and the APA.

8       There will be, again, assuming we're able to settle,  
9 which I'm very confident we will, there will be a request  
10 from Your Honor to enter a very limited supplemental sale  
11 order. That would be, of course, agreed to as between the  
12 debtors, Sentylnl, and Merck. It would be limited to  
13 essentially two discrete issues; one regarding the license  
14 and one regarding payments to Merck, which is part of the  
15 settlement.

16       So the way I hope this will happen is that we will  
17 resolve the remaining issue and get to a closing tomorrow.  
18 That is our goal. And then we'll be able to inform the Court  
19 of that, as well as submit the agreed order, which that order  
20 is already an agreed form as to between the parties. So it's  
21 just a matter of settling that one -- that one issue.

22       So that's -- that's what I have on status. I'm sure  
23 perhaps others will want to weigh in. But as Your Honor  
24 mentioned, we did -- the debtors did retain a special  
25 conflicts counsel for purposes of the motion, which includes

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1 the motion to seal. So when we get to that portion of the  
2 hearing, I'll be turning it over to Mr. Neligan and his team.

3 THE COURT: All right. Is there anyone who  
4 wanted to put anything on the record in the status conference  
5 portion of our hearing? You know, obviously I'm pleased that  
6 there's been a lot of activity outside the courtroom and  
7 you're, quote, close -- you're cautiously happy you're close  
8 to resolution, I think is the phrasing you used. That's  
9 always wonderful to hear. Obviously I hope it stays on  
10 track.

11 Anyone, again, want to put anything on the record?

12 All right. Well, I think this goes without saying, but  
13 I obviously understand this is a hugely important issue for  
14 Sentylnl and for a closing on the sale. So it doesn't  
15 surprise me that people are working around the clock. And I  
16 would hope that will continue to happen until hopefully  
17 you've got this ironed out.

18 Reading the reservations of rights of Merck, I, you  
19 know, was already feeling a little optimistic that you could  
20 get there. So I will just stay tuned. And I assume

21 Mr. Curtin or someone on your team will notify my courtroom  
22 deputy, Traci, as soon as you are in a position to say, we've  
23 resolved all our issue and we don't need any court time on  
24 this Tuesday and I will plan accordingly. Either be reading  
25 up on pleadings over the weekend on this or not, depending on

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1 what I hear. So I know you've always extended her that  
2 courtesy in the past to let us know if things are worked out,  
3 so I trust you will do so.

4 MR. CURTIN: Absolutely, Your Honor. Nothing  
5 would make me happier than to make that phone call. So we  
6 will absolutely do that.

7 THE COURT: Okay. Thank you.

8 Now --

9 MR. NELIGAN: Your Honor -- go ahead.

10 THE COURT: Mr. Neligan, good to see you. Are  
11 you going to weigh in on the sealing motion now?

12 MR. NELIGAN: Yes, I am, Your Honor. And I  
13 appreciate your patience and time on this.

14 We are hopeful that we can get a settlement. And  
15 although our motion was originally filed in connection with  
16 the underlying motion regarding the license agreement, we  
17 realize that even if there is an agreement or a settlement,  
18 there will be a supplemental order. And there may well be  
19 either pleadings or orders or exhibits that will be entered  
20 related to the sale that need to be made confidential and  
21 sealed. And accordingly, we had initially requested that the  
22 Court seal the underlying motion and the license agreement,  
23 sub-license agreement which we provided to the Court. But  
24 over the course of the last few days as we participated in  
25 the settlement discussions it became clear that the order on

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1 sealing should go beyond simply the underlying motion and  
2 extend to future orders, or, you know, exhibits, or documents  
3 that relate to this sale to Sentynl and have information that  
4 would otherwise be contained in the license agreement and be  
5 required to be maintained as confidential.

6 And with that in mind, we have worked with Merck and  
7 the other parties to come up with an order that deals not  
8 only with the current situation, if we end up going to court,  
9 but also potentially future situations, even if we do have an  
10 agreement. And I think at this juncture we have an agreement  
11 on the form of that order. We have been working with the  
12 different parties to make sure everyone is -- has signed off  
13 on the order. And with that in mind, I can turn it over to  
14 counsel for Merck. But, you know, this is on one level  
15 driven by Merck. But from the debtor's standpoint, we want  
16 to make sure there is no question that we have complied with  
17 the license and the confidentiality provision.

18 And I would propose that we submit the order sealing  
19 these documents and future documents to the Court for review  
20 and hopefully for entry.

21 THE COURT: All right. Well, thank you,  
22 Mr. Neligan.

23 And I'll just say for the record and everyone's  
24 benefit, most often the Court will consider a sealing motion  
25 like this in chambers, unless I see something unusual or that



1 I think requires vetting on the record. I'll just look and  
2 see if I think 107 or other applicable authority justifies  
3 sealing and I'll do it without a hearing. But I think it was  
4 good, since we were having a status conference today any way,  
5 to go ahead and have this hearing.

6 I've read the motion. It certainly seems to be a  
7 reasonable request under 107. I'll start with Merck's  
8 counsel. Obviously I'm assuming you're happy that this  
9 motion is being pursued. But is there anything you feel like  
10 you need to say about this?

11 MR. VAN HORN: Thank you, Your Honor. Eric  
12 Van Horn on behalf of Merck.

13 I've worked with Mr. Neligan and his team and Ms. Young  
14 and the Covington Burling folks. And with some additional  
15 revisions to the proposed order, I think we've got a form of  
16 agreement on the sealing -- on the motion to seal. And  
17 certainly appreciate specifically the United States Trustee's  
18 time with addressing some of these issues. So I'll -- I will  
19 defer to my Covington Burling friends, if they've got  
20 anything else to add. But, otherwise, I think we've got to a  
21 point of an agreed form of order on the motion to seal.

22 THE COURT: All right.

23 MR. BAXTER: Michael Baster, Your Honor, for  
24 Covington Burling representing Merck. We have nothing  
25 further to add. Thank you.

1 THE COURT: Okay. Thank you, Mr. Baxter.

2 And you mentioned the U.S. Trustee. Usually when I do  
3 one of these sealing orders, we have language that the U.S.  
4 Trustee will have access to the information. And sometimes  
5 we have catchall that, you know, it's without prejudice to  
6 any party in interest down the road asking to see these  
7 items. And the Court would have notice and a hearing if  
8 anyone out there somehow has an argument they're entitled to  
9 see this.

10 So, Ms. Young, I'll ask to hear from you. Do you have  
11 the language that the U.S. Trustee can see this information?

12 MS. YOUNG: Yes, Your Honor. And we have been  
13 working very diligently with the parties to get our -- to get  
14 comfortable with the language. So I think we now have  
15 agreements on the form of language that will allow the  
16 document to be shared with us, with the Court, as well as  
17 providing mechanism for parties -- other parties to request  
18 that the order unseal certain portions of it, if it so needs  
19 to be an issue down the line at some point.

20 THE COURT: Okay. Very good.

21 Mr. Morse, you're obviously in this loop. You have  
22 anything you want to add?

23 MR. MORSE: This is Joshua Morse, Your Honor,  
24 for Sentynl Therapeutics. We have nothing to add.

25 THE COURT: Thank you.

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1 All right. Well, anything else anyone wants to discuss  
2 at this point that we haven't addressed?

3 MR. CURTIN: Yes, Your Honor. Yes, Your  
4 Honor, It's William Curtin from Sidley, again.

5 And in the truest nature of restructuring,  
6 multi-tasking, and the fluid nature of the situation, I'm  
7 extremely pleased to inform the Court that while we were on  
8 the hearing, there were some emails going back and forth and  
9 it appears that we have reached agreement in principle and in  
10 language on the side letter solution. So nothing is ever  
11 done until it's signed, as we all know. But we are  
12 significantly closer at 2:51 Central than we were when I last  
13 spoke at 2:41 Central.

14 THE COURT: All right.

15 MR. CURTIN: I'm not much more optimistic even  
16 than I was before.

17 THE COURT: Okay. Well, I feel like I get  
18 some credit, even though I deserve no credit, just because --

19 MR. CURTIN: No, you get credit. Believe me,  
20 believe me, Your Honor, you get credit.

21 THE COURT: Thank you. I only say that  
22 because it happened while we're on the record. But I'm being  
23 silly, of course.

24 All right. Well, that is wonderful. And compliments  
25 to smart lawyers and clients who are getting things done,

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1 multi-tasking, as you said.

2           So if you would just let Traci Ellison, my courtroom  
3 deputy, know by either a phone call or email that there's an  
4 order in my queue that has everyone's agreement, I will  
5 promise I will get it signed very quickly. And so I'll  
6 actually, I guess, be expecting two orders hopefully before  
7 the end of today, or in the next 24 hours the sealing order  
8 and the resolution of the Merck issues, whatever form that  
9 takes. I think you said it might be a supplement to the sale  
10 order, or something to that affect.

11           MR. CURTIN: Yes, Your Honor. Most of the  
12 substance is just in the side letter itself, which is just  
13 going to be the APA. But there will be -- there will be a  
14 very short supplemental sale order with really just two  
15 substantive provisions.

16           THE COURT: Okay.

17           MR. CURTIN: So, yes, Your Honor, we'll -- as  
18 soon as we get this done, we will let your courtroom deputy  
19 know. And also that order will be uploaded.

20           THE COURT: Okay. And I will just say for the  
21 record, because people tend to order transcripts right and  
22 left in Chapter 11 cases, I am granting the extended or  
23 expanded, I should say, sealing relief, you know, not just  
24 the attachments to the Merck motion, but any pleadings that  
25 might get filed relating to this Merck license agreement and

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1 orders. I think it is appropriate for any of that related to  
2 Merck and the license to be sealed.

3 All right. Well, very good. If there is nothing  
4 further, we are adjourned.

5 MR. CURTIN: Thank you, Your Honor.

6 MALE SPEAKER: Your Honor, thank you.

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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CINDY SUMNER, CSR #5832  
Expires 10-31-2024  
Cindy Sumner, CSR  
5001 Vineyard Lane  
McKinney, Texas 75070  
214 802-7196

CINDY SUMNER, CSR (214) 802-7196