

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 BIOPHARMACEUTICAL, )  
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 29th day of July, 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 a setting this  
3 morning. I think people have been very busy over the weekend  
4 from looking at the docket. We have a setting in Eiger  
5 BioPharmaceuticals. Case number 24-80040. Let's get  
6 appearances first from our debtor team.

7                   MR. CALIFANO: Good morning, Your Honor. Tom  
8 Califano, Sidley, on behalf of the debtors. With me are my  
9 colleagues Anne Wallace, Andrew (inaudible name), and Parker  
10 Embry.

11                  THE COURT: Okay. Thank you.  
12 All right. How about for the secured lender?

13                  MR. PROSTOK: Good morning, Your Honor. Jeff  
14 Prostok, Forshey Prostok for Innovatus.

15                  THE COURT: All right. Good morning.  
16 Our Unsecured Creditors Committee.

17                  MR. GONZALEZ: Good morning, Your Honor.  
18 Daniel Gonzalez of Meland Budwick on behalf of the UCC. And  
19 joining me in court is Garrick Smith from Munsch Hardt, our  
20 local counsel.

21                  THE COURT: Okay. Good morning.

22                  MR. GONZALEZ: Thank you.

23                  THE COURT: All right. How about for the  
24 Equity Committee?

25                  MS. VENUS: Good morning, Your Honor. Margie

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1 Venus from McKool Smith. With me Warren Martin and Rachel  
2 Parisi from the Porzio Bromberg firm.

3 THE COURT: Okay. Good morning to all.

4 All right. Do we have an appearance from the U.S.  
5 Trustee? It looks like we do.

6 MS. YOUNG: Good morning, Your Honor. Liz  
7 Ziegler-Young for the U.S. Trustee.

8 THE COURT: Good morning.

9 All right. That's all of our courtroom appearances.  
10 Is there anyone on the Webex who desired to make an  
11 appearance?

12 All right. Mr. Califano. I had wonderful notebooks  
13 delivered last Friday. And then I popped on my computer at  
14 home last night and saw an Equity Committee objection and a  
15 revised disclosure statement and plan. And my law clerk says  
16 there's still another amended disclosure statement.

17 MR. CALIFANO: Yes. I apologize, Your Honor,  
18 for the last minute scramble. But I'm happy to say that we  
19 have resolved all of the objections.

20 THE COURT: Okay.

21 MR. CALIFANO: And if it's okay with Your  
22 Honor, I'd like to give a little bit of an overview of what's  
23 going on and talk about what we've done to resolve things.

24 THE COURT: Okay.

25 MR. CALIFANO: And then just discuss the

1 scheduling issue.

2 THE COURT: All right. Sounds good.

3 MR. CALIFANO: So good news, and especially  
4 for a case this size, Your Honor, has had more twists and  
5 turns and more things that I've seen for the first time in my  
6 career than any other case. But I'm happy to inform the  
7 Court that we are very close to a sale on our two remaining  
8 drugs.

9 THE COURT: Okay.

10 MR. CALIFANO: And as has been the pattern  
11 here, we're getting a lot more than we ever thought we would.  
12 So that's good news. And we hope to be submitting a sale  
13 motion for the sale of the motion for August 8th, okay, which  
14 will be in compliance with the past bid procedures that we  
15 had in the sale motion. And we have agreed with the Equity  
16 Committee that to the extent that something arises between  
17 now and confirmation that is a better deal, i.e., some sort  
18 of reorganization transaction, we'll consider it with the  
19 fiduciary -- in the debtor's board's fiduciary duties.

20 Your Honor, with that, we need to exit quickly because  
21 of the mounting fees and expenses here. So we intend to do  
22 that and we're moving along towards confirmation. We're  
23 working with the parties for a fully consensual plan. The  
24 UCC has raised an issue that we're going to continue to work  
25 with them on on whether they are impaired or not. The EC

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1 raised an issue. That's resolved in the amended disclosure  
2 statement that was filed at docket 463. And Innovatus has  
3 raised an issue.

4 Now, there was a -- I think there was an ambiguity in  
5 the plan that Innovatus read to me and that they would not  
6 get post-effective date interest. But our position was that  
7 the reserve that we're setting up include post-effective date  
8 interest. So we didn't come up with the language now, but  
9 have agreed with Mr. Prostok that between now and the next  
10 couple of days we'll come up with language that clarifies  
11 that ambiguity. It is not -- just for the record, it is not  
12 the debtor's intention to deny Innovatus post-effective date  
13 interest, to the extent this Court allows it.

14 We do think, and it's unclear from their proof of  
15 claim, it doesn't really -- it doesn't tell us how much they  
16 believe they're owed. We're going to ask the Court at the  
17 end of this hearing to schedule a hearing to determine the  
18 amount of their claim. Because it is our intention to  
19 unimpair them, Your Honor. And so we will need to know what  
20 is the amount of that claim. And, you know, we can deal  
21 with, you know, an objection estimation similar motion. But  
22 we would like to get a hearing today to give us enough time  
23 before confirmation so it's not a confirmation issue.

24 We have an agenda, Your Honor, at docket number 459.  
25 And with Your Honor's permission, we'd like to slightly

1 reorder that --

2 THE COURT: Okay.

3 MR. CALIFANO: -- where the first is the  
4 modification to the trading order. And Ms. Wallice will  
5 address that. We also would like to add to the agenda the  
6 resolution of the standing motion.

7 THE COURT: Okay.

8 MR. CALIFANO: The parties -- and Ms. Wallice  
9 will bring the Court through it -- have agreed to a  
10 stipulation so, hallelujah. Maybe things are changing here.

11 THE COURT: You know, I actually signed it  
12 Friday night, so I -- you know, boy, I'm going to sign that  
13 quick before someone changes their mind.

14 MR. CALIFANO: Exactly.

15 So we have that. And then we have the disclosure  
16 statement, which Ms. Wallice will also -- if I could just get  
17 back at the end of that, Your Honor, and we could talk about  
18 the schedule.

19 THE COURT: Okay. Very good.

20 MR. CALIFANO: All right. Thank you very  
21 much.

22 THE COURT: All right. Anyone have a burning  
23 desire to make something like an opening statement before I  
24 hear from Ms. Wallice?

25 MR. PROSTOK: Your Honor, at some point I

1 would like to make a comment. Is now a good time?

2 THE COURT: Sure.

3 MR. PROSTOK: Your Honor, Jeff Prostok, one of  
4 the lawyers representing Innovatus, the secured creditor.

5 You know, we've been working with the debtor, the UCC,  
6 the Equity Committee and jointly we've been able to solve  
7 what we think are a lot of issues that were outstanding in  
8 the case. We've resolved the cash collateral, which is going  
9 to allow for the dismissal of the cash collateral appeal; the  
10 joint stipulation with the UCC and the Equity Committee  
11 regarding derivative standing related to the extended  
12 challenge period has been handled by agreement. And I think  
13 you just signed the order, it sounds like. And we appreciate  
14 the cooperation that the parties have shown and we're hopeful  
15 that going forward that cooperation will continue.

16 We agree with the debtors that this is an appropriate  
17 case for a conditional approval of a disclosure statement and  
18 combined hearing for final approval of the disclosure  
19 statement, a plan confirmation. And I think as the Court is  
20 aware, we haven't filed a formal objection to approval of the  
21 disclosure statement on a conditional basis, but we do have  
22 concerns. And I'd like to raise those with the Court.

23 The debtor has agreed to include a broad reservation of  
24 rights on behalf of Innovatus in the disclosure statement.

25 But I want to make clear on the record that our lack of a

1 formal objection in now way is an adoption of any of the  
2 debtor's contentions of a disclosure statement. And also  
3 that our lack of objection does not mean that we don't have  
4 serious concerns about the debtor's ever-changing plan,  
5 because we do.

6 Your Honor, it's a liquidating plan. It's simple,  
7 right, liquidating plan. Well, it's not. And it starts with  
8 Innovatus, the secured creditor being deemed by the debtor as  
9 unimpaired. And we realize it's a confirmation issue. But I  
10 do think it's important, Your Honor, just to hear the  
11 highlights today of that impairment issue, because I think it  
12 will help all of the parties involved.

13 As the Court's aware under 1124(1), a class is impaired  
14 unless a plan leaves unaltered the legal, equitable, and  
15 contractual rights to such a claim or interest, entitles the  
16 holder of such a claim or interest. Case law shows this is  
17 an incredibly high standard. If a plan alters a creditor's  
18 rights in any way, Your Honor, the class is impaired. So  
19 what does that mean in a liquidation case where the plan  
20 proposes to satisfy the secured lender's claim with cash  
21 payment? What treatment is needed to leave the lender  
22 unimpaired under 1124(1)?

23 Your Honor, the Texas Rangers case, I think, is helpful  
24 in that regard. And you helped Judge Lynn on that case.  
25 You're familiar with it. In that case Judge Lynn pointed out



1 that for starters leaving a secured creditor unimpaired means  
2 guaranteeing full post-petition interest to the date of  
3 payment. And, Your Honor, I'm glad to hear that that  
4 inconsistency has been cleared up today and that we will be  
5 receiving interest. So I think that issue is going to be  
6 handled. But that's not all.

7 The plan has to carry forward the lender's contractual  
8 right from and after the effective date to the date of  
9 payment. Otherwise, the secured lender's class is impaired.  
10 So as a practical matter, what does that mean? First of all,  
11 they provide interest, post-petition interest through the  
12 date of payment. Second, the plan has to preserve the  
13 lender's security position and other contractual rights until  
14 payment is full. And we think the plan current form doesn't  
15 do that. The proposed escrow, as Mr. Califano alluded to, it  
16 calls for an escrow of \$22 million on the effective date for  
17 payment of the Class 3 claims, our class. And we don't think  
18 the amount of escrow is near adequate to cover our potential  
19 claim. Our claim is almost \$21 million, not including  
20 default rate interest, cost, expenses, and other items. It's  
21 fair, Mr. Califano, we need to give him a number of what that  
22 actually is and what we think needs to be reserved. And  
23 we'll do that. And we're hopeful that we'll be able to  
24 consensually get to a number because it makes sense. Your  
25 Honor, we shouldn't be fighting. We shouldn't be spending

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1 money needlessly arguing over reserve when there's money  
2 that, according to the debtor, is going to ultimately go to  
3 equity. We're spending their money, Your Honor. We don't  
4 want to do that needlessly. We need to come to a number that  
5 makes sense and move forward.

6 The plan, as we read it, also calls for the cancelation  
7 of loan documents and agreements on the effective date. And  
8 obviously that's not preserving our security position, our  
9 contractual rights until the claim is resolved. And that's  
10 impairment.

11 The plan calls for all of the assets to vest in the  
12 plan administered free and clear of liens. There's no  
13 exception for the lender's liens to be preserved while the  
14 claim litigation is being resolved. And that's a clear  
15 infringement of a lender's rights in our security. And  
16 that's impairment. The plan alters our indemnity rights.  
17 That's impairment.

18 So there's a lot of issues, Your Honor, that we think  
19 need to get resolved. And treating us as an unimpaired at  
20 this time is going to create issues at confirmation. And I  
21 want the Court to be aware of that.

22 Your Honor, until this weekend, every class was deemed  
23 unimpaired. Now the unsecureds are deemed impaired. And I'm  
24 not sure why they're being deemed -- I guess because they're  
25 not paying post-confirmation interest. But I'm not sure.

1 And the question is what's the economic reason for this  
2 last-minute change? What changed over the weekend? We'd  
3 like to know. And if I was representing the Unsecured  
4 Creditors, I would want to know. If I had a client who was  
5 going to vote, I'd want to know what legal rights I'm giving  
6 up between when we were unimpaired and now that we are  
7 impaired. What -- what -- that needs to be explained. And I  
8 think it can be. But I can't tell what it is. And I think  
9 that needs to be figured out. It's a liquidation plan, Your  
10 Honor. And according to the debtor's equity is in the money.  
11 We'd like to avoid spending equity's money needlessly.

12 Which brings me really to my final point. And if we're  
13 going to go down this path -- and I'm being really serious  
14 now, Your Honor -- our client will do everything it possibly  
15 can to bring you a consensual confirmation hearing. But if  
16 we can't, we're going to need a little bit of discovery. And  
17 we think September 5th is tight. We'd ask the Court for an  
18 extra week to September 12th. There's a holiday in between  
19 that. Our recent request, they haven't said, no, but they  
20 haven't said, yes, either. And we don't think any party  
21 would be harmed by this request. It may actually help get to  
22 a resolution of some of these other issues by having that  
23 extra week.

24 And then I have a couple of other requests, as well,  
25 Your Honor. We'd like some sort of deadline for the debtor

1 to file its brief in support of confirmation. And then some  
2 opportunity to file a reply, if that's appropriate. And we'd  
3 also like to see a deadline for the plan supplement to be  
4 filed. There's a lot of important documents included within  
5 that plan supplement. And we don't want to receive it on the  
6 eve of confirmation.

7 And one other thing, Your Honor, I'm sorry. The  
8 revised notice of order, it contains a bunch of new stuff  
9 that we haven't had an opportunity to read. And if the Court  
10 does grant the debtor's relief today, we'd like an  
11 opportunity to review the order before it's submitted to you  
12 for entry. And that's all I have, Your Honor, unless you  
13 have questions.

14 THE COURT: Thank you. All right. I do not.  
15 And obviously we're going to talk about scheduling, I guess  
16 towards the end of today.

17 MR. CALIFANO: Yes. If I may -- should I do  
18 it now or wait?

19 THE COURT: Well, let me ask. Does the  
20 Creditor's Committee, Equity Committee, U.S. Trustee have  
21 anything as far as an opening statement you desire to make?

22 MR. GONZALEZ: Not from the UCC, Your Honor.

23 THE COURT: Okay.

24 MS. PARISI: Your Honor, good morning. Just  
25 for the record, Rachel Parisi from Porzio, Bromberg & Newman

1 on behalf of the Equity Committee.

2 I do think it makes sense to hear from the debtors this  
3 morning. But we just wanted to preview in terms of the  
4 disclosure statement, we'll take the blame for the late 11th  
5 hour changes, at least this morning, to get our issue  
6 resolved with respect to language on the third-party  
7 releases. So -- and I just think in terms of a preview of,  
8 you know, what may or hopefully may not come on confirmation  
9 is the Equity Committee's concern regarding the broad  
10 releases. But the debtors have confirmed and the language is  
11 now included that they will work with us over the next few  
12 weeks through to confirmation to work through that, engage in  
13 some discovery, and hopefully get us comfortable with what's  
14 in there. And if not, you know, it might be before Your  
15 Honor at confirmation. But I just wanted to preview that.

16 We might have some further comments once the debtors  
17 come back to the podium. But I just wanted to preview that  
18 for Your Honor.

19 THE COURT: Thank you.

20 MS. PARISI: Thank you.

21 THE COURT: All right. Well, it looks like  
22 that's all of the opening statements.

23 Mr. Califano.

24 MR. CALIFANO: Thank you, Your Honor.

25 I heard Mr. Prostok about the issues that they have

1 with the claim and that the amount that we put in the plan is  
2 not enough. But we haven't got a number from them. Some of  
3 the other issues, like the preservation of liens, the  
4 continuation indemnification, we have a provision for the  
5 indemnification. If they tell us that's not enough, that's  
6 fine. We have every intention to unimpair them. We don't  
7 need discovery, we don't. Because it's their numbers that we  
8 have to get. I don't know why they need discovery from us on  
9 their numbers. And then we should have an interim hearing.  
10 Hopefully we can resolve it, we can resolve that issue. But  
11 if not, we'll be before Your Honor. Your Honor will tell us  
12 how much we throw -- we put into the reserve. And then we go  
13 forward for confirmation.

14 I do want to talk about some of the issues they raised.  
15 We have already agreed to file the plan supplement, which  
16 they said -- we've already agreed to file that by August  
17 16th. That's plenty of time for a September 15th  
18 confirmation hearing. We also, Your Honor, have 38 days  
19 between today and the disclosure statement hearing -- I'm  
20 sorry, the confirmation hearing. I think that's plenty of  
21 time for this case. As Mr. Prostok says, it's a simple  
22 liquidation, liquidating case. I am sure that we can resolve  
23 the issues we have with the unsecured creditors. Already  
24 resolved the issues with the Equity Committee. And if Your  
25 Honor just puts something on the calendar, we can work

1 towards a resolution of the amount of the Innovatus claim.

2 But if we can't, then Your Honor can decide. It's a pretty  
3 simple issue. And then we just set up the reserve.

4 So thank you, Your Honor.

5 THE COURT: Thank you.

6 All right. Ms. Wallace, why don't we knock out the,  
7 what I call the Louisiana -- well, the Louisiana World motion  
8 is the one I already signed the stipulation on. I don't know  
9 if you want to put anything on the record for parties who may  
10 not have seen the stipulation and order I signed.

11 MS. WALLICE: We did. And I think the reason,  
12 Your Honor, that we'd like to talk through it is because I do  
13 think that this represents a great change, kind of as we go  
14 forward in this case. It's a fully consensual resolution to  
15 the standing motion.

16 So this relates to the motion that was filed at docket  
17 number 428. And the stipulation Your Honor signed was  
18 entered at docket number 454. The standing motion was  
19 resolved via consensual stipulation. This stipulation does  
20 extend the Equity Committee, the Unsecured Creditor's  
21 Committee, and the debtor's challenge period to September 9th  
22 and grants non-exclusive derivative standing to the Equity  
23 Committee and Unsecured Creditor's Committee. It further  
24 provides for the withdrawal of the cash collateral appeal.  
25 The parties will seek to withdraw the standing motion. But

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1 just wanted to put that on the record because we do think  
2 that this was a great outcome and a good resolution to that  
3 standing motion.

4 THE COURT: All right.

5 MS. WALLICE: Thank you, Your Honor.

6 THE COURT: Any party in interest want to say  
7 anything about this?

8 All right. Well, again, I signed the order late  
9 Friday. And so I was pleased to see it was worked out.  
10 Thank you.

11 MS. WALLICE: Thank you, Your Honor.

12 And next I'll move actually to the modification to the  
13 NOL motion, the trading motion.

14 Your Honor, because of the change in position of the  
15 equity holders, the debtors received a request from the SEC  
16 and the U.S. Trustee's Office to modify the 30-day objection  
17 period to 7 calendar days related to requests to transfer, as  
18 well as the notice related to the intent to take the  
19 worthless stock deduction. The debtors have no issue with  
20 that. We've received no objections. A certificate of no  
21 objection was filed at docket number 458. I'm happy to  
22 answer any questions Your Honor has. But, otherwise, we'd  
23 respectfully ask for the entry of that modification order.

24 THE COURT: Okay. And just to be clear, all  
25 it does it reduce down to 7 days the debtor's time to



1 object --

2 MS. WALLICE: Exactly, Your Honor.

3 THE COURT: -- on any of those -- either an  
4 accumulation of stock, reduction in stock, or a worthless  
5 stock deduction. Anyone have anything to say?

6 All right. Well, I do find this is an exercise of  
7 reasonable business judgment. And so I do approve that  
8 motion.

9 MS. WALLICE: Thank you, Your Honor.

10 With that, I know there's been quite a bit of  
11 conversation related to the disclosure statement, so I will  
12 try to keep it brief, because we have talked about some of  
13 the key issues. But next the debtors will be moving to a  
14 request to enter the disclosure statement scheduling  
15 hearing -- excuse me -- disclosure statement scheduling  
16 motion. That was originally filed at docket number 426. As  
17 Your Honor noted, there were a number of revised versions of  
18 that order, as well as the related documents that had been  
19 filed. The most recent revision was filed at docket number  
20 463.

21 You've heard from the parties. The debtors have been  
22 working very closely with the Equity Committee, the Unsecured  
23 Creditor's Committee, Innovatus, as well as the U.S.  
24 Trustee's Office to incorporate changes related to those  
25 documents. And we have fully resolved all issues. Obviously

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1 there are confirmation issues that remain outstanding, as  
2 you've heard today. But I don't think that today is the time  
3 to take those up. Some -- just some key changes that I  
4 thought would be helpful to walk the Court through from the  
5 initially filed scheduling motion.

6 First, we highlighted -- Mr. Califano highlighted this  
7 previously. There has been the addition of a deadline by  
8 which the debtors have to file the plan supplement. That has  
9 been modified in the plan as part of the definition of plan  
10 supplement. And that is set at August 16th, which is two  
11 weeks before the plan objection deadline. Then there's also  
12 been the addition of solicitation packages for Class 4, the  
13 general unsecured claimants; and Class 6, the existing equity  
14 interest holders, as well as related solicitation procedures  
15 regarding that solicitation and changes to the documents  
16 related to those modifications.

17 THE COURT: Okay.

18 MS. WALLICE: Happy to answer any questions  
19 Your Honor has. But with that and because of the  
20 resolutions, we would respectfully ask for entry of that  
21 order and setting of a hearing on September 5th.

22 THE COURT: All right. Well, a couple of  
23 questions.

24 Mr. Prostok alluded to everyone was unimpaired before  
25 and now Classes 4 and 6 are impaired and entitled to vote.

1 What exactly was the motivation or thinking behind that?

2 MS. WALLICE: Your Honor, it's a great  
3 question. So let's talk through Class 4 first. So with  
4 respect to Class 4, we are currently working through the  
5 mechanics of distribution to the general unsecured claimants.  
6 And one of the key pieces of that is post-petition interest.  
7 We're just working to make sure that we're providing for the  
8 correct distribution timing, as well as the actual amount of  
9 that claim. And so because that language has not been agreed  
10 to and is not included in the plan, from a technical  
11 perspective general unsecured claimants are currently  
12 impaired. We hope to come to a resolution with the unsecured  
13 creditors in short order. And have actually talked to  
14 counsel for the Unsecured Creditor's Committee this morning.  
15 But that's the reason for Class 4.

16 THE COURT: Okay. So just to make sure I  
17 caught that correctly. Right now there is no provision of  
18 post-petition interest for general unsecureds, and so that  
19 was the reason, okay, technically they're impaired.

20 MS. WALLICE: And one slight clarification and  
21 I continue to make this mistake. There's no provision for  
22 post-effective date interest. There is a provision for  
23 interest post-petition to emergence. But because of timing  
24 issues related to distribution, we just haven't added that  
25 modified language for post-emergence to distribution.

1 THE COURT: Okay. Post-confirmation interest.

2 MS. WALLICE: Correct.

3 THE COURT: Post-effective date interest. All  
4 right. So that's not in there. So -- so you're  
5 acknowledging that means they are impaired.

6 MS. WALLICE: Correct, Your Honor.

7 THE COURT: But you're going to try to work  
8 things out.

9 MS. WALLICE: That is correct, Your Honor.

10 THE COURT: Okay. And Class 6, I guess that  
11 was equity, right?

12 MS. WALLICE: Correct.

13 And so on Class 6, the debtor's view related to the  
14 impairment versus unimpairment question on the equity is --  
15 honestly, there's not a lot of case law for circumstances  
16 like this. I think that the debtors feel very comfortable  
17 that there is -- the equity holders are unimpaired in a  
18 circumstance where they are receiving the full pro rata  
19 distribution of the assets left in the estate. But because  
20 of for notice issues, for the ability for parties to vote on  
21 the plan, the debtors at this time wanted to ensure that all  
22 of those, the holders of equity did receive the ability to  
23 vote, to submit their vote on the plan, the treatment. They  
24 already had the opt out notices. But it's simply a notice  
25 provision and also accounting for the fact that there is

1 limited case law. And we wanted to ensure that there was no  
2 disruption to the timing, if at a later date that issue was  
3 raised.

4 THE COURT: Okay. But their stock is being  
5 cancelled.

6 MS. WALLICE: That's correct.

7 THE COURT: And they're getting a share of the  
8 trust in exchange.

9 MS. WALLICE: Correct.

10 THE COURT: So that's -- that's the issue, I  
11 suppose, on impairment.

12 All right. Let me look through my notes here.

13 As far as the release. You know, the Equity Committee  
14 had raised some issues on that. Just so I understand,  
15 everyone has the ability to opt out?

16 MS. WALLICE: That is correct, Your Honor.

17 THE COURT: Whether they end up being  
18 unimpaired and not entitled to vote, per say, they still have  
19 the ability to opt out.

20 MS. WALLICE: That's correct.

21 So we have both the opt out notices that will be sent  
22 to everyone, and parties also have the ability to object to  
23 the releases on the docket --

24 THE COURT: Okay.

25 MS. WALLICE: -- which will function as an opt

1 out.

2 THE COURT: Okay. And you're working with the  
3 Committee, the Equity Committee on the language, because they  
4 had raised some issues in their objection, they weren't  
5 entirely clear who was being released. You're working on  
6 that language?

7 MS. WALLICE: We have. And so the resolution  
8 for today's hearing related to the fact that we added  
9 language that the debtors are working and coordinating with  
10 the Equity Committee on the Equity Committee's ongoing  
11 investigation into those releases. So we are committed to  
12 continuing to coordinate with them and ensure that any issues  
13 related to those releases are resolved by the confirmation  
14 hearing.

15 THE COURT: Okay. I think that was my last  
16 question.

17 Well, I had a question coming in, but Mr. Califano  
18 started off on this subject, the remaining two assets. I  
19 think one of the assets, there was a bid deadline of July  
20 19th.

21 MS. WALLICE: There is.

22 THE COURT: And I didn't -- I didn't know if  
23 you've updated the disclosure statement to say what happened  
24 and where we are on that.

25 MS. WALLICE: We have not. We are working

1 with the party to finalize that documentation. We had hoped  
2 to have that before Your Honor today. We're still  
3 finalizing. We hope to have that before the Court on August  
4 8th to seek approval of that sale. That's a Lonafarnib  
5 transaction. The Lambda transaction has a bid deadline of  
6 August 2nd. There is a chance that the debtors will extend  
7 that. There are certain parties that are interested. And we  
8 want to ensure that they have adequate time to evaluate. So  
9 that likely will not be before Your Honor on August 8th. But  
10 we are continuing to work very hard to press forward on those  
11 transactions.

12 THE COURT: Okay. All right. Well that was  
13 my list of questions I had.

14 I'll hear from others now on what is being proposed.

15 MR. GONZALEZ: Thank you, Your Honor. Daniel  
16 Gonzalez, again, on behalf of the UCC>

17 No further comments, other than to say that  
18 Ms. Wallace's recitation of what's going on is correct.  
19 The UCC does have an issue with impairment. And the specific  
20 issue is, are we going to get paid post-effective date  
21 interest on our claim until the time of distribution? Which  
22 we don't know exactly when that's going to be yet. So we  
23 want to make sure that the plan captures that amount of  
24 interest. And we're working with the debtor to work through  
25 that. And we also have reserved our ability to object to

1 impairment of any other class, to the extent any other class  
2 is deemed impaired.

3 THE COURT: Okay. Thank you.

4 MR. GONZALEZ: Thank you.

5 THE COURT: All right. Other comments?

6 MS. PARISI: Thank you, Your Honor. Again,  
7 Rachel Parisi, Porzio, Bromberg, & Newman on behalf of the  
8 Equity Committee.

9 I just want to say I was pleased to hear a couple of  
10 times parties saying they don't want to spend equity's money  
11 needlessly, so it's music to our ears. And we hope parties  
12 stay true to that. Obviously it's of the utmost concern for  
13 our constituents.

14 I just want to clarify just one piece with respect to  
15 the releases. I understand there's the third-party releases  
16 with the opt outs. But there's also the debtor releases.  
17 And that's also I think what's perhaps the most concerning  
18 for the Equity Committee. Because obviously to the extent  
19 that the debtors are bound by those releases, if there are  
20 any remaining claims, those claims pursuant to how the plan  
21 is currently drafted would transfer to the liquidating trust.  
22 And so obviously if they're released, there would be no way  
23 to monetize those. So that's the issue that we'll continue  
24 to work through with the debtors in addition to the  
25 individual third-party releases where parties are able to opt



1 out.

2 Just on the changes made on Friday to the plan with  
3 respect to the Equity Committee and impairment. It has been  
4 our position from day one that the equity holders are  
5 impaired. Exactly as Your Honor stated, they hold shares.  
6 They hold stock. And it will be cancelled by virtue of this  
7 plan going effective. So we agree with the -- with the  
8 impairment and those changes that were made over the weekend.

9 Just last point, Your Honor, that I'll make is with  
10 respect to the Innovatus claim. We are fully supportive of  
11 getting that issue resolved sooner rather than later. So to  
12 the extent that Innovatus would share with the Equity  
13 Committee, the debtors, the UCC information about, you know,  
14 precise amount of their claim, what they're seeking in terms  
15 of the reserve, I think that would move things along. And if  
16 we're not able to consensually resolve that, then we agree  
17 with the debtor's request to get that on the calendar again  
18 sooner rather than later so it doesn't hold up confirmation.

19 And I think that's it for me for now. Thank you, Your  
20 Honor.

21 THE COURT: Okay. Thank you very much.

22 All right. Well, Mr. Prostok, back to you. I think  
23 we're down to just discussing scheduling, right?

24 MR. PROSTOK: I think that's right, Your  
25 Honor.

1 And, you know, the challenge with a number is when  
2 you're talking a \$21 million claim and not -- and entitlement  
3 to default interest and not knowing when that claim is going  
4 to get paid is do you reserve for two years? Do you reserve  
5 for three years? Four years? So it's not just a real simple  
6 process determining the exact number for the reserve.  
7 There's also the indemnity claim that's factored in, you  
8 know. But I would like an opportunity to try to negotiate  
9 first with the debtor and the Committees to see if we can get  
10 someplace. I mean, the easiest solution is if they just pay  
11 us, you know, our claim. And if they ultimately want to --  
12 think they have some sort of claim to get money back, we're  
13 in a position to pay it back. But we can -- we can talk  
14 about these issues, I think, before we actually set some sort  
15 of estimation on a motion that hasn't even been filed yet  
16 today. I think it's premature to have any sort of  
17 pre-confirmation hearing, other than maybe a status  
18 conference at some point to discuss where we are.

19 THE COURT: Okay. Let me back up and ask you  
20 about discovery. Why do you think you would need discovery  
21 on your own claim?

22 MR. PROSTOK: Well, it -- to some extent there  
23 were issues with the plan that we think we maybe need limited  
24 discovery. If we can get to resolution on everything else  
25 other than this number, then our discovery may not be

1 necessary. It may be very limited.

2 THE COURT: Okay. What -- what would you need  
3 discovery on regarding the plan?

4 MR. PROSTOK: I mean, there's confirmation  
5 issues that -- objections that we would want discovery on.  
6 We would -- Your Honor, they're talking about impairing, you  
7 know, the Unsecured Creditor's Committee. There's issues as  
8 to confirmability that we have a right to ask the debtor and  
9 inquire about.

10 THE COURT: Okay. There's a big, giant pot of  
11 money right now.

12 MR. PROSTOK: Right.

13 THE COURT: Giant, compared to a lot of cases  
14 giant. How big is the pot of money? I can't remember at the  
15 moment.

16 MS. WALLICE: Your Honor, the escrow currently  
17 holds about \$21 million.

18 THE COURT: Well, that's the escrow. I meant  
19 overall.

20 MS. WALLICE: 46 million, Your Honor.

21 THE COURT: \$46 million. So --

22 MR. PROSTOK: We haven't seen a waterfall,  
23 Your Honor. And, again, it does sound like the sales have  
24 been fantastic. I mean, it's been a great result. But, you  
25 know, it -- it really, in my view, to stop interest, to stop

1 some of these issues, pay our claim. There's this reserve  
2 that they're talking about. If that's the way the debtor  
3 ultimately goes, we'll deal with it. But, again, it's a huge  
4 interest that they're accruing while we potentially fight  
5 about an unknown claim at this point, or an unknown assertion  
6 of potential liability against my client that we vigorously  
7 contest. And so we're going to work with the constituencies  
8 to try to get to some kind of resolution. But interest on  
9 that claim is going to accrue at a huge rate.

10 THE COURT: All right. Well, that's  
11 unsecureds and equity's issue for the most part, right?

12 MR. PROSTOK: It is. And we're a --

13 THE COURT: You're being benevolent in arguing  
14 for them?

15 MR. PROSTOK: Well, we're a small equity  
16 holder, as well, Your Honor. So we'd like to see equity gets  
17 as large a return as possible.

18 THE COURT: Okay. I gotcha. All right.  
19 Well, I really -- I'm trying to understand September 5th  
20 versus 12th. What is an extra week going to really do, other  
21 than --

22 MR. PROSTOK: I think take a little bit of the  
23 pressure off and give the parties maybe a little bit more of  
24 an opportunity to come to resolution. That would be, you  
25 know, my request.

1 THE COURT: I guess I'm just trying to  
2 understand. If the issues are things like amount of your  
3 claim, which is really going to be math, right, exchange of  
4 numbers, and interest on the unsecureds, and tweaking of  
5 language regarding release, what is or isn't subject to the  
6 release, I just don't know why you need an extra week on  
7 that.

8 MR. PROSTOK: I think my colleague is maybe  
9 going to answer that question.

10 You're on mute, Andrew.

11 MR. CITRON: Apologize. I didn't intend to  
12 speak today. Can you hear me all right?

13 THE COURT: I can.

14 MR. CITRON: Thank you. First of all, I'm  
15 sorry, Andrew Citron on behalf of Innovatus from Kramer  
16 Levin. First, thank you, Your Honor, for letting me appear  
17 remotely. Greatly appreciate it. I planned to try and come  
18 down there. It's my wife's first day back at work from  
19 maternity leave, so I don't think I'd be able to come home if  
20 I had left her with the two kids today.

21 THE COURT: Understood.

22 MR. CITRON: Any way, one item that would be  
23 helpful, the extra week, is, as Mr. Prostok mentioned  
24 earlier, is the fact that as of right now there's no  
25 provision in the scheduling order for when the debtors are

1 filing a brief in support of confirmation. And I think the  
2 idea is we would just like an opportunity to reply to their  
3 brief in support. And if we're going to go first, which  
4 would be August 30th -- and let me be clear. I hope we don't  
5 have to file an objection. I hope we can get to a consensual  
6 resolution. But just looking ahead, if we need to file an  
7 objection on August 30th, I'm not sure when the debtors are  
8 filing a brief in support and I don't know if that leaves us  
9 an opportunity to respond. So that, I think, is where the  
10 extra week comes from.

11 THE COURT: Okay. Thank you.

12 MR. CITRON: Thank you, Your Honor.

13 THE COURT: Anything else from our secured  
14 lender?

15 MR. PROSTOK: I think that's all we have, Your  
16 Honor.

17 THE COURT: Okay. Thank you very much.

18 All right. Mr. Califano or Ms. Wallace, let's talk  
19 about scheduling. First, I've not been persuaded we need an  
20 extra week here. I mean, this is not, you know, incredibly  
21 rocket docket fast here. And I -- you started out by saying  
22 this has kind of been an unusual case in many respects. And I  
23 would agree. There ended up being a lot more value in the  
24 assets than maybe first thought. But I don't think this is a  
25 complicated plan.

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1 MR. CALIFANO: No, it's not, Your Honor.

2 THE COURT: It's basically a liquidating pot  
3 plan.

4 MR. CALIFANO: Exactly.

5 THE COURT: And we have what appears to be an  
6 extremely over secured creditor. We have issues that our  
7 Committees are exploring, whether there might be claims or  
8 causes of action, or should their claims just be allowed.  
9 And, I mean, I think we're just down to math --

10 MR. CALIFANO: Exactly, Your Honor.

11 THE COURT: -- more than anything else. So I  
12 will allow the September 5th setting --

13 MR. CALIFANO: Thank you, Your Honor.

14 THE COURT: -- to stand on confirmation. As  
15 far as the deadlines, you've already agreed to the plan  
16 supplement being filed on August 16th. Let's give the  
17 secured lender some time on your briefing to have a fair  
18 amount of time to respond. So do you want to suggest a date,  
19 or I'll impose one.

20 MR. CALIFANO: Well, it has to be, Your  
21 Honor, after their objection to confirmation. Because that's  
22 what the brief addresses.

23 THE COURT: And I don't have in front of me  
24 that order.

25 MR. CALIFANO: I mean, their objection --

1 their plan objection is August 30th.

2 THE COURT: Okay.

3 MR. CALIFANO: So I would suggest -- okay,  
4 Your Honor. So August 30th is their objection deadline. You  
5 know, we can file it on Labor Day, unless they want to move  
6 their objection deadline up. And if they move their -- if  
7 they agree to object earlier, or if they agree to object on  
8 the 26th, we'll file it by the 29th. We don't need that much  
9 time. And I do think -- and I did just want to address some  
10 of the issues that Mr. Prostok raised. Because I do think  
11 they're reading it wrong. And they're reading what we  
12 intend. We don't intend to impact their secured position.  
13 We don't intend to impair their indemnity. We have proposed  
14 in our proposed reserve, which we haven't gotten any feedback  
15 on, we've proposed interest, pre-payment penalty, exit fee,  
16 accrued interest, default interest for a year  
17 post-confirmation. So the reserve is already stocked for a  
18 year. And we have a \$1 million indemnification placeholder.  
19 Because in our opinion, the only thing that they could be  
20 indemnified for would be attorney's fees.

21 So that's where we've started. I'm not saying we have  
22 to finish there. But we haven't had any response on that.  
23 That's why I believe it's important -- we're going to  
24 continue to talk to them, Your Honor. But I believe it's  
25 important that we get this issue resolved before

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1 confirmation. Because, frankly, if we come to an agreement  
2 or Your Honor sets a number and we put that number in the  
3 escrow, then there's no issue on confirmation. They have no  
4 objection. And then we'll be done. So if we could just get  
5 a date before that and the parties can work towards that  
6 date, you know, it's really simple. You know, it's just a  
7 few components. It's -- the interest -- the period of time  
8 for which we have to reserve interest. And it's the  
9 indemnification. Everything else is just plain math.

10 So that's why I think it's really important for all of  
11 the parties if we have that interim date that we work  
12 towards. And hopefully we come in and tell you what the  
13 number, the agreed upon number. But if not, we can, you  
14 know, we can have the Court determine it.

15 THE COURT: All right. Well, back, though, to  
16 the briefing. And I know all of this is related to that.  
17 But, again, the objection deadline you said is the 30th?

18 MR. CALIFANO: 30th, yes, Your Honor.

19 THE COURT: That's the Friday before Labor  
20 Day.

21 And you're going to get the packages out when? In the  
22 next day or two?

23 MR. CALIFANO: Within three days.

24 THE COURT: In three days. Yeah. So that's  
25 the thing, I would have to shorten the 28 days plus 3 days

1 slightly for objecting, which, I mean, I guess we have  
2 everyone well represented. I guess the issue is pushing the  
3 ballots down to the beneficial holders of equity. You know,  
4 that always is a little bit more of a cushion we need to  
5 build in.

6 MR. CALIFANO: And we fully intend -- I know  
7 I've said this before. We fully intend to have Innovatus  
8 unimpaired when we come into confirmation.

9 THE COURT: Uh-huh.

10 MR. CALIFANO: But I don't want to be here at  
11 confirmation fighting over what the number it is to unimpair  
12 them. So that's why it's important we get that number set.

13 THE COURT: All right. Well, this is a little  
14 bit awkward maybe, but I am going to impose a deadline for  
15 the debtor's brief in support of confirmation on the 28th.  
16 Now, I know that's putting the cart before the horse. You  
17 haven't seen the objection. But you know what it's going to  
18 say pretty much, if you don't have things worked out by then.

19 MR. CALIFANO: Right. And, Your Honor, that  
20 interim hearing will make it a lot easier to file that brief.

21 THE COURT: Okay. Okay.

22 MR. CALIFANO: So I hate to be a broken  
23 record.

24 THE COURT: Well, right. Right. So far as  
25 the interim hearing -- okay. So you -- we don't have a proof

1 of claim on file.

2 MR. CALIFANO: No, we do.

3 THE COURT: Oh, we do. But it just doesn't  
4 have all of the math.

5 MR. CALIFANO: It doesn't have a number.

6 THE COURT: It doesn't have a number?

7 MR. CITRON: Your Honor, I apologize.

8 THE COURT: Go ahead.

9 MR. CITRON: May I be heard?

10 THE COURT: You may.

11 MR. CITRON: Thank you, Your Honor. For the  
12 record, Andrew Citron, Kramer & Levin on behalf of Innovatus.

13 Yes, we have a proof of claim on file, filed timely  
14 before the bar date. It includes what we believe -- it  
15 includes a number as of what was owed on the petition date,  
16 and it includes a number as of the date of July 15th. And it  
17 states that it will -- that added on to that will be default  
18 interest and attorney's fees as they accrue. So it's not  
19 that it doesn't have a number. It has a number as of July  
20 15th, but it doesn't have a number as of when the debtors  
21 might think they're going effective. But we don't know when  
22 that date is.

23 THE COURT: Okay. So I'm just thinking  
24 through procedurally. This is technically not going to be a  
25 claim objection. It's not going to be a motion to estimate

1 for voting purposes, because they're not voting. It's going  
2 to be -- you keep calling it an interim hearing on what is  
3 the appropriate reserve. That's really the issue.

4 MR. CALIFANO: Exactly.

5 THE COURT: All right. Well, I have a problem  
6 on August 8th. I don't know if I gave you a placeholder  
7 hearing or Traci did at some point. But I have a scheduling  
8 problem.

9 Mr. Prostok, what about the next week, or what any of  
10 you if I can find a place the very next week?

11 MR. PROSTOK: For a status conference, Your  
12 Honor?

13 THE COURT: Well, I guess you're going to file  
14 some sort of motion regarding motion to estimate appropriate  
15 reserve or something awkward like that.

16 MR. CALIFANO: Yeah, it can't be -- it has to  
17 be a full hearing, because it can't be a status conference  
18 because then we won't know what to do at confirmation.

19 THE COURT: Yeah.

20 MR. PROSTOK: We've got to know what we're  
21 responding to, Your Honor.

22 MR. CALIFANO: We'll file our motion this  
23 week.

24 THE COURT: I mean, I imagine it's going to  
25 be -- well, I don't know if it's going to be a very lengthy

1 argumentative thing or not. It's a motion to establish  
2 appropriate reserve pursuant to the plan.

3 MR. CALIFANO: Right.

4 MR. PROSTOK: I'd like an opportunity to try  
5 to also have an opportunity to try to resolve it prior to and  
6 avoid the necessity for a hearing. So I would ask that we  
7 push it out as much as we can, as the Court would allow and  
8 be comfortable with.

9 THE COURT: All right. Well, it seems like a  
10 reasonable request, Mr. Califano.

11 MR. CALIFANO: Well, the week of August 15th  
12 would be -- I mean, that would work for us, Your Honor,  
13 because that gives us, you know, plenty of time if we have to  
14 make any changes. Or we could do it the following week. But  
15 we need to get something on file that we're working towards.  
16 We'll talk. As we've proven throughout, we'll talk to people  
17 up until, you know, we come in here. But, you know, we could  
18 do the week of the 12th or the week of the 19th.

19 THE COURT: All right.

20 MR. PROSTOK: If the Court wants to go down  
21 this road, I would request the week of the 19th.

22 THE COURT: Okay. We'll make it the week of  
23 August 19th.

24 Nick, can you pull up chat, because I don't think Traci  
25 is on the line. My courtroom deputy is dealing with a sick

1 parent.

2 MS. DAVIS: I'm actually here, Judge Jernigan.

3 THE COURT: Oh, Traci, all right. So Nick  
4 says we're open the week of the 19th. That's probably  
5 because --

6 MS. DAVIS: Yes. That would ordinarily be  
7 your trial week, yes.

8 THE COURT: Okay. So we could do this the  
9 19th at 9:30 in the morning, perhaps?

10 MR. CALIFANO: If Your Honor doesn't mind, I'd  
11 rather not travel on a Sunday to get here, so if we could do  
12 it on Tuesday the 20th or Wednesday the 21st.

13 THE COURT: Okay. We've had a request for  
14 Tuesday or Wednesday, the 20th or 21st. Those should be  
15 open, right, because it's trial week?

16 MS. DAVIS: Yes, they're both open.

17 THE COURT: Okay. Okay. Let's do Tuesday  
18 August 20th at 9:30.

19 Mr. Prostok, that's good with your group?

20 MR. PROSTOK: We'll make it work, Your Honor.

21 THE COURT: Okay. Well, that gives you all  
22 three weeks and one day. So that's a lot of time, I think,  
23 for people to -- that's good.

24 MR. CITRON: Oh, I apologize. Sorry, Your  
25 Honor, yes. It's Andrew Citron of Kramer Levin again. Sorry

1 for speaking over you.

2 I understood on the scheduling, it was hard to get  
3 here, get to that date today at the hearing. Perhaps it was  
4 just a miscommunication between us and the debtors. We  
5 viewed the setting of the reserve and their, you know,  
6 assertion that 22 million was the appropriate amount to  
7 reserve as an impairment issue. And so when they had agreed  
8 to reserve for impairment to be heard at confirmation, we  
9 understood we'd be fighting about that then. We had proposed  
10 some dates to do it beforehand. That's neither here nor  
11 there at this point. So we'll do our best, because we hear  
12 you on doing the schedule beforehand. But, of course, we  
13 need to see what their motion says and be able to respond  
14 appropriately.

15 THE COURT: All right, thank you. Well, if  
16 there's nothing else, I certainly appreciate the hard work  
17 that has been going on and will continue to go on outside the  
18 courtroom.

19 I am prepared today to approve on a conditional basis  
20 the adequacy of the disclosure statement with these  
21 amendments that have been made in the past 24 hours and are  
22 going to continue to be made as announced here today. I  
23 think I would say conditionally, the document will enable  
24 people to make an informed decision regarding the plan. I  
25 likewise approve these notice and solicitation deadlines that

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1 have been proposed here today. Again, we'll have a September  
2 5th, I think we said at 9:30, correct, confirmation hearing.  
3 And we will have some adjusted deadlines, as we discussed  
4 here today, for the plan supplement August 16th. And for the  
5 brief -- I said the 28th, right?

6 MR. CALIFANO: Yes, Your Honor.

7 THE COURT: Okay. And then we'll have an  
8 August 20th at 9:30 hearing to address the reserve issue, if  
9 it has not been worked out. And I'm not going to predict  
10 what Mr. Prostok is about to say, but maybe he's about to  
11 say, you need a deadline for getting that motion to estimate  
12 the reserve on file.

13 So when can we get that on file?

14 MR. CALIFANO: By the end of this week.

15 THE COURT: By the end of this week. So that  
16 would be August 2nd, close of business you'll have that on  
17 file.

18 MR. CALIFANO: Yes.

19 THE COURT: All right. Mr. Prostok.

20 MR. PROSTOK: The only other thing, Your  
21 Honor, I'd like to make clear is that this hearing will be  
22 limited to setting what the Court deems is an appropriate  
23 reserve. It would not impair any of our other objection  
24 rights with respect to confirmation or our argument that we  
25 are still impaired even with that reserve. I just want to



1 make sure that this is a very limited motion.

2 THE COURT: Well, you are still impaired. The  
3 whole issue, I think, is going to be what level of reserve  
4 needs to be set to where you no longer can make the impaired  
5 argument based on not enough reserve.

6 MR. PROSTOK: Correct. But there may be other  
7 impairment issues that we want to be able to argue.

8 MR. CALIFANO: See, that's the problem, Your  
9 Honor. It's a moving target. And --

10 THE COURT: Well, for example, he could still  
11 argue -- let's say you propose non-default contract interest.

12 MR. CALIFANO: No, we're going to propose full  
13 default interest.

14 THE COURT: Okay. So I don't know what we'd  
15 be arguing about.

16 MR. PROSTOK: I don't either. But right now  
17 the way I read the plan, there are some issues that I think  
18 we can get resolved. But I've never had a pre-confirmation  
19 confirmation hearing ever. And to some extent that's --

20 THE COURT: Well, it wouldn't be. This is  
21 like similar to a motion to estimate a claim for voting  
22 purposes, only you don't vote so it's --

23 MR. PROSTOK: And that's what I want to make  
24 sure that it's just limited to that issue.

25 THE COURT: It's just limited to what is an

1 appropriate reserve where you can't argue impairment based on  
2 inadequate reserve.

3 MR. PROSTOK: That makes sense, Your Honor.

4 THE COURT: Okay.

5 MR. CITRON: Understood, Your Honor.

6 Apologies.

7 THE COURT: You know, I guess any other  
8 argument based on inadequate reserve would be addressed, too,  
9 right?

10 MR. CALIFANO: No.

11 THE COURT: What other argument would you have  
12 besides that's not enough for --

13 MR. PROSTOK: If for some reason our loan  
14 documents are being impaired or our rights to other issues  
15 that we have, other potential claims. If the indemnity issue  
16 isn't satisfactory -- satisfactorily handled, we may have  
17 confirmation objections.

18 MR. CALIFANO: Limited reserve -- see, this is  
19 the problem, Your Honor. They have a moving target. We need  
20 to not have a moving target, that's what we need. I don't  
21 know why we can't --

22 THE COURT: Okay. You're saying now you want  
23 all issues regarding their impairment resolved on August 20?

24 MR. CALIFANO: Right. Because we want to walk  
25 into confirmation with them unimpaired. And I need to know

1 what that is.

2 MR. PROSTOK: Your Honor, they're asking --

3 MR. CITRON: Your Honor, may I be heard?

4 Sorry. Sorry. Sorry, Mr. Prostok. Andrew Citron, Kramer  
5 Levin on behalf of Innovatus.

6 THE COURT: Go ahead.

7 MR. CITRON: The concern is over the weekend  
8 or just before the weekend the debtors -- we had  
9 conversations with the debtors on this topic, on Thursday and  
10 over the weekend. They proposed time to do exactly this. We  
11 proposed an alternate schedule. They rejected that schedule  
12 and said, we will reserve all issues for impairment per your  
13 objection deadline on August 30th. It is a little difficult  
14 to now litigate this on the fly at the hearing if they're  
15 trying -- if they want to now accelerate that deadline after  
16 telling us on Friday, Saturday, I can't recall the date, that  
17 we'd be able to reserve all of these issues for our objection  
18 deadline on August 30th.

19 THE COURT: Okay. Well, I have to say I'm  
20 confused. And maybe that's because I haven't yet seen an  
21 Innovatus objection to the plan that would say, we're  
22 impaired because of X. I thought the whole argument was  
23 going to be, we're impaired because that reserve of 21  
24 million, or whatever it is, is not going to be adequate  
25 enough to cover our whole claim as it might ultimately be

1 allowed and paid. But you're saying there is more to your,  
2 we're impaired argument than that?

3 MR. PROSTOK: And, Your Honor, as we sit here  
4 today, and I have full confidence that we'll be able to get  
5 it resolved, but I think our indemnity rights are impaired to  
6 the extent that we're not -- we may not have them  
7 post-confirmation. I think our loan documents are such as  
8 being vested, the plan administrator that certain of our  
9 rights and our loan documents may be affected, which would be  
10 impairment.

11 I -- I am fully confident that we're going to be able  
12 to work through those issues. But if they still exist at  
13 confirmation, we've got to have an opportunity to object. I  
14 think he's asking for a pre-confirmation confirmation. And  
15 that's not appropriate. The reserve, I get. We can get to a  
16 number on the reserve. But we've got to be able to preserve  
17 our rights for any other confirmation objections. The  
18 hearing you're setting isn't confirmation, Your Honor.

19 MR. CALIFANO: Your Honor, see this is the  
20 problem now. It is a problem. It's been a problem  
21 throughout. Now you have -- now we've agreed to file our  
22 brief before their objection, right. And we thought that  
23 made sense because we were going to deal with the impairment  
24 issue and there would be very little for them to do. Now  
25 we're going to file our brief, which, you know, I had a few

1 cases down here and it always came after the objections. So  
2 now we're going to put out our position, then they're going  
3 to file their objection, okay. I thought that made sense  
4 when we had a process to get them unimpaired.

5 But now they're like, we want to set that amount and  
6 then we want to come up with something else that we're not  
7 going to show you yet, we're not going to show you our cards  
8 on and you're already going to be briefing. I don't  
9 understand it. Okay. But, first of all, even if we did have  
10 a two-stage confirmation hearing, there's nothing wrong with  
11 that, okay. Your Honor could carve out particular issues and  
12 have them heard at a different date than at the confirmation  
13 hearing. There's no problem with that. But there is a  
14 problem now if they're reserving rights and they're bringing  
15 up issues that they can't even articulate and we have to have  
16 our brief out before we get their objection.

17 So if they're -- I do think we need to set the reserve  
18 amount in advance. But we can't be in a position where  
19 they're now saying, well, you can sit through a reserve  
20 number, but there's eight other issues that we can raise  
21 because I was led to believe in all the discussion it was  
22 about preservation of their rights under the documents, okay.  
23 And setting the amount. Now they keep talking about their  
24 indemnification rights. We have a million dollar placeholder  
25 in our proposal for the indemnification, okay. So then the

1 resolution for that would be a bigger number, okay. We have  
2 interest reserved and preserved for a year. If the response  
3 to that is not to say we're impaired it's to say, well, no,  
4 one year isn't the right amount of time, two years is the  
5 amount -- right amount of time. All those things are issues  
6 that relate to the amount of their claim. But if they're  
7 going to turn this on its head and say, yes, we're going to  
8 fight you on all of those issues and then we're going to  
9 throw something else out there, all of it should be related  
10 to the amount of their claim.

11 THE COURT: Okay. I feel like -- I don't know  
12 if we're talking around each other or what. I keep saying  
13 this is all about math. This is all about math. There's a  
14 big, giant pot of money that you're absolutely going to be  
15 paid in full whatever your ultimate allowed claim is. So  
16 it's just about math. What is the amount of reserve that  
17 reasonably needs to be set aside to make sure you're  
18 unimpaired, right? I mean, I don't mean to be simplistic,  
19 but it's very simple, right?

20 MR. PROSTOK: No. I think -- I think that  
21 issue is, Your Honor. I'm just saying, safe is the best  
22 interest of creditors test, or an absolute priority rule.

23 THE COURT: Best interest of creditors?

24 MR. PROSTOK: No. I'm not saying there is.

25 THE COURT: It's a liquidating plan with a

1 giant pot of money.

2 MR. PROSTOK: But the plan as of last night,  
3 all of a sudden the unsecured are impaired. I'm not  
4 saying --

5 THE COURT: Because they weren't getting  
6 interest before. And there's case law that says when you  
7 have a solvent estate, you're entitled to not just  
8 post-petition interest, post-confirmation interest, of  
9 course.

10 MR. PROSTOK: I get it, Your Honor. And we  
11 may be -- what I'm -- what I'm trying to avoid is a complete  
12 confirmation hearing on the 22nd.

13 THE COURT: It's not going to be.

14 MR. PROSTOK: That's my point.

15 THE COURT: It's all going to be about, is  
16 this reserve sufficient to take away any argument that you're  
17 impaired because not enough has been set aside to pay you  
18 cash in full, whatever allowed claim you have.

19 MR. PROSTOK: We'll deal with that issue on  
20 the 22nd, Your Honor.

21 THE COURT: Okay. All right. And, again, the  
22 motion is going to be filed by, we'll say 5:00 Central  
23 Time --

24 MR. CALIFANO: On Friday.

25 THE COURT: -- Friday.

1 MR. CALIFANO: And it's the 20th, Your Honor?

2 THE COURT: The 20th. I'm sorry if I said the  
3 21st. Tuesday the 20th at 9:30. Okay.

4 MR. CALIFANO: Okay. Thank you, Your Honor.

5 THE COURT: All right. Thank you. Well,  
6 we'll look for your form of order today, I presume, by the  
7 end of the day, or --

8 MS. WALLICE: Yes, Your Honor.

9 THE COURT: Okay. All right. And I think I  
10 resolved everything. Any last words before we conclude?

11 All right. Well, thank you. I'll see you on the 20th  
12 if not sooner.

13 MS. WALLICE: Thank you, Your Honor.

14 MR. CALIFANO: Thank you.

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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