

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

In re:	§	Chapter 11
EIGER BIOPHARMACEUTICALS, INC., <i>et</i>	§	Case No. 24-80040 (SGJ)
<i>al.</i> ¹ ,	§	(Jointly Administered)
Debtors.	§	§

**DECLARATION OF P. BRADLEY O’NEILL IN SUPPORT OF
INNOVATUS LIFE SCIENCES LENDING FUND I, LP’S
EMERGENCY MOTION FOR STAY PENDING APPEAL**

I, P. Bradley O’Neill, Jr., pursuant to 27 U.S.C. § 1746, declare as follows:

1. I am a partner in the law firm of Kramer Levin Naftalis & Frankel LLP located at 1177 Avenue of the Americas, New York, NY 10036. I am a member in good standing of the Bar of the State of New York and I have been admitted to practice *pro hac vice* in the Northern District of Texas.

2. I submit this declaration (the “Declaration”) in support of the emergency motion (the “Motion”) ² of Innovatus Life Sciences Lending Fund, I LP’s (“Innovatus”) filed contemporaneously herewith.

3. I make this Declaration based upon my own personal knowledge and experience.

4. Attached hereto as **Exhibit A** is a true and correct copy of the transcript of the hearing on the Estimation Motion held before the Court on August 20, 2024.

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors’ service address is 2100 Ross Ave., Dallas, Texas 75201.

² Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the Motion.



5. Attached hereto as **Exhibit B** is a true and correct copy of an email chain reflecting correspondence between counsel to Innovatus and counsel to the Debtors from August 22.

6. Attached hereto as **Exhibit C** is a true and correct copy of the Estimation Order entered by the Court.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: August 30, 2024
New York, New York

Respectfully submitted,

By: /s/ P. Bradley O'Neill
P. Bradley O'Neill

EXHIBIT A

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

IN RE: . Case No. 24-80040-SGJ-11
. (Jointly Administered)
EIGER BIOPHARMACEUTICALS, .
INC., et al., . Earle Cabell Federal Building
. 1100 Commerce Street
. Dallas, Texas 75242
Debtors. .
. Tuesday, August 20, 2024
. 9:35 A.M.

TRANSCRIPT OF HEARING ON
DEBTORS' EMERGENCY MOTION FOR THE ENTRY OF AN ORDER (I)
AUTHORIZING THE SALE OF THE LONAFARNIB AND LAMBDA ASSETS FREE
AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS,
(II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, (III) GRANTING THE PURCHASER
THE PROTECTIONS AFFORDED TO A GOOD FAITH PURCHASER, (IV)
APPROVING PURCHASER PROTECTIONS IN CONNECTION WITH THE SALE OF
THE LONAFARNIB AND LAMBDA ASSETS, AND (V) GRANTING RELATED
RELIEF [DOCKET NO. 490]; AND

DEBTORS' EMERGENCY MOTION FOR A PROTECTIVE ORDER WITH RESPECT
TO INNOVATUS LIFE SCIENCES LENDING FUND I, LP'S REQUESTS FOR
DEPOSITION AND PRODUCTION OF DOCUMENTS [DOCKET NO. 514]; AND

DEBTORS' EMERGENCY MOTION IN LIMINE TO EXCLUDE THE EXPERT
REPORT AND TESTIMONY OF DAVID E. KELTNER [DOCKET NO. 539]; AND

DEBTORS' MOTION FOR ENTRY OF AN ORDER ESTIMATING CLAIM OF
INNOVATUS LIFE SCIENCES LENDING FUND I, LP FOR THE PURPOSES OF
ESTABLISHING SUFFICIENT RESERVES TO UNIMPAIR CLAIM [DOCKET NO.
488]

BEFORE THE HONORABLE STACEY G. JERNIGAN
UNITED STATES CHIEF BANKRUPTCY COURT JUDGE

APPEARANCES ON THE NEXT PAGE.

Audio Operator: Michael F. Edmond

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(III) GRANTING THE PURCHASER THE PROTECTIONS AFFORDED
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1 (Proceedings commenced at 9:35 a.m.)

2 THE COURT: We're on the record now. We have
3 settings in the Eiger BioPharma case, Case Number 24-80040. We
4 have a motion to sell Lonafarnib and Lambda Assets as well as a
5 motion for valuation. We got lots of folks in the courtroom, I
6 guess no one on WebEx today. Are there people on Webex?

7 Okay. Well, we'll take appearances from the lawyers
8 in the courtroom and see if anyone wants to appear on WebEx.

9 MR. CURTIN: Good morning, Your Honor.

10 William Curtin from Sidley Austin for the debtors.
11 I'm joined in the courtroom this morning by my colleague, Jon
12 Muenz, Chelsea McManus, Parker Embry from Sidley. Also, we
13 have Paul Coloma from Alvarez & Marsal, and Doug Staut, our CRO
14 from Alvarez & Marsal. And Scott Victor from SSG is here also
15 on the sale motion.

16 THE COURT: Good morning.

17 MR. PROSTOK: Good morning, Your Honor.

18 Jeff Prostok, Forshey & Prostok.

19 With me today is Brad O'Neill and Andrew Citron from
20 Kramer Levin. And from Innovatus is Webb George who I know I
21 will call him George Webb before the day is over. I've been
22 doing that already. But we represent Innovatus.

23 THE COURT: Thank you. Good morning.

24 MR. GAITHER: Good morning, Your Honor.

25 John Gaither, conflicts counsel to the debtors on the

1 Merck issues.

2 THE COURT: Thank you. Good morning.

3 MR. GONZALEZ: Good morning, Your Honor.

4 Daniel Gonzalez of Meland Budwick on behalf of the
5 UCC. With me in court is our local counsel, Garrick Smith of
6 Munsch Hardt.

7 THE COURT: Good morning.

8 MS. VENUS: Good morning, Your Honor.

9 Margie Venus with McKool Smith on behalf of the
10 Equity Holders Committee. On WebEx is Mr. Warren Martin and
11 Rachel Parisi at the Porzio firm.

12 THE COURT: Okay. Good morning.

13 MR. BROOKNER: Good morning, Your Honor.

14 Jason Brookner from Gray Reed on behalf of the
15 purchaser of the Lonafarnib and Lambda Assets, Eiger
16 InnoTherapeutics, Inc. And co-counsel from the Goodwin firm is
17 also on the line and will appear separately.

18 THE COURT: Okay. Good morning. All right. On the
19 Webex, if you're wanting to appear, you may go ahead. All
20 right. I'm not seeing anyone on my screen, Mike. I don't know
21 what's up with that.

22 MR. WOODARD: Good morning, Your Honor.

23 Kyle Woodard with Kane Russell Coleman & Logan on
24 behalf of the Thermo Fisher entities.

25 THE COURT: Thank you.

1 MR. WOODARD: Also on the line is Marybeth Taylor
2 with Tucker Arensberg.

3 THE COURT: Okay.

4 MR. WOODARD: Counsel to the Thermo Fisher entities,
5 as well.

6 THE COURT: Thank you. Any other --

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

9 THE COURT: Good morning.

10 MS. JARASHOW: Good morning, Your Honor.

11 Kizzy Jarashow from Goodwin Procter on behalf of
12 Eiger InnoTherapeutics. On the line with me today is also
13 James Lathrop from Goodwin Procter and Jeffrey Glenn from Eiger
14 InnoTherapeutics.

15 THE COURT: Okay. Thank you. Good morning.
16 Anyone else?

17 MR. VAN HORN: Good morning, Your Honor.

18 Eric Van Horn of Spencer Fane on behalf of Merck.
19 And along with me is Martin Beeler of Covington & Burling for
20 Merck.

21 THE COURT: Thank you.

22 All right. Well, Mr. Curtin, as noted, we have a
23 sale motion, we have a valuation motion. I presume you might
24 want to take the sale motion first?

25 MR. CURTIN: Yes, Your Honor, if that's okay.

1 THE COURT: Sounds good.

2 MR. CURTIN: I think it's best to kind of continue
3 our good news story that has been this case so far with the
4 sale motion before we get into other things. First of all,
5 Mr. Califano apologizes for not being here. He has, you might
6 have noticed the last couple times he's here, he's been hobbled
7 a bit by his back. And he's actually in a doctor's appointment
8 today that he couldn't reschedule.

9 THE COURT: Okay.

10 MR. CURTIN: So again, some more good news on this
11 sale. As you mentioned, this is our motion to sale the final
12 two -- the final two drugs, Lonafarnib and Lambda, as was filed
13 at Docket Number 490. And we're seeking to sell both of those
14 Assets to Eiger InnoTherapeutics, Inc., which everyone has been
15 referring to as Inno.

16 Your Honor, we pivoted on this one to a private sale,
17 and I'm going to our basis for that in a moment. But the real
18 reason was that was the sole interest that was viable. So we
19 were not able to conduct an auction. However, we believe we
20 still got a good value for these assets. The drugs will have a
21 new home. They will -- the purchaser will continue their
22 development. Remember, these are in development. Zokinvy was
23 our only commercialized drug.

24 We executed asset purchase agreements on both the
25 Lonafarnib and Lambda assets which were filed along with our

9
1 motion. Just very briefly, the Lonafarnib asset purchase price
2 is 5.2 million, plus some -- a multi-stage kind of cure issue.
3 So if the purchaser does not assume any of our crossover
4 contracts, the cure amount will be up to 180,000 in the
5 aggregate.

6 If they assume the IQVIA contracts, and my colleague,
7 Ms. McManus is going to in a moment address where we are with
8 all the cure issues. You know, not to steal thunder, but
9 spoiler alert, everything is resolved for purposes of the sale
10 today. There are a couple that will need continued to
11 negotiate after. But no one has any objections to the sale
12 motion.

13 And then Biorasi, if the purchaser assumes Biorasi
14 and IQVIA, then the cure amounts would be up to 2.38 million.
15 And if they assume Biorasi but not IQVIA, it's 380,000. So it
16 kind of flows with the potential amounts of those cures.

17 With regard to Lambda, much simpler, it's a \$1
18 million base price, and up to 269 in cures, 269,000 in cures.
19 Your Honor, we're going to put Mr. Victor on the stand briefly
20 in a moment. But, you'll hear that Lambda and Lonafarnib were
21 extensively marketed. And the relief requested in here is, in
22 the debtor's business judgment, the best result of the sale of
23 these assets.

24 There is a basis here for a private sale. The assets
25 have been marketed for over four months. The purchaser was the

1 only bidder that provided a viable bid for the Lonafarnib and
2 Lambda assets. The debtors believe that the probability of a
3 competing bidder -- that a competing bidder will emerge is
4 exceptionally low within the necessary time frame of this case,
5 which Your Honor know we're trying to -- trying to wrap up as
6 quickly as possible.

7 So we believe there's a good basis to sell these
8 assets to this purchaser. Your Honor, I think at this point
9 I'll ask Ms. McManus to come up and address the cure issues,
10 and then I will come back and put on some brief testimony from
11 Mr. Victor.

12 THE COURT: All right. Thank you.

13 Ms. McManus?

14 MS. MCMANUS: Good morning, Your Honor.

15 For the record, Chelsea McManus of Sidley Austin, LLP
16 on behalf of the debtors. As Mr. Curtin just noted, there are
17 a few outstanding cure objections that we are continuing to
18 reconcile with ourselves and the contract counter parties.

19 So starting with IQVIA, the debtors are still working
20 to reconcile those amounts. As Mr. Curtin noted, the amount in
21 the APAs is subject to whether or not certain crossover
22 contracts are ultimately assumed by the buyer. So that amount
23 will depend on what contracts are ultimately taken by the
24 buyer.

25 We also have received an objection from the Thermo

1 Fisher entities. And we've been working with them throughout
2 each of the different sales to reconcile the different cure
3 amounts for each of those entities. And I believe they filed a
4 reservation of rights last night. And we are continuing to
5 work with them up until the closing of the sale.

6 We also received an objection from Fujifilm. And
7 that's another one where we're continuing to reconcile the
8 amounts because for a lot of these, there were several hundreds
9 of invoices that the debtors have been reconciling on our side
10 and with them.

11 And finally, we have the Biorasi contracts which is
12 also subject to the cure amounts in the Lonafarnib APA. And so
13 depending on what the purchaser ultimately takes will depend on
14 what contracts and how much will be paid for the Biorasi
15 contracts. And we're continuing to work with them and their
16 counsel to close that out.

17 And that is it for the outstanding cure objections on
18 our end.

19 THE COURT: All right. Very good. Thank you.

20 All right. Mr. Curtin?

21 MR. CURTIN: Thank you, Your Honor.

22 And just again to clarify, all of those parties have
23 indicated to us that they do not have an objection to entry of
24 the sale order today. So at this point, Your Honor, I would
25 call J. Scott Victor from SSG to the stand.

Victor - Direct/Curtin

12

1 THE COURT: All right. Mr. Victor, welcome back.

2 MR. VICTOR: Thank you, Your Honor. Good to see you
3 again.

4 THE COURT: Okay. Please raise your right hand.

5 J. SCOTT VICTOR, DEBTOR'S WITNESS, SWORN

6 THE COURT: All right. Please be seated.

7 MR. CURTIN: And, Your Honor, at this time I would
8 offer the declaration of Mr. Victor filed at Docket Number 491
9 into evidence.

10 THE COURT: All right. I have seen that. And I will
11 admit it as part of his direct testimony. And obviously, he
12 can be crossed on any aspect of it. Okay.

13 MR. CURTIN: Thank you, Your Honor.

14 (Declaration of J. Scott Victor admitted into evidence)

15 DIRECT EXAMINATION

16 BY MR. CURTIN:

17 Q Mr. Victor, can you briefly remind the Court of your
18 background and your experience in restructuring?

19 A Yes.

20 For 41 years, Your Honor, I've been in restructuring,
21 first 16-1/2 as a bankruptcy lawyer, and then since 2000 as an
22 investment banker, and the managing partner of SSG.

23 Q Approximately how many companies and/or their assets have
24 you marketed for sale?

25 A Hundreds.

Victor - Direct/Curtin

13

1 Q And what percentage of those have been distress companies?

2 A Ninety-nine point nine-nine percent.

3 Q And have you been involved in marketing and selling assets
4 in the context of a bankruptcy case?

5 A Yes, hundreds.

6 Q And have you been involved in marketing and selling assets
7 of biopharmaceutical companies?

8 A Many.

9 Q All right. Let's talk about the marketing and sale
10 procedures here. Can you briefly describe the post-petition
11 marketing process for the, we'll start with the Lonafarnib
12 Assets.

13 A Sure. We went to market for all four of the drugs as soon
14 as we were hired back in March. Obviously, the pressure was on
15 time wise to get Zokinvy done. And then we had great success
16 again with Avexitide. And then we really focused on Lonafarnib
17 and Lambda, but also continued to market them all throughout
18 our engagement.

19 For lonafarnib, we went to about 350 buyers, for Lambda a
20 little more than that, about 375. Twenty-four NDAs were
21 signed. People were given access to the data room, management
22 meetings, etc.

23 Q And how many bids were received for the, we'll start with
24 the Lonafarnib Assets.

25 A Only one. And we negotiated with that particular party,

Victor - Direct/Curtin

14

1 which is the buyer here, for several months to increase that
2 bid, which was done very successfully.

3 Q Do you recall what the approximate purchase price increase
4 was from the start to the end of that negotiation?

5 A For just lonafarnib, I believe it went from 1.2 million to
6 5.2 million.

7 Q And how many bids did you receive -- did the debtor
8 receive for Lambda?

9 A For Lambda, we received a bid from the bidder who's
10 offered to purchase for \$1 million subject to also buying
11 lonafarnib. There was another bidder that we did receive an
12 offer from that was slightly higher, but was full of diligence
13 requirements, would have taken time, was not certain at all.
14 And we felt it was best to go with the current offer of one
15 million.

16 Q And the current purchaser of Lonafarnib and Lambda is the
17 same entity, right?

18 A Yes.

19 Q And as part of that purchase price, did that and the
20 negotiation that you talked about in getting the purchase price
21 from one million to five million on Lonafarnib was one of the
22 requirements that they be able to purchase both?

23 A Yes.

24 Q Can you just briefly explain to the Court the decision to
25 pivot to a private sale? Probably already did with that answer

Victor - Direct/Curtin

15

1 to that question, but anything other you want to add on that?

2 A Sure. Well, there was no other bid at all for Lonafarnib.
3 And while there was another bid for Lambda, having an auction
4 just wouldn't have made sense because the other bid was subject
5 to too much diligence and too much risk. And it was much
6 better and value maximizing to bundle the two assets together
7 because there are cross contracts between the two, and do a
8 private sale.

9 Q And did you get an indication from that other bidder that
10 they would not -- other than their slight overbid, initially
11 that they would not be participating in an auction and bidding
12 more?

13 A Correct. Yes.

14 Q Do you believe that the pivot from the auction process to
15 private sale was in the best interest of the debtors and the
16 estates?

17 A Absolutely.

18 Q And based on your 40 years of restructuring experience in
19 the restructuring -- experience in the restructuring industry,
20 do you believe that the sale that's currently contemplated
21 before the Court for the sale of Lonafarnib and Lambda is the
22 highest and best offer to maximize value for the debtor's
23 estates?

24 A Yes. Very much so.

25 Q And were the post-petition marketing process conducted in

1 accordance with the bidding procedures --

2 A They were.

3 MR. CURTIN: -- approved in the case? No further
4 questions.

5 THE COURT: All right. Does anyone have questions
6 for the witness?

7 (No audible response)

8 THE COURT: I don't know if I'm going to hear this
9 from another witness or a lawyer. But tell me one or two
10 things about this purchaser, Eiger InnoTherapeutics, Inc. I
11 wondered, are they connected with Stanford University somehow?
12 I saw that somewhere in an email in a contact information for
13 purchaser. So just a little bit about them.

14 THE WITNESS: Yes. So the lead investor for the
15 group who we negotiated with directly is actually a former
16 director of the debtor, pre-petition. Didn't have any access
17 to any more information than anybody else had, but that's who
18 we negotiated with.

19 Many of the other investors are Stanford professors,
20 as is Mr. Glenn. So that's the relationship to Stanford.

21 THE COURT: Okay. All right. Anything else?

22 MR. CURTIN: No, Your Honor.

23 THE COURT: Okay. Thank you. We appreciate your
24 efforts and your testimony.

25 THE WITNESS: Thank you, Your Honor.

1 MR. CURTIN: Your Honor, we did file an amended sale
2 order last night which makes very few changes. I'll just
3 highlight them very, very quickly. The first is Paragraph --
4 new Paragraph 26 of the order which simply is some rights
5 language from Bristol-Myers Squibb that both the purchaser and
6 the company are fine with.

7 And then also, Your Honor's aware there was a
8 reservation of rights about it by Merck. And the Neligan firm
9 negotiated with Merck and came up with the language that's
10 included at the new Paragraph 30. That's acceptable to both
11 the company and the purchasers. Those are the only substantive
12 changes to the sale order.

13 Unless Your Honor has any questions, we would ask
14 that Your Honor approve the sales.

15 THE COURT: All right. I have no follow-up
16 questions. I'll ask lawyers, speak now or forever hold your
17 peace if you have any comments you want to put on the record.

18 (No audible response)

19 THE COURT: All right. Well, silence is good, I
20 suppose.

21 I will first find that notice of the sale of these
22 assets has been reasonable and sufficient under all the
23 circumstances. We have no pending objections at the moment.
24 Any conditional objections of executory contract parties have
25 been resolved as announced by Ms. McManus.

1 I do find there was a sound business justification
2 for pursuing the sales. The debtor has and always exercised
3 reasonable business judgment. It appears we had a fair and
4 fulsome marketing process for many months, and it was designed
5 to and did yield a fair value for these assets. So I do
6 approve the sale, free and clear, to Eiger InnoTherapeutics,
7 Inc.

8 THE CLERK: (Indiscernible).

9 THE COURT: All right. Well, I'm going to finish
10 making my ruling, and then I'll go back and see if there's
11 anything that we need to adjust.

12 Anyway, I do find that this purchaser is a good faith
13 purchaser for value and a fair price has been yielded under all
14 of the circumstances here. So I approve the sale of these two
15 drug assets free and clear under 363(f).

16 All right. The changes to the order that you have
17 announced sound perfectly fine to me. So I will accept that
18 form of order.

19 Now, who is wanting to speak on the Webex? I'm not
20 -- I didn't see anyone raising their hand from my screen. Was
21 there someone who wanted to speak?

22 (No audible response)

23 THE COURT: All right. We're going to move on
24 because I'm not hearing anything or seeing anything on my
25 screen.

1 All right. So, Mr. Curtin, now for the valuation
2 motion which looks pretty contested from the filings. I don't
3 know if anything has changed overnight.

4 MR. CURTIN: Unfortunately not, Your Honor. This is
5 the debtors' motion for entry of an order estimating the
6 Innovatus' claim. We previewed this at the last hearing. My
7 colleagues previewed this at the last hearing. So this is not
8 unexpected. This is the direction that we've been taking for
9 quite a while.

10 And, you know, we kind of find ourselves in an almost
11 unbelievably unfortunate, but maybe entirely predictable
12 situation here. The case, as Your Honor knows, has been
13 successful beyond anyone's wildest imagination. We should be
14 talking about confirming a plan and making distributions to
15 creditors in equity.

16 But instead, we're here and with a contested motion
17 talking about Innovatus taking a simple claims objection to the
18 United States Supreme Court and, in the process, taking all
19 value from other creditors in equity to pay their attorneys
20 fees and default interest, and all based on an event of default
21 that we contend in the claims objection that we filed recently
22 was manufactured.

23 So what do I mean by unfortunate but predictable?
24 You know, my dad always used to say if someone shows you who
25 they really are, you should believe them. So let's talk about

1 what Innovatus' approach to this case, again which we contend
2 from the beginning, have contended from the beginning, would
3 not have been necessary but for their actions pre-petition.

4 Let's just talk about how the case has gone so far.
5 Once we started, we filed our typical first day motions.
6 Innovatus opposed every single substantive first day motion, as
7 Your Honor will recall. We had a first day hearing where their
8 counsel raised a laundry list of issues on -- some on rather
9 typical first day motions.

10 Then, initially they opposed the sale of the debtors'
11 life saving commercialized drug Zokinvy. Once they realized
12 that the incredible value that the debtor and their -- debtors
13 and their advisors had generated for Zokinvy, they -- and they
14 could really no longer, with a straight face, suggest that the
15 sale shouldn't be approved, they backed off of that but then,
16 once that sale was approved, suggested that at that point, the
17 cases should be converted to Chapter 7.

18 That was at the conclusion of that Zokinvy sale
19 hearing, Your Honor will recall. Then with regard to the final
20 cash collateral hearing, they opposed that on the grounds that
21 they are not adequately protected. And when Your Honor
22 overruled that objection, based in substantial part on their
23 substantial, and now I would argue massive equity cushion, they
24 appealed cash collateral.

25 And only when it became clear that their equity

1 cushion was more of an equity mattress, they agreed to dismiss
2 that appeal. Then we had venue. They filed a last-minute
3 joinder to the United States Trustee's venue motion. And when
4 Your Honor denied the motion, the U.S. Trustee is the actual
5 movant, and I would note the party with bona fide concerns, the
6 U.S. Trustee accepted Your Honor's ruling and decided not to
7 appeal.

8 But the last minute joinder, Innovatus, did appeal.
9 And they also filed a brief in that appeal that the debtor will
10 need to respond to. Then the debtor sought to, again, no
11 surprise, we said right from the beginning that the case was,
12 in our view, caused by an invalid or event of default based on
13 a MAC. We filed a 2004 motion. And Your Honor granted that,
14 again over Innovatus' opposition.

15 And what do they do there? They slow-played their
16 production, taking many months. They still have not agreed to
17 a deposition, and just done everything that they can to slow
18 that down.

19 And the list kind of goes on and on. But Your Honor
20 gets the point. And now, you know, here we are. And we're
21 trying to get to confirmation. We're trying to get out of
22 Chapter 11 as quickly as we possibly can for many reasons.
23 One, to distribute to creditors. Two, to stop the
24 administrative expenses of the case.

25 And what we have now is just Innovatus' latest

1 attempt to avoid the issue of its bad acts that led up to the
2 filing of the case, and stop us from the simple act of
3 establishing an escrow so that the substantive issues of
4 Innovatus' -- of our objection to Innovatus' claim can be
5 resolved, and it doesn't hold up confirmation.

6 Your Honor, all the while here, you know, the kind of
7 one thing I think to keep in mind throughout all of this is
8 that this is a loan -- unlike a lot of our cases, this is a
9 loan that didn't -- doesn't mature until 2027. No payments are
10 even due, no principal payments are even due until 2027. And
11 Innovatus, you know, putting everything that I just said aside,
12 they've already received 27 million in pre-payments on this
13 loan that doesn't mature until 2027.

14 Our amended plan calls for them to receive another
15 ten million. So 37 million they'll have received if our plan
16 is confirmed, but 27 million they've already received three
17 years early.

18 So you're going to hear a lot of noise from Innovatus
19 on this motion. But it's incredibly simple, Your Honor. And
20 if you, you know, we make the point in Mr. Staut's amended
21 declaration, nothing has -- supplemental declaration, I'm
22 sorry, and nothing's changed.

23 There's only two issues of dispute here, and it's
24 really one issue of dispute. All of the math matches up. The
25 math that's included in the letter that Innovatus finally sent

1 us giving us their explanation for their amount of claim, and
2 also Mr. George's declaration, the math matches up.

3 You'll notice the numbers, and Mr. Staut will testify
4 about this, you'll notice that the numbers are off slightly.
5 But that's only because we were using September 15th as the
6 date that the -- to start, that the distribution would be made
7 and that this interest run would start, and they used the 30th.
8 So it's just off by two weeks, but it's essentially the same
9 math.

10 The only disagreement, the only disagreement today,
11 despite everything else you hear, is the length of time for
12 which interest must be reserved, and the amount that must be
13 reserved for alleged indemnification obligations which is
14 essentially attorneys fees. That's it.

15 Your Honor, we believe that the evidence will show
16 that the debtors' proposal to reserve one year of post-
17 emergence interest at the full default rate, full default rate,
18 and \$1 million for indemnification obligations is immanently
19 reasonable. And, you know, we've proposed it. We don't think
20 it's going to take a year, but we've proposed it, that there is
21 time and this is supposed to -- this is our good faith
22 estimate. And we submit that the Court should accept that.

23 Your Honor, we do have two motions that are related
24 to this. One is a motion in limine that was filed yesterday
25 for an expert report that was provided to us on Friday night.

1 And the other is a motion for a protective order for discovery
2 that Innovatus had served.

3 My colleague, Mr. Muenz, will address those. I'll
4 defer to Your Honor if you want to hear from the other side
5 first, or you want us to present those motions. But I will
6 defer to Your Honor on whether you want to hear those first
7 or --

8 THE COURT: All right. I'll wait on those two, the
9 motion for a protective order and motion in limine. But remind
10 me, just because I'm a big-picture numbers person, how much
11 cash the debtor has at this point. This Zokinvy sale was
12 wildly successful. I think we used that term. What was the
13 ultimate sale price?

14 MR. CURTIN: It was about 38 million today, Your
15 Honor.

16 THE COURT: Thirty-eight million.

17 MR. CURTIN: Yes, Your Honor.

18 THE COURT: And then the Avexitide sale price was?
19 The second rug, what was it?

20 MR. CURTIN: What was the sale price?

21 THE COURT: Well, yeah. I said I wanted to know the
22 cash on hand. But I guess I really am starting with the sale
23 price and then --

24 MR. CURTIN: That's everything, Your Honor. That
25 includes everything.

1 THE COURT: Okay. Thirty-eight million is both
2 Zokinvy and Avexitide, because those were two separate sales.
3 Okay.

4 MR. CURTIN: Yes.

5 THE COURT: I see --

6 UNIDENTIFIED SPEAKER: Your Honor, after the pay
7 down.

8 MR. CURTIN: Right, after the pay down. I thought
9 you were asking what --

10 THE COURT: Oh, no, no, no, no. I know there's been
11 27 million paid --

12 MR. CURTIN: Right. Right.

13 THE COURT: -- to the secured lender.

14 MR. CURTIN: Right. So that does not include that,
15 of course.

16 THE COURT: Okay.

17 MR. CURTIN: It's 38 plus the 27 million that we've
18 already paid down.

19 THE COURT: Oh, so 60-something million --

20 MR. CURTIN: Right.

21 THE COURT: -- was yielded from those two sales.

22 MR. CURTIN: Yes, Your Honor.

23 THE COURT: Okay. Again, I know it's not directly
24 relevant --

25 MR. CURTIN: No, no, no.

1 THE COURT: -- to what we're doing here.

2 MR. CURTIN: No, no.

3 THE COURT: But I just --

4 MR. CURTIN: I have all the people in the room to
5 answer whatever --

6 THE COURT: It's just --

7 MR. CURTIN: -- questions you have, Your Honor. It
8 just may not be me.

9 THE COURT: -- context to context is a big deal here.
10 All right. Well, then I'll hear from Mr. Prostok, and we'll go
11 from there.

12 MR. PROSTOK: Thank you, Your Honor. Jeff Prostok
13 for Innovatus. And I'm happy to hear from the debtor that
14 there really are two issues for today, because we agree with
15 that. Your Honor, I did fail to recognize esteemed appellate
16 lawyer David Keltner, who is in the courtroom today. We'll be
17 addressing his report. And we can get into that, I guess, when
18 we address the motion in limine of why we think we've complied
19 with all of the requirements, both kindly and otherwise, and
20 why we think his report will be helpful to Your Honor.

21 Let me first compliment Mr. Victor and his group for
22 the success in this case. They've done a tremendous job. They
23 have -- we've used SSG and his group over the years, and
24 they've always done a great job for us. And this is just
25 another example of them going above and beyond. And we're very

1 pleased and complimentary of him and the professionals to get
2 to the point where we are.

3 Your Honor, an objection to claim was filed by the
4 debtor, I think, Friday, 33 pages, 126 exhibits. That's not
5 the issue. The merits are not the issue today for the Court to
6 consider. I mean, what the Court is being asked to consider
7 from the debtors' perspective is, what's an appropriate time
8 period to reserve for a final order?

9 And the final order is defined in their plan, as it's
10 always defined, very boilerplate language, final,
11 non-appealable, after you've had all of your rights. And what
12 we're seeking to do is provide testimony that we think a year
13 is not realistic.

14 The other issue is to estimate attorney's fees, what
15 sort of attorney's fees would need to be escrowed if you're
16 going to decide to do the reserve route, if you think that's
17 appropriate. But Your Honor, in our view, what the debtors'
18 attempting to do is really formulate a plan to leave Innovatus,
19 the secured creditor, at risk with respect to their plan.

20 And if they want to treat us as unimpaired, we think
21 there's very simple ways to do it. This is a liquidation, Your
22 Honor. I mean, they could pay the claim. Eliminates the need
23 for interest to be reserved. It eliminates high interest on
24 this \$10 million that will accrue while the Court makes a
25 decision on this issue.

1 Innovatus is a substantial entity. They can pay a
2 judgment if, ultimately, a suit is filed and they're
3 responsible, which we highly contest. And we look forward to
4 being able to tell our side of the story because we haven't
5 gotten to yet. You've heard one side of the story. But Your
6 Honor, today's not the time to hear the merits. But we look
7 forward to that day when you will have that opportunity.

8 The other thing they could do is don't pay any claims
9 until resolution. If they really think it's a six-month or a
10 one-year process, okay, well, just hold the money for six
11 months or a year and let's get through the process. It
12 eliminates the uncertainty. It eliminates the flipping the
13 risk to the secured creditor in favor of the junior creditors,
14 which just isn't proper under the Bankruptcy Code.

15 The debtor hadn't chosen either of these paths. But
16 rather, they really seek to shift the burden of the risk to the
17 secured lender. It would create a cap for any sort of recovery
18 that Innovatus may ultimately have if we do create some sort of
19 estimation. I mean, and it really does create risk.

20 I mean, the Court's seen that sort of attorney's fees
21 that can be accrued in these type of matters. And we think the
22 type of cap that's being proposed by the debtor is completely
23 inadequate. Creation of a reserve, it doesn't include all of
24 Innovatus collateral. It impairs Innovatus rights. Innovatus
25 is entitled to all its rights under the loan documents.

1 Until paid in full, its collateral, we would argue,
2 really can't be released. And, you know, under 1129(b), the
3 debtors must provide the indubitable equivalent. And we
4 realize that that's governed by 1129(b) and not 502(c). But,
5 you know, we really think that we're impaired by the treatment
6 that the debtors is proposing.

7 Nothing in the Bankruptcy Code or the LSA permits a
8 non-consensual use of cash collateral proceeds to pay unsecured
9 creditors or equity. I mean, at the end of the day, it very
10 well may be that these amounts get paid. But until there's
11 resolution, or at least a very realistic protective cap, we
12 would ask Your Honor, you know, not to imperil the secured
13 creditor at this point in what's been a very successful result.

14 Your Honor, you know the requirements of 1124 with
15 respect to impairment in the Fifth Circuit. Any alteration of
16 a claimant's legal equitable contractual rights constitute
17 impairment. In the Fifth Circuit especially, impairment's a
18 fragile concept. Almost any alteration of a creditor's rights
19 can be deemed impairment.

20 And whether the plan impairs Innovatus is not before
21 the Court today. I mean, it's really, you know, it's a
22 confirmation issue. But it needs to be considered, we think,
23 when you're considering this reserve and the effect it may
24 ultimately have.

25 And again, I can't emphasize enough, this reserve

1 shifts the risk of underpayment to Innovatus and away from the
2 junior creditors. And it really does impact my client. And we
3 think there's very easy solutions to this that we have
4 proposed.

5 We've set out in our trial brief why we think the
6 estimation is really not appropriate, that the underlying claim
7 is not unliquidated. Interest is due until the claim is paid.
8 It's not contingent. The Fifth Circuit's rejected construing a
9 claim as contingent when the claim is contingent just as to the
10 amount of the claim, but not liability.

11 And, you know, we think the debtors undisputedly
12 agreed to pay. They may contest the amount that we're entitled
13 to pay, but they don't contest that we're entitled to payment.
14 So they may claim offsets. Filing an objection doesn't change
15 that. I mean, if that was the case, every time an objection to
16 claim was filed, it would be deemed contingent and subject to
17 estimation. And that's really not the law.

18 And I just want to emphasize, Your Honor, for an
19 estimation, there's a requirement that not fixing or
20 liquidating Innovatus claim will delay or unduly delay the
21 case. We think there's these alternatives. I mean, this is an
22 issue of the debtors' own making by the way that they've
23 created this reserve by either deciding not to pay us or by
24 deciding to pay junior creditors before our claim is resolved.

25 And again, I mean, I'll put them to the test. If

1 they think that it can be resolved as quickly, then just hold
2 the collateral until it's resolved. I mean, that's a very easy
3 solution. Though we think that debtors pass improper, if the
4 Court does deem that an estimation on these two issues is
5 appropriate, we think that the one here is wholly inadequate.

6 The length of time which interest must be reserved
7 and, Your Honor, it's now come down to \$10 million. So the
8 figure is a little less than it was when it was \$20 million, I
9 think, when we met before in late July. In other words, I
10 mean, how long does this Court think it could take to get to a
11 final judgment as defined by the debtors' definition in their
12 plan?

13 And it's Page 13, Debtors' Exhibit 1, after all
14 appeal rights are exhausted. And it's exclusive. It's all
15 appeal rights. And then it's attorney's fees, basically. It's
16 an estimate of what kind of attorney's fees need to be
17 reserved.

18 Let's talk about why that length of time is so
19 important, Your Honor. Why is it so important that we get this
20 right? Because if we're wrong and the process takes longer
21 than a year, and we've secured only enough funds for a year,
22 the secured lender's collateral, it's gone forever. It's going
23 to have been distributed. There's no getting it back.

24 What if we overestimate? Or what if you decide, I'm
25 not going to let this collateral go until we know, you know,

1 what the claim ultimately is? Is it really going to be less?
2 How long is it going to take? What kind of fees are going to
3 be done? It's too speculative for me to do it. I'm just going
4 to say, hold the collateral. Let's get this done quickly, and
5 then we can distribute.

6 Your Honor, if we over-reserve, I mean, there's no
7 harm. That money's in the reserve. And it's going to come
8 back, and it can be distributed to unsecured junior creditors,
9 and even in equity. I mean, the only party at risk in this
10 type of scenario is a secured creditor, who should be at the
11 least risk. There should be no risk at this point if we're
12 going to honor the Bankruptcy Code requirements.

13 I would guess that most -- you know, what do we think
14 is a reasonable number? Your Honor, we think four years is a
15 reasonable time. And why are we proposing four years? I don't
16 know, Your Honor. I mean, I've been involved in cases that
17 have taken longer than that. I would guess most lawyers in
18 this courtroom have taken -- I've been in situations where you
19 have the outlier case. It takes forever to get resolved.

20 I'm not saying that this will be that case, but it
21 could be. And if you really want to protect the secured
22 creditor, you have to consider the worst case scenario. And
23 that's what --

24 THE COURT: And that worst case scenario --

25 MR. PROSTOK: Yes.

1 THE COURT: -- is equity committee, or unsecured
2 creditors committee, I think equity committee, files an
3 adversary proceeding against Innovatus. You know, whatever
4 causes of action are in there, are in there.

5 MR. PROSTOK: Correct.

6 THE COURT: And then that is litigated. And whoever
7 doesn't like the result appeals to the district court. And
8 then whoever doesn't like that result appeals to the Fifth
9 Circuit. And maybe someone files a petition for cert. For
10 some crazy notion they would grant cert on something like this.
11 I don't think they would.

12 MR. PROSTOK: I agree.

13 THE COURT: And that could take four years. That's
14 what we're talking about.

15 MR. PROSTOK: It is, Your Honor. And it's easy for
16 the debtor to say, oh, it's going to be six months or a year.

17 THE COURT: So we're not factoring in your client's
18 various appeals that are already pending. You're just talking
19 about --

20 MR. PROSTOK: No. This is just --

21 THE COURT: -- the to be filed, we think.

22 MR. PROSTOK: Yeah. And, Your Honor, the debtors'
23 not going to control the litigation. It's going to be
24 controlled by the litigation trust, which is really made up of
25 members of the current equity committee. So we don't even know

1 what's out there yet, Your Honor. They're asking to reserve
2 for something that may not even be here yet.

3 I mean, we absolutely are confident, ultimately,
4 we're going to prevail in this suit. But we've got to be
5 protected. The Bankruptcy Code provides that type of
6 protection. And Your Honor, if there were not easy solutions
7 to this, it would be a much harder issue. But the debtor has
8 easy solutions. Just for whatever reason, they don't want to
9 pay us, or they don't want to wait. But that's really the
10 solution here.

11 Your Honor, David Keltner, Dean of Appellate Law. I
12 don't know a guy that has more appellate experience than him.
13 We prepared a report that literally was not due until the
14 morning of this last past Friday, which I think is the 16th.

15 The complex rules provide that you, in this
16 situation, provide it by noon on Friday. It's Section 38 of
17 the complex rules of the Northern District, Section K, Page 38
18 says, it's the Friday before for a Tuesday hearing before 12
19 noon. We submitted it to the debtor at 11:46 a.m. And so we
20 complied with what was required to have a timely report filed.

21 And why do we think this is important? And what does
22 the report do, because I think this is really critical. Your
23 Honor, the report doesn't try to attempt to tell this Court how
24 long a claim objection or adversary would take in your court.
25 Nobody knows that better than Your Honor.

1 And we realize, and I think Mr. Keltner realizes, you
2 have much experience with respect to appeals. You know the
3 process. But what he has done, and what I think you'll find
4 very helpful, is there's a database that takes every case from
5 the Northern District Bankruptcy Division, I think he went back
6 to 2020, and it says how long is the average process from
7 bankruptcy court to district court. How long does an appeal,
8 on average, take.

9 And I think there were 37 cases from the Northern
10 District of Texas that went to the district court, from the
11 bankruptcy court, various bankruptcy courts. And the average
12 was 11-1/2 months, which I found kind of interesting. I
13 thought it would have been longer. I mean, my cases always
14 seem longer from the bankruptcy court to the district court for
15 11-1/2 months.

16 And then there's the same type of information
17 available from the district court to the Fifth Circuit to
18 determine how long --

19 MR. CURTIN: Your Honor, if I may interrupt. Debtors
20 have a motion in limine --

21 THE COURT: Right.

22 MR. CURTIN: -- pending with respect to the report
23 that is being discussed right now. Counsel is basically
24 presenting to you what is in that report as if it is evidence
25 that's been admitted, and hasn't. We're seeking to exclude it.

1 I would request we have an opportunity to present and argue
2 that motion before you hear what's in the report.

3 MR. PROSTOK: Okay. And that's fine.

4 THE COURT: Sustained.

5 MR. PROSTOK: Yeah. I'll get off of that, Your
6 Honor. But you know, and the debtor says one year, which we
7 think the evidence will show is completely unrealistic. I
8 think Your Honor has to realize that one year to, you know, for
9 a claim of objection or for some litigation that may not have
10 even been filed yet is unrealistic.

11 And so, Your Honor, at the end of the day, I mean, I
12 think we're still at risk at four years, but that's what we're
13 going to ask the Court to grant. And I think even under those
14 terms, it's a risk and there's better alternatives for all
15 constituencies than to, you know, reserve that kind of cash,
16 especially, you know, in this type of a case, in a liquidating
17 case.

18 You know, the other issue, Your Honor, is attorney's
19 fees. And that's an estimate as well, and it's based on time.
20 I mean, if it's a year, attorney's fees are going to be much
21 less than if it's four years. And Mr. George is here, and he
22 just has an opinion based on the attorney's fees that he's
23 incurred. And he's going to tell you that if this thing's three
24 years, based on fees that have been incurred to date, I mean,
25 it could be \$11 million of attorney's fee. If it's four years,

1 it could be \$13 million. I mean, it's an absurd number, I
2 realize.

3 THE COURT: It is an absurd number.

4 MR. PROSTOK: I realize. But, you know, it's based
5 on, you know, these kind of facts that at the end of the day,
6 you can decide. But the problem is if we're wrong, my client,
7 an over-secured creditor, has his collateral gone, dissipated,
8 and he collects less than the Bankruptcy Code requires him to
9 collect in a liquidating case like this.

10 All we're asking, Your Honor, is just for fair
11 protection. We think the Court can fashion a solution that
12 makes sense, that doesn't harm the debtor, that doesn't harm
13 the creditors, that is in the best interest of the estate, but
14 it's not putting the secured creditor at risk in a liquidating
15 plan. Thank you, Your Honor.

16 THE COURT: All right. I have so much I want to say,
17 but I don't know if it will help things or not. I guess we'll
18 start with a question or two. I'm just trying to save time
19 this morning.

20 Just out of curiosity, how long do you each think
21 this would take today? I'm just curious how much we would
22 spend on this issue in each of your estimation.

23 MR. CURTIN: Your Honor, we have one witness.

24 THE COURT: Okay.

25 MR. CURTIN: And the direct will take less than ten

1 minutes.

2 THE COURT: Okay. What about from this side?

3 MR. PROSTOK: Your Honor, we have a declaration, you
4 know, whatever cross would take. I mean, I think our case is
5 probably an hour, maybe, total.

6 THE COURT: Okay. Well, that's, at least,
7 encouraging. But I am just -- again, we're down to these two
8 issues, right? So here is my pragmatic, big picture take on
9 all this. So Innovatus came into this bankruptcy case with
10 about a 40, well, I think the debtor said it was a 41
11 million-ish claim, and maybe Innovatus, the proof of claim is
12 45,000, or 45 million, something like that.

13 Okay. And so Innovatus has been paid down 27
14 million, 15 million from Zokinvy, 12 million from the closing
15 of Avexitide. The plan contemplates another \$10 million paid
16 down, so 37 million. But then the plan contemplates default
17 interest post-confirmation, I guess post-petition and
18 post-confirmation, but it's just up to one year.

19 MR. CURTIN: That's right, Your Honor.

20 THE COURT: And Innovatus wants four years. The
21 calculation of the debtor does contemplate the prepayment fee,
22 right?

23 MR. CURTIN: It does, Your Honor, as well as the
24 final fee.

25 THE COURT: And that's 833 million prepayment

1 penalty, as well, and the final fee is 2.6 million.

2 MR. CURTIN: Yes, Your Honor. Now, we -- just to be
3 clear, we contest --

4 THE COURT: Well --

5 MR. CURTIN: -- on the substance.

6 THE COURT: Well, there may be an adversary --

7 MR. CURTIN: Right. Well --

8 THE COURT: -- where who knows what is --

9 MR. CURTIN: Well, just a point on that. We don't
10 believe there is an adversary. We've already filed our claims
11 objection.

12 THE COURT: Okay.

13 MR. CURTIN: So when you ask -- there's no adversary.
14 It's a claims objection that's already been filed. But yes, we
15 are -- obviously we contest the validity of those fees, but we
16 are 100 percent reserving for every penny of those.

17 THE COURT: Okay. So I keep throwing out adversary
18 proceeding, but it could just be a claim objection. This is --
19 I mean, again, I'll hear the evidence and argument, but this is
20 just astounding to me.

21 I just can't think of a case I have had in 18-plus
22 years on the bench and all the private practice where we had
23 this dynamic, okay, of a secured creditor being so unhappy when
24 they've been paid so much so fast and, you know, they're
25 looking at getting their prepayment penalty and default

1 interest.

2 I don't know if there's anything you can say,
3 Mr. Prostok, to help me understand the dynamic here.

4 MR. CURTIN: And it's beyond that, Your Honor. We're
5 talking about attorneys' fees of 14 million to go to the
6 Supreme Court and post-petition interest for default, full
7 default, when the risk profile obviously is way, way down.
8 They've been paid --

9 THE COURT: Okay. So I really am having trouble
10 understanding --

11 MR. PROSTOK: And I get it, Your Honor.

12 THE COURT: -- this.

13 MR. PROSTOK: But a secured creditor is entitled to
14 get its claim paid. That's all we're asking for. At the end
15 of the day, if we're not entitled --

16 THE COURT: But there's --

17 MR. PROSTOK: No. You know, I think we're entitled
18 in a case where equity's getting a recovery to default
19 interest. I think the Fifth Circuit's clear.

20 THE COURT: And they're agreeing to that.

21 MR. PROSTOK: Right. They're --

22 THE COURT: They're just --

23 MR. PROSTOK: We're not -- we're not just -- and, I
24 mean, it's just a question of time. If you could guarantee
25 that it's one year, we're fine. We'll walk away happy. If

1 there was a guarantee that this was only going to last a year,
2 they've accounted for it. But they -- but there's no --

3 THE COURT: Isn't this just about --

4 MR. CURTIN: We'll guarantee --

5 THE COURT: Stop.

6 MR. CURTIN: -- it on our side, Judge. We'll waive
7 our appellate rights. Guarantee on your side.

8 THE COURT: It's not just, it's not about you two,
9 the debtor --

10 MR. PROSTOK: Right.

11 THE COURT: -- and the secured lender. We've got
12 unsecured creditors.

13 MR. PROSTOK: We --

14 THE COURT: We've got equity who is in the money.

15 MR. PROSTOK: Right.

16 THE COURT: So, isn't this a nice balance of all of
17 those interests? Right?

18 MR. PROSTOK: But it's not, Your Honor. I'm -- a
19 Chapter 7 Trustee, in my opinion, with the risk of not having
20 funds to pay a secured creditor in full, I don't think he would
21 distribute money to junior creditors, including equity, until
22 there was a determination that there was money to pay him.

23 I'm sitting on -- I'm waiting for, you know, admin
24 phase in a number of cases that the trustee is being overly
25 conservative because he doesn't want to be in a situation where

1 he's paid out money and then at the end of the day, he was
2 wrong. And, you know, if this can be done in a year, great.
3 That's fantastic. They get the money back.

4 All we're asking you is just to protect the process.
5 I mean, it's a really simple solution. And if they want to pay
6 us our claim, they can do that, as well. But they have no
7 evidence that a year is realistic. They just don't. I mean,
8 they can't just say, oh gosh, we're going to get this thing.

9 You know if somebody appeals, this thing can't be
10 done in a year. There's no way. It's unrealistic. And I know
11 it sounds like we're trying to grab, but we're not. We're just
12 asking to get our claim paid, which they could do tomorrow, and
13 then distribute whatever the heck they want to the junior
14 creditors at equity.

15 For some reason, they don't want to. I don't know
16 why. Do they think it's leverage? Maybe. But it doesn't make
17 any sense. It's a liquidated plan.

18 THE COURT: Maybe they're worried about getting it
19 back, if they ever --

20 MR. PROSTOK: I mean, we --

21 THE COURT: -- are entitled to get it back.

22 MR. PROSTOK: We can get them comfortable that they
23 can get it back.

24 THE COURT: How can you give anyone comfort on that?

25 MR. PROSTOK: I mean, I think we can get them more

1 comfortable that there's going to be --

2 THE COURT: Funds are liquidated all the time,
3 especially in this economic environment.

4 MR. PROSTOK: I think we could get the Court
5 comfortable that there would be a solvent entity. My client's
6 a very viable entity, but very successful. And we think that
7 the Court would be comfortable with a settlement that you would
8 look at and be comfortable that there is a solvent debtor.

9 THE COURT: I would love a settlement, as in global
10 overall big picture settlement.

11 MR. PROSTOK: You know, and we tried --

12 THE COURT: What about the attorneys' fees? 506(b)
13 says you get reasonable attorneys' fees --

14 MR. PROSTOK: Correct.

15 THE COURT: -- as opposed, I mean --

16 MR. PROSTOK: Absolutely.

17 THE COURT: -- if it's in the contractual provision,
18 which I'm sure it is here.

19 MR. PROSTOK: Yes.

20 THE COURT: In your estimate of reasonable attorneys'
21 fees, I forgot the number that I was looking at.

22 MR. PROSTOK: It's like \$13 million, 14.

23 THE COURT: Thirteen million dollars?

24 MR. PROSTOK: I mean, it's --

25 THE COURT: Thirteen million?

1 MR. CURTIN: For a claims objection.

2 MR. PROSTOK: It's a lot. It's just the unknown.

3 THE COURT: You think that's reasonable under 506(b)?

4 MR. PROSTOK: I think if you're going to protect a
5 creditor, at the end of the day, when you look at the fees that
6 have been incurred in this case to date --

7 THE COURT: I'm just going to be very blunt because
8 I'm trying to --

9 MR. PROSTOK: And that's -- I understand.

10 THE COURT: -- encourage you all --

11 MR. PROSTOK: I understand, Your Honor.

12 THE COURT: -- to work it out. Three law firms
13 representing a very over secured creditor?

14 MR. PROSTOK: Really only two law firms are active in
15 this -- at this point, in this case. I mean, the first law
16 firm is no longer active. Your Honor, my billing rate's \$825
17 an hour. It's less than probably their two-year associate.

18 THE COURT: I'm not talking about anyone's hourly
19 billing rate. I'm talking about how many attorneys would be
20 involved with a claim objection and an appeal, maybe, in this
21 scenario.

22 MR. PROSTOK: It's a legitimate question, Your Honor.
23 But again, I just go back to the fact, if we're wrong, we're
24 damaged. And there's a very easy solution from the debtors'
25 standpoint to make sure that the secured creditor, who's

1 entitled to 100 percent of its claim, along with its interest
2 and costs, is protected. That's all we're asking.

3 We're not asking for anything more than we're
4 entitled to. If our fees are unreasonable and they're objected
5 to, you can tell us they're unreasonable and we don't get them.
6 All we're asking for is to be protected. Either pay our claim,
7 they've already reduced it from 20 million to 10, just pay the
8 other 10. Why would they want to accrue, you know, a huge
9 interest cost while they're doing this? I mean, it makes no
10 sense.

11 THE COURT: Okay. But we all know the answer to that
12 question. And the answer is, if the equity committee has a
13 successful claim objection or adversary cause of action, they
14 don't want your client to have been paid and the money to be
15 gone.

16 MR. PROSTOK: That's very fair. But I think we can
17 get them comfortable that it won't be gone. I mean, I think we
18 can come up with some sort of a solution in that regard that
19 the Court would be satisfied with.

20 I mean, I agree, Your Honor. This, to me, is
21 something that screams out for resolution. I mean, we tried --

22 THE COURT: Absolutely.

23 MR. PROSTOK: We tried over the weekend, I mean, with
24 Mr. Califano. But it really goes down to, I think the debtor
25 strongly believes that it could be done in one year, and my

1 client -- and, you know, there's no assurances. I mean, the
2 debtor isn't even going to be controlling the litigation.
3 Things happen. I mean, things happen, is the problem.

4 THE COURT: Okay. Thank you.

5 And, oh, Ms. Venus, did you want to speak? We're
6 using your client's name a lot, it would appear, without --

7 MS. VENUS: Yes, Your Honor. Mr. Warren, who's on
8 the line, wanted to address the Court for a second. I don't
9 know if you could see him raising his hand.

10 THE COURT: For some reason, my screen is just
11 showing exactly what you see there, and I don't know why that's
12 happening this morning. But yes, we'll hear from him.
13 Mr. Warren, you said?

14 MS. VENUS: Yes.

15 THE COURT: Okay. Mr. Warren, you may speak up right
16 now. Mike, what are you seeing over there?

17 THE CLERK: I don't see him. He's still on.

18 THE COURT: Mr. Warren.

19 MR. CURTIN: It's actually Mr. Martin.

20 THE COURT: Or, Martin. I'm sorry.

21 MR. CURTIN: Warren is his first name.

22 THE COURT: Mr. Martin, we're not seeing or hearing
23 you, so make sure your audio and video are turned on. Mike,
24 would you get the IT people up here just in case it's a problem
25 on our end? Do you see all the faces on your screen, Mike?

1 THE CLERK: I don't, but I see the names. But when
2 they start speaking, they should come up.

3 THE COURT: I know, but it's not happening. And --

4 THE CLERK: Is it Martin Beeler?

5 THE COURT: No. Mr. Warren.

6 MS. ELLISON: Judge Jernigan, this is Traci. I see
7 Mr. Martin and it looks like he has an assistant with him in
8 his office trying to do something to the computer, so I think
9 they are having problems on their end.

10 THE COURT: Okay. Thank you, Traci.

11 So I would like the IT people to come up just in case
12 because this is not the screen we typically see.

13 MS. VENUS: Yes, Your Honor. We can't see anybody
14 here on this side, either. And I know someone else was having
15 an issue earlier trying.

16 THE COURT: Okay. I suppose it's possible everyone
17 has their video turned off but it's just unusual to see all
18 black.

19 Traci, on your end are you seeing any faces or names?

20 MS. ELLISON: Just names, Your Honor, no faces. I'm
21 not sure if that's because everyone has their video
22 (indiscernible).

23 THE COURT: We're not even seeing the names on the
24 big screen in the courtroom or my screen or the law clerk
25 screens. So if we can get an IT person up here, maybe that'll

1 help. But it sounds like Mr. Martin is having issues, too.

2 MS. ELLISON: Okay. I'll reach out to IT right away.

3 THE COURT: Okay. Thank you.

4 MS. VENUS: Your Honor, would you like me to go ahead
5 and address the issues while we --

6 THE COURT: Yes, why don't you. Thank you.

7 MS. VENUS: Okay. Your Honor.

8 Again, just to take a moment, Your Honor had
9 indicated the context was important and we agree with you that
10 context is important. The debtors have requested an estimation
11 of the Innovatus claim at 24.2, which the Equity Committee
12 believes is extremely generous, particularly when you take into
13 account the \$10 million pay-down on the effective date, which
14 would then require an escrow of 13.4 for the Innovatus claim.

15 If you consider the debtors recently filed a
16 objection to claim, which the Committee will probably join in
17 soon and we hope that it will be expeditiously resolved. In
18 that objection, there is a hope to find that Innovatus owes the
19 estate 18.7 for the damages caused to the estate by their
20 actions. If you take that into consideration, that --

21 MR. PROSTOK: Your Honor, I'm going to object. I
22 mean, the issue today are two issues. We're not talking about
23 the merits of the claim or any sort of offset whatsoever. The
24 issue is, if our claim is what we are deeming that claim is,
25 then what sort of reserve needs to be put in place to protect

1 us for costs, for interest, and attorneys fees? That's it. I
2 mean, we're not estimating our claim. We're estimating the
3 reserve.

4 THE COURT: Overruled. This is important context.
5 You've outlined, I don't know if I should call it the best case
6 scenario, where your claim is allowed in full but only after
7 four years, and I'm hearing another perspective on what might
8 be reasonable for the reserve.

9 MS. VENUS: Thank you, Your Honor.

10 So 13.4 in escrow, then Innovatus owes the estate
11 18.7. That means that at the end of the day, if that claim
12 objection is successful, it's actually Innovatus who will owe
13 the estate \$5.3 million. So quite the contrary to the
14 situation that they are expressing that they are going to have
15 all these claims that they are going to be owed, that the money
16 is gone, it's going to be quite the contrary.

17 We're going to be going after them to repay the
18 estate because in fact they will have gotten paid more than
19 what they're entitled to. So we believe that the debtors'
20 estimation is frankly overly generous and should be estimated
21 at a zero escrow based on these numbers.

22 This is an extraordinary case where there is value to
23 the equity. And we just hope that the value isn't eroded by
24 the greed of one secured creditor in contrast to all the other
25 creditors that will suffer based on what they would like to

1 see, which is everybody has to wait. Wait indefinitely and, as
2 I said, at the end of the day, it may actually be Innovatus
3 that has to pay the estate and not vice versa.

4 THE COURT: I'd like to clarify one thing I heard you
5 say. You said we think it should be a zero reserve. You
6 didn't file a position paper today --

7 MS. VENUS: No. No, Your Honor.

8 THE COURT: -- or you're not going to object to the
9 plan reserve. You're just saying, I guess in our perfect world
10 it would be zero.

11 MS. VENUS: If you're looking at sort of Innovatus
12 has tried to do their best case and we're looking at sort of
13 the alternative case. We're looking at the context, both sides
14 of the equation. One could suggest that the escrow that's
15 being requested here by the debtor is actually overly generous
16 to that.

17 THE COURT: Okay. But your client is willing to live
18 with what the debtor has proposed?

19 MS. VENUS: Absolutely.

20 THE COURT: Okay.

21 MS. VENUS: Worst case, we would ask that the Court
22 grant the debtors' request.

23 THE COURT: Okay.

24 MR. CURTIN: And, Your Honor, I'm glad that Your
25 Honor heard that, although I do for once here agree with

1 counsel that that part of it is not before you.

2 But I'm glad you heard it because you're now hearing
3 that debtors' counsel did what debtors' counsel is supposed to
4 do. You've got the Equity Committee on one side saying what
5 you just heard and you've got Innovatus saying what they heard.
6 We think what we have proposed here, if anything, and we're
7 trying to be conservative because that's just how we operate,
8 is it is a great offer for Innovatus.

9 But, again, that's why when I started the way I did
10 with it's the same thing that's happened every time. You sell
11 as it can be for a certain price, and they're going to be
12 happy. The reaction is convert to Chapter 7. You sell it back
13 to (indiscernible) for light years above what anybody thought.
14 You think, well, what do you get? You get a venue appeal.

15 So now, we're trying to, again, you're hearing that
16 Equity has its opinions, right. But this is, we've tried to
17 come up with the fairest, the best, the solution that works for
18 all parties. So I wasn't, quite frankly, expecting you to hear
19 that today. But, again, the Equity Committee, we've had
20 multiple conversations with Mr. Martin, and they are supportive
21 of this relief. But they have strong opinions one way, just
22 like Innovatus does the other way. And we did what debtors'
23 counsel does and come up with a solution.

24 THE COURT: All right. Thank you.

25 MS. VENUS: Thank you, Your Honor.

1 THE COURT: Thank you.

2 Mr. Prostok, you're still standing.

3 MR. PROSTOK: No, I mean, I just want to reiterate.

4 I mean, the only issue on the table is what is the proper

5 amount of time for the reserve. The merits are not at issue.

6 There's no evidence today of the merits.

7 THE COURT: And what is an appropriate attorney fee

8 plug figure.

9 MR. PROSTOK: You're correct, Your Honor.

10 THE COURT: Okay.

11 MR. PROSTOK: That's right. Which also sort of

12 depends on what you think the length could be.

13 Thank you, Your Honor.

14 THE COURT: Okay. Thank you.

15 All right. Who is next?

16 MR. CURTIN: I think, Your Honor, it probably makes

17 sense, again -- I apologize for keeping deferring to you. But

18 I would say we deal with the motion in limine and the

19 protective order and then we'll do our witness, which, again,

20 is short.

21 I'm happy to do it the other way around. But

22 whatever, Your Honor.

23 THE COURT: Okay. Well, let's talk about the motion

24 in limine. And let me just say, I see former Justice Keltner

25 out there. I know what a wonderful person he is. Okay. I

1 don't know if he remembers this, but at one point we were both
2 law partners at Haynes & Boone.

3 I know he was a Justice on the State Court of Appeals
4 before that. And I just respect the heck out of him. Okay.
5 But I don't feel like I need to hear any evidence today on one
6 year versus four year with respect to everyone.

7 I mean I have access to the same databases up here on
8 my computer and I know that one year is not a realistic
9 estimate for if there's a claim objection, there's an adversary
10 proceeding, then there's an appeal to the district court,
11 there's an appeal to the Fifth Circuit. I know that's not
12 going to happen in one year without an expert testifying.

13 I think four years sounds too long. Hansel and
14 Gretel, or what is it Goldilocks, somewhere in between is
15 probably just right, but I don't really think we need to spend
16 Court time on that. I mean, you both argue your point well. I
17 think four years is too much. One year is not enough. So can
18 we just short-circuit this and let me decide after all of this
19 what's reasonable based on my own experience with appeals?

20 MR. CURTIN: Well, Your Honor, that's basically what
21 we say in our motion.

22 THE COURT: When I heard that there were 37 appeals
23 since 2020 from the bankruptcy court, I think probably all of
24 those are related to this little case I have called Highland
25 where I've had more appeals from that case than the prior

1 decades on the bench. So I --

2 MR. CURTIN: Yeah. And you saw we cited that case in
3 our motion.

4 THE COURT: Yeah. So I know, and it depends on so
5 many things, right, which district judge gets assigned, how
6 many criminal trials they have going at the moment. We did
7 have COVID going, which like you, Mr. Prostok, I'm surprised at
8 the average length of appeal when we had COVID slowing things
9 down. I don't think we should spend any more time than we have
10 on the one year versus four year versus something in between.

11 MR. CURTIN: I would just make one observation. And,
12 look, we agree. We don't think expert testimony is necessary
13 here, Your Honor. I've got a whole cross prepared. I was
14 hoping to do it just for fun, but I'm happy not to waste the
15 Court's time with it.

16 What I would say is this, the one year versus four
17 year argument is almost sort of a false choice because that
18 assumes there are going to be appeals --

19 THE COURT: Right.

20 MR. CURTIN: -- up to the Fifth Circuit or beyond.

21 THE COURT: Right.

22 MR. CURTIN: We're talking about the Supreme Court,
23 right. But how many cases does Your Honor have where the
24 parties work it out or where there's an appeal --

25 THE COURT: Most of them.

1 MR. CURTIN: -- and the appeal gets dismissed early
2 on, or a party gets a judgment and decides not to appeal
3 because there's no basis for an appeal, right.

4 THE COURT: In the world of Chapter 11, people
5 usually resolve things.

6 MR. CURTIN: Exactly. And so all Your Honor is
7 tasked with doing is asked to make a reasonable estimate for
8 how long this claims objection process will last. You're not
9 estimating how long if everybody exhausts all possible appeals
10 until the end of time.

11 THE COURT: Right.

12 MR. CURTIN: And so one year is reasonable, Your
13 Honor. In fact, it's probably well longer than this process
14 will actually take. You don't need to think about how long a
15 Fifth Circuit appeal might take. This is not going up there,
16 realistically. And if it does --

17 THE COURT: I hope not.

18 MR. CURTIN: Well, if it does, it would be the
19 exception, and it goes beyond the reasonable estimate.

20 THE COURT: Okay. I think I've heard enough, and
21 it's just picking what I think is a reasonable length of time.
22 So I hate to grant a motion in limine when someone like David
23 Keltner is involved. This reminds me of the time when, maybe
24 you remember this Mr. Prostok, my former law professor, Jay
25 Westbrook, was brought in to be an expert on executory

1 contracts, and I'm like how can I strike the person like this.
2 But I know what to do here. I know what might or might not be
3 reasonable --

4 MR. PROSTOK: Yeah. I had to cross him, Your Honor,
5 if you'll remember.

6 THE COURT: You crossed him.

7 MR. PROSTOK: That was not a lot of fun.

8 THE COURT: That's why I said I think you may
9 remember.

10 MR. PROSTOK: I didn't do a very good job, either.

11 And the fact that I'm compared to Highland made me
12 shudder at nine o'clock last night when I received their motion
13 in limine. So that was difficult to hear. But, Your Honor,
14 just for my own and for the Court's -- I want the Court to be
15 aware because some of the allegations, I think, are unfair.

16 Can I just take two minutes just to tell you the
17 process?

18 THE COURT: Two minutes.

19 MR. PROSTOK: Okay. Your Honor, the motion to
20 estimate was filed August 2nd. On August 3rd, I called David
21 Keltner to see if he could help us because the only issue was
22 going to be really length of time, but that was going to be a
23 significant issue. And the thought was, if he could provide
24 information that would be helpful to the Court to help you make
25 a decision of what the really proper of the timeline is, he

1 cleared conflicts on August 6th.

2 According to the complex --

3 THE COURT: Why are we going through this?

4 MR. PROSTOK: Because there have been allegations
5 that --

6 THE COURT: I don't care about the last-minute
7 allegations.

8 MR. PROSTOK: All right. Okay. All right, Your
9 Honor.

10 THE COURT: I think the point is that --

11 MR. PROSTOK: Okay. Just for the record, Your Honor,
12 we think David Keltner would be helpful. We think that his
13 testimony would be allowable, that he's certainly a qualified
14 expert, but we respect your decision.

15 THE COURT: Okay. Thank you.

16 I'm granting that with angst. I feel like I am, I
17 don't want to say I'm an expert, but I'm as much an expert as
18 one could expect on how long appeals from this bankruptcy court
19 typically take. So we're trying to predict the future here and
20 I don't think we need any more expert testimony on that.

21 All right. So the motion for protective order, it
22 has to do with a deposition that they noticed on your client.
23 Have y'all worked that out perhaps?

24 MR. CURTIN: Your Honor, I'm sorry. Can I make a
25 suggestion? I mean, based on hearing what Your Honor said. I

1 mean, we would be willing to put in our declaration of
2 Mr. Staut, stand on that, let them put in their declaration of
3 Mr. George, stand on that. We will waive our right to cross-
4 examine him as long as they waive their right to cross-examine
5 Staut. And Your Honor can decide.

6 I mean, Your Honor's heard I think what you need to
7 hear.

8 THE COURT: All right. I've read both of those
9 declarations last night. Anything --

10 MR. PROSTOK: Your Honor, the motion for protective
11 order I don't think is necessary because the whole issue was,
12 do you have evidence that we haven't seen? And they don't. So
13 I mean I think we're fine there because they're standing on
14 their declaration. So there's really nothing to protect.

15 THE COURT: Okay.

16 MR. CURTIN: We will, if you're standing on your
17 declaration. I'm proposing that we just submit the
18 declarations. There's no need to cross. We agree on --
19 neither Mr. Staut nor Mr. George can testify and give the Judge
20 any useful information about what we've agreed are the only two
21 issues. All their declarations talk about is the math and how
22 we figured it out. And, again, it's the same. The only change
23 is that we use the 15th, you use the 30th. It's the same
24 amount of money.

25 (Counsel confers off record)

1 MR. PROSTOK: Your Honor, that's acceptable to us.

2 THE COURT: Okay. All right. So, again, I've read
3 these declarations and I guess now I'm just hearing closing
4 argument on whose declaration is more credible, or persuasive,
5 I should say.

6 UNIDENTIFIED SPEAKER: That does moot most of the
7 protective order, Your Honor. I do just want to address one
8 open item on discovery, which was addressed also in our motion
9 for protective order.

10 Your Honor, Innovatus has complained about the length
11 of time that it's going to take to litigate this contested
12 matter. Your Honor may recall that back in May, you allowed us
13 to take Rule 2004 discovery relating to the very issues that
14 are being litigated. Your Honor, that discovery still has not
15 been completed. Innovatus will not even give us available
16 dates for the 30(b)(6) deposition that we noticed back in May.

17 They haven't produced a single document relating to
18 the notice of default on MAC (phonetic). Not one. They seem
19 to be indicating that those documents are privileged, but they
20 have not given us a privilege log. They won't tell us when
21 they will give us a privilege log. We've asked numerous times,
22 Your Honor.

23 And so, Your Honor, respectfully, I would ask that
24 Innovatus be ordered to produce a privilege log by the end of
25 this week and to give us dates for a deposition. We will be

1 reasonable about scheduling, but they have not even agreed to
2 offer dates, Your Honor.

3 THE COURT: Okay. Wow. Well, that was unexpected.

4 UNIDENTIFIED SPEAKER: Can I respond to that, Your
5 Honor?

6 THE COURT: You may.

7 MR. CURTIN: And, Your Honor, we're -- sorry. Let me
8 go first. So --

9 (Laughter)

10 THE COURT: I'll let him go. Your counsel just went.

11 MR. CURTIN: Well, I'm going to -- I may take the
12 issue off the table.

13 That is an important issue for us but, Your Honor, we
14 can focus on the issue at hand today if Your Honor would
15 prefer, and seek that relief. Because I know counsel is going
16 to say it's in our protective order motion, but it's not
17 really. The relief was related to what we're talking about
18 today, and we just made the agreement that we were going to
19 submit the declarations.

20 So what I'm saying is, we'd be fine if Your Honor
21 wants to table that issue for now and move on with this.

22 THE COURT: Okay. I'll still let you speak, because
23 maybe you want --

24 UNIDENTIFIED SPEAKER: You know what, I don't want to
25 have to -- as much as I like Dallas, Your Honor, it's expensive

1 to come down and to stay over to address this issue all over
2 again. It's not before you. They haven't made any motions
3 with respect to it. We've been producing on an agreed
4 timetable with respect to Rule 2004.

5 You notice that we have other things going on in the
6 case right now, including this hearing, including confirmation
7 in two weeks, and so we told the debtors that we didn't think
8 it was appropriate. There was no urgency with respect to
9 claims that are going to be contributed to a liquidating trust
10 and pursued post-confirmation to conduct depositions in the
11 middle of two other active litigations.

12 Since that time, they've actually filed a claim
13 objection, Your Honor, and so I think there's a filed
14 proceeding objection to the continued discovery. We're
15 prepared, obviously. If you want us to brief it, we'll brief
16 it. If you want us to come down, we'll come down. I like
17 Mr. Prostok. He has a nice office.

18 But somehow or other, every time we're before you, we
19 hear complaints about everything that's happened in the case.
20 And now they're treating it as if everything's actually live
21 for decision on all those other issues, too. So I don't think
22 it's timely, but I think we've been cooperating fully and there
23 are real objections continuing with the deposition right now.
24 But we'll abide by what Your Honor decides.

25 THE COURT: All right. Well, I think it is

1 appropriate to table this. So we'll just hear the closing
2 arguments now.

3 MR. CURTIN: Thank you, Your Honor. Again, William
4 Curtin of Sidley Austin for the debtors.

5 Again, Your Honor, we've taken the position
6 consistently from the opening presentation and the first day
7 hearing, that the only reason these cases needed to be filed in
8 the first place was due to an improperly and unjustifiably
9 called event of default under the prepetition loan docs.

10 And as I kind of laid out in opening and I think this
11 argument can be significantly briefer than I intended it to be.
12 So bear with me if I stumble a bit because I'm going to attempt
13 to shorten it but still cover everything that we need covered.

14 Your Honor, again, only two elements here are length
15 of time from which default interest must be reserved and the
16 attorneys fees. And those are really two issues that are kind
17 of the same thing. Everything else kind of flows through that.

18 By overstating the complexity of the issues, and I
19 think my colleague said it best, they're asking you to only
20 look at the absolute worst-case scenario and not look at the
21 reality, which, of course, as Your Honor has already stated,
22 you're intimately familiar with, that things settle. People
23 don't appeal. Appeals are dismissed. There's all sorts of
24 things that happen.

25 And why they're doing this, they're just trying to

1 create obstacles like they've been trying to create obstacles
2 throughout the entire case, and it just has to stop. We have
3 to get to confirmation. You heard from the Equity Committee.
4 You heard from Innovatus. You heard that debtors' counsel here
5 is doing what debtors' counsel does, they're coming up with a
6 solution that doesn't make anybody happy, but is the right
7 solution, the middle solution, middle-of-the-road solution
8 under the circumstances.

9 We think that the \$1 million, that there won't be a
10 million dollars due. We think it's not going to take a year,
11 but we are overestimating to try and bridge that gap. Your
12 Honor, our plan is incredibly simple. Allowed claims are going
13 to be paid in full with interest. It's just that simple. We
14 have our claims objection on file and we believe that that can
15 be resolved easily within a year from September 15th.

16 In terms of Innovatus's arguments that their claim
17 cannot be estimated, I think the best kind of where we start is
18 that the Court has broad discretion in estimating claims in the
19 Fifth Circuit, and really everywhere, frankly. And that the
20 bankruptcy court should use whatever method is best suited
21 under the circumstances and that there's wide discretion in
22 establishing the method to be used to arrive at an estimated
23 value of estate claims.

24 And furthermore, we have a claims objection here.
25 There is a live objection to this claim. Probably the best

1 example of kind of what we view as the disingenuous position
2 that Innovatus is taking here is one of their arguments that
3 their claim is unliquidated. And you don't have to take our
4 word for it, you just have to look at their proof of claim,
5 right.

6 In their proof of claim, it says amounts due for
7 compensation expenses in (indiscernible) are presently
8 contingent and unliquidated. I mean, they admit it.
9 Obviously, they didn't mean to put that in there and now that
10 they're taking this position to try and once again squeeze the
11 debtor for whatever. They make all sorts of arguments. They
12 cite the Pulliam case to somehow say that that doesn't matter.
13 It matters.

14 Same thing with the argument that it's not
15 contingent. Innovatus disregards, as it really has throughout
16 every step of this case, the valid objections that exist to its
17 claim. And, again, this is no secret. It's been from the
18 beginning that we've taken this position, and it's come up at
19 almost every hearing. The MAC that Innovatus alleges as a
20 basis for the default was a decline in stock price and going
21 concern disclosures in our September 2023 10-K.

22 It's a simple, simple issue, Your Honor. Those are
23 both public documents. As we set forth in the claims objection
24 under relevant New York law, it's just not a valid -- it wasn't
25 a valid call event of default. But it's not an issue that's

1 going to need discovery. It's a very simple -- we certainly
2 don't need discovery, and I think most times, at least every
3 time I've ever litigated a claims objection, it's the debtor
4 taking discovery from the claimant.

5 We don't need discovery. The only real issue is
6 going to be what was Innovatus' motive and was it proper, and
7 that's not something we would even need discovery on.

8 In terms of undue delay, clearly, Your Honor, there's
9 a need to get this case to confirmation. Even though it's been
10 incredibly successful, it's not the biggest case in the world.
11 There are mounting administrative expenses that we are doing
12 everything in our power, along with the Equity Committee and
13 the Unsecured Creditors Committee, who we've been working
14 together with really well, to try and get this to confirmation
15 to stop those fees because unlike what you're hearing from
16 Innovatus, we want, yes, fees are high, we want to stop the
17 fees, and get that money to who it's supposed to go to.

18 And, Your Honor, in terms of the length of time, I'm
19 not going to make any comments on that. Your Honor knows it
20 far better than I do. You've seen more cases than I have. And
21 we would submit that, can anyone say with certainty how long it
22 will take? No, of course not. But we would submit that one
23 year is a very sufficient estimate, which is this, again,
24 estimation, and that's why we picked it. Again, maybe the
25 Equity Committee wanted more. You know that Innovatus, I'm

1 sorry -- the Equity Committee wanted less and Innovatus you
2 know wanted more, but we had to bridge that gap.

3 Again, when you look at the two declarations, Your
4 Honor said to see which declaration is stronger, but I think
5 Your Honor will find that they're the same, really. They're
6 saying in terms of the calculation, they are not disputed, and
7 that's further evidence that we thought we were taking a
8 position that would satisfy Innovatus, right.

9 We were trying to come up with a number and not say,
10 for example, what could we have done? We could have said, no,
11 there's no way you're ever going to be entitled to that
12 prepayment fee, so we're going to take 800 grand out for that.
13 Or we're going to take 400. We're going to discount it
14 somehow. We didn't discount any of it.

15 And that's why there's such a narrow issue before the
16 Court today. So again, it's set forth in the supplemental
17 Staut declaration, our numbers. But, again, when you look at
18 them, you're not going to have to decide between the two
19 because you'll see it again. The only, and I just want to make
20 it clear, there are differences in the numbers, but it's only
21 because we used the 15th and they used the 30th, and you see
22 it's a very, very small difference.

23 A couple of things I just want the Court to keep --

24 THE COURT: And just so the record's clear,
25 September 15th, 2025, versus September 30th?

1 MR. CURTIN: Well, it's really a starting point, so
2 it's '24. It's the 15th versus --

3 THE COURT: Oh, okay.

4 MR. CURTIN: Right. That is, under our one-year
5 theory, yes. It would be the 15th and the 30th.

6 THE COURT: Okay.

7 MR. CURTIN: But for both of us, so like we start our
8 one-year on the 15th. They start their four years on the 30th.

9 THE COURT: Gotcha. Okay.

10 MR. CURTIN: Do y'all have that? Okay. My CRO is
11 nodding, so I just want to make sure I said that right.

12 Your Honor, there are a few things that I think the
13 Court should keep in mind in making the decision here. And
14 I've touched on a lot of these, but they're important, so I'm
15 going to repeat some of them.

16 One is that this loan does not mature until
17 August 31, 2027. The debtors are not obligated to make any
18 principal payments until July of 2027. And notwithstanding
19 those two facts, Innovatus has already received 27 million, and
20 will, if the debtors' plan is confirmed, will get another 10
21 million.

22 Other than the alleged MAC default and the resulting
23 event of default, debtors have remained in compliance with each
24 and every term of the prepetition loan documents. And as I
25 kind of alluded to before, despite the fact that the risk

1 profile changed dramatically once the balance of Innovatus's
2 claim -- once there's an additional prepayment and the balance
3 is escrowed, we're still not seeking to reserve interest at a
4 lower rate, right. We're still reserving it at that full
5 default rate, even though they've been paid 37 million and
6 we're escrowing the rest.

7 Your Honor can imagine under different circumstances
8 if we had taken a different approach to try and get to
9 confirmation, of course we'd be trying to reduce that rate.
10 But, again, we're not.

11 Your Honor, I think at this point, I'll close and
12 just reserve a few minutes for rebuttal to Counsel.

13 THE COURT: Thank you.

14 Mr. Prostok.

15 MR. PROSTOK: Thank you, Your Honor. You've sort of
16 heard my spiel. I'll try to be very brief.

17 I mean, it's interesting that debtors' counsel's
18 statement, can anyone say with certainty, no. Your Honor,
19 that's the point. No one can say with certainty. I mean, I'll
20 tell you, indulge me just for a second, Your Honor. I mean,
21 with respect to ACES, when this thing started, I remember
22 getting a call from Robert Phelan to hire me to represent him
23 as Trustee.

24 I called my wife and I said, the good news is Robin
25 Phelan has hired me. The bad news is, we have a settlement

1 meeting tomorrow and the case is going to be over because
2 they're going to write us to check. It's less than a \$10
3 million issues. It's going to resolve. You know what
4 happened. Completely unforeseen. How many lawsuits and
5 appeals and later, this thing turned into a giant situation
6 when no one thought that was going to be the case.

7 So, Your Honor, that's really the point here. There
8 isn't any certainty. You're being asked to estimate, which is
9 a hard thing for them to ask you to do because you're being put
10 in a position where you're asked to protect a fully secured
11 creditor who, at the end of the day if we're right, is entitled
12 to all of the things that they have agreed to, including
13 interest that will continue to accrue and our reasonable
14 attorneys fees. And that's the only issue that you're asked
15 today to consider is what amount of reserve, if we're right,
16 needs to be put, what part of our collateral needs to be
17 preserved to protect us if we're right at the end of the day.

18 And we specifically stayed away from the merits
19 because the merits are not here to be heard today. Debtors'
20 counsel acknowledged that so I'm really asking the Court to
21 look at it from that standard that if we're right, this is what
22 we're entitled to, and this is what you need to do to protect
23 us if we're right.

24 Your Honor, it's a liquidating plan. In bankruptcy,
25 you follow the rules. You either hold the collateral until

1 resolution or you pay the claim, or in their case, you create a
2 reserve that is adequate so at the end of the day, if
3 uncertainty, which the debtor has admitted is a possibility.
4 If that occurs, we're still protected.

5 And it's easy for them to say, oh, it's a simple
6 claim, it will be paid in a year. That would be the best for
7 all parties if that could get done. But there's no assurance
8 that that will happen. Your Honor, we've argued for it.

9 THE COURT: Well, let me ask you --

10 MR. PROSTOK: Sure.

11 THE COURT: -- and I'm sorry to --

12 MR. PROSTOK: Not at all, Your Honor.

13 THE COURT: -- interrupt your flow. But the debtor
14 has argued, and of course, it's ultimately maybe the Equity
15 Committee who will take the lead role. But they've argued that
16 in any claim objection litigation or if there's an adversary,
17 it all boils down to Innovatus motive and was it proper when
18 they said MAC, we're declaring a default that there's not going
19 to be math or any other issue, there's just going to be that.

20 If you agree with that, as far as you know, doesn't
21 that affect the timing?

22 MR. PROSTOK: I mean, it may. But, Your Honor, I'm
23 the last guy to be asking what's going with respect to the
24 claims, but, Your Honor, there were a lot of things going on
25 with the debtor at the time of the default.

1 I mean, discovery is definitely going to be
2 necessary. I mean, it's our client's position that there were
3 significant other issues that are going to have to be looked at
4 going forward. It's not just this simple issue. And
5 certainly, that's what my client is looking at. I mean, but
6 the objection claim was filed Friday. It's 33 pages. I mean,
7 there's a number of exhibits. I mean, I guess my answer should
8 be I cannot say today that it's a simple deal and every time
9 I've told a client in the past that, oh, this is a simple
10 thing, it never is. It never is.

11 How many cases have you had, Your Honor, that seem
12 simple on their face, and turn into incredibly complex matters.

13 UNIDENTIFIED SPEAKER: And let me interrupt, because
14 Mr. Prostok is not responsible for the investigation, and so
15 you've put him at a little bit of a disadvantage. There's
16 going to be plenty of discovery, Your Honor. We dispute much
17 of what they say in the claim objection, the notion of the MAC.

18 It's not even, frankly, the default that's the basis
19 of this case. The default that's the basis of this case is an
20 insolvency default based on the filing of the case. We gave
21 them a full forbearance on the MAC. We didn't assert default
22 interest. We didn't seek to enforce rights.

23 We have all kinds of arguments about their own
24 behavior. And we have not had the opportunity to take
25 discovery, Your Honor. There's only been one side of discovery

1 up until now.

2 And now that the case has been -- now that the claim
3 objection, and potentially an adversary proceeding has been
4 filed, we plan to take discovery. So I don't have discovery
5 requests ready to read to you, but I think, and frankly, I
6 can't imagine this is going to surprise you to hear that
7 there's going to be active litigation of these claims on both
8 sides.

9 THE COURT: Okay. But this -- I'm trying to find in
10 my notes that I took the first day. I mean, this loan was made
11 like in 2022, or something like that, right. It is not like
12 years and years of historical activity. It was a loan that
13 wasn't in place very long and then in fall of 2023, this
14 materially adverse change was announced.

15 I mean, again, I know things can get more complicated
16 but this just doesn't sound like there's going to be loads of
17 discovery or months and months of discovery or 20 witnesses.

18 MR. PROSTOK: And I really hope you're right. But if
19 we're wrong, we run a risk of being damaged, and for junior
20 creditors being paid ahead of us. And we're a half million
21 dollar fund. They could pay us \$10 million and this issue goes
22 away. They can hold the collateral for, if they think it's
23 going to be six months, six months, and then distribute it.

24 They're not going to be able to distribute to
25 unsecureds and Equity immediately anyway. There's going to be

1 a process, I'm sure, that they have to -- before they can pay.

2 So I mean, I guess, Your Honor, what's difficult for
3 us is with what's before you today, which is to determine
4 what's a proper reserve and we're being asked to bear the risk.
5 And that's not how the bankruptcy process is supposed to work
6 when you have a vastly over-secured creditor. If, at the end
7 of the day, our claim is reduced, it's reduced. But if it's
8 not, we're entitled to a 100 percent plus costs and fees, and
9 that's all we're asking for, Your Honor.

10 We're asking that the integrity of the bankruptcy
11 distribution process be recognized, that this Court protect us.
12 We've said four years. I think the Court needs to err on the
13 side of caution, because, again, the debtors' own words, can
14 you say with certainty? No. And if you can't say with
15 certainty, you have to err on the high side to protect my
16 client.

17 At the end of the day, if you're wrong and there's a
18 bunch of escrow money that goes back, it gets paid to the
19 creditors. They're not harmed by the money in escrow. Maybe
20 they're delayed a little bit. But they're going to get that
21 money. If you're wrong with respect to my client, there's no
22 recourse. We have no chance of getting back if a wrong
23 decision is made and the escrow is not large enough.

24 What I'm asking the Court to do is just allow our
25 client a fair reserve. We think it's four years. That at the

1 end of the day, if this thing is done in a year, and there's
2 money back from the escrow and it goes back, no one's harmed.

3 Thank you, Your Honor.

4 THE COURT: Remind me what the dollar amount you're
5 proposing is for the escrow.

6 MR. PROSTOK: Your Honor, and I'll have to refer to
7 the affidavit of what we had --

8 THE COURT: I've got it. I guess I could --

9 MR. PROSTOK: -- of what we had said.

10 Your Honor, the amount that we're talking about is in
11 Paragraphs 45 and 46 and that's how it's been calculated. And
12 I don't think the debtor disputes our calculations, though they
13 were off on some particular, just the dates that were
14 different. But, Your Honor, I think Paragraphs 45 and 46
15 represent what we're requesting.

16 THE COURT: Okay. So the number is? There are lots
17 of numbers in there, I'm not sure.

18 MR. PROSTOK: I know. Let me make sure --

19 THE COURT: I think you're saying 41 million.

20 MR. PROSTOK: I was hoping that you --

21 THE COURT: Basically, you're saying the debtor
22 doesn't have enough money to pay the size of escrow you think
23 is appropriate, right?

24 MR. PROSTOK: That's --

25 THE COURT: Or barely would.

1 MR. PROSTOK: -- right.

2 THE COURT: Forty-one million, that's what you're
3 saying?

4 MR. PROSTOK: It's 31, I think. Thirty-one, Your
5 Honor. It's for 17,926,000 and expenses of the 13 million for
6 the attorneys fees.

7 THE COURT: So pay down 10 million and then a \$31
8 million escrow.

9 MR. PROSTOK: Yes, Your Honor.

10 THE COURT: Okay. All right. Thank you.

11 MR. PROSTOK: Thank you, Your Honor.

12 THE COURT: Rebuttal.

13 MR. CURTIN: Your Honor, it's not really a rebuttal.
14 Just, our number, just for Your Honor's -- our number is in
15 Paragraph 17 of Mr. Staut's amended declaration.

16 Again, it counts for the \$10 million additional pay
17 down and it's approximately 13.4 million. I have no rebuttal,
18 but my colleague, Ms. McManus, correctly reminded me that
19 neither we nor Innovatus moved to actually admit our
20 declarations in our little conversation there. So at this
21 point, I would just formally move to admit the two declarations
22 of Doug Staut filed on the docket.

23 THE COURT: All right. As you agreed, I will admit
24 those. Mr. George's is at Docket Number 527. And Mr. Staut's,
25 I feel like there was a supplemental, right? There was an

1 original and supplemental.

2 MR. CURTIN: There's a supplemental on Mr. Staut.
3 His original was 499, his supplemental was 518. There's an
4 original of Mr. George and a amended Mr. George, but then it
5 was just to correct a number.

6 THE COURT: Okay.

7 MR. CURTIN: So it's amended versus supplemental.

8 THE COURT: Okay. So I am admitting all of those,
9 Docket 499, 518, 527, and the amended George declaration --

10 UNIDENTIFIED SPEAKER: At 537, Your Honor.

11 THE COURT: 5 --

12 MR. CURTIN: 533.

13 THE COURT: -- 33. Those are admitted.

14 (Docket Numbers 499, 518, 527, and 533 admitted to evidence)

15 UNIDENTIFIED SPEAKER: Oh, okay. Thank you.

16 THE COURT: Okay. No rebuttal, then?

17 MR. CURTIN: No, Your Honor.

18 THE COURT: Okay. Let me take about a 10 minute
19 break and then I'm going to come back and give you my ruling.

20 I promise you it will be short. I sometimes
21 underestimate, but I do have a twelve o'clock meeting to get to
22 and so I can't keep you very much longer. So we'll be back in
23 10 minutes. What time is it now?

24 THE CLERK: All rise.

25 THE COURT: Ten minutes.

1 (Recess at 11:19 a.m./Reconvened at 11:41 a.m.)

2 THE CLERK: All rise.

3 THE COURT: All right. Please be seated.

4 All right. We are going back on the record in the
5 Eiger Biopharma case. This is the Court's ruling on debtors'
6 motion to estimate Innovatus's claim for purposes of
7 establishing a sufficient reserve so that Innovatus's claim can
8 be considered unimpaired and can be reasonably provided for in
9 the debtors' plan such that it could be reasonably estimated to
10 be provided for in full.

11 The motion before the Court is governed by
12 Sections 502(c) and 105 of the Bankruptcy Code. Local
13 Bankruptcy Rule 3007-3 is particularly relevant, as well. Just
14 to be clear, this is, of course, not a hearing on an actual
15 claim objection.

16 There is, of course, an objection to Innovatus's
17 proof of claim pending. But to be clear, this is just a
18 situation where part of Innovatus's claim at this juncture is
19 contingent and unliquidated, specifically. At least the total
20 amount of post-petition and post-confirmation interest is
21 contingent and unliquidated and its potential reasonable
22 attorneys fees that are allowable post-petition under 506(b)
23 are, at this point, contingent and unliquidated in amount.

24 I start by mentioning once again on the record that
25 Innovatus has been paid down 27 million so far during this case

1 from the successful sales of Zokinvy and Avexitide and is due
2 to be paid another \$10 million pay down pursuant to the plan,
3 so will be paid down 37 million of what was about a \$41 million
4 claim coming into the bankruptcy case.

5 And it's ringing through my brain the words that this
6 was a loan that was not due to mature until year 2027. I
7 stress this because I always say facts matter, context matters.
8 This is in my perspective a wildly successful bankruptcy. I
9 know you don't want to use an adjective like successful to
10 modify bankruptcy. No one feels happy when there's a
11 bankruptcy but this is just a really positive outcome so far
12 for this secured lender compared to what we usually see in
13 these courts.

14 So pay down of 37 million on a roughly \$41 million
15 pre-petition claim and the debtor is proposing with this motion
16 before the Court a \$13.4 million cash escrow to be set aside to
17 pay Innovatus what's remaining on its claim. And the big, big
18 unknowns at this point are how long it will take to resolve all
19 issues with Innovatus so, therefore, how much potential
20 post-confirmation interest should be put in that escrow and how
21 much potential cash set aside for indemnifying its attorneys
22 fees that it might ultimately be entitled to under 506(b) and
23 its loan documents.

24 So the debtor has done what it says is reasonable in
25 proposing \$13.4 million cash and they even contemplated the

1 \$2.6 million final fee as part of what Innovatus is entitled
2 to, a prepayment penalty, and then default interest. But,
3 again, as we know, the interest is just calculated for a
4 one-year period, and Innovatus thinks that is wholly
5 unreasonable, that it should be computed for four years. And
6 they also think the \$1 million plug number that debtor has
7 proposed for potential indemnification of Innovatus's attorneys
8 fees is wholly unreasonable.

9 Innovatus has proposed 31 million, if my memory is
10 correct, for what the escrow should be. Thirty-one million,
11 roughly, and that would be as a result of allowing it a much,
12 much bigger plug number for its potential post-petition
13 attorneys fees that might have to be indemnified as well as
14 four years of default interest.

15 Meanwhile, it is meaningful to me that we have an
16 Equity Committee and we think they're in the money, as the
17 expression goes, and if it were up to them, if they were king
18 of the world, it would be a zero escrow because they haven't
19 done discovery yet, but they think there might be arguments
20 that Innovatus owes the estate back money for maybe an
21 improperly declared MAC and default.

22 So all this background is merely to be clear on the
23 record that this is not exact science but the Bankruptcy Code
24 does grant latitude in 502(c) and 105 and Bankruptcy Rule 3007
25 and our Local Rule 3007-3. There is latitude for a court in

1 this situation to estimate what should be set aside here. I
2 called it a valuation motion one or two times today, but that's
3 not precisely what we're talking about. It's estimating what
4 we need to set aside to address Innovatus's potential
5 unliquidated and contingent post-petition interest and
6 attorneys fees.

7 The Court, again, it's not exact science, but after
8 hearing all the evidence and argument and balancing all the
9 interests appropriately, is going to address the motion as
10 follows.

11 The Court is going to require that two years of
12 interest be escrowed by the debtor, and I don't have the exact
13 math, but I'm guessing that's somewhere definitely north of a
14 million dollars extra but south of two million extra. I can't
15 do the compound interest. But I note that by August '25, the
16 monthly interest is computed at about 178,000 a month and so
17 I'm guessing that's going to be an extra \$2 million or
18 something like that, that has to be plugged into the escrow.

19 I'm not, however, increasing or ordering that the
20 escrow reserve would be increased for more than a million
21 dollars for Innovatus's potential attorneys fee plug. Like
22 every bankruptcy judge, I want reasonable minds to get together
23 and resolve things, and I just want to say on the attorneys
24 fees, with respect to all the lawyers involved on the Innovatus
25 side, the attorneys fees proposed are just outrageous.

1 And so part of my analysis here is just predicting
2 what I would ultimately approve or not approve if there was 506
3 challenge of the reasonableness of attorneys fees. I don't
4 know what goes on outside the courtroom.

5 Every bankruptcy judge will tell you we don't know
6 how many conversations or arguments or negotiations are needed
7 in a situation like this. But I do know those numbers I talked
8 about in the beginning. We have such an over-secured creditor
9 here and that impacts what a bankruptcy judge thinks is
10 reasonable.

11 Again, with all respect to the lawyers, how many
12 lawyers work on things on a daily basis or handle hearings.
13 You're just in a lower risk posture when you're so vastly
14 over-secured. But then, again, I'm looking at the fact that
15 loan originated in 2022. We are not going to need that
16 extensive of discovery. We're just not.

17 And I think most of the discovery dates back to fall
18 of 2023. So there's just no way. There's just no way
19 attorneys fees should get into the range that maybe some people
20 think. And I really want people to discuss this and think
21 about what I'm saying. I don't know what went on and what did
22 not go on in the fall of 2023. I just know that this is a very
23 unusual thing when I have such aggressiveness from such an
24 over-secured creditor.

25 And maybe one day I'm going to hear evidence and

1 there's going to be a reasonable explanation, but right now I
2 just don't know what that's going to be. So I'm really trying
3 to drive home that this attorneys fees request just almost
4 shocked my conscience. So I want people to know that.

5 All right. So I reserve the right to supplement in a
6 more fulsome written order. I'm going to ask Mr. Curtin that
7 you submit a form of order. Please, as a courtesy, run it by
8 Innovatus's counsel and give them 24 hours to comment. But I
9 would not expect a battle of the forms of order on this. It
10 just can be a very short order. All right.

11 MR. CURTIN: Will do, Your Honor.

12 THE COURT: Okay. Thank you all.

13 We're adjourned.

14 THE CLERK: All rise.

15 (Proceedings concluded at 11:55 a.m.)

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C E R T I F I C A T I O N

We, DIPTI PATEL and KAREN K. WATSON, court-approved transcribers, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Dipti Patel
DIPTI PATEL, AAERT CET-997

/s/ Karen Watson
KAREN WATSON, AAERT CET-1039

J&J COURT TRANSCRIBERS, INC.

DATE: August 21, 2024

EXHIBIT B

Citron, Andrew

From: Califano, Thomas R. <tom.califano@sidley.com>
Sent: Thursday, August 22, 2024 8:39 AM
To: Citron, Andrew; Rahie, Amanda; Rogoff, Adam C.; O'Neill, P. Bradley;
jprostok@forsheyprostok.com
Cc: Curtin, William E.; Wallace, Anne G.
Subject: [EXTERNAL] RE: Eiger - Revised Order re: Claim Estimation

Absolutely not. The judge has ruled that Innovatus is unimpaired. That has consequences for its ability to object and the potential objections which can be raised.

THOMAS R. CALIFANO

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From: Citron, Andrew <ACitron@KRAMERLEVIN.com>
Date: Thursday, Aug 22, 2024 at 8:16 AM
To: Rahie, Amanda <arahie@sidley.com>, Rogoff, Adam C. <ARogoff@KRAMERLEVIN.com>, O'Neill, P. Bradley <BOneill@KRAMERLEVIN.com>, jprostok@forsheyprostok.com <jprostok@forsheyprostok.com>
Cc: Califano, Thomas R. <tom.califano@sidley.com>, Curtin, William E. <wcurtin@sidley.com>, Wallace, Anne G. <anne.wallice@sidley.com>
Subject: RE: Eiger - Revised Order re: Claim Estimation

Sidley Team,

We have reviewed the revised figure in the proposed order and concur that such amount reflects the number set by Judge Jernigan at Tuesday's hearing as the amount to fund the Prepetition Term Loan Claim Escrow Account. We ask that you add the following language to the order: "Nothing herein shall preclude Innovatus's right to object to confirmation pursuant to § 1129, or preclude the right of any party to respond to any such objection."

Thank You,
Andrew

Andrew Citron
Associate
Pronouns: he/him/his

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Bio

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From: Rahie, Amanda <arahie@sidley.com>
Sent: Wednesday, August 21, 2024 10:51 AM
To: Rogoff, Adam C. <ARogoff@KRAMERLEVIN.com>; O'Neill, P. Bradley <BOneill@KRAMERLEVIN.com>; Citron, Andrew <ACitron@KRAMERLEVIN.com>; jprostok@forsheyprostok.com
Cc: Califano, Thomas R. <tom.califano@sidley.com>; Curtin, William E. <wcurtin@sidley.com>; Wallice, Anne G. <anne.wallice@sidley.com>
Subject: [EXTERNAL] Eiger - Revised Order re: Claim Estimation

Counsel,

Please see attached for the revised claim estimation order and a redline to the proposed order filed on 8/15. This reflects interest through 9/15/2026.

Please let us know if any questions before we submit to the Court tomorrow morning.

Best,

AMANDA RAHIE
Associate

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**

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**

EXHIBIT C




CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed August 23, 2024


United States Bankruptcy Judge

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

In re:

EIGER BIOPHARMACEUTICALS, INC.,
*et al.*¹

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

**ORDER ESTIMATING CLAIM OF
INNOVATUS LIFE SCIENCES LENDING FUND I, LP FOR THE
PURPOSES OF ESTABLISHING SUFFICIENT RESERVES TO UNIMPAIR CLAIM**

Upon the motion ("Motion")² of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), for entry of an order (this "Order") (a) estimating the Innovatus claim for purposes of calculating the Prepetition Term Loan Claims Escrow Amount; and (b) granting related relief, each as more fully set forth in the Motion; and

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors' service address is 2100 Ross Avenue, Dallas, Texas 75201.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion.



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upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and opportunity for a hearing on the Motion having been given; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

HEREBY ORDERED THAT:

1. The Innovatus claim amount shall be set at \$15,738,961.47 for the sole purpose of funding the Prepetition Term Loan Claims Escrow Account and rendering Innovatus unimpaired.
2. The Debtors reserve all rights to object to Innovatus's Proof of Claims and any amounts asserted therein.
3. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of the Bankruptcy Rules and the Bankruptcy Local Rules are satisfied by such notice.
4. Notwithstanding any Bankruptcy Rule to the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Debtors are authorized to take all such reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Submitted By:

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*Attorneys for the Debtors and Debtors in
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