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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
. .
ZOSANO PHARMA CORPORATION, . Case No. 22-10506 (JKS)
. .
. Courtroom No. 6
. 824 Market Street
. Wilmington, Delaware 19801
Debtor. .
. November 18, 2022
. 1:30 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE J. KATE STICKLES
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence at 1:30 p.m.)

2 THE COURT: Good afternoon, everyone. Please be
3 seated.

4 Mr. Elrod, good afternoon.

5 MR. ELROD: Good afternoon. For the record its
6 John Elrod and Dennis Meloro on behalf of the debtor, Zosano
7 Pharma Corporation.

8 With us today, in Court, we have Mr. Steven Lo, who
9 is a director of the debtor and a consultant, the former CEO
10 of the debtor. And Adam Gorman from Kurtzman Carson
11 Consultants to testify should the Court find that necessary.

12 THE COURT: Good afternoon. Welcome, gentlemen.

13 MR. ELROD: Well, Your Honor, as you are aware, we
14 are here today on the confirmation of the debtor's Chapter 11
15 plan. We are pleased to report to the Court that we have
16 resolved both of the pending objections to the plan and filed
17 an amended plan, at Docket No. 280, that reflects the changes
18 that were negotiated to resolve those objections.

19 I am happy to hand-up a redline if that pleases the
20 Court.

21 THE COURT: Is the redline you have Docket 281?

22 MR. ELROD: Its --

23 THE COURT: I have a redline of the amended plan.

24 MR. ELROD: -- the redline, yes.

25 THE COURT: I have that. I also have your

1 confirmation order, the revised confirmation order. I am not
2 sure what the docket number is on that --

3 MR. ELROD: Okay.

4 THE COURT: -- but I also that.

5 MR. ELROD: I understand the Court may have some
6 questions regarding that. I think we have isolated what
7 those might be.

8 Your Honor, as you are aware, given the Court's
9 prior approval of the sale in this case, substantially all of
10 the debtor's assets have been sold and, therefore, the plan
11 is a liquidating plan that contemplates the establishment of
12 a liquidating trust which should enable the creditors to
13 receive significant distributions on their unsecured claims.
14 There are, at this stage, with the exception of a couple of
15 tax claims and administrative expense claims, there are only
16 unsecured claims remaining in the case.

17 We believe the plan offers an efficient means for
18 the distribution of cash to creditors who are holding allowed
19 claims and it maximizes value to the creditors. We have
20 filed the plan supplement which contains an identification of
21 the proposed liquidating trustee as well as the liquidating
22 trustee's proposed fee structure, a copy of the proposed
23 liquidating trust agreement, and an outdated version of the
24 proposed confirmation order, of course.

25 Your Honor, as set forth in our brief, in support

1 of confirmation, the plan complies with all requirements for
2 confirmation under Section 1129 of the Bankruptcy Code. And
3 I am happy to walk through those if it pleases the Court. I
4 do believe, though, that there are no objections to the
5 confirmation of the plan at this stage.

6 THE COURT: Okay. I have read the brief and the Lo
7 declaration. So, you don't need to walk through every
8 requirement.

9 MR. ELROD: Thank you, Your Honor.

10 Your Honor, as evidentiary support for confirmation
11 today we have two items; one, of course, the declaration of
12 Mr. Steven Low which you just referenced, and, additionally,
13 we have the ballot certification that was filed by Mr. Gorman
14 on behalf of Kurtzman Carson Consultants. At this time, I
15 would move for the admission of those into evidence.

16 THE COURT: Let me ask, does anyone object to the
17 admission into evidence of the Lo declaration at Docket No.
18 266 in support of confirmation?

19 (No verbal response)

20 THE COURT: I hear no one. The declaration is
21 admitted.

22 (Lo declaration received into evidence)

23 THE COURT: Is there any party who is appearing
24 today who wishes to cross-examine Mr. Lo regarding the
25 content of his declaration?

1 (No verbal response)

2 THE COURT: Okay. The declaration is admitted
3 without contradiction.

4 (Lo declaration received into evidence)

5 THE COURT: Does anyone here today object to the
6 admission of the certification of Adam Gorman with respect to
7 tabulation of votes which can be found at Docket No. 267?

8 (No verbal response)

9 THE COURT: Okay. I hear no one. The declaration -
10 - excuse me, the certification is admitted.

11 (Gorman certification received into evidence)

12 THE COURT: Is there any party appearing today who
13 wishes to cross-examine Mr. Gorman regarding the contents of
14 his certification?

15 (No verbal response)

16 THE COURT: Okay. The certification is admitted
17 without contradiction.

18 (Gorman certification received into evidence)

19 MR. ELROD: Thank you, Your Honor.

20 Your Honor, as you probably noticed from the
21 certification, all creditors who were entitled to vote on the
22 plan did vote in favor of the plan. So, you may recall that
23 there was some acrimony at the outset of the case from one
24 creditor in particular. We ended up addressing that
25 creditor's concerns both in the sale process as well as the

1 plan phase. Their changes have been incorporated into the
2 amended plan as well as the plan that was filed at or around
3 the disclosure statement hearing; therefore, we are pleased
4 to report that Patheon, that creditor, did vote in favor of
5 the plan.

6 THE COURT: Okay. Well, I do have a question while
7 we're talking about votes with respect to the plan. The plan
8 itself and the solicitation materials provided that both
9 Class III and IV were impaired and entitled to vote. I have
10 seen no reference in the voting certification with respect to
11 Class IV and I have seen within the confirmation order that
12 Class III is referred to as the voting class and at one point
13 Class IV is referred to as having deemed to reject.

14 Now was there no party or no claimant holder in
15 Class IV that was eliminated or --

16 MR. ELROD: Thank you, Your Honor. You're raising
17 a good point. Class IV is defined as subordinated claims.
18 There are no parties at this time who fall into that class.

19 THE COURT: So, there was no solicitation for Class
20 IV because there were no holders in Class IV, so its deemed
21 eliminated.

22 MR. ELROD: That is correct, Your Honor.

23 THE COURT: Okay. When we get to the form of order
24 with respect to confirmation I am going to ask for
25 clarification with respect to Class IV and where there is a

1 reference that its deemed rejected I am going to ask you to
2 strike that. I will point that out when we get there.

3 MR. ELROD: Okay. Your Honor, as I referenced, we
4 did address various concerns of the Office of the United
5 States Trustee and those are reflected in the amended plan
6 that was filed this morning. In particular, there are --
7 excuse me.

8 (Coughing)

9 THE COURT: Do you need to get a glass of water?

10 MR. ELROD: I have some water.

11 THE COURT: Take your time.

12 (Pause)

13 THE COURT: If you need a break, Mr. Elrod, please
14 don't hesitate.

15 MR. ELROD: Thank you, Your Honor. I'm on the tail-
16 end of some type of cough like I think most of America is.

17 THE COURT: I may cough also, so, please.

18 MR. ELROD: Your Honor, as I was saying, those, and
19 its incorporated into the amended plan, we also received a
20 joinder of the United States Trustees objection from the
21 debtor's former landlord. Its being referred to as BMR
22 Ardentech. I am not getting all the numbers right, but its,
23 essentially, a landlord entity. That lease has been rejected
24 and they had filed a joinder to the United States Trustees
25 objection.

1 We have resolved their objection by, effectively,
2 at the bottom of the release provision in the amended plan,
3 inserting a sentence that excludes any claims they may have
4 under a guarantee of the lease from the release provision.
5 We don't believe that there is a guarantee. We haven't seen
6 a guarantee yet. So, we looked back at the lease and have
7 not seen a guarantee.

8 Moreover, there have been -- there were a series of
9 corporate transactions that occurred between the execution of
10 the lease and, what I will call, modern Zosano when it went
11 public, which I believe was in the 2016 timeframe that, we
12 believe, may have effectively eliminated that guarantee to
13 the extent it existed via merger. Accordingly, it's not
14 something that the debtor has an issue with. So, we are
15 agreeing to the language that carves that out.

16 With that, Your Honor, I --

17 THE COURT: Let me just, before you go, Mr. Elrod,
18 is there anyone present on behalf of BMR-34790 that wishes to
19 be heard?

20 MR. STEMERMAN: Good afternoon, Your Honor. John
21 Stemerman from Armstrong & Teasdale on behalf of BMR.

22 I rise only to say that Mr. Elrod accurately
23 described the concern that we had, as well as the revised
24 language in the amended plan. Beyond that, Your Honor, just
25 because of the commentary Mr. Elrod gave, we just wanted to

1 preserve any non-debtor guarantor obligations that might be
2 out there. Other than that, I just wanted to thank Mr. Elrod
3 for his cooperation and professionalism in dealing with BMR's
4 concerns.

5 THE COURT: Thank you.

6 MR. STEMERMAN: Thank you.

7 THE COURT: Thank you both for working together to
8 resolve that.

9 MR. ELROD: With that, Your Honor, as I referenced,
10 we do have a copy of the proposed order, including a redline,
11 from, I believe, the version that was filed with the plan
12 supplement. I am happy to -- it sounded like you may have a
13 copy, is that right?

14 THE COURT: I think that I have the same thing, but
15 before you go through an order can I ask if there is anyone
16 else who wishes to be heard today with respect to
17 confirmation of the plan?

18 MS. SARKESSIAN: Your Honor, good afternoon.
19 Juliet Sarkessian on behalf of the U.S. Trustee.

20 I rise just to confirm that the U.S. Trustees
21 objection has been resolved through certain modifications
22 that have been made to the plan.

23 THE COURT: I did have an opportunity to look at
24 the U.S. Trustees objections and I appreciate the
25 modifications that were made to the plan as a result of your

1 negotiations to resolve those objections.

2 MS. SARKESSIAN: Thank you, Your Honor.

3 THE COURT: Thank you.

4 MS. SARKESSIAN: I would just ask if there is a
5 redline of the confirmation order -- do you have an extra
6 copy?

7 MR. ELROD: I do.

8 MS. SARKESSIAN: Thank you.

9 THE COURT: Mr. Elrod, before we review the
10 confirmation order could I ask you a couple of questions with
11 respect to the plan?

12 MR. ELROD: Sure.

13 THE COURT: I mean, I don't want to -- if you had a
14 separate process you would like to go, but I do have a couple
15 of questions.

16 MR. ELROD: Not a problem.

17 THE COURT: Okay. I don't know if you wanted to
18 approach with a form of order. I do have a blackline, but it
19 looks to me there might have been a different blackline
20 because mine contains language that was stricken, like prior
21 release language, and that was not in the form of order that
22 was filed with the Court.

23 MR. ELROD: That's correct, Your Honor, and I can
24 explain that discrepancy. So, we had originally inserted a
25 revised form of the release into that provision of the order.

1 In speaking with the Office of the United States Trustee they
2 felt more comfortable with an amended plan being filed which,
3 of course, we have now filed and it incorporates that
4 language into the amended plan. So, therefore, we thought it
5 was redundant to include a proposed form of order.

6 THE COURT: Understood.

7 MR. ELROD: So, apologies for the discrepancy.

8 THE COURT: No, that makes sense to me. So the
9 release language, as modified, will be solely in the revised
10 plan.

11 MR. ELROD: Correct.

12 THE COURT: If I could, I just have a couple of
13 questions with respect to the plan.

14 MR. ELROD: Okay.

15 THE COURT: I am looking at the blackline that was
16 submitted this afternoon at Docket 281. I am hoping these
17 are just a couple of issues that you could clarify or just
18 explain to me.

19 MR. ELROD: Certainly.

20 THE COURT: So, on page 11 of the blackline I am
21 looking at Paragraph 3 under administrative expense claims.

22 MR. ELROD: Okay.

23 THE COURT: This provision, as I read it, was
24 confusing. So, it provides that objections to proofs of
25 claim must be filed and served on the requesting party by the

1 later of 180 days after the effective date and 90 days after
2 the filing of applicable proof of claim. I think it should
3 be disjunctive; I think it should be an "or."

4 MR. ELROD: Okay.

5 THE COURT: But I am curious, so its either 180
6 days or 90? I am not sure of the distinction there. I don't
7 appreciate it.

8 MR. ELROD: That is a good question, Your Honor. I
9 am trying to recall back. I know there was some discussion
10 with Patheon about the filing of a proof of claim as opposed
11 to a motion for administrative expense. We agreed to permit
12 administrative claim holders to file a proof of claim to
13 reduce costs in preparation of a motion.

14 THE COURT: And they're due, as I recall, like 30
15 days after the --

16 MR. ELROD: The effective date.

17 THE COURT: -- effective date.

18 MR. ELROD: Yes.

19 THE COURT: So, this is with respect to objections.

20 MR. ELROD: Right. So, the two don't mesh because
21 it would seem like there would never be a gap. It was
22 between the 90 and the 180.

23 THE COURT: Yeah. I just want to avoid confusion
24 down the road with respect to your objections. Frankly,
25 whatever time, 90 or 180 days, is fine with me. I just think

1 it's a little confusing what applies. Maybe we could take a
2 break when we go through a couple of comments and you can
3 consult with the Office of the United States Trustee and
4 other parties in interest here.

5 MR. ELROD: Okay.

6 THE COURT: The other comment I have, and I believe
7 this is consistent with a few other judges in this district,
8 but the next paragraph it states that claims shall be barred.
9 You have later on in the plan with respect to rejection
10 damage claims it states "Unless otherwise order by the
11 Court." So, I would ask that you put the same language here
12 that "Unless otherwise ordered by the Court" they're barred.

13 MR. ELROD: Okay.

14 THE COURT: Just for parallel, the rejection damage
15 language is on page 23.

16 MR. ELROD: Okay.

17 THE COURT: Then on page 17 this was just a comment
18 about the elimination of a vacant class. I just wanted to
19 confirm that that is what happened to Class IV.

20 MR. ELROD: Right.

21 THE COURT: On page 18, regarding the dissolution
22 of the debtor I have no edit here. I just make the comment
23 that whatever it talks what the liquidating trustee shall
24 submit for dissolution. That, to me, is whatever the state
25 law requires it requires. I had no edit to it, but I would

1 just note that it is what it is.

2 I do have a comment under (d) (2). I'm sorry, I'm
3 looking at a different version from when I put my prior
4 comments. My concern here was if the debtor is dissolved how
5 does the liquidating -- and this states, "The liquidating
6 trustee shall be authorized to act on behalf of the debtor in
7 the same manner as the debtor's D's & O's were authorized to
8 act prior to the effective date." I don't think the trust
9 acts on behalf of D's & O's.

10 MR. ELROD: I understand the distinction you're
11 drawing, Your Honor. I think that is probably a drafting
12 issue.

13 THE COURT: I think its --

14 MR. ELROD: Its imprecise or clunky language,
15 something is out of order.

16 THE COURT: Yeah. I can even find where it is, its
17 the second sentence, I think. Its the second paragraph. I
18 think its --

19 MR. ELROD: So, I think it's the final sentence in
20 the second paragraph.

21 THE COURT: -- from and after the effective date.
22 It's at the bottom of page 18.

23 MR. ELROD: Right.

24 THE COURT: The liquidating trustee shall be
25 authorized to act on behalf of the debtor. I think it should

1 be at the debtor's estate.

2 MR. ELROD: Yeah, just strike the clause in the
3 same manner.

4 THE COURT: Yes.

5 MR. ELROD: Okay.

6 THE COURT: I only have two more comments. Page
7 22, I am talking about exculpation of a liquidating trustee.
8 This same provision applies in the trust agreement at page
9 10, Section 4.9, "Exculpation is generally limited to estate
10 professionals taken during the pendency of the case from
11 petition date prior to the effective date."

12 So, I don't, prospectively, exculpate actions with
13 respect to a litigation trustee. That said, they absolutely
14 can come back and ask for it in the final decree motion, case
15 closing motion, but I won't, prospectively, approve it here.

16 MR. ELROD: Okay.

17 THE COURT: That has been pretty much my consistent
18 approach. I hope I have picked it up in all my cases, but I
19 can assure you that I have other colleagues who take that
20 position as well.

21 MR. ELROD: Okay. Good to know. Thank you.

22 So, would you like us to strike that paragraph?

23 THE COURT: Yeah or you can -- yeah, I would ask
24 that you strike it because the only other thing that you
25 could say is that the liquidating trustee can seek it in the

1 final order, but it seems to me that for purposes of today I
2 would just strike it.

3 MR. ELROD: Okay.

4 THE COURT: Then my final comment is on, I believe
5 it's, 31(g) on the blackline.

6 MR. ELROD: Okay. I'm there.

7 THE COURT: Just the prior comment, you could
8 either strike it or you can modify the language to say they
9 could seek exculpation in the final decree motion?

10 MS. SARKESSIAN: I'm sorry --

11 MR. ELROD: I'm sorry --

12 MS. SARKESSIAN: -- what section is this, Your
13 Honor, on page 31?

14 THE COURT: 31, Section (g).

15 MS. SARKESSIAN: (g).

16 THE COURT: But that was -- I just was modifying my
17 prior comment.

18 MS. SARKESSIAN: Oh.

19 THE COURT: I'll give you the option there, you
20 could either strike it or state in there that they can --
21 they reserve their right to seek it in a final decree.

22 MR. ELROD: I'm sorry, I'm at page 31, but what I'm
23 looking at is (g) deals with --

24 THE COURT: You are --

25 MR. ELROD: -- disallowed claims.

1 THE COURT: -- I'm sorry. I'm confusing you all.
2 On the last issue on exculpation, I said strike it, or you
3 could say that the trust reserves the right to seek --

4 MR. ELROD: Okay.

5 THE COURT: -- that relief.

6 MR. ELROD: All right.

7 THE COURT: Okay. So page 31(g) on the blackline,
8 this has to do with disallowed claims. And perhaps I'm
9 reading this incorrectly, but I'm not sure this is accurate
10 because, with respect to the first sentence, this talks about
11 disallowance and voting. And then the second provision here,
12 it talks about claims continue to be disallowed until the
13 relevant proceeding, and I'm not so certain that's accurate.
14 Shouldn't it be allowed?

15 And I welcome the Trustee's thoughts on this
16 provision too --

17 MR. ELROD: So this would --

18 THE COURT: -- or am I just misreading it?

19 MR. ELROD: So this would be in the instance, for
20 example, of a 547 action that effectively acts as an
21 objection to a claim. The deemed disallowance of the claim
22 during that time period until it's adjudicated, is that what
23 you -- the type of situation that concerns you?

24 THE COURT: Yeah.

25 MR. ELROD: Among others, perhaps --

1 THE COURT: Yeah.

2 MR. ELROD: -- but that's one example?

3 THE COURT: Isn't it allowed pending adjudication?

4 MR. ELROD: I think it's -- I think, generally,

5 under the plan, a claim is -- it's not allowed if there's

6 been an objection that's filed; that doesn't mean it's

7 necessarily disallowed --

8 THE COURT: Disallowed.

9 MR. ELROD: -- but it's not allowed.

10 MS. SARKESSIAN: Your Honor, it's Juliet Sarkessian

11 on behalf of the U.S. Trustee. Under 502(a), once a proof of

12 claim is filed, it's allowed until someone objects to it.

13 So in this situation, if I'm reading this

14 correctly, if there is an objection, it would then fall into

15 the definition of disputed claim. So it's --

16 THE COURT: Disputed.

17 MS. SARKESSIAN: -- yeah, disputed. So Your Honor

18 is right, it's not disallowed, it should be disputed.

19 THE COURT: Do you have the defined term "disputed

20 claim"?

21 MR. ELROD: We do.

22 THE COURT: Yeah, okay, that --

23 MR. ELROD: That's the more precise --

24 THE COURT: -- makes sense to me.

25 MR. ELROD: Yeah. We will fix that.

1 THE COURT: Yeah. Thank you, I appreciate that.

2 MS. SARKESSIAN: You're welcome, Your Honor.

3 THE COURT: Those were all the comments I had on
4 the plan.

5 MR. ELROD: Okay.

6 THE COURT: Did you have any questions with respect
7 to any of those --

8 MR. ELROD: I don't, Your Honor.

9 THE COURT: -- or did I misunderstand anything?

10 MR. ELROD: No, Your Honor. I had trouble
11 following you there for a bit because I think you were
12 referring back to your prior comment, but other than that,
13 no.

14 THE COURT: Because I was unclear.

15 MR. ELROD: All right.

16 THE COURT: And let me ask you, before we go on, do
17 you need a break? Do you want to talk with any party here
18 about the admin expense objection provision?

19 MR. ELROD: What I would propose is we simply make
20 it 180 days after the effective date and strike the -- you
21 know, the conjunctive, as it's presently drafted, second part
22 of that; in other words, the 90-day period.

23 THE COURT: Right.

24 MR. ELROD: I think that's the simplest way to
25 handle it.

1 THE COURT: All right.

2 MR. ELROD: Any issue with that? I think --

3 MS. SARKESSIAN: If I could just ask Counsel a
4 question?

5 THE COURT: Certainly.

6 MR. ELROD: Sure.

7 THE COURT: Do you need a break? I'm happy to give
8 you --

9 MS. SARKESSIAN: No.

10 THE COURT: Okay.

11 (Counsel confer)

12 MS. SARKESSIAN: Thank you, Your Honor, that sounds
13 fine.

14 THE COURT: Okay. Are there any other comments
15 that you need to discuss before we go forward? Because I
16 will say this, I know you probably want an order today and I
17 know it's Friday afternoon and, unfortunately, I have a
18 commitment at 4 o'clock. So I'm hoping that you'll be able
19 to turn in comments and submit an order today, unless you are
20 willing to wait until Monday.

21 MR. ELROD: You know, we can probably turn them in
22 this afternoon; I'm not dying to do that. I don't know if we
23 can get them before 4:00, but if it's Monday, that should be
24 fine.

25 THE COURT: Yeah, okay. I just have another court

1 function today, so --

2 MR. ELROD: Understood. You know, there's any type
3 of, you know, sale transaction or anything of that nature
4 that is waiting on this, so a weekend won't hurt.

5 THE COURT: Okay, Mr. Elrod, do you want to walk
6 through the order now?

7 MR. ELROD: Of course. Do you need a copy or do
8 you have one?

9 THE COURT: I think I have a copy.

10 MR. ELROD: Okay. Your Honor, the proposed order
11 is -- we believe it's fairly straightforward. We did, as the
12 Court is aware, make some edits to the original version that
13 was filed with the plan supplement. I believe the first
14 blackline edit is -- well, it starts on page 23 of the
15 redline and runs to page 24. That reflects a request from
16 the Office of the United States Trustee to incorporate some
17 revised language that was incorporated into the amended plan
18 with respect to United States Trustee fees, the statutory
19 fees, and we've incorporated that into the plan.

20 And so, as a result, the Office of the United
21 States Trustee asked us to strike that provision.

22 THE COURT: Understood. So that the edits are in
23 one location --

24 MR. ELROD: Correct.

25 THE COURT: -- as opposed to having to --

1 MR. ELROD: Look back and forth and wonder -- yeah,
2 hope that they're the same.

3 THE COURT: Understood.

4 MS. SARKESSIAN: That's correct, Your Honor. And I
5 just want to highlight, you know, our office's strong feeling
6 that, if something is in the plan, you don't need to repeat
7 it in the order. So, in order to try to make these orders
8 shorter, we made the revisions in the plan, no need to repeat
9 them here, because then you have to compare it and make sure
10 they're exactly the same. So --

11 THE COURT: Understood.

12 MS. SARKESSIAN: -- that seemed to be the easiest
13 way to deal with it. Thank you, Your Honor.

14 MR. ELROD: It's funny, I have a New York-based
15 client who was a practitioner for many years back during the
16 Act period and into the Code period, and he said the original
17 practice was to simply attach a copy of the plan to like a
18 one-page order and say the plan is hereby confirmed, that's
19 it. But, you know, obviously, lawyers have -- we've evolved
20 or devolved, as the case may be, with the language that is
21 currently found in most confirmation orders.

22 THE COURT: Well, again, I do appreciate you work
23 with the Trustee's Office in making the modifications to the
24 plan. And this is a pretty slimmed-down order and I
25 appreciate it.

1 MR. ELROD: Thank you, Your Honor.

2 The next item, I believe, other than some
3 paragraph-numbering changes which result from the striking of
4 the prior paragraph that we discussed, is with respect with
5 the resolution of the confirmation objections. And, as I had
6 indicated a few moments ago, we took out the revised release
7 and exculpation language and inserted that into the amended
8 plan that's now on file and will be the operative plan,
9 subject to any changes we may incorporate into an amended
10 plan resulting from this hearing.

11 THE COURT: Does the proposed order provide that
12 the plan is attached?

13 MR. ELROD: It does.

14 THE COURT: Okay.

15 MR. ELROD: So I suppose, you know, we're happy to
16 do whatever the Court prefers. We're happy to file it as a
17 freestanding item on the docket or simply make the changes
18 we've discussed here today and attach it to the --

19 THE COURT: You probably should file --

20 MR. ELROD: Yeah, that's what I'm --

21 THE COURT: -- another blackline --

22 MR. ELROD: Yeah --

23 THE COURT: -- and --

24 MR. ELROD: -- okay. And I believe that's
25 everything, Your Honor, versus the version that was filed

1 originally with the Court. There are, of course, some
2 various edits that refer to an amended Chapter 11 plan versus
3 a Chapter 11 plan of liquidation.

4 THE COURT: I saw that you included the docket
5 number.

6 MR. ELROD: That's correct, Your Honor. Other than
7 that, those are the changes to the proposed order. If the
8 Court has comments or questions about the form of the order,
9 we're happy to address those.

10 THE COURT: Okay. I do have a couple of comments
11 and this -- I'm alluding to what I talked about earlier.

12 So in paragraph (h), it states, as set forth in
13 Voting Declaration, Class III is the only voting class who
14 voted to accept the plan.

15 For completeness of record here, it says the plan
16 provides that Class IV votes and the solicitation procedures
17 approved a form of ballot for Class IV, I think that the
18 proposed order should indicate that Class IV was a vacant
19 class and, pursuant to the terms of the plan, that that --
20 there was no solicitation in that class.

21 MR. ELROD: Okay.

22 THE COURT: And I don't -- I don't know if you want
23 to -- I would ask that you run the revisions past the United
24 States Trustee's Office --

25 MR. ELROD: Of course.

1 THE COURT: -- whether that -- you know, I won't
2 wordsmith it for you, but I want to be clear what happened to
3 Class IV in this case.

4 So, in that vein, paragraph (cc) -- let me just --
5 I'm going to go back, but I want to keep all the comments
6 relative to this issue together.

7 MR. ELROD: Okay.

8 THE COURT: Paragraphs (cc), (ee), and (ii).

9 So with respect to paragraph (cc), two comments.
10 It states that Class III has voted to accept the plan and
11 Class IV is deemed to reject, and that's not accurate.

12 MR. ELROD: That's correct, Your Honor. We will
13 fix that and add language that's consistent with that agreed
14 upon with the Office of the United States Trustee, but as
15 outlined by the Court.

16 THE COURT: Okay. And then in paragraph (cc), it
17 also in line refers to Class II, and it refers them as
18 priority non-tax claims. This is a nit, but that class is
19 other priority claims.

20 MR. ELROD: Yeah, it should just be -- yeah.

21 THE COURT: And Class -- I mean, I'm sorry,
22 paragraph (ee), I guess that paragraph is okay -- well, no.
23 Again, it says Class III was the only one entitled to vote.
24 I think you have to make a consistency there.

25 MR. ELROD: Okay.

1 THE COURT: And then -- excuse me -- class (ii),
2 again, says IV and V are deemed to reject.

3 MR. ELROD: Okay, we will strike the reference to
4 IV.

5 THE COURT: Going back to paragraph (u), this
6 relates to compromise and settlement, and I think that this
7 paragraph was stricken pursuant to the United States
8 Trustee's objection.

9 MS. SARKESSIAN: Thank you, Your Honor. We missed
10 that, yes.

11 MR. ELROD: Okay.

12 THE COURT: And bear with me a second.

13 (Pause)

14 THE COURT: And I do appreciate getting a blackline
15 before the hearing and --

16 MR. ELROD: Of course.

17 THE COURT: -- unfortunately, it does take me a
18 little longer to make my comments consistent.

19 In paragraph 3 is again reference to compromise and
20 settlement, and I don't know if that has a different meaning
21 at this -- in this portion of the order.

22 MR. ELROD: Your Honor, my view on the whole -- and
23 I've been over this with Mr. Cudia -- there are of course
24 plan settlements that are formal -- you know, in the nature
25 of litigation settlements. My view on this is there's the

1 concept of a plan generally being a contract between a debtor
2 and its creditors and, therefore, a settlement in that
3 regard. I understand the United States Trustee and perhaps
4 the Court, it sounds like, doesn't like that language, and so
5 I'm happy to remove that, but there was no intention to slide
6 that by.

7 THE COURT: Okay. I just --

8 MR. ELROD: It just wasn't picked up.

9 THE COURT: -- I mean, if it's okay with the U.S.
10 Trustee's Office -- I didn't know if it had a different
11 meaning here.

12 MS. SARKESSIAN: Well, Your Honor, I mean, looking
13 at paragraph 3, this language is limited to settlements and
14 compromises set forth in the plan --

15 THE COURT: Right.

16 MS. SARKESSIAN: -- not that the entire plan is a
17 settlement and compromise. So I think this language is okay.

18 THE COURT: Okay. And it's to the extent it's
19 applicable. So --

20 MS. SARKESSIAN: Right, to the extent -- exactly.

21 THE COURT: Yeah.

22 MS. SARKESSIAN: Thank you, Your Honor.

23 THE COURT: Okay.

24 MR. ELROD: Okay.

25 THE COURT: I missed one edit in paragraph (m),

1 that's another Class II, just the title --

2 MR. ELROD: Non-priority --

3 THE COURT: -- of the class, yeah.

4 MR. ELROD: -- strike non-priority?

5 THE COURT: Well, yeah. I forget what it's titled.

6 Yeah, it's other priority, right.

7 Okay, I only have a few more comments.

8 Paragraph 9, this states that causes of action and
9 any property acquired by the debtor under or in connection --
10 under or in connection with the plan shall vest in the debtor
11 free and clear? Is that supposed to be the debtor or the
12 liquidating trust?

13 MR. ELROD: It should be the liquidating trust.

14 THE COURT: Okay.

15 MR. ELROD: Thank you, Your Honor.

16 THE COURT: And then paragraph 17 approves the
17 liquidating trust agreement. I have no issue with the
18 liquidating trust agreement other than to modify or strike
19 the provision regarding exculpation.

20 MR. ELROD: Of course. So that will be -- I
21 suppose we'll update that, perhaps file that on the docket
22 and, therefore, I don't think there would be a need for a
23 change to this, provided that the operating liquidating trust
24 agreement strikes --

25 THE COURT: Right.

1 MR. ELROD: -- the exculpation.

2 THE COURT: Right, either strike it or say that the
3 trust reserves the right to seek exculpation --

4 MR. ELROD: Okay.

5 THE COURT: -- in conjunction with the case
6 closure, final decree.

7 And then on paragraph 23, this is just a
8 consistency. Paragraph 23 says any rejection claim, if
9 they're not timely filed, shall be forever disallowed and
10 barred, and I'm just going to ask that you make this
11 consistent with the plan. It's apparently page 24 of the
12 blackline, which says unless otherwise ordered by the Court.

13 MR. ELROD: Okay.

14 THE COURT: But those are the only comments I have
15 on the form of order.

16 Let me just ask before we move any further, does
17 anyone wish to be heard with respect to confirmation of the
18 proposed plan or the form of confirmation order?

19 (No verbal response)

20 THE COURT: Okay. Mr. Elrod, is there anything
21 further before I make a formal ruling?

22 MR. ELROD: No, Your Honor.

23 THE COURT: Okay. Having not heard from any other
24 party with respect to the plan or the proposed form of order,
25 based on the record that's been made and the fact that the

1 plan is presented to the Court on an unopposed basis, and all
2 formal and informal comments to the plan have been resolved,
3 I will enter an order confirming the plan.

4 In terms of meeting the standards for confirmation,
5 the debtors have admitted into evidence the Lo declaration at
6 Docket 266, which is not controverted and supports
7 confirmation of the plan.

8 In addition, the voting certification at Docket 267
9 explains that the debtors have satisfied the provisions of
10 Section 1126 of the Bankruptcy Code for purposes of obtaining
11 the support for the plan. Class III and IV were the only
12 voting classes; Class III voted overwhelmingly to support the
13 plan; Class IV was vacant, was not solicited and, therefore,
14 under the terms of the plan, the vacant Class IV is
15 eliminated.

16 The debtor also filed a memorandum of law in
17 support of confirmation of the plan and, while that
18 memorandum is of course not evidence, it nevertheless does
19 set forth the record -- excuse me, is nevertheless part of
20 the record before the Court and it lays out with specificity
21 how the debtors have satisfied their various statutory
22 burdens and requirements.

23 The memorandum addresses in detail the provisions
24 of the plan, the debtor's compliance with Sections 1123,
25 1125, 1126, and 1129 of the Bankruptcy Code.

1 I'm not going to address each of those standards,
2 but I will note that no one has challenged the
3 classification. The plan does satisfy the best interests
4 test. The liquidation analysis that was attached as Exhibit
5 B to the disclosure statement reflects greater net cash
6 available for distribution under the plan than in a Chapter 7
7 liquidation.

8 The plan satisfies the cramdown requirements since
9 Class V will not receive a distribution. And the releases,
10 as modified in conjunction with the United States Trustee's
11 objection, are appropriate and meet the standards for
12 releases in this circuit.

13 So I am satisfied the debtor has carried its burden
14 under the provisions for confirmation of the plan and I will
15 enter the revised order when it's submitted under
16 certification of counsel.

17 MR. ELROD: Thank you, Your Honor.

18 THE COURT: Thank you. Is there anything further
19 for today?

20 MR. ELROD: I don't believe so, Your Honor.

21 THE COURT: Okay. Mr. Elrod, let me just state for
22 the record, I do appreciate the debtor working cooperatively
23 with the parties in this case. I see that the objectors are
24 all present this afternoon and I do appreciate the efforts
25 that have been made between the parties to resolve their

1 issues.

2 We will look for a confirmation order before my 4
3 o'clock. If it comes in, we'll be happy to enter it; if not,
4 we'll look for it for Monday morning.

5 MR. ELROD: Okay.

6 THE COURT: Okay?

7 MR. ELROD: Thank you, Your Honor. We certainly
8 appreciate all the Court's time on this case.

9 THE COURT: Certainly. Thank you, everyone. Have
10 a good weekend and have a happy Thanksgiving.

11 We stand adjourned.

12 COUNSEL: Thank you, Your Honor.

13 (Proceedings concluded at 2:12 p.m.)

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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ Tracey J. Williams

April 4, 2023

Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable

/s/ Mary Zajaczkowski

April 4, 2023

Mary Zajaczkowski, CET-531
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